

## Chapter 24

### ZONING\*

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## Chapter 24

### ARTICLE I. IN GENERAL

#### Sec. 24-1. Short title.

This chapter shall be known and may be cited as the "James City County, Virginia, Zoning Ordinance" or simply as the "Zoning Ordinance." (Ord. No. 31A-88, § 20-1, 4-8-85)

#### Sec. 24-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Accessory apartment.* A separate, complete housekeeping unit that is substantially contained within the structure of, and clearly secondary to, a single-family dwelling. The accessory apartment may not occupy more than 35 percent of the floor area of the dwelling.

*Accessory building or structure.* A subordinate building or structure customarily incidental to and located upon the same lot occupied by the main use or building. No such accessory building or structure shall be used for housekeeping purposes. Garages or other accessory structures such as carports, porches, decks and stoops attached to the main building shall be considered part of the main building. Accessory buildings and structures located ten feet or less from a main structure shall be considered part of the main structure for the purpose of determining side and rear yards.

*Accessory use.* A subordinate use customarily incidental to and located upon the same lot occupied by the main use or building.

*Acreage parcel.* A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any record subdivision plat.

*Administrator; zoning administrator.* The official charged with the enforcement of this chapter.

*Adult day care center.* A facility that provides care to adults during part of the day only and which includes personal supervision of the adults and promotes social, physical and emotional well-being through companionship, self-education and leisure time activities.

*Affordable housing.* Units with sales prices targeted to low- and moderate-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). Such sales prices shall be those endorsed annually by the board of supervisors after receiving recommendations from the James City County Office of Housing and Community Development based on the then-current HUD area-wide income limits and identified local needs.

*Agriculture, general.* The tilling of the soil, the raising of crops, orchards, horticulture, forestry and gardening, including the keeping of animals and fowl but not intensive agriculture as herein defined or the commercial slaughtering or processing of animals or poultry.

*Agriculture, intensive.* Those intensive agricultural operations commonly known as confinement operations where large numbers of animals or poultry are confined to a relatively small space such as hog, veal and poultry pens or houses, feedlots for livestock and dairy farming operations. Any enclosure, pen or building for the concentrated confinement of livestock or poultry wherein more than 300 veal animals, slaughter or feeder cattle, 200 dairy cattle, 750 swine, 150 horses, 500 sheep, lambs, goats or similar animals, 5,500 turkeys, or 10,000 laying hens or broilers are confined or housed shall constitute intensive agriculture. Enclosed pasture or range where grass is maintained for at least ten months of the year or where animals are confined at no more than 15 adult animals per acre for no longer than 120 continuous days shall not constitute intensive agriculture.

*Alteration.* Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or interior partitions, as well as any change in doors or windows or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

*Antenna.* A device of which the surface is used to capture an incoming and/or to transmit an outgoing radio-frequency signal. Antennas shall include the following types:

- (1) Omnidirectional (or 'whip') antenna. An antenna that receives and transmits signals in a 360-degree pattern.
- (2) Directional (or 'panel') antenna. An antenna that receives and transmits signals in a directional pattern typically encompassing an arc of 120 degrees.
- (3) Dish (or parabolic) antenna. A bowl shaped device, less than two meters in diameter, that receives and transmits signals in a specific directional pattern.

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

*Aquaculture.* The growing, farming and husbandry of freshwater and marine organisms under controlled conditions, including, but not limited to, hatcheries, the propagation of ornamental fish and plants and pearl culture. Includes fish farming.

*Arterial streets.* A street specifically designed to move high volumes of traffic from collector streets through the county and not designed to serve abutting lots except indirectly through intersecting streets. Arterial streets shall include all U.S. Highways, state primaries with one, two or three-digit numbers, state secondary roads with three-digit numbers, and any other street which the subdivision agent determines is functionally equivalent to these transportation department classifications. This definition shall not include three-digit numbered streets which are part of a recorded subdivision or an extension thereof.

*Attic.* That part of a building which is immediately below and wholly or partly within the roof framing.

*Automobile.* A motor vehicle designed to transport property and/or passengers on its own structure and having a gross registered weight of 10,000 pounds or less. Automobile is inclusive of "passenger car," "pickup truck" "panel truck" and "van."

*Automobile and gasoline service station.* A facility for fueling, minor repairs and maintenance of automobiles. An automobile or gasoline service station may include no more than four enclosed service bays for maintenance and minor repair of automobiles and may also include retail sale of lubricants, tires, batteries and similar accessories.

*Automobile graveyard.* Any lot or place which is exposed to the weather upon which more than five motor vehicles of any kind, incapable of being operated and which it would not be economically practical to make operative, are placed, located or found. (Code of Virginia, section 33.1-348)

*Base flood/100-year flood.* A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one percent chance of occurring each year although the flood may occur in any year).

*Base flood elevation.* The Federal Emergency Management Agency (FEMA) designated 100-year water surface elevation.

*Basement.* A story having part but not more than one-half of its height below grade. A basement shall be counted as a story for the purpose of height regulations if it is used for business purposes or for dwelling purposes by other than a janitor employed on the premises. Solely for the purposes of Article VI, Overlay District, Division 3, Floodplain Area Regulations, this term shall mean any area of the building having its floor subgrade (below ground level) on all sides.

*Building.* Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

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

*Building line.* The line marking the intersection of the vertical building face and the ground plane. For the purpose of this definition, the building face shall be deemed to exclude exterior steps, chimneys and architectural features such as canopies, cornices, belt courses, pilasters, sills and eaves which project no more than three feet into the yard.

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

*Caliper.* The diameter of a tree trunk measured six inches aboveground level for nursery stock.

*Campgrounds.* Any area, place, parcel or tract of land of four acres or more on which three or more campsites are occupied or intended for occupancy or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease or conditional sale, or by covenants, restrictions and easements. "Campground" includes, but is not limited to, a travel camp, recreation camp, family campground, camping resort, recreational vehicle park and camping community. "Campground" does not include a summer camp, migrant labor camp or park for manufactured homes as defined in sections 32.1-203, 35-1.1 and 36.71 of the Code of Virginia, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions for providing his sanitary facilities within his property lines.

*Camping unit.* A tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, recreational vehicle or any other commonly used temporary shelter device used as temporary living quarters or shelter during periods of recreation, vacation, leisure time or travel. To qualify as a camping unit, vehicular and mobile units shall be eligible to be currently licensed and registered by a governmental body and shall be legal to travel on Virginia highways without special permits for size, weight or other reasons. For purposes of this definition, "temporary shelter device" shall mean a unit not occupied by the same persons in the campground for more than 30 days in any 60-day period. A mobile home or manufactured home shall not be considered a camping unit.

*Campsite.* Any plot of ground within a campground used or intended for occupation by the camping unit.

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

*Child day care center.* An establishment offering group care to six or more children away from their own home for any part of a day.

*Co-location.* The use of a single support structure and/or site by more than one wireless communications service provider.

*Commission, the.* The planning commission of James City County, Virginia.

*Community character corridor.* A road shown and identified on the Land Use Plan Map in the Comprehensive Plan as a community character corridor.

*Condominium.* A building, or group of buildings, in which units are owned individually and the structure, common areas and common facilities are owned by all the owners on a proportional, undivided basis.

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

*Dairy.* A commercial establishment for the manufacture, processing, distribution and sale of dairy products.

*Detectable warnings.* A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.

*Development.* Solely for the purposes of Article VI, Overlay District, Division 3, Floodplain Area Regulations, this term shall mean any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations, storage of equipment or materials.

*Development plans.* Any site plan or subdivision plan.

