

## **ARTICLE 3: Administration and Enforcement**

### **3-10 Certificate of Zoning Compliance**

A Certificate of Zoning Compliance is intended to verify the present zoning classification of a subject property in order to ensure or establish conformity of uses, structures, and parcels with the requirements the Zoning Ordinance. The Certificate of Zoning Compliance shall be issued by the Zoning Administrator in order to determine the following:

- a) The location of the property within a particular zoning district or overlay district;
- b) The uses allowed by right or through the issuance of a Special Use Permit and whether a particular use is permitted by right or through the issuance of a Special Use Permit within a particular zoning district or overlay district;
- c) The setbacks, height, coverage, and bulk requirements applicable to buildings and structures located on a piece of property and whether or not a building or structure conforms to the same within the zoning district or overlay district so located;
- d) The lot area, width, depth, and density requirements applicable to a piece of property and whether or not a parcel or building lot conforms to the same within the zoning district or overlay district so located; and
- e) Compliance of constructed buildings and uses with approved zoning permits, site development plans, special use permits, variances, special exceptions, zoning ordinance amendments, zoning map amendments and all other such approvals authorized by this Ordinance.

A Statement of Zoning Compliance is intended to verify the conformance of existing or established uses, structures, and parcels with the requirements of the Zoning Ordinance based upon information furnished by the property owner-applicant, but is not intended to establish whether uses, structures, and parcels proposed or not yet established comply with the requirements of the Ordinance, such compliance to be established only through issuance of zoning permit, special use permit, special exception, variance, or other authorization applicable to said use, structure, or parcel.

### **3-20 Zoning Permits**

No building or structure shall be erected, reconstructed in whole or in part, structurally altered, enlarged, or moved, nor shall any land or building be used, until a Zoning Permit has been issued by the Zoning Administrator. Upon completion of the work authorized by such Permit, the owner-applicant shall notify the Zoning Administrator of its completion.

- a) Application & Contents: All applications for a Zoning Permit shall be made in writing on forms prescribed by the Zoning Administrator by the owner-applicant and filed with the Zoning Administrator. The application shall be attached to one (1) copy of a drawing, sketch, plans and/or specifications and accompanied by the appropriate fee. The drawing, sketch, plans or and specifications shall be of sufficient detail as to permit the Zoning Administrator to fully evaluate the proposed project and ensure conformance with this Ordinance.
- b) Procedure for Review: Applicants for a Zoning Permit are encouraged to discuss their plans with the Zoning Administrator prior to completing the Application to facilitate timeliness of review. Unless

otherwise outlined in the Ordinance, a Zoning Permit Application will be reviewed within thirty (30) days of receipt. If approved, a copy of the Application and drawing denoted as approved shall be returned to the owner-applicant, such approval to constitute issuance of a Zoning Permit for the use and/or structure. If denied, a copy of the Application and drawing denoted as denied shall be returned to the owner-applicant. The lot and location of the building thereon shall be staked out on the ground before construction is started.

- c) Site Plans: Where a site plan has been submitted to and approved by the Zoning Administrator in accordance with the provisions of Article 12 of this Ordinance, one (1) copy of the approved site plan may be substituted for the plans required above. The site plan case number must be indicated on the permit.

### **3-22 Lapse of Zoning Permit**

Nothing contained herein shall require any change in the plans or construction of any building or structure for which a zoning permit was granted prior to the effective date of this Ordinance. However, such construction must commence within one (1) year of Permit approval or the Permit shall lapse and become null and void. If a Permit shall lapse, the owner-applicant of the property must reapply and shall be then governed by and must conform to the provisions of this Ordinance. If construction is substantially and materially discontinued for a period of six (6) months or more on any Permit which was granted prior to the effective date of this Ordinance, further construction shall be in conformity with the provisions of this Ordinance for the district in which the operation is located.

### **3-25 Public Notification Requirements**

Each public hearing involving planning and zoning matters before the Town Council, Planning Commission or Board of Zoning Appeals shall require notice, as set out in Sec. 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth below.

