

Chapter 24

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Chapter 24

ARTICLE VI. OVERLAY DISTRICTS

DIVISION 1. RESIDENTIAL CLUSTER DEVELOPMENT

Sec. 24-538. Statement of intent.

The purpose and intent of this article is to achieve innovative and quality designs of residential developments above one dwelling unit per acre that provide avenues for affordable housing, minimize environmental impacts, provide for usable and meaningful open space, and provide recreation amenities within a more practical and efficient development. Recognizing that greater variety and affordability are more obtainable with higher densities, developers have the flexibility to provide this product and still provide reasonable amenities within variously priced residential cluster communities. Hand in hand with the opportunities offered in higher density development is the expectation that the development will provide certain benefits to the community. As stated in the comprehensive plan, examples of these benefits include mixed-cost housing, affordable housing, unusual environmental protection or development that adheres to the principles of open space development design. Such design may include maintaining open fields; preserving scenic vistas; protecting wildlife habitats and corridors; retaining natural vegetative buffers around water bodies, wetlands, and along roads; preserving historic sites; creating adequate recreational areas; designing efficient pedestrian circulation to include trail systems; and ensuring that common land adjoins protected open space on adjacent parcels.

(Ord. No. 31A-88, § 20-153.1, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-539. Residential cluster development defined.

A "residential cluster development," for purposes of this article, shall be a planned development of land consisting of predominantly residential uses together with its recreational facilities, supporting roads, utilities and other public facilities.

(Ord. No. 31A-88, § 20-153.2, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-540. Where permitted.

A residential cluster development is permitted in the R-1, R-2, and R-5 zoning districts. The requirements of this article shall govern where there is a conflict with the requirements of the underlying district.

(Ord. No. 31A-88, § 20-153.3, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-541. Minimum site size.

The minimum site size for a residential cluster development is five acres, except that extensions to an existing cluster development may be less than five acres. The planning director may waive the minimum site size requirements for residential cluster developments which provide affordable housing set forth in section 24-549 below. However, in no case shall such development be less than two acres. Such a waiver may be considered upon the applicant providing a written request to the planning director to waive the minimum acreage requirement demonstrating to the satisfaction of the planning director that:

- (1) The proposed development is consistent with the comprehensive plan; and
- (2) Verification of affordable housing is provided; and
- (3) Evidence that the property can be subdivided as proposed.

Upon receipt of the request, the planning director shall, within thirty days of the request, either grant or deny the waiver with reasons to that effect.

(Ord. No. 31A-88, § 20-153.4, 4-8-85; Ord. No. 31A-197, 5-25-99)

Sec. 24-542. Permitted uses.

Uses permitted in a residential cluster development shall be the same as those permitted in the zoning district in which the residential cluster development is located. In the event that the individual units within attached dwellings are proposed to be sold as separate living units, the attached dwelling may be divided to permit separate deed descriptions for conveyance purposes. A limited amount of commercial development may be allowed within residential clusters as permitted in the zoning district in which the development is located. Commercial uses shall be shown on the master plan and be consistent with the Comprehensive Plan.

(Ord. No. 31A-88, § 20-153.5, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-543. Utilities.

Lots in a residential cluster development shall be served by a public sewage disposal system and a public water system.

(Ord. No. 31A-88, § 20-153.6, 4-8-85)

Sec. 24-544. Buffer requirements.

(a) *Right-of-way buffer.* Within any major subdivision approved under this article, there shall be planned and maintained buffers along all external existing and planned arterial road rights-of-way, as follows:

- (1) The minimum right-of-way buffer on Community Character Corridor roads as defined in the Comprehensive Plan shall be 150 feet, except when the average lot depth of the parent parcel is less than 600 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.
- (2) The minimum right-of-way buffer on all non-Community Character Corridor roads shall be 75 feet, except when the average lot depth of the parent parcel is less than 300 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.
- (3) If the buffer is non-wooded as defined for the purpose of this article as having no mature trees, then a minimum of two trees per 400 square feet of area shall be planted with a minimum 50 percent of said trees being evergreen. Otherwise, the buffer shall remain undisturbed or supplemented with additional plantings to achieve the planting ratio stated above.

(b) *Perimeter buffers.* Within any major subdivision approved under this article, there shall be planned and maintained a perimeter buffer along the perimeter property lines of the development, except for areas adjacent to road rights-of-way. The minimum perimeter buffer shall be 35 feet. Landscaping guidelines for perimeter buffers shall follow the requirements in section 24-94(a) of this chapter.