*Diameter breast height.* The diameter of a tree trunk measured four and five-tenths feet from the ground.

*Discontinuance.* "Discontinuance" is defined as:

- (1) Vacancy of a building originally designed or arranged for the nonconforming use for a continuous period of two years;
- (2) Vacancy of land for a period of 90 days;

- (3) Vacancy of any building other than in subparagraph (1) above for a period of six months; or
- (4) Clear intent on the part of the owner to abandon the nonconforming use.

*Dish antenna.* A dish-shaped antenna designed, used or intended to be used to receive or transmit television, radio or other electronic signals.

*District.* Districts as referred to in the Code of Virginia, section 15.2-2280.

*Dwelling.* Any structure which is designed for use for residential purposes, except hotels, motels, boardinghouses, lodging houses and tourist cabins,

- (1) *Single-family detached.* A detached structure arranged or designed to be occupied by one family, the structure having only one dwelling unit.
- (2) *Two-family.* A structure containing two dwelling units separated from one another by a solid wall or floor. For the purpose of this chapter, the term "two-family dwelling" shall not apply to a single-family dwelling containing an accessory apartment.
- (3) *Multiple family.* A structure arranged or designed to be occupied by more than two families.

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

*Elevation.* A vertical distance above or below a fixed reference point.

*Equipment enclosure.* A small building, cabinet, or vault used to house and protect the electronic equipment necessary to process wireless communications signals. Associated equipment may include air conditioners and emergency generators.

*Exterior lot.* Pertaining to lots for three- or four-family dwellings whose units are laid out side-by-side in a row, an exterior lot is a lot intended to contain a dwelling unit sharing only one wall in common with another dwelling unit.

*Family.* One or more persons related by blood, adoption or marriage living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons, not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage shall be deemed to constitute a family.

A family is, exclusive of household servants:

- (1) An individual;
- (2) Two or more persons related by blood, marriage, adoption or guardianship;
- (3) A number of persons, not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, marriage, adoption or guardianship; or
- (4) Not, more than two unrelated persons living and cooking together along with two or more persons related by blood, marriage, adoption or guardianship, as a single housekeeping unit.

*Farmer's market.* An occasional or periodic market held in a structure or open area where farmers sell their produce or farm products.

*Fast food restaurant.* Any establishment whose principal business is the sale of pre-prepared and rapidly prepared food directly to the customer in a ready-to-consume state for consumption either at the restaurant or off premises.

*Fish farm.* See "Aquaculture."

*Flag lot.* A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way.

*Flea market.* An occasional or periodic market held in a structure or open area where one or more individuals offer goods for sale to the public. "Flea market" does not include sales held by charitable or nonprofit organizations not more than four times a year, farmer's market or garage sales.

*Flood or flooding.* The terms include:

- (1) A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface water from any source.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 of this definition.

*Floodplain.* Any land area susceptible to being inundated by water from any source.

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

*Floor area.* The total number of square feet of floor space within the exterior walls of a building, not including space in cellars, basements or attics.

*Floor area ratio.* A mathematical expression determined by dividing the total floor area of a building by the area of the lot on which it is located, as:

$$\frac{\text{Floor area}}{\text{Lot area}} = \text{Floor area ratio}$$

*Floor area, retail.* The total floor area of a commercial building or the commercial portion of a mixed use building, excluding stairwells, elevator shafts, equipment rooms (HVAC, plumbing, electrical, mechanical), storage areas, restrooms, hallways, and interior vehicle parking or loading. For the purposes of commercial parking calculations, the applicant shall be responsible for providing the zoning administrator with information detailing the allocation of retail and non-retail space.

*Frontage.* The minimum width of a lot measured along the street from one side lot line to the other.

*Functional classification.* A classification of streets, approved by the governing body, into the following categories: Interstate, expressway, principal arterial, minor arterial, major collector and minor collector.

*Garage.* A deck, building or structure, or part thereof, used or intended to be used for the parking or storage of vehicles.

*Garage, private.* An accessory building which is designed or used for the storage of automobiles owned and used by the occupants of the building to which it is accessory and which is not operated as a separate commercial enterprise available to the public.

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

*Garage sale.* The sale of goods by a property owner and his neighbors at the property owner's residence occurring not more than twice a year.

*Glare.* The effect of a light source that shines so as to be conspicuous and obtrusive.

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

*Golf driving range.* A limited area on which golf players do not walk, but onto which they drive golf balls from a common driving tee.

*Governing body.* The board of supervisors of James City County, Virginia.

*Greenbelt road.* A road shown and identified on the Land Use Plan Map in the Comprehensive Plan as having a greenbelt.

*Guest room.* A room which is intended, arranged or designed to be occupied, or which is occupied, by one or more guests paying direct or indirect compensation therefor, but in which no provision is made for cooking. Dormitories are excluded.

*Historic and scenic resource area.* Land managed by Colonial Williamsburg, the Jamestown-Yorktown Foundation, the National Park Service, York River State Park, the Virginia Association for Preservation of Antiquities, the Williamsburg Land Conservancy, or properties listed in the National Register, Virginia Historic Landmarks Register, or locally designated historic structures or districts, or Community Character Areas as defined in the Comprehensive Plan.

*Home care facility.* A residential facility for the care of four or more persons who require the protection of a supervised group setting or nine or more persons who are mentally ill, intellectually disabled, or developmentally disabled.

*Home garden.* An accessory use in a residential district for the production of vegetables, fruits and flowers generally for use or consumption, or both, by the occupants of the premises.

*Home occupation.* Any occupation or activity which is clearly incidental and secondary to the use of the premises for dwelling purposes and conducted solely by residents of the dwelling; provided, that:

- (1) The occupation or activity is conducted entirely within the dwelling; and

- (2) Not more than 25 percent of the first floor area is used throughout the structure for such occupation or activity; and
- (3) The occupation or activity requires no external alterations or the use or outdoor storage of machinery or equipment that creates noise, odor, smoke, dust or glare or is dangerous or otherwise detrimental to persons residing in the home or on adjacent property; and
- (4) No exterior evidence of the secondary use exists, with the exception of one sign, not to exceed four square feet. Such a sign must be attached to the dwelling and shall not be illuminated; and
- (5) No articles are displayed or otherwise offered for sale upon the premises; and
- (6) No equipment or process is used that may disrupt neighboring dwellings; and
- (7) Traffic is not generated in greater volumes than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street.

*Horizontal light bars/strips.* An illumination device erected in a way so there is no visible bulb, lens or globe and designed such that there is no light spillage beyond the intended object to be illuminated.

*Hospital.* Any facility in which the primary function is the provision of diagnosis, of treatment and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums, and general, acute, short-term, long-term, outpatient and maternity hospitals.

*Hotel.* A building designed or occupied as the more or less temporary abiding place for more than ten individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

*Iso-foot candle diagram.* A diagram consisting of lines showing the relative illumination in foot candles from a light source or group of light sources.

*Junk yard.* The use of any area of land lying within 100 feet of a state highway or the use of more than 200 square feet of land area in any location for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials.

*Kennel.* A place prepared to house, board, breed, handle or otherwise keep or care for either dogs or cats or both for sale or in return for compensation.

*Landscaped open space, area or strip.* An area containing living plant materials, including trees, flowers, shrubs or grass. Landscaped areas may include pedestrian walks, ornamental objects, decorative planting, lawns and wooded areas, but at least 50 percent of the area must be vegetated. Landscaped open space, areas or strips shall not include any building, parking surface or structure except as stated above, or any wet detention pond or infiltration trench.