#### **3-25.10 Written Notice**

- a) Landowner Initiated Cases: In any case involving a zoning text amendment, zoning map amendment, special use permit or variance which is initiated at the request of an owner-applicant, such owner-applicant shall be designated by the Planning Commission, Town Council or Board of Zoning Appeals as the appropriate and responsible party for sending any written notice required by this section and Section 15.2-2204 of the Code of Virginia, 1950, as amended. Such notice shall contain the precise wording as provided to the owner-applicant by the Zoning Administrator or otherwise be in a form acceptable to the Zoning Administrator, provided that the notice shall contain, at a minimum, the information listed in paragraph (b) of this subsection.
- b) Minimum Information: All written notices shall contain, at a minimum, the following information:
  - 1) The time, date and place of hearing;
  - 2) A brief description of the matter being heard;
  - 3) Identification of the land that is the subject of the application (including the tax map number of the property and complete street address of the property, if any); and

- 4) The assigned case file number.
- c) When Delivered: Written notice shall be sent at least ten (10) calendar days before the hearing by first class mail to the last known address of an owner as listed in the current Orange County real estate tax assessment records or current real estate tax assessment books.

### **3-25.20 Placard Notice**

Placard notice shall be posted by the owner-applicant, using a form of placard approved by the Zoning Administrator, at least fifteen (15) calendar days and no more than twenty (20) calendar days prior to each public hearing. Certification of posting shall be provided to the Zoning Administrator.

- a) Location: Placards shall be clearly visible from each public street abutting the property. If no public streets abut the property, then the placard shall be posted so as to be clearly visible from at least two abutting properties and at the access points to said property. Placards shall be weatherproof.
- b) Contents: Placards shall contain:
  - 1) The time, date and place of hearing;
  - 2) A brief description of the matter being heard;
  - 3) Identification of the land that is the subject of the application (including the tax map number of the property and complete street address of the property, if any); and
  - 4) The assigned case file number.
- c) Maintenance and Removal: The owner-applicant shall maintain all placards up to the time of the hearing and shall remove all posted placards no later than fifteen (15) calendar days after the public hearing has been closed.
- d) 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 Sec. 3-80.

### **3-25.30 Newspaper Notice**

All newspaper notices required under Section 15.2-2204 of the Code of Virginia, as amended, shall contain, at a minimum, the following information:

- a) The time, date and place of the hearing;
- b) A brief description of the matter being heard;
- c) Identification of the land that is the subject of the application including the property tax identification number, tax map number and complete address of the property, if any;
- d) In the case of a zoning map amendment, including an amendment to an approved concept 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 Town Comprehensive Plan shall be included within the notice; and
- e) The assigned case file number.

### **3-25.40 Cost of Notice**

The cost of all notice required by this section shall be paid by the owner-applicant. The costs of placing the original newspaper notice shall be in addition to the application fee. The cost of newspaper notices for re-hearings or additional hearings required by the owner-applicant's actions shall be paid by the owner-applicant.

## **3-30 Special Use Permits**

### **3-30.10 Authority**

The Town Council may grant Special Use Permits under suitable regulations and safeguards for those uses listed as "Special Uses" in the district regulations upon finding that the use will not be detrimental to the character and development of the adjacent land, and will reflect the spirit and intent of the Town of Orange *Comprehensive Plan*, as well as this Ordinance. Should work or change in use not commence within five (5) years of approval of the special use, the permit shall lapse and be considered null and void. If the Permit lapses, for any reason, the property owner-applicant shall be required to reapply following the provisions of this Article.

### **3-30.20 Application**

In acting on a request for a Special Use Permit, the Planning Commission and Town Council shall consider the impact of the requested special use on the Town and on public facilities and systems. The owner-applicant shall provide all of the information needed to allow the Town Council and Planning Commission to evaluate the proposal and reach conclusions. This information shall address the compatibility of the proposed use with the existing and proposed land uses adjacent to the site and shall include:

- a) Application: An Application for a Special Use Permit shall be filed on the appropriate form as provided by the Zoning Administrator and in accordance with the instructions which accompany the form.
- b) Boundary Survey Plat: For developments which do not require submittal of a site development plan, a current boundary survey plat of the property in question shall be submitted. If an existing plat is used, the same shall have been prepared no more than one (1) year prior to the date of submission of the application for special use permit and shall show all information required below. Unless otherwise exempted, all such plats accompanying application for special use permit shall contain the following information:
  - 1) Boundaries of the entire property;
  - 2) Public right(s) of way, indicating names, route numbers, and width;
  - 3) Total area of the property in square feet and acres;
  - 4) Location of all existing and proposed structures, including but not limited to lighting, signs, fences and walls, and buildings;
  - 5) Footprint area and floor area of all existing and proposed buildings;

- 6) Location and distance of all off-site structures within fifty (50) feet of the property, including but not limited to lighting, signs, fences and walls, and buildings;
- 7) Proposed means of ingress and egress to the property from a public street for vehicular and pedestrian traffic, including all sidewalks interior and adjacent to the subject property;
- 8) Required and proposed buildings setbacks and building heights, required lot coverage, and the distances of all existing and proposed buildings to the nearest lot line(s);
- 9) Parking spaces, existing and/or proposed, indicating minimum distance from the nearest property line(s);
- 10) Existing and/or proposed utilities including but not limited to water, sewer, stormwater, electric, cable, and telephone lines, structures and facilities.
- 11) Where applicable, existing and/or proposed seating capacity, usable outdoor recreation area, open spaces, emergency access, limits of land disturbance, landscaping, major trees, screening, buffering, outside lighting, loudspeakers and required and/or proposed improvements to public right(s) of way;
- 12) Existing zoning designation and use of subject and adjacent properties; and
- 13) Building elevations for all new construction or major exterior alterations to existing structures.

For developments and uses which do not require submittal of a site development plan and (1) primarily involve renovations and alterations to the interior of existing buildings and structures; (2) do not involve or require major exterior alterations to existing structures; and (3) do not require additional off-street parking spaces or major upgrades to off-street parking areas, the owner-applicant shall submit a current boundary survey of the property in question showing, at a minimum, items (1)-(7) of this subsection above. The plat shall have been prepared no more than one (1) year prior to the date of submission of the application for special use permit.

- c) Statement of Compliance: The owner-applicant shall submit a written statement with supporting evidence regarding compliance of the proposed use with provisions of the Town of Orange *Comprehensive Plan* and the Evaluation Criteria set forth in Section 3-30.30 below. In addition, the written statement shall address:
  - 1) Type and hours of operation;
  - 2) Traffic impacts, including the maximum expected trip generation and the distribution of such trips by mode and the time of day based on current Institute of Transportation Engineers (ITE) Manual. The owner-applicant shall also submit average traffic volumes calculated for the internal road network, if applicable, and on adjacent streets and highways.
  - 3) Impacts on adjacent uses and measures proposed to mitigate such impacts.
  - 4) Impacts on the Town's community facilities including estimates of costs and means of providing the additional community facilities which will be needed to serve the proposed special use. Community facilities include, but shall not be limited to, sewage disposal facilities and systems, solid waste disposal facilities and systems, water supply facilities and systems, storm drainage facilities and systems, and electrical utility facilities and systems.

- 5) Ability of the Town and County, as applicable, to provide police and fire protection to the proposed use.
  - 6) Noise impacts and abatement methods to determine potential impact on adjoining properties and neighborhoods.
- d) Traffic Study: Traffic Impact Analysis or Supplemental Traffic Analysis and all accompanying materials, if required, shall be submitted in accordance with the provisions of Section 2-30.30 of this Ordinance and §15.2-2222.1 of the Code of Virginia and the regulations promulgated thereunder.

### **3-30.30 Evaluation Criteria**

The Planning Commission and Town Council shall use the following criteria, in addition to other reasonable considerations, in making their decision regarding approval or disapproval of a special use permit application:

- a) Whether the proposed Special Use Permit is consistent with the Comprehensive Plan;
- b) Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control;
- c) The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate vicinity;
- d) The glare or light that may be generated by the proposed use in relation to uses in the immediate vicinity;
- e) The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance;
- f) The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels;
- g) Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature;
- h) Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public;
- i) Whether the proposed use will facilitate orderly and safe road development, transportation, and vehicle and pedestrian traffic flow;
- j) Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Building Code as determined by the Building Official;
- k) Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities;
- l) The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality; and
- m) Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.