(c) *Waiver provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning commission may reduce the buffer depth requirements of this section for residential developments when:

- (1) The development is less than five acres and a majority of the development's units are dedicated to affordable housing; or
- (2) The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
- (3) The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning commission may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

(d) *Modifications to the landscape requirements.* The planning commission may modify, permit substitutions, or permit transfer of required landscaping in accordance with the provisions set forth in article II, division 4 of this chapter.

(e) *Requirements for buffers.* All required buffers shall be exclusive of lots, remain free of structures and parking, and remain undisturbed, except for additional plantings and selective clearing approved by the director of planning or his designee. Soil stockpiles and staging areas shall not be permitted within any buffer, except that temporary soil stockpiles may be allowed upon approval by the planning commission under the following circumstances:

- (1) The buffer in which the temporary stockpile is to occur is non-wooded, defined as having no mature trees.
- (2) The stockpile should not be visible from a Community Character Corridor or Community Character Area, unless the soil stockpiling is needed for approved berming in that buffer.
- (3) Stockpiles shall not exceed 35 feet in height.
- (4) Stockpiles shall be temporary, with a time limit of six months.
- (5) Once the use of the temporary soil stockpiles is completed, the ground must be adequately prepared for planting and revegetated in a manner that meets or exceeds the amount and quality of vegetation on the site previously.

(f) *Limitations on buffers.* Wet ponds, dry detention basins, and other structural BMPs shall not generally be permitted in the buffers, except that the planning commission may approve them under the following circumstances:

- (1) The need is necessitated by site conditions rather than economic factors; and
- (2) The screening/buffering effect of the buffer has been retained by the design of the BMP and any degradation has been mitigated with additional plantings or berms as necessary.

(g) *Improvements allowable within buffers.* An entrance road, community and directional signage, bicycle and/or pedestrian paths, and utility connections and drainage improvements shall be permitted within the buffer with approval of the planning commission. Permitted utilities and constructed drainage conveyance systems shall cross the buffer at or near a perpendicular angle to the property line, with clearing kept to a minimum necessary to accommodate the utilities, except that minor improvements to natural drainage channels may be permitted at different angle to the property line upon the recommendation of the environmental director and the approval of the planning commission.

(h) *Roads within buffers.* Entrance roads through these buffers shall be built to the narrowest cross-section possible. Roads and open space shall be located and designed in a manner that minimizes views of structures within the development from the adjoining primary or secondary road as determined by the planning commission.

(Ord. No. 31A-197, 5-25-99)

Sec. 24-545. Setback requirements.

The minimum setback from the right-of-way shall be shown on the plan of development and on the recorded subdivision plat. The minimum setback from external streets shall be the same as that required by the zoning district in which the lot is located, except as superceded by section 24-544. The minimum setback from internal streets may be reduced to zero, provided that no building in a residential cluster shall be closer than 35 feet to the internal edge of perimeter buffers. Off-street parking shall not be permitted within the required setbacks, except that parking spaces for single-family and two-family dwellings may be located within the required setback.

(Ord. No. 31A-88, § 20-153.8, 4-8-85; Ord. No. 31A-197, 5-25-99)

Sec. 24-546. Minimum lot width and area requirements.

There are no lot width or area requirements.

(Ord. No. 31A-88, § 20-153.9, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-547. Yard regulations.

The rear and side yards may be reduced to zero, provided that easements or covenants establish the rights of two abutting properties where main buildings are to be constructed on or within five feet of a property line. Such easements or covenants shall establish the rights of each affected owner to gain access to each owner's building for purposes of essential maintenance and service. Reductions of rear or side yards made under this provision shall also be subject to the following conditions:

- (a) The minimum distance between any two buildings within the residential cluster development shall be governed by the State of Virginia Building Code.

(b) No building in a residential cluster development shall be closer than 35 feet to the internal edge of perimeter buffers.
 (Ord. No. 31A-88, § 20-153.10, 4-8-85; Ord. No. 31A-89, 9-9-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-548. Density.