*Livestock.* Domestic animals normally raised on a farm such as horses, cows, swine, goats, sheep, etc.

*Livestock market.* A commercial establishment wherein livestock is collected for sale and auctioned off.

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

*Lot, area of.* The total area of land contained by lot lines and inclusive of any easements that may exist upon the lot. For the purpose of computing coverage of floor area ratio, the area of the lot shall not be considered to include any area of land designated for a future public road right-of-way.

*Lot, corner.* A lot abutting on two or more streets at their intersection. Of the two sides of a corner lot the front shall be deemed to be the shortest of the two sides fronting on streets.

*Lot, depth of.* The shortest horizontal distance between the front and rear lot lines.

*Lot, double frontage.* An interior lot having frontage on two streets.

*Lot, interior.* Any lot other than a corner lot.

*Lot, interior unit.* Pertaining to lots for three- or four-family dwellings, an "interior unit lot" is a lot intended to contain a dwelling unit sharing two walls wholly or in part with another dwelling unit.

*Lot line, front.* The lot line separating a lot from a street right-of-way except in the case of a flag lot, which the front lot line shall be the lot line nearest and parallel or approximately parallel to the street to which the lot has access.

*Lot line, rear.* The lot line opposite and most distant from the front lot line; or in the case of a triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

*Lot, width of.* The horizontal distance between side lot lines measured at the setback line.

*Lot of record.* A lot which has been recorded in the clerk's office of the circuit court.

*Lowest Floor.* The lowest floor of the lowest enclosed area including the basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Federal Code 44CFR Section 60.3.

*Luminary.* A lighting fixture assembly or source of artificial illumination including, but not limited to, bulbs, lamps, reflectors, refractors and housings associated with them.

*Manufacture; manufacturing.* The assembly of components, pieces or subassemblies, or the processing or converting of raw, unfinished materials or products into articles or substances of different character or for use for a different purpose.

*Manufactured home.* A manufactured home is a structure subject to federal regulation which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning and electrical systems contained in the structure.

*Manufactured home park.* A lot or parcel, not part of a manufactured home subdivision, on which are located or which are arranged or equipped for the accommodation of three or more manufactured homes occupied as single-family dwellings.

*Medical clinic.* An establishment where patients are admitted for examination and treatment by one or more physicians, dentists or psychologists and where patients are not usually lodged overnight. "Medical clinic" includes a facility known as surgical outpatient clinic.

*Micro-brewery.* A brewery that produces less than 15,000 barrels per year.

*Mixed use structure.* A building or other structure containing a combination of two or more different principle uses.

*Mobile home.* A mobile home is a structure not meeting the specifications or requirements of a manufactured home, designed for transportation, after fabrication, on streets and highways on its own wheels or on flat bed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operation, location on jacks or permanent foundations, connection to utilities and the like. (See "trailer" and "travel trailer" following in this section.)

*Motel.* One or more buildings containing individual sleeping rooms, designed for or used temporarily by automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.

*Net developable area.* The total gross land area of a site minus stream beds, areas subject to flooding, marsh and areas with slopes exceeding 25 percent gradient.

*Neighborhood resource center.* A facility used primarily by residents of adjacent neighborhoods for the sharing of information and services of a public, nonprofit, or charitable nature. Primary uses may include resource libraries, meeting rooms, offices for neighborhood organizations or related staff, and education rooms. Accessory uses may include food preparation areas, health areas, community gardens, and parking. "Neighborhood Resource Center" does not include any facility with sales or residential units, nor does it include facilities for private lodges or clubs.

*New Construction.* For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after July 18, 1975, the effective date of an initial Flood Insurance Rate Map, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which start of construction commenced on or after August 8, 1977, the effective date of these floodplain management regulations, and includes any subsequent improvements to such structures.

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

*Nonconforming activity or use.* The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this chapter for the district in which it is located, either at the effective date of this chapter or as a result of subsequent amendments to the chapter.

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

*Nursing home.* Any facility or any identifiable component of any facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled care facilities, intermediate care facilities, extended care facilities and infirmaries.

*Off-street parking area.* Space provided for vehicular parking outside the dedicated street right-of-way.

*Open space.* Space suitable for recreation, gardens or landscaping which may include areas left in their natural state, trails, ponds, stream banks, recreation areas, areas of excessive slopes, low-lying areas and marshes and landscaped areas required by this chapter. Such space must be free of automobile traffic and parking and be readily accessible to all those for whom it is required.

*Parcel.* A contiguous area of land described in a single description as one of a number of lots on a plat, separately owned, either publicly or privately, and capable of being separately conveyed.

*Parks and playgrounds.* Land set aside for nonprofit activities of a recreational nature such as fishing, boating, swimming, camping, hiking, picnicking, outdoor games and sports incidental to the foregoing.

*Parking area.* Any public or private land area or structure designed and used for parking motor vehicles including parking lots, garages, private driveways and legally designated areas of public streets.

*Parking lot.* An off-street, outdoor area, usually surfaced and improved, for the parking of motor vehicles.

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

*Planned road.* Any road or similar transportation facility as designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, Peninsula Area Transportation Plan or any road plan adopted by the board of supervisors.

*Plant and garden supply sales.* Stores which shall sell a combination of materials used in the process of creating, cultivating, decorating, and maintaining gardens and landscaped areas. The primary items sold may include plants, shrubs, and trees grown on- or off-site; seeds; produce; hand tools; fertilizer; plant containers and hangers; natural materials such as sand, soil, rock, wood chips, and mulch; and decorative features including sculptures, fountains, ponds, ornaments, and cast or formed cement and cement pavers. Patio and outdoor furniture, including grills, gazebos, trellises, and outdoor fireplaces may also be included as secondary and incidental items sold at a plant and garden supply store. Excluded from this definition are mechanical lawn and garden equipment, pools and pool equipment, lumber and building supplies.

*Poultry.* Domestic fowl normally raised on a farm such as chickens, ducks, geese and turkeys.

*Primary service area.* The primary service area (PSA) is the area(s) identified on the zoning map where urban development is encouraged to locate in accordance with the Comprehensive Plan. These areas presently are provided with public water and sewer systems and other public services such as police and fire protection, transportation and emergency medical services, and areas slated to receive such services in the next 20 years.

*Principal residential use.* A single-family dwelling, including a mobile home, manufactured home and a modular home, a two-family dwelling or a multiple-family dwelling. The occupancy of a building by a caretaker or watchman for sleeping quarters shall not constitute a principal residential use.

*Public water and sewer systems.* A water or sewer system owned and operated by a municipality, county, service authority or sanitary district, or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the State Corporation Commission and approved by the Virginia Department of Health.

*Publicly owned solid waste container site.* A county-owned facility providing containers for citizens to dispose of residential solid waste and recyclable materials to include, but not limited to, aluminum cans, container glass and newspaper.

*Recreation facility, commercial.* A place designed and equipped for the conduct of leisure-time activities, sports or other customary and usual recreation activities and which is operated as a business.

*Recreation facility, community.* A place designed and equipped for recreational activities by the inhabitants of a residential or mixed use project and which is operated for noncommercial purposes by a developer, homeowner association, nonprofit organization or a governmental agency.

*Recreational vehicle.* A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

*Residential club house.* A facility used by residents of the community for recreational purposes.

*Rest home.* Any place, establishment or institution, public or private, including any day care center for adults, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled, except the home or residence of any individual who cares for or maintains only persons related to him by blood or marriage. The term "rest home" shall include facilities known by varying nomenclature such as home for adults and domiciliary.