### **3-30.40 Conditions**

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping; parking, streets and methods of ingress and/or egress for vehicles and pedestrians; building location, height, and setbacks from property lines; location, style, intensity, and arrangement of lighting; and setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Council may require a guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the Special Use Permit.

### **3-30.50 Public Hearing**

The Town Council shall consider the recommendations of the Town Planning Commission before granting or denying approval of a special use permit. Before rendering a recommendation or decision, as applicable, on a particular special use permit, the Planning Commission and Town Council shall hold a public hearing, which may be jointly or separately held, after giving public notice as required by § 15.2-2204 of the Code of Virginia.

### **3-30.60 Amendments**

A request for any enlargement, expansion or increase in intensity, or relocation of any previously approved and currently valid special use permit or condition thereof shall constitute an amendment to the approved special use permit. The application and review process for an amendment of a special use permit shall be the same as specified for the approval of the original permit.

## **3-40 Zoning Amendments**

### **3-40.10 Authority**

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the Town Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such change may be initiated by resolution of the Town Council, by motion of the Planning Commission, or by petition of the property owner, contract purchaser with the written consent of the owner or owner's agent of the property which is the subject of the proposed zoning map amendment.

### **3-40.20 Application for Amendment**

Every application for amendment of the Zoning Ordinance text, or the Zoning Map, shall contain the following information, as applicable:

- a) The name, physical and mailing address, and telephone number of the owner-applicant, and the professional interests of every person represented in the application;
- b) The proposed zoning text amendment and written justification of conditions warranting such amendment, including anticipated effects upon properties within the district(s);
- c) An illustrative plan or map showing the extent of the area to be rezoned, streets bounding and intersecting the area, and the land use and zoning classification of abutting properties;
- d) A statement of the circumstances in the proposed district and the abutting districts and any other factors on which the owner-applicant relies as reasons for supporting the proposed rezoning or text amendment;
- e) The approximate time schedule for the beginning and completion of any development proposed in the area as a result of rezoning or amendment;
- f) A conceptual development plan, at a scale of no less than fifty (50) feet, to the inch indicating proposed or existing locations of structures together with plans thereof, land uses, areas for off-street parking and loading, site access and roadways, topography, hydrology, vegetation and tree cover, utilities, open spaces, recreation areas, and recognized historic resources;
- g) Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed business facilities, and any other information describing the relationship of the proposed development to the needs of the market area as the Planning Commission shall reasonably prescribe; and
- h) The degree of compliance of the proposed rezoning request and subsequent development plans with the provisions of the Town of Orange *Comprehensive Plan*.

### **3-40.30 Referral to Planning Commission**

The Zoning Ordinance shall not be amended without referral to the Planning Commission. The Zoning Administrator shall refer the proposed amendment or reenactment to the Planning Commission for its recommendations. The Commission shall hold a public hearing on the amendment, after notice as required by Section 15.2-2204 of the *Code of Virginia*, as amended, and may recommend appropriate changes in the proposed Ordinance or amendment as a result of such hearing. Failure of the Planning Commission to report in sixty (60) days to the Town Council shall be deemed a recommendation for approval unless the owner-applicant requests deferral.

### **3-40.40 Town Council, Public Hearing**

Before approving and adopting any Zoning Ordinance or amendment thereof, the Town Council shall hold at least one (1) public hearing thereon, pursuant to public notice as required by Section 15.2-2204 of the *Code of Virginia*, as amended, after which the Town Council may make appropriate changes or corrections in the Ordinance or proposed amendment, provided, however, that no additional land may be zoned to a different classification, nor may the Council make a change to increase the permitted density of any residential use or permitted intensity of any non-residential use, compared to what was contained in the public notice without an additional public hearing by the Town Council.

### **3-40.50 Joint Public Hearing**

The Town Council and the Planning Commission may hold a joint public hearing pursuant to public notice as required by Section 15.2-2204 of the *Code of Virginia*, as amended.