In a residential cluster development, the minimum and maximum number of dwelling units per acre of gross acreage as calculated below shall be as follows:

<i>Comprehensive Plan Designation</i>	<i>Minimum</i>	<i>Maximum</i>
Low-Density Residential	0	4.0
Moderate-Density Residential	4.0	12.0

For the purpose of calculating gross density, gross acreage shall be calculated as shown below:

<i>Gross Acreage</i>	
<i>Percentage of Nondevelopable Area</i>	<i>Gross Acreage Shall Equal:</i>
Less than 35	Total area of parcel
35 or more	Developable land plus 35% of the parcel's land

Developable area shall consist of the total land area of the site minus stream beds, areas subject to flooding under the 100-year storm event, wetlands and areas with slopes exceeding 25 percent gradient. If the cluster development lies in more than one Comprehensive Plan Land Use Designation, the number of dwelling units shall be calculated separately for each designation.
 (Ord. No. 31A-88, § 20-153.11, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-145, 7-6-92; Ord. No. 31A-175, 3-25-97; Ord. No. 31A-197, 5-25-99)

Sec. 24-549. Density Standards.

(a) *Low density residential cluster development.* Within any low density residential cluster development, the following standards shall apply:

- (1) Residential cluster developments of one unit per acre or less may be permitted in areas designated low density residential on the comprehensive plan land use map upon the approval of a master plan by the planning commission in accordance with section 24-553.
- (2) Residential cluster developments of more than one unit per acre, but of no more than two units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit from the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553. In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:

- a. Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.
 - b. Implementation of the county's Archaeological Policy.
 - c. Provision of sidewalks on at least one side of all internal streets in the development, including the entrance road. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property. In addition, a sidewalk shall be provided as required in section 24-35.
 - d. Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the Board of Supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.
 - e. Implementation of the county's Natural Resources Policy.
- (3) Residential cluster developments of more than two units per acre, but of no more than three units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit by the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553. In addition to items (2)(a) through (e) above, the developer shall make assurances in a master plan or otherwise for the following:
- a. Provision of pedestrian and/or bicycle trails, where topographically feasible, which connect cul-de-sacs throughout the development to each other and to the recreation area; or provision of sidewalks on both sides of all internal streets in the development, including the entrance road; or a combination of trails and sidewalks as stated above. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property.
 - b. Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:
 - 1. The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or
 - 2. Along those segments of road, including the entrance road, where structures are not planned.
- (4) At its discretion, the board of supervisors may award density bonuses to a gross allowable base density of two dwelling units per acre for the following items, provided that no total density exceeds four dwelling units per acre in areas designated low density residential on the comprehensive plan land use map. In addition, the board of supervisors may waive one or more of the requirements for standards (3)(a) and (b) above in approving these density bonuses; however, standards (2)(a) through (e) shall remain as requirements of the developments.

- a. An additional 0.5 dwelling unit per acre may be awarded for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.
- b. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, protection of wildlife habitat corridors, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in *The Sustainable Building Sourcebook* from the City of Austin's Green Building Program, or the *Sustainable Building Technical Manual* by the United States Department of Energy.
- c. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.

No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.

(b) *Moderate density residential cluster development.* Within any moderate density residential cluster development, the following standards shall apply:

- (1) Residential cluster developments of four units per acre but less than nine units per acre may be permitted in areas designated moderate density residential on the comprehensive plan land use map and zoned R-5 upon the approval of a master plan by the planning commission in accordance with section 24-553. In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:
 - a. Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.
 - b. Implementation of the county's Archaeological Policy.
 - c. Provision of sidewalks on both sides of all internal streets and drive aisles in the development, including the entrance road. This requirement may be waived or modified by the planning commission under the following circumstances:
 - 1. The development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property, or
 - 2. The planning director agrees with the applicant that there will be no practical destination point or route connected to the segment of sidewalk now or in the future.

- d. Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the board of supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.
 - e. Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:
 - 1. The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or
 - 2. Along those segments of road, including the entrance road, where structures are not planned.
 - f. Implementation of the county's Natural Resources Policy.
- (2) At its discretion, the planning commission may award density bonuses to a gross allowable base density of nine dwelling units per acre for the following items, provided that no total density exceeds 12 dwelling units per acre in areas designated moderate density residential on the comprehensive plan land use map. Standards (1)(a) through (f) shall remain as requirements of the developments.
- a. An additional 0.5 dwelling unit per acre for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.
 - b. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in *The Sustainable Building Sourcebook* from the City of Austin's Green Building Program, or *The Sustainable Building Technical Manual* by the United States Department of Energy.
 - c. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.
 - d. An additional one dwelling unit per acre for land dedicated and accepted by the county for a public use site. The site shall be suitable for the proposed use, and shall be a minimum of five acres.