*Restaurant.* Any building in which, for compensation, food or beverages are dispensed for consumption on the premises including, among other establishments, cafes, tea rooms, confectionery shops or refreshment stands.

*Retail stores and shops.* Buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood and lumber yards) such as the following which will serve as illustration: Drug store, newsstand, food store, candy shop, milk dispensary, dry goods and notions store, antique shop and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop and beauty shop.

*Sanitary landfill.* A facility where solid waste is spread in thin layers on the ground, compacted to the smallest practical volume and covered with soil at the end of each working day.

*Scenic resource corridor.* Community Character Corridors as defined in the Comprehensive Plan; Virginia Byways.

*Setback.* The distance by which any building or structure must be separated from the front lot line. For buildings, the setback is measured from the building line. For other structures, the setback is measured from the point on the ground vertically below the point of the structure nearest the front lot line.

*Setback for timbering.* The distance which any timbering activity must be set back from a public road right-of-way. It is an area in which no timbering shall occur except in accordance with section 24-43.

*Setback line.* That line that is the required distance from the street line or any other lot line. The setback line establishes the area within which the principal structure shall be erected or placed.

*Shrubs.* For the landscaping requirements of this caliper, a shrub shall be defined as a low-growing woody plant having several permanent stems which is, at planting, 18 inches if evergreen or 22 inches if deciduous.

*Solid waste transfer station.* A facility for the collection of solid waste and shipment to a final point of disposal. The facility may serve one or more localities and may include accessory facilities for the collection of recyclable materials such as glass, aluminum, paper and plastic products, waste motor oil, tires and appliances.

*Spillage (light).* Light which falls or is transmitted from a luminary in one area or site into an adjoining area or site.

*Start of construction.* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site (such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation) or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, or filling; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alternation affects the external dimensions of the building.

*Store.* See "Retail stores and shops" preceding in this section.

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

*Story, half.* A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished off for use.

*Street; road.* A public or private thoroughfare which affords principal means of access to abutting property.

*Street line.* The line that forms the boundary between a street or road right-of-way and the contiguous property.

*Structure.* Anything constructed or erected, the use of which required permanent location on the ground or attachment to something having a permanent location on the ground.

*Substantial damage.* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement.* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Support structure.* The structure to which antenna and other necessary hardware is mounted. Support structures shall include the following:

- (1) *Tower.* A pole or latticed structure designed for the attachment of one or more antenna as the primary use of the structure.
- (2) *Alternative mounting structure.* Light poles, utility transmission structures, water towers, and other structures other than building exteriors, towers, or camouflaged WCFs which are not primarily designed to support antenna nor are designed taller in order to accommodate antenna.
- (3) *Camouflaged structure.* Any WCF disguised or hidden so that all of its components are unnoticeable to the casual observer, or otherwise not have the appearance of an antenna or a tower, and which meets at least one of the following: (1) the structure has the appearance, scale and height of other structures that are generally permitted in the district in which it is to be located; (2) the structure has the appearance of vegetation native to eastern Virginia; or (3) the structure is completely surrounded by a minimum of a 100-foot, undisturbed buffer of mature trees, or a buffer consisting of other elements such as evergreen trees, other structures or topography that provide at least the equivalent visual effect of a 100-foot undisturbed buffer of mature deciduous trees, that in combination with the design and color of the structure, renders the structure unnoticeable to the casual observer.

*Theme park.* A park or garden facility that is based on a common theme and may include, but is not limited to, the following: Exhibits, animal acts and displays, rides, shops and eating facilities encompassing a minimum of ten acres.

*Timbering.* Tree harvesting, cutting, or removal where the total amount of land on which tree cutting occurs exceeds 10,000 square feet. However, timbering shall not include:

- (1) Harvesting, cutting, removal or other clearing of trees in accordance with an approved site plan, subdivision plan, or building permit; or
- (2) Removal of dead, diseased, dying, or insect damaged trees.

*Tourist home.* A dwelling where lodging or lodging and meals are provided for compensation for up to five rooms and open to transients.

*Townhouse.* In a structure containing three or more dwelling units, a dwelling unit for single-family occupancy, not more than three stories in height, attached by one or more vertical party walls extending to the roof sheathing without passageway openings to one or more additional such dwelling units, each of which is served by an individual exterior entrance or entrances.

*Trailer.* A structure standing on wheels towed or hauled by another vehicle and used for short-term human occupancy, carrying materials, goods or objects, or as a temporary office.

*Travel trailer.* A mobile unit less than 29 feet in length and less than 4,500 pounds in weight which is designed for human habitation.

*Tree.* For the landscaping requirements of this chapter, a tree shall be defined as a deciduous shade tree having a minimum caliper of 1-1/2 inches at planting or an evergreen tree at least eight feet in height and a minimum caliper of 1-1/4 inches if single stemmed at planting or eight feet in height if multistemmed at planting. The term "tree" shall not include ornamental trees as defined below.

*Tree, mature.* Any deciduous or evergreen tree with a minimum diameter breast height of 12 inches which is free of disease and significant damage.

*Tree, ornamental.* For the landscaping requirements of this chapter, an ornamental tree shall be defined as a deciduous or evergreen tree which if single stemmed is eight feet in height and has a minimum caliper of 1-1/4 inches at planting or if multistemmed has a height of eight feet at planting.

*Tree, specimen.* Any tree with a minimum diameter breast height of 24 inches which is free of disease and significant damage or which is notable by virtue of its outstanding size and quality for its particular species.

*Truck.* A motor vehicle designed to transport property on its own structure or to transport property on a trailer drawn by it. "Truck" is inclusive of "tractor trailer vehicle," "tractor truck," and "road tractor" and has a registered gross weight in excess of 10,000 pounds.

*Truck stop.* Any facility offering for sale fuel for commercial vehicles, trucks and automobiles and constructed and designed to enhance maneuverability and fueling of tractor trailer vehicles by the contouring of curbs and aprons, the placement and design of fuel pump islands or other such design criteria. In addition, a truck stop shall have the capability to fuel three or more tractor trailer vehicles at the same time and/or parking facilities for three or more such vehicles. The facility may include provisions for one or more of the following: Repairs or maintenance of commercial vehicles and trucks; sleeping accommodations for commercial vehicles or truck crews; sale of parts and/or accessories for commercial vehicles or trucks; or a restaurant.

*Truck terminal.* A storage facility for the unloading, transferring and storing of goods and materials being transported by truck. A truck terminal may include facilities for the repair and servicing of trucks.

*Unit.* See "Dwelling unit."

*Usable satellite signal.* A satellite signal which, when viewed on a conventional television set, is at least equal in picture quality to that received from local commercial television stations by use of an outdoor antenna.

*Variance.* A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the chapter would result in an unnecessary and undue hardship. As used in this chapter, a variance is authorized only for height, area and size of a structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variances in the zoning division or district or adjoining zoning division or districts.

*Watercourse.* A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

*Wayside stand; roadside stand; wayside market.* Any structure or land use for the sale of agricultural or horticultural produce, livestock or merchandise produced by the owner or his family on their farm.

*Winery.* An establishment located on a farm with a producing vineyard, orchard or similar growing areas and with facilities for fermenting, bottling, storage and sale of wine on the premises.

*Wireless communications facility (WCF).* A facility for the transmission or reception of low power radio signals used for two-way communications provided by a FCC licensee. WCFs shall not include facilities for broadcasting or receiving commercial or public radio or television programming; or facilities for transmitting or receiving signals by governmental agencies or amateur radio, citizens band, or similar users. WCFs are composed of two or more of the following components:

- (1) Antenna;
- (2) Support structure;
- (3) Equipment enclosure; or
- (4) Security barrier

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

- (1) *Front.* An open space on the same lot as a building and located between the front building line and the front lot or street line and extending across the full width of the lot.
- (2) *Rear.* An open, unoccupied space on the same lot as a building between the rear building line and rear line of the lot and extending the full width of the lot.
- (3) *Side.* An open, unoccupied space on the same lot as a building between the side building line and the side line of the lot and extending from the front yard line to the rear yard line.