### **3-40.60 Criteria for Consideration**

In considering requests for rezoning, the Planning Commission and Town Council shall consider the following factors:

- a) Whether the public necessity, convenience, general welfare, and/or good zoning practice require an amendment;
- b) Whether rezoning request, if granted, would further the public interest, and the goals, objectives, and policies of the Town of Orange *Comprehensive Plan*;
- c) Whether the rezoning is consistent with the town's Future Land Use Policy Map, as identified in the Town of Orange *Comprehensive Plan*, and established land use patterns;
- d) Whether the rezoning is justified by changed or changing conditions;
- e) Whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
- f) Whether the Town has the capability to provide public utilities, roads, and services to the subject property if the rezoning were approved;
- g) Whether the rezoning will be compatible with neighboring uses and not have an adverse impact on the value of these properties; and
- h) Whether there are adequate sites available elsewhere in the Town for the proposed use, or uses, in districts where such uses are already allowed.

### **3-40.70 Majority Requirement**

An affirmative vote of at least a majority of the members of the Town Council present and voting shall be required to adopt, amend, or reenact the Zoning Ordinance.

### **3-40.80 Timing of Application Consideration**

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of Planning Commission and Town Council meetings and the schedule of newspaper publications relative to required public notices. A petition for rezoning or zoning amendment, which is substantially the same as the one which has been denied by the Town Council may not be reconsidered for a period of one (1) year from the date of denial.

### **3-40.90 Uses Not Listed**

The Town Council shall conduct a public hearing after giving notice as required by Section 3-40.40, and shall consider the Planning Commission's recommendation and render a decision as to whether the requested use should be permitted on the subject property and in the district as a by-right use or as a special use within thirty (30) days of receiving the recommendation. The

Planning Commission and Town Council may impose reasonable safeguards and conditions on the requested zoning amendment as it pertains to the owner's use of the property, provided that if Council grants the request with such conditions, the action shall have the effect of adding the use as a special use in the zoning district, and provided further that such approval shall be in lieu of issuance of a special use permit for the requested use of the owner's property.

### **3-40.100 Conditional Zoning**

- a) Purpose: It is the purpose of this section to provide a zoning method as authorized under Section 15.2-2296, *Code of Virginia* as amended, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the owner-applicant for the protection of the community even though said conditions may not be generally applicable to land similarly zoned.
- b) Proffer in Writing: As a part of a petition for rezoning or amendment of the zoning district map, the owner-applicant(s) of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case, as provided for in Section 15.2-2297 and Section 15.2-2298, *Code of Virginia*, as amended and as applicable, which sections are incorporated as part of this Ordinance as if set out fully herein. For the purpose of this Ordinance, proffered conditions shall be interpreted to include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as conditions shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council and the undersigned."
- c) Modifications to Proffers Prior to Council Hearing: Additional conditions may be proffered by the owner-applicant during or subsequent to the public hearing before the Planning Commission and prior to the public hearing before Town Council, provided however that after additional or revised proffered conditions are made available for public review, no further changes to proffered conditions shall be permitted or authorized until the public hearing has commenced
- d) Modifications to Proffers After Hearing Has Commenced: After the Town Council public hearing has commenced, should additional or modified conditions be proffered by the owner-applicant which materially affect the overall rezoning proposal, or which, in the opinion of a majority of the Council, substantially alter the proffered conditions beyond the original scope of those considered at the public hearing before the Planning Commission, the rezoning application shall be the subject of an additional public hearing before the Planning Commission and the Town Council, which hearing may be either separately or jointly held.
- e) Annotation of Zoning District Map: The zoning district map shall show by an appropriate symbol on the map the existence of conditions attached to one or more of the zoning districts

or sections thereof. A Conditional Zoning Index shall be kept in the office of the Administrator and made available for public inspection. The Index shall provide ready access to proffered conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to conditionally-zoned properties, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map or district regulations pertaining thereto other than by a comprehensive, new or substantially revised zoning map or ordinance, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the particular zoning district in question.