No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.

(Ord. No. 31A-197, 5-25-99)

Sec. 24-550. BMP requirements.

To assure an appearance and condition which is consistent with the purpose of the residential cluster development overlay district, structural BMPs serving the properties within the district shall comply with the landscaping regulations in article II, division 4 of this chapter.

(Ord. No. 31A-197, 5-25-99)

Sec. 24-551. Performance assurance.

For all improvements proposed by the applicant pursuant to section 24-549, assurances shall be provided, satisfactory to the county attorney, that such improvements will be constructed and completed for use by project residents within a specific, reasonable period of time.

(Ord. No. 31A-88, § 20-153.13, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-552. Amount of open space required.

(a) Within every residential cluster development approved under this article, there shall be planned and set aside permanently an amount of open space to be maintained exclusively for conservation and recreation purposes. It is recommended that the open space be protected by establishing a permanent conservation easement. The amount of such open space shall include not less than 40 percent of the net developable area of the site in low-density residential areas and 35 percent of the net developable area in moderate-density residential areas. These amounts may be reduced to the following percentages at the discretion of the planning commission if the proposed development dedicates the following percentage of its total units to affordable housing:

Percentage of Total Units Dedicated to Affordable Housing	Percentage of Open Space Required in Low Density Residential	Percentage of Open Space Required in Moderate Density Residential
10 to 55	30	25
More than 55 to 100	25	20

Golf courses may be counted as open space for the purpose of meeting this requirement to a maximum of 30 percent of the required open space. The developable area of right-of-way buffers and perimeter buffers may be counted as open space for the purpose of meeting this requirement to a maximum of 50 percent of the required open space.

(b) In addition, all nondevelopable areas consisting of all stream beds, areas subject to flooding under the 100-year storm event, and wetlands shall be maintained as open space. Areas with slopes of 25 percent or more which are contiguous to the above-mentioned areas may be incorporated into individual lots provided that the sloped areas are placed in conservation easements approved by the county attorney.

(c) Before accepting the open space as meeting the requirements of paragraph (a) of this section, the planning commission shall find that:

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- (1) No land lying within a proposed or existing road right-of-way, utility easement or drainage facility is counted toward the minimum open space requirement; and
- (2) The land is suitable in its size, shape and location for the conservation and recreational purposes for which it is intended, with adequate access for the entire development and served with adequate facilities for such purpose; and
- (3) No part of a private yard or area determined by the planning commission to be a part thereof, with the exception of easements for streetscapes, shall be counted as meeting the open space requirements of this chapter; and

(d) Evidence shall be given that satisfactory arrangements will be made for the perpetual maintenance of designated open space areas to relieve the county of future maintenance. (Ord. No. 31A-88, § 20-153.14, 4-8-85; Ord. No. 31A-112, 2-6-89; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-553. Ownership of open space.

Within any residential cluster development approved under this article on which a tract is intended to be used in common for recreational or other public or semipublic purposes, no lot shall be approved, recorded, sold or used within the development until a declaration of covenants and restrictions or other documents necessary to establishing a permanent homeowners organization has been approved by the county attorney and has been executed. Such documents shall set forth the following:

- (1) The nature of the permanent organization under which common ownership is to be established, including its purpose; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property including necessary bonds when required by the county; and the method of assessing the individual property for its share of the cost of adequately administering and maintaining and replacing such common property.
- (2) The extent of common interest held by the owner of each individual parcel in the tract held in common.

(Ord. No. 31A-88, § 20-153.15, 4-8-85; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99)

Sec. 24-554. Review and approval process.

(a) *Review required.* A master plan for a residential cluster development proposed under this article shall be filed with the planning director, who shall submit it to the planning commission and board of supervisors in instances where a special use permit is required or to the development review committee in cases where a special use permit is not required. The planning director shall recommend action on the plan to the planning commission, and to the board of supervisors in instances where a special use permit is required. The planning commission and board of supervisors, where applicable, shall approve the master plan upon finding that:

- (1) Such cluster development will preserve the environmental integrity of the site by protecting features such as wetlands, steep slopes, stream valleys, or natural vegetation; and

- (2) The cluster development will not impair the character of the area or create unacceptable adverse off-site infrastructure impacts; and
- (3) The proposed project is in accordance with the Comprehensive Plan of James City County; and
- (4) The structures within the residential cluster development are sited in a way that preserves prominent open space features which are within or adjoin the site, such as open fields or farmland, scenic vistas, sight lines to historic areas or structures, and archaeological sites.