*Zoning district, overlay.* Any section of James City County, Virginia, for which regulations governing the use of buildings and land, the height of buildings, the size of yards and the intensity of use are uniform and which district overlays one or more principal zoning districts so as to impose special requirements in addition to the requirements of the principal zoning district.

*Zoning district, principal.* Any section of James City County, Virginia, for which regulations governing the use of buildings and land, the height of buildings, the size of yards and the intensity of use are uniform. Wherever used in this chapter, the term "district" or "zoning district" shall mean the same as the term "principal zoning district" as if the latter term were fully set out.

(Ord. No. 31A-88, § 20-2, 4-8-85; Ord. No. 31A-94, 2-3-86; Ord. No. 31A-109, 8-22-88; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-113, 4-3-89; Ord. No. 31A-114, 5-1-89; Ord. No. 31A-119, 3-5-90; Ord. No. 31A-123, 7-2-90; Ord. No. 31A-126, 10-1-90; Ord. No. 31A-131, 6-3-91; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-149, 2-1-93; Ord. No. 31A-151, 5-3-93; Ord. No. 31A-163, 7-3-95; Ord. No. 31A-165, 9-18-95; Ord. No. 31A-167, 5-26-96; Ord. No. 31A-169, 5-28-96; Ord. No. 31A-174, 1-28-97; Ord. No. 31A-176, 5-26-98; Ord. No. 31A-177, 8-18-98; Ord. No. 31A-179, 9-8-98; Ord. No. 31A-198, 5-25-99; Ord. No. 31A-204, 5-8-01; Ord. No. 31A-222, 2-14-06; Ord. No. 31A-228, 9-25-07; Ord. No. 31A-231, 12-11-07; Ord. No. 31A-238, 5-12-09; ord. No. 31A-242, 7-14-09)

### **Sec. 24-3. Purpose of chapter; zoning map.**

(a) The board of supervisors hereby enacts this chapter, together with the zoning map and all accompanying data thereon or affixed thereto and which is and shall remain on file in the office of the county administrator, and which is hereby incorporated in and made a part of this chapter for the purpose of promoting the health, safety and general welfare of the public, and for the further purpose of accomplishing the objectives of sections 15.2-2200, 15.2-2280 and 15.2-2283 of the Code of Virginia.

(b) This chapter is designed so as to give reasonable consideration to each of the following purposes, where applicable:

- (1) To provide for adequate light, air, convenience of access and safety from fire, flood and other dangers;
  - (2) To reduce or prevent congestion in the public streets;
  - (3) To facilitate the creation of a convenient, attractive and harmonious community;
  - (4) To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
  - (5) To protect against destruction of or encroachment upon historic areas;
  - (6) To protect against one or more of the following: Overcrowding of land; undue density of population in relation to the community facilities existing or available; obstruction of light and air; danger and congestion in travel and transportation; or loss of life, health or property from fire, flood, panic or other dangers;
  - (7) To encourage economic development activities that provide desirable employment and enlarge the tax base;
  - (8) To provide for the preservation of agricultural and forestal lands.
- (Ord. No. 31A-88, § 20-3, 4-8-85)

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**Sec. 24-4. Exclusive nature of the chapter.**

This chapter shall be deemed exclusive in nature and only those uses specified shall be permitted in the various zoning districts. If a use is not specified in a zoning district, it shall be prohibited in that district. In the event that a use is not permitted in any zoning district, it may only be permitted after appropriate amendment to the text of this chapter.

(Ord. No. 31A-100, 4-6-87)

**Sec. 24-5. Zoning administrator; administration and enforcement of chapter.**

This chapter shall be administered and enforced by the zoning administrator who shall be appointed by the governing body. The zoning administrator shall serve at the pleasure of that body. Compensation for such shall be fixed by resolution of the governing body.

(Ord. No. 31A-88, § 20-5, 4-8-85)

**Sec. 24-6. Duty of those authorized to issue licenses and permits to conform to chapter.**

All departments, officials and public employees of this jurisdiction who or which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this chapter. Any such permit, if issued in conflict with the provisions of this chapter, shall be null and void.

(Ord. No. 31A-88, § 20-6, 4-8-85)

**Sec. 24-7. Administrative fees.**

(a) Fees shall be charged at the time of application to offset the cost of making inspections, issuing permits, advertising notices and other expenses incident to the administration of this chapter or to the filing or processing of any appeal or amendment thereto. The following fees shall be charged and collected at the time of application:

| <u>Procedure</u>                                               | <u>Fee</u>                         |
|----------------------------------------------------------------|------------------------------------|
| (1) Rezoningings .....                                         | \$1,200.00 plus \$75.00 per        |
| .....                                                          | acre, not to exceed \$15,000.00    |
| (2) Applications for special use permits:                      |                                    |
| a. Generally (General special use permits processed with ..... | \$1,000.00 plus \$30.00            |
| a rezoning shall pay a rezoning fee only).....                 | per acre, not to exceed \$5,000.00 |
| b. Manufactured home on an individual lot.....                 | 100.00                             |
| c. Family subdivision under section 24-214.....                | 100.00                             |
| d. Amendment to a special use permit .....                     | 400.00                             |
| e. Wireless communications facilities under division 6.....    | 1,500.00                           |

- (3) Master plan review:
  - a. Initial review of any Residential Cluster, Mixed Use or a PUD with less than 400 acres (PUD's with 400 acres or more shall pay a rezoning fee only)..... 200.00
  - b. Revision of approved plan:
    - 1. Residential Cluster ..... 75.00
    - 2. R-4, PUD, Mixed Use ..... 150.00
  
- (4) Site Plan Review:
  - a. Administrative review:
    - 1. Residential structures or improvements, \$600.00, plus \$60.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$600.00, plus \$0.024 per sq. ft. of building area.
    - 3. Mixed Use structures or improvements, \$600.00, plus \$60.00 per residential unit plus \$0.024 per sq. ft. of nonresidential building area.
  - b. Planning commission review:
    - 1. Residential structures or improvements, \$1,800.00, plus \$60.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$1,800.00, plus \$0.024 per sq. ft. of building area.
    - 3. Mixed Use structures or improvements, \$1,800.00, plus \$60.00 per residential unit plus \$0.024 per sq. ft. of nonresidential building area.
  - c. Amendment to an approved plan:
    - 1. Residential structures or improvements, \$100.00, plus \$10.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$100.00, plus \$0.004 per sq. ft. of building area.
    - 3. Mixed Use structures or improvements, \$100.00, plus \$10.00 per residential unit plus \$0.004 per sq. ft. of nonresidential building area.
    - 4. Residential or nonresidential structures or improvements where the number of dwelling units or area of building area, pavement, or open space is not changed more than 15 percent, \$100.00.
  - d. Zoning administrator and fire department review only, \$20.00.
  - e. Each additional review after second resubmission, \$250.00 not to include resubmissions that are the result of substantial redesign due to other agency comments.
  