- f) Enforcement of Conditions. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to such rezoning or amendment to the zoning district map, including:
- 1) The ordering in writing of the remedy of any noncompliance with such conditions;
  - 2) The bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and
  - 3) Requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.
- g) Conformity of Site Development Plans: Upon approval of a conditional zoning request, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity. For the purpose of this Section, substantial conformity shall mean that conformity which leaves a reasonable margin for adjustment to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the owner-applicant.
- h) Amendments to Approved Conditions: Once conditions have been approved, and there is cause for an amendment, which would not be in substantial conformity with the proffered conditions, then an application shall be filed for an amendment. If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site plan set forth in Article 14, except that the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the request for site plan amendment. Such amendment shall be the subject of public hearings in accordance with the requirements for a new application.

## 3-50 Modifications and Variances

### 3-50.10 Administrative Modifications

The Zoning Administrator shall have the authority to grant a modification from any building setback requirement in accordance with Section 15.2-2286A.4. of the *Code of Virginia*, as amended.

### 3-50.20 Variances

The Board of Zoning Appeals may grant variances in accordance with Section 15.2-2309 of the *Code of Virginia*, as amended, and shall apply the following procedures, standards, and limitations:

- a) Authorization: Variances from the regulations and restrictions contained in this Ordinance may only be granted for the following:
  - 1) A reasonable deviation from the provisions regulating the size or area of a lot or parcel;  
or
  - 2) A reasonable deviation from the provisions regulating the size, area, bulk, or location of a building or structure.
- b) Application: Applications for Variances shall be filed with the Zoning Administrator by a property owner-applicant. All applications for variance shall contain the following:
  - 1) An application on a form provided by the Town, completed and signed by the property owner-applicant;
  - 2) A fee made payable to the Town of Orange as set forth in the Town's fee schedule;
  - 3) A written statement with supporting evidence regarding compliance with the variance approval criteria of this section, including:
    - i) The particular provision of the Zoning Ordinance which prevents the proposed construction on, or use of the property;
    - ii) The existing zoning of the property, including any previously approved conditions, proffers, or modifications;
    - iii) The special circumstances, conditions or characteristics of the land, building or structure that prevent the use of the land in compliance with the terms of this Zoning Ordinance;
    - iv) The particular hardship that would result if the specified provisions of the Zoning Ordinance were to be applied to the subject property;
    - v) The extent to which it would be necessary to vary the provisions of this Zoning Ordinance in order to permit the proposed construction on, or use of, the property; and
    - vi) An explanation of how the requested variance conforms to the Approval Criteria set forth in paragraph (d) below.
- c) Public Hearing: The Board shall give notice and conduct at least one public on any proposed variance in accordance with Section 15.2-2309 of the *Code of Virginia*, as amended, and decide on the same within ninety (90) days of receipt of an application for variance.
- d) Approval Criteria: No variance shall be approved unless the Board of Zoning Appeals finds that all of the following statements are true with respect to the subject property:

- 1) That strict application of the regulations of this Zoning Ordinance would produce undue hardship;
  - 2) That such hardship is not shared generally by other properties in the same zoning district and in the same vicinity;
  - 3) That the authorization of such variance will not be of substantial detriment to adjacent properties and that the character of the district will not be changed by the granting of the variance;
  - 4) Such variance is not contrary to the public interest or to the stated purpose of this Zoning Ordinance;
  - 5) Such variance would result in substantial justice being done;
  - 6) The property was acquired in good faith;
  - 7) 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 practical the formulation of a general regulation to be adopted as an amendment to this Zoning Ordinance; and
  - 8) Sufficient evidence exists to support all of the required findings of this section.
- e) Conditions: In granting variances, the Board of Zoning Appeals may impose such additional conditions and safeguards upon the character, location and other features of the proposed structure or use as the Board of Zoning Appeals deems necessary for the protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of this Zoning Ordinance. Such conditions may include a financial guarantee or bond requirement to ensure compliance with all imposed conditions.
- f) Court Petition: Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, or board, of the Town may present to the Circuit Court of Orange County a petition in accordance with Section 15.2-2314 of the *Code of Virginia*, as amended.