(b) *Master plan.* The master plan shall identify proposed areas and uses of open space including the nondevelopable areas. The master plan shall be prepared by a licensed surveyor, engineer, architect, landscape architect or a planner. A scale shall be used so that the entire parcel can be shown on one piece of paper no larger than 36 inches by 48 inches. It shall include:

- (1) An inset map at a scale of not less than one inch to one mile, showing the property in relation to surrounding roads, subdivisions or landmarks.
- (2) A north arrow.
- (3) The location of existing property lines, existing above and below-ground utility easements, scenic easements, watercourses or lakes, wooded areas and existing woods which are within or adjoin the property.
- (4) The boundaries of each section, topography and approximate location of proposed streets, proposed areas and uses of open space, proposed parking areas, proposed recreation areas, proposed lots and/or buildings, and phasing of development.
- (5) Marginal data which shows the gross acreage of the site, the net developable area, the proposed facilities qualifying for density bonuses or required per the density standards, the total number of dwelling units and/or lots, the number of bonus units and/or lots, the minimum amount of open space required by section 24-551(a) and the total amount of open space.
- (6) Master water, sewer and drainage plans and schematic plans.
- (7) All required setbacks, right-of-way buffers and perimeter buffers; all preserved tree areas, preserved slopes, open space areas and proposed bicycle/pedestrian access thereto; and proposed storm water management facilities.

(c) *Status of master plan.* The approval of the master plan under this section shall not be considered an approved preliminary plat as defined in the subdivision ordinance.

(d) *Administrative consistency review.* The planning director may determine certain minor changes to a development plan are consistent with the master plan. A conceptual plan may be submitted to the planning director for this purpose in a form sufficient to illustrate the proposed deviations. For the purpose of this section, minor determinations of consistency include changes that meet all of the following:

- (1) Do not significantly affect the general location or classification of housing units or buildings as shown on the master plan.

- (2) Do not significantly alter the distribution of recreation or open space areas on the master plan.
- (3) Do not significantly affect the road layout as shown on the master plan.
- (4) Do not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the corresponding legislatively approved case associated with the master plan.

The planning director shall notify the chair of the development review committee when minor determinations of consistency are approved. Determinations of consistency that do not meet the criteria listed above shall follow the procedures for development plan review as outlined in section 24-554 (e) of the zoning ordinance.

(e) *Development plan review.* Development plans shall be submitted and reviewed in accordance with article III of this chapter or with the county's subdivision ordinance, whichever is applicable. Development plans may be submitted for review after approval of a master plan by the board of supervisors. All development plans shall be consistent with the master plan. Development plans may deviate from the master plan if the planning commission concludes, after reviewing written comments from the planning director, that the plan does not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the approval of rezoning. A conceptual plan may be submitted to the planning commission for this purpose in a form sufficient to illustrate the proposed deviations. If the planning commission determines that a proposed change would significantly deviate from the approved master plan, the applicant may submit alternative proposed development plans or proceed with amendment of a master plan in accordance with section 24-13.

(f) *Master plan review fees.* Submittal of a master plan shall be accompanied by the fee charged for master plan review in accordance with section 24-7 of this chapter.

(g) *Master plan-Agreement.* Prior to final approval of the first sectional plan, an agreement shall be executed between the developer and the county which shall be binding upon the developer, his successors, assigns or heirs to the effect that the approved master plan shall govern the development of the total residential cluster development. This provision does not preclude the adjustment of the plan in accordance with section 24-553(d).

(h) *Sectional plans-Action.* Sectional plans submitted in accordance with subsection (d) shall be reviewed in accordance with and shall meet the requirements of, article III of this chapter or the county's subdivision ordinance, whichever is appropriate. However, all sectional plans submitted for moderate density cluster development shall be reviewed in accordance with and meet the requirements of article III of this chapter.