- (5) Sign permits, \$5.00 per square foot of gross sign area.
- (6) Appeals to the board of zoning appeals, \$500.00.
- (7) Application for a height limitation waiver to the board of supervisors, \$200.00
- (8) Application for administrative variance, \$250.00

- (9) Public hearing applicant deferral request when the applicant fails to meet a staff imposed deadline for additional information relevant to the application except where deferral is the result of a commission or board action, \$350.00 per request.
- (10) Conceptual plan review, \$25.00.
- (11) Zoning verification request, \$100.00.
- (12) Stormwater inspection fees: There shall be a fee for the inspection of public stormwater installations and private stormwater installations required in accordance with section 23-10(4). Such fee shall be \$900 per practice for each best management practice constructed and \$.90 per foot for every foot of stormwater drain or channel constructed and shall be submitted at the time of filing an application for a land disturbance permit.

(b) Payment of any permit fees established in section 24-7 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.

(Ord. No. 31A-88, § 20-8, 4-8-85; Ord. No. 31A-130, 5-6-91; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-166, 1-23-96; Ord. No. 31A-170, 6-25-96; Ord. No. 31A-176, 5-26-98; Ord. No. 31A-178, 8-18-98; Ord. No. 31A-190, 4-13-99; Ord. No. 31A-212; 4-22-03; Ord. No. 31A-225, 4-24-07; Ord. No. 31A-235, 5-27-08; Ord. No. 31A-250, 8-9-11)

#### **Sec. 24-8. Certificate of occupancy.**

(a) Land may be used or occupied and buildings structurally altered or erected may be used or changed in use only after a certificate of occupancy has been issued by the zoning administrator. Such a certificate shall state that the building or the proposed use, or the use of the land, complies with the provisions of this chapter. A similar certificate shall be issued for the purpose of maintaining, renewing, changing or extending a nonconforming use. The certificate shall be issued within ten days after the erection or structural alteration of such building or part has conformed with the provisions of this chapter and all applicable codes and ordinances. Upon the request of the holder of a permit, the zoning administrator may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(b) The zoning administrator shall not issue a temporary certificate of occupancy until the applicant has guaranteed the completion of public improvements, including, but not limited to, public roads, public water and public sewer facilities, or the completion of required landscape areas and plantings shown on the approved site plan or other approved plan by providing either a letter of credit, certified check, cash escrow or cash payment approved by the county attorney.

(Ord. No. 31A-88, § 20-9, 4-8-85; Ord. No. 31A-100, 4-6-87; Ord. No. 31A-123, 7-2-90)

#### **Sec. 24-9. Special use permits.**

In order to provide for good zoning practices, the purpose the zoning district seeks to accomplish, to provide for adjustments in the relative location of uses and buildings of the same or different classification, and to promote the usefulness of these regulations, special use permits, limited as to location by the district regulations, are permitted as set forth under the terms of this chapter. In considering an application for a special use permit in those districts allowing them, the planning commission and the board of supervisors shall

give due regard to the James City County Comprehensive Plan, the nature and condition of adjacent uses and structures, and the probable effect upon them of the proposed exception. They shall also take into account the special characteristics, design, location, construction, methods and hours of operation, effect on traffic conditions, or any other aspects of the particular use or structure that may be proposed by the applicant. The planning commission and the board of supervisors should consider whether the proposed establishment or use will adversely affect the health, safety or welfare of persons residing or working on the premises or in the neighborhood, will unreasonably

restrict an adequate supply of light and air to adjacent property, will increase congestion in the streets, will increase public danger from fire, will impair the character of the district or adjacent districts, will be incompatible with the Comprehensive Plan of James City County, will likely reduce or impair the value of buildings or property in surrounding areas, and whether such establishment or use will be in substantial accordance with the general purpose and objectives of this chapter. After a public hearing, if the planning commission determines the above considerations have been protected, the planning commission shall recommend to the board of supervisors that the special use permit be granted. The board of supervisors shall consider the recommendation of the planning commission and after a public hearing and a determination that the above considerations have been protected shall grant the special use permit. In those instances where the planning commission or the board of supervisors find that the proposed use may be likely to have an adverse affect, they shall determine whether such affect may be avoided by the imposition of special requirements or conditions, including, but not limited to, location, design, construction, equipment, maintenance and/or hours of operation, in addition to those expressly stipulated in this chapter and the commission may make their recommendation or the board of supervisors may grant the special use permit contingent upon the imposition of such special requirements or conditions. An application for a special use permit substantially the same as one previously denied shall not be reconsidered within a one-year period from the date the similar application was denied.

(Ord. No. 31A-88, § 20-10, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-116, 11-6-89)

#### **Sec. 24-10. Public hearing required.**

Prior to issuance of a special use permit a public hearing shall be held by the planning commission and by the board of supervisors; provided, however, that a special use permit for a manufactured home, temporary classroom trailer, a family subdivision may be issued after a public hearing is held by the board of supervisors only. Whenever the planning commission is not required to hold a public hearing, it need not consider the permit nor make a recommendation to the board of supervisors for such permit.

(Ord. No. 31A-88, § 20-10.1, 4-8-85; Ord. No. 31A-108, 4-18-88; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-114, 5-1-89; Ord. No. 31A-201, 12-1-99)

#### **Sec. 24-11. Special use permit requirements for certain commercial uses; exemptions.**

- (a) *General requirements.* A special use permit issued by the board of supervisors shall be required for:
- (1) Any convenience store;
  - (2) Any commercial building or group of buildings which exceeds 10,000 square feet of floor area; or
  - (3) Any commercial building or group of buildings, not including office uses, which generates, or would be expected to generate, a total of 100 or more additional trips to and from the site during the peak hour of the operation, based on the application of the Institute of Transportation Engineers (ITE) traffic generation rates contained in the latest edition of its book entitled *Trip Generation*. The applicable trip generation rate shall be determined by the planning director. The planning director may permit other traffic generation rates to be used if an individual or firm qualified to conduct traffic engineering studies documents that the use would not reasonably be expected to generate the amount of peak hour traffic projected by application of ITE traffic generation rates, provided the documentation is acceptable to the planning director; or
  - (4) Automobile and gasoline service stations.

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(b) *New buildings, additions or expansions.* A special use permit shall be required for a new building, addition or expansion when:

- (1) In combination with the existing structure, it exceeds the thresholds set forth in paragraph (a);
- (2) It adds 5,000 square feet or more of commercial floor area or, in combination with other new buildings, additions or expansions, generates 75 or more peak-hour trips than generated by the existing or approved use on May 21, 1990, or than approved in a special use permit, whichever is greater; and
- (3) It is located on the same property as the existing structure or other parcel which is a logical component of such property. Factors to determine whether a parcel is a logical component include:
  - a. Common ownership or control of the parcels under consideration by the same person(s) or entity(ies), or similar or related entities;
  - b. Regardless of factor a. above, shared access to public roads, shared parking arrangements, shared traffic circulation or shared service areas; and
  - c. Proximity. For the purpose of this paragraph, "proximity" means adjacent parcels, parcels separated by property under common ownership or control by the same person(s) or entity(ies) or similar or related entities, or parcels separated by a public or private right-of-way.

(c) *Design and submittal requirements.* Any building or use and addition or expansion thereto requiring a special use permit under this section shall comply with the requirements of section 24-23.

(d) *Exemptions.* The following shall be exempt from the requirements of this section:

- (1) Any use or building and expansion or addition thereto with preliminary site plan approval prior to May 21, 1990;
- (2) Any use or building and expansion or addition thereto for which the start of construction began prior to May 21, 1990, in accordance with a site plan approved prior to that date;
- (3) Any use or building and expansion or addition thereto shown on a proffered binding master plan that binds the general location of all of the features on the plan as required under this section;
- (4) Any building located in a mixed use district, residential planned community district or planned unit development district; or
- (5) Any building predominantly used as a warehouse, distribution center, office, or for other industrial or manufacturing purposes. For purposes of this exemption only, the term "predominantly" shall mean 85 percent of the total square feet of the building or more.