### **3-60 Appeals to the Board of Zoning Appeals**

- a) Authorization: The Board of Zoning Appeals shall be authorized to hear and decide appeals of any final decision of the Zoning Administrator or any final order, requirement, decision or determination made by an officer, department, or board in the administration or enforcement of this Zoning Ordinance.
- b) Right to Appeal: An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town of Orange affected by any final decision of the Zoning Administrator or from any final order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this Ordinance.
- c) Application: Applications for appeal shall be filed with the Zoning Administrator on a form provided by the Town. Appeals shall be accompanied by a fee made payable to the Town of Orange in accordance with the fee schedule set forth by Town Council.
- d) Hearing: The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as notice to the parties in interest as required by law and decide the same within ninety (90) days. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the owner-applicant on any

matter upon which it is required to pass under the ordinance or to affect any proceedings and other official actions.

- e) Procedure: Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed except by a court of record, on application and on notice to the Zoning Administrator and for good cause shown. A copy of the appeal shall be mailed to the secretary of the Planning Commission and Town Council.
- f) Court Petition: Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, or board, of the Town may present to the Circuit Court of Orange County a petition in accordance with Section 15.2-2314 of the *Code of Virginia*, as amended.

### **3-70 Processing Fees**

It is the intent of the Town that at least part of the cost of administering this Ordinance be borne by those responsible for development; therefore, a fee schedule, as prescribed by the Town Council and modified from time to time, shall apply to all permits, reviews, notices, advertisements, public hearings and processing as required by this Ordinance.

### **3-80 Enforcement**

- a) Authority: The Zoning Administrator is hereby authorized to enforce the provisions of this Ordinance by administrative action or initiation of court proceedings in the name of the Town, as may be necessary.
- b) Procedure: Upon determination that a violation of this Ordinance exists and that enforcement action is necessary, the Zoning Administrator shall give written notice of same to the owner(s) of the property (as disclosed on the Town tax records) and also to the occupant(s) thereof, if any. Such notice shall state with reasonable particularity:
  - 1) The name(s) of the property owner(s);
  - 2) The Tax Parcel Number of the property;
  - 3) A description of the nature of the violation(s);
  - 4) The time period for correction of the violation(s); and
  - 5) Suggested remedies for the violation(s).

Such notice may be personally delivered by a Town employee, may be served in the same manner as legal process, or may be mailed by certified mail to any required recipient. If any violation is not remedied within the time specified or any extension thereof agreed to in writing by the Zoning Administrator, then any one (1) or more of the following procedures may occur, in the discretion of the Administrator:

- 1) Revocation of any permit.

- 2) Petition for injunctive relief and/or in a court of appropriate jurisdiction or imposition of a civil fine for each day's violation.
  - 3) Repair or removal by the Town upon failure of any responsible party to remedy the violation.
- c) Liability: All owners of record of a property on which there is a violation of this Ordinance shall be jointly and severally liable for full compliance with this Ordinance and all costs of enforcement of same, including recovery by the Town of reasonable attorney's fees, and the costs associated with repair or removal of violations hereof. In addition, the beneficial user(s) of a violation and/or the occupant(s) of the property (if different from the owner(s) thereof) shall each be likewise jointly and severally liable for such compliance and costs.
  - d) Lien: The Town shall have a lien against the real property on which there is a violation for the aforesaid costs incurred by the Town in enforcement of this Ordinance, to be established and perfected in the same manner as mechanics' liens for materials and labor furnished, as provided in Title 43 of the *Code of Virginia*, as amended, said lien to be effective as of the date and time of the filing of a memorandum of same in the Clerk's Office of the Circuit Court of Orange County.
  - e) Time Limit: The time limit provided for remedy of any violation hereunder shall be no less than thirty (30) days from the receipt of notification by the owner(s), unless the Administrator determines time is of the essence to protect life or property than said time frame can be reduced. The administrator may extend the time frame for up to sixty (60) days.
  - f) Violation of Provisions: Any person, firm, or corporation, whether as principal, employee or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand (\$1,000) dollars.
  - e) Recourse: The Zoning Administrator may institute any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, repair, or conversion of any building or structure, or the unlawful use of land; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.