(Ord. No. 31A-88, § 20-153.16, 4-8-85; Ord. No. 31A-97, 6-2-86; Ord. No. 31A-112, 2-6-89; Ord. No. 31A-137, 2-18-92; Ord. No. 31A-197, 5-25-99; Ord. No. 31A-233, 12-11-07)

Secs. 24-555 - 24-563. Reserved.

Chapter 24

ARTICLE VI. OVERLAY DISTRICTS

DIVISION 2. RESERVED

Secs. 24-564 - 24-585. Reserved.

Chapter 24

ARTICLE VI. OVERLAY DISTRICTS

DIVISION 3. FLOODPLAIN AREA REGULATIONS

Sec. 24-586. Statement of intent.

(a) These regulations are intended to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (1) Regulating uses, activities and development which, alone or in combination with other existing or future uses, activities and development, may cause unacceptable increases in flood heights, velocities and frequencies;
- (2) Restricting or prohibiting certain uses, activities and development within districts subject to flooding;
- (3) Requiring uses, activities and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and
- (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(b) These regulations comply with the requirements of the National Flood Insurance Program (42 USC 4001-4128) of the Federal Insurance Administration. These regulations are necessary in order for all property owners within the county to be eligible for the National Flood Insurance Program and thereby purchase such insurance at nominal rates.

(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-228, 9-25-07)

Sec. 24-587. Applicability.

These regulations shall apply to all property located within an area designated as a floodplain area, and as such shall supplement the regulations of the zoning district within which such property is located. Where these regulations are at variance with other provisions of this chapter, it is intended that these regulations shall apply. These regulations shall only apply to property which is designated as being within a floodplain area. (Ord. No. 31A-127, 10-29-90)

Sec. 24-588. Compliance and liability.

(a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of these regulations and any other applicable ordinances and regulations.

(b) The degree of flood protection sought by the provisions of these regulations is for reasonable regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These regulations do not imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damage.

(c) Records of actions associated with administering these regulations shall be kept on file and maintained by the county engineer.

(d) These regulations shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-228, 9-25-07)

Sec. 24-589. Definitions

The terms used in these regulations are defined in section 24-2 of this chapter except for the board of zoning appeals, which is defined in section 24-645.

(Ord. No. 31A-228, 9-25-07)

Sec. 24-590. Designation of floodplain districts.

(a) The various floodplain districts shall include areas subject to inundation by waters of the 100-year flood. The minimum basis for the delineation of these districts shall be, but not limited to, the September 28, 2007, flood insurance study prepared by the Federal Emergency Management Agency (FEMA), Federal Insurance Agency (FIA), since other flood-prone areas exist in James City County which are not shown on the floodplain maps. To determine these areas, the 100-year flood elevations and floodways from federal, state and local sources may be used when available. Where the specific 100-year flood elevation cannot be determined for an area by using available sources of data, then the applicant for the proposed use, development and/or activity shall determine this elevation to the satisfaction of the county engineer in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall consider full development of the watershed and shall be submitted in sufficient detail to allow a thorough review by the county engineer.

Where flood elevations are provided by the FIS, these elevations shall not be changed except with FEMA approval. Local sources of floodplain data include, but are not limited to, the following reports: *Drainage Study of Upper Powhatan Creek Watersheds, Camp Dresser and McKee 1987; Mill Creek-Lake Watershed Study, GKY and Associates, 1988.*

(b) The floodway district, minimally shown on the maps accompanying the flood insurance study, is established for purposes of these regulations using the criterion that certain areas within the floodplain must be kept free of encroachment in order that the 100-year flood be conveyed without increasing the water surface areas included in this district.

(c) The flood-fringe district shall be that area of the 100-year floodplain not included in the floodway district. The basis for the outmost boundary of the district shall be the 100-year flood elevations minimally shown as Zone AE on the maps accompanying the flood insurance study.

(d) The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided but Where a 100-year floodplain boundary has been approximated. Such areas are minimally shown as Zone A on the maps accompanying the flood insurance study.
(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-179, 9-8-98; Ord. No. 31A-228, 9-25-07)

Sec. 24-591. Official map.

The boundaries of floodway, flood-fringe and approximated floodplain districts in section 24-590(b), (c) and (d) above are established as minimum areas, as shown on the flood insurance rate map dated September 28, 2007, which is declared to be a part of these regulations and which shall be kept on file at the office of the county engineer.
(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-179, 9-8-98; Ord. No. 31A-228, 9-25-07)

Sec. 24-592. Permits.