(Ord. No. 31A-121, 5-21-90; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-155, 1-3-94; Ord. No. 31A-201, 12-1-99)

#### **Sec. 24-12. Revocation of special use permits.**

(a) The governing body may, by resolution, initiate a revocation of a special use permit. When initiated, the revocation process shall be handled as would a new application for a special use permit, following the procedures set forth in section 24-9 of this chapter.

(b) After review by the planning office and consideration and recommendation by the planning commission, the governing body shall act on the proposal to revoke the special use permit. Grounds for revocation shall include, but not be limited to, the following:

- (1) A change in conditions affecting the public health, safety and welfare since adoption of the special use permit; or
- (2) Repeated violations of this chapter, including any conditions attached to the special use permit, by the owner/operator of the use; or
- (3) Fraudulent, false or misleading information supplied by the applicant (or his agent) for the special use permit; or
- (4) Improper public notice of the special use permit public hearing(s) when the permit was considered by the planning commission or the governing body; or
- (5) An error or mistake in fact that led to an arbitrary and unreasonable decision made by the governing body when approving the special use permit.

(Ord. No. 31A-102, 6-1-87)

#### **Sec. 24-13. Amendment of chapter.**

As provided for by section 15.2-2286(7) of the Code of Virginia, the board of supervisors may from time to time amend, supplement or change by ordinance the boundaries of the districts or the regulations herein established; any such amendment may be initiated by resolution of the board of supervisors or by motion of the planning commission or by petition of any property owner, contract purchaser with the owner's written consent, or the owner's agent therefor of the property which is the subject of the proposed zoning map amendment, addressed to the board of supervisors. Petitions for change or amendment shall comply with the requirements of section 24-23. These changes may be made, provided:

- (1) The planning commission and the board of supervisors shall each hold at least one public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard.
- (2) That notice shall be given of the time and place of such hearing by publication as a box advertisement in at least two issues of some newspaper having a general circulation in the jurisdiction. Such notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than six days nor more than 21 days after final publication. After enactment of any such plan, ordinance or amendment, further publication thereof shall not be required.
- (3) When a proposed amendment of the zoning ordinance involves a change in the zoning classification of 25 or less parcels of land, then, in addition to the advertising as required above, written notice shall be given by the planning commission at least five days before the hearing to the owner or owners, their agent or the occupant of each parcel involved and to the owners, their agent or the occupant of all abutting property and property immediately across the street from the property affected. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 but less than 500 parcels of land, then, in addition to the advertising as above required, written notice shall be given at least five days before the hearing to the owner, owners or their agent of each parcel of land involved. One notice sent by first class mail to the last known address of such owner as shown on the current real estate

assessment books shall be deemed adequate compliance with this requirement; provided, that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this paragraph shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the planning commission to give written notice to the owner, owners or their agent of any parcel involved. Such notice shall be sent in accordance with section 15.2-2204 of the Code of Virginia.

- (4) No plan, ordinance or amendment shall be enacted, amended or re-enacted unless the board of supervisors has referred the proposal to the planning commission for its recommendation or has received the planning commission recommendation. Failure of the planning commission to report 100 days after the first meeting of the commission after the proposed plan, amendment or reenactment has been referred to the commission for action shall be deemed approval. After the public hearing required in subsection (1) above, the board may make appropriate changes or corrections in the ordinance or proposed amendment.
- (5) A petition for a plan or amendment substantially the same as one previously considered shall not be reconsidered within a one-year period from the date the similar petition was decided.  
(Ord. No. 31A-88, § 20-14, 4-8-85; Ord. No. 31A-201, 12-1-99; Ord. No. 31A-210, 12-10-02)

#### **Sec. 24-14. Construction and severability of provisions.**

This chapter shall be liberally construed so as to effectuate the purposes hereof. If any clause, sentence, paragraph, section or subsection of this chapter shall be adjudged by any court of competent jurisdiction to be invalid for any reason, including a declaration that is contrary to the constitution of the commonwealth or of the United States, or if the application thereof to any government, agency, person or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application hereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to any other government agency, person or circumstance.

(Ord. No. 31A-88, § 20-14.1, 4-8-85)

#### **Sec. 24-15. Purpose of this article.**

It is the general policy of the county, in accordance with the laws of the Commonwealth of Virginia, to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit land uses and at the same time to recognize effects of change. It is the purpose of this article to provide a more flexible and adaptable zoning method to cope with situations found in such zoning through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that is not applicable to land similarly zoned. The provisions of this article shall not be used for the purpose of discrimination in housing.

(Ord. No. 31A-88, § 20-14.2, 4-8-85)

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**Sec. 24-16. Proffer of conditions.**

The owner or owners of property making application for a change in zoning or amendment to a zoning map, as part of their application, may voluntarily proffer in writing reasonable conditions, prior to a public hearing before the board of supervisors, which shall be in addition to the regulations provided for in the zoning district or zone sought in the rezoning petition. The conditions shall be proffered as a part of the requested rezoning or amendment to the county's zoning map.

**State law reference**-Code of Va., § 15.2-2303

(Ord. No. 31A-88, § 20-14.3, 4-8-85; Ord. No. 31A-100, 4-6-87; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-115, 6-5-89)

**Sec. 24-17. Enforcement and guarantees as to conditions.**

The zoning administrator shall be vested with all necessary authority on behalf of the county to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:

- (1) The ordering in writing of the remedy of any noncompliance with such conditions;
- (2) The bringing of legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding; and
- (3) Requiring a guarantee, in an amount sufficient for or 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 may be reduced or released by the zoning administrator upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any required use, occupancy or building permits as may be appropriate.

(Ord. No. 31A-88, § 20-14.4, 4-8-85)

**Sec. 24-18. Records.**

The zoning map of the county shall show by an appropriate symbol on the map the existence of conditions attached to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zone.

(Ord. No. 31A-88, § 20-14.5, 4-8-85)

**Sec. 24-19. Petition for review of decision.**

(a) Any zoning applicant who is aggrieved by a decision of the zoning administrator, pursuant to the provisions of section 24-17, may petition the board of supervisors for the review of such decision. Such appeal shall be taken within 30 days from the date of the action complained of and shall be instituted by filing with the zoning administrator and with the county administrator a notice of appeal, specifying the grounds thereof.

(b) The zoning administrator shall forthwith transmit to the board of supervisors all of the papers constituting the record upon which the action appealed from was taken. The board of supervisors shall hear the appeal within 45 days from the date of the filing and give public notice in accordance with section 15.2-2204 of the Code of Virginia of the date fixed for the hearing, and shall give written notice at least five days before the hearing to the owner or owners, their agent or the occupant of each parcel involved and to the owners, their agent or occupant of all abutting property and property immediately across the street from the property affected.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board of supervisors, after notice of appeal has been filed with him, that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of supervisors or by a court of record on application or notice to the zoning administrator and on due cause shown.

(Ord. No. 31A-88, § 20-14.6, 4-8-85; Ord. No. 31A-217, 4-26-05)

**Sec. 24-20. Amendments and variations of conditions.**

(a) Conditions proffered and accepted as part of an amendment of the zoning ordinance shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

(b) There shall be no amendment or variation of conditions created pursuant to the provisions of this article until after a public hearing before the board of supervisors which shall be advertised pursuant to section 24-13 of this chapter.

(Ord. No. 31A-88, § 20-14.7, 4-8-85)

**Sec. 24-21. Relation of section to other laws.**

The provisions contained in this section shall be considered separate from, supplemental to and additional to the provisions contained elsewhere in this Code or other county ordinances. Nothing contained in this section shall be construed as excusing compliance with all other applicable provisions of this Code or other county ordinances.

(Ord. No. 31A-88, § 20-14.8, 4-8-85)

**Sec. 24-22. Penalties; sanctions, injunctive relief, fines.**

(a) Violating, causing or permitting the violation of, or otherwise disregarding any of the provisions of this chapter by any person, firm or corporation, whether as principal, agent, owner lessee, employee or other similar position, shall be unlawful and is subject to the following:

- (1) *Criminal sanctions.* Upon conviction, shall be guilty of a misdemeanor and shall be fined not less than \$10.00, nor more than \$1,000.00. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 nor more than \$1,000.00, and any such failure during any succeeding thirty day period shall constitute a separate misdemeanor offense for each thirty day period punishable by a fine of not less than \$10.00 nor more than \$1,000.00.
- (2) *Injunctive relief.* Any violation or attempted violation of this chapter may be restrained, corrected or abated as the case may be by injunction or other appropriate relief.

(3) *Civil fines:*

a. A civil penalty in the amount listed on the schedule below shall be assessed for a violation of the respective offense:

- 1. Keeping an inoperative vehicle in residential or commercial zoning districts in violation of section 24-37, per vehicle ..... \$100.00
- 2. Constructing, placing, erecting or displaying a sign on private property without a sign permit issued by the county in violation of section 24-67, per sign..... 100.00
- 3. Occupying, or permitting to be occupied, a single-family dwelling (SFD) by more than three unrelated individuals in violation of the definition of "family" in section 24-2, per offense ..... 100.00
- 4. Installing, placing or maintaining a dish antennae in violation of section 24-34, per offense ..... 50.00
- 5. Failure to meet the tree replacement requirements for any buffer or setback for timbering in accordance with section 24-43, per offense ..... 100.00

b. Each day during which a violation is found to exist shall be a separate offense. However, in no event shall specified violations arising from the same set of operative facts be charged more frequently than once in a ten-day period and in no event shall a series of such violations result in civil penalties of more than \$3,000.00.

c. Any person summoned for a scheduled violation may make an appearance in person or in writing by mail to the county treasurer prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

- d. No provisions herein shall be construed to allow the imposition of civil penalties for:
  1. Enforcement of the Uniform Statewide Building Code;
  2. Activities related to land development or activities related to the construction or repair of buildings and other structures;
  3. Violations of the erosion and sedimentation control ordinance;
  4. Violations of any provisions of a local zoning ordinance relating to the posting of signs on public property or public right-of-ways; or
  5. Violations resulting in injury to any person or persons.

(b) Civil or criminal action may be brought in conjunction with an action for injunctive relief. However, the offense designated for civil penalties above shall be in lieu of criminal enforcement. (Ord. No. 31A-88, § 20-15, 4-8-85; Ord. No. 31A-100, 4-6-87; Ord. No. 31A-129, 3-4-91; Ord. No. 31A-182, 10-13-98; Ord. No. 31A-204, 5-8-01)

### **Sec. 24-23. Submittal requirements.**

(a) The following shall be submitted with any request for an amendment of this chapter, as provided for in section 24-13, or for any building or use and addition or expansion thereto which requires a special use permit under this chapter, provided however, applications for family subdivisions, manufactured homes and temporary classroom trailers shall be exempt from the requirements of this section.

- (1) Community impact statement containing:

- a. Infrastructure information:

1. A traffic impact study for all projects that expect to generate 100 or more weekday peak hour trips to and from the site during the peak hour of the operation, based on the application of the Institute of Transportation Engineers (ITE) traffic generation rates contained in the latest edition of its book entitled Trip Generation, or those projects with an entrance or exit onto a roadway with a level of service "D" or lower. The applicable trip generation rate shall be determined by the planning director. The planning director may permit other traffic generation rates to be used if an individual or firm qualified to conduct traffic engineering studies documents that the use would not reasonably be expected to generate the amount of peak hour traffic projected by application of ITE traffic generation rates, provided the documentation is acceptable to the planning director. Vehicular access points and drives shall be designed to encourage smooth traffic flow, with controlled turning movements and minimum hazards to vehicular and pedestrian traffic. Buildings, parking areas and drives shall be arranged in a manner that encourages pedestrian access and minimizes traffic movement. No more than one access point on each abutting public street shall be permitted unless specifically approved by the board of supervisors after reviewing the applicant's traffic impact study; and
2. A water and sewer impact study for all projects with an anticipated average daily flow greater than 30,000 gallons, and/or for proposed residential projects containing 100 lots or more; and
3. A conceptual stormwater management plan showing approximate location, footprint, and type of BMP; and

4. An adequate public facilities report in accordance with Board of Supervisors policy.
- b. Quality of life information
1. A Phase IA historic and archaeological study if the property is identified as being a highly-sensitive area on the James City County archaeological assessment. If the property is identified as a moderately-sensitive area on the assessment, studies shall be provided in accordance with the currently adopted archaeological policy; and
  2. An environmental inventory in accordance with the James City County Natural Areas policy; and
  3. A fiscal impact analysis when the proposal includes residential dwelling units.
- (2) Master plan prepared in accordance with section 24-484(b)(1)-(5). The master plan shall depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, right-of-ways, accesses, open spaces, public uses and other features to be located on the site for which approval is sought. The planning director may require other features, including general location and approximate boundaries of buildings, structures or parking areas, to be incorporated into the master plan where deemed necessary due to the size of the development, access to or location of public roads, distance from residential areas, presence of environmentally sensitive areas or availability of public utilities. The master plan shall be reviewed and approved and thereafter become binding upon approval of a rezoning or a special use permit by the board of supervisors. Thereafter, all amendments to the master plan shall be in accordance with section 24-13 of this chapter. Final site plans may be approved after approval of a master plan by the board of supervisors. All final site plans shall be consistent with the master plan, but may deviate from the master plan if the zoning administrator concludes, after reviewing written comments from the planning director, the site plan does not alter the basic concept or character of the development or conflict with any conditions placed on the special use permit. If the zoning administrator determines that a proposed change would deviate from the approved master plan, the amendment shall be submitted and approved in accordance with section 24-13.
- (3) Any other submittal requirement which may be required by this chapter.
- (4) An application and fee in accordance with section 24-7 of this chapter.
- (b) Supplemental information should be submitted in accordance with the “Supplemental Submittal Requirements for Special Use Permits and Rezonings” policy as adopted by the board of supervisors.
- (c) Unless otherwise required by this chapter, upon written request by the applicant, the director of planning may waive any requirement under (a)(1) or (a)(2) above after finding that such information would not be germane to the application.  
(Ord. No. 31A-201, 12-1-99)

**Sec. 24-24. Additional requirements for submittal.**

Each person or entity submitting an application for consideration under the provisions of section 24-23 including a special use permit, variance, erosion and sediment control permit, building permit, or any other land disturbance or rezoning measure, shall attach to such application a signed statement from the county treasurer certifying that for property listed in the application all real estate taxes owed to the county have been paid in full. The statement of certification from the county treasurer shall be valid for 30 days. Should the application be submitted more than 30 days after the treasurer has certified payment of taxes, a new certification from the treasurer shall be required.

**State law reference**-Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties, Code of VA., §15.2-2286.  
(Ord. No. 31A-247, 8-10-10)

**Secs. 24-25 - 24-31. Reserved.**