No specific permit shall be required by these regulations. An application for subdivision, site plan, rezoning, building permit, special use permit, sedimentation and erosion control permit, wetlands permit or other local development permit shall be considered an application for development under these regulations. The applicant shall be informed of the provisions of this article as they may apply to the property and no permit shall be issued until the applicant has complied with such provisions.
(Ord. No. 31A-127, 10-29-90)

Sec. 24-593. Permitted uses.

Permitted uses, special permit uses, accessory uses, dimensional standards and special requirements shall be as established by the underlying zoning district except as specifically modified herein.
(Ord. No. 31A-127, 10-29-90)

Sec. 24-594. Prohibited uses.

- (a) The following uses shall be specifically prohibited within all floodplain districts:
- (1) Sanitary landfills, junkyards, outdoor storage of inoperative vehicles.
 - (2) Manufactured homes.
 - (3) Surface mines and borrow pits.
 - (4) Manufacture, bulk storage, transformation or distribution of petroleum, chemical or asphalt products or any hazardous materials as defined in either or both of the following:
 - a. Superfund Amendment and Reauthorization Act of 1986.
 - b. Identification and Listing of Hazardous Wastes, 40 CFR section 261 (1987).

The following products shall be specifically included:

- i. Oil and oil products including petrochemicals.
- ii. Radioactive materials.

- iii. Any material transported or stored in large commercial quantities (such as 55-gallon drums) which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable, exerting a strong oxygen demand.
 - iv. Biologically accumulative poisons.
 - v. Substances containing the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 135 et seq.).
 - vi. Substances highly lethal to mammalian or aquatic life.
- (5) Storage or land application of industrial wastes.
- (6) Outdoor storage of equipment, materials or supplies which are buoyant, flammable or explosive.
- (b) Nonconforming uses of this chapter notwithstanding, no expansion of any of the above uses located within the floodplain district shall be permitted.
(Ord. No. 31A-127, 10-29-90)

Sec. 24-595. Regulations for construction.

- (a) The construction or placement of any structure or obstruction, filling or changing the cross-section or flow characteristics within the 100-year floodplain shall not be permitted unless the project is in conformance with the following requirements:
- (1) In case of residential usage, the finished grade shall be at least one foot above the 100-year flood elevation for the lowest floor, including basement or cellar of structure. For nonresidential structures, watertight floodproofing in accordance with the Virginia Uniform Statewide Building Code may be provided in lieu of the finished grade requirement described herein. Prior to issuance of a certificate of occupancy, the owner of any structure located in a floodplain district shall submit a completed elevation certificate or floodproofing certificate as appropriate to the director of code compliance.
 - (2) Utility and sanitary facilities shall be floodproofed up to the level of the 100-year flood.
 - (3) Encroachments, including fill, new construction, substantial improvements and other development are prohibited within the floodway district unless it has been demonstrated through hydrologic and hydraulic analyses that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (4) All other federal and state permits shall be obtained by the applicant before a building permit can be issued.
- (b) It shall be the responsibility of the applicant to provide this data, certified by a licensed surveyor or engineer or other source acceptable to the director of code compliance.
(Ord. No. 31A-127, 10-29-90)

Sec. 24-596. Regulations for subdivisions and site plans.

The applicant of any subdivision of land or site plan within the county shall submit with his application a statement by a licensed surveyor or engineer as to whether or not any property shown on the plat or plan is at an elevation lower than the 100-year flood level. Where a 100-year flood level exists, the extent of this area shall be shown on the plat or plan. Further, the elevation of the finished surface of the ground at each building location shall be shown. Lots created after February 6, 1991, which are within a floodplain district having a 100-year flood elevation greater than 7-½ feet, shall contain a natural, unfilled building site at least one foot above the 100-year flood elevation adequate to accommodate all proposed structures. All structures shall be constructed solely within such building site.

(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-228, 9-25-07)

Sec. 24-597. Regulations for replacement manufactured homes.

(a) Replacement manufactured homes shall be elevated on a permanent foundation so that the lowest floor is one foot above the level of the 100-year flood.

(b) In floodplain areas, replacement manufactured homes shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors in either of the following arrangements:

(1) Over-the-top ties at each corner plus one frame tie at the middle of each side; or

(2) Frame ties at each corner plus no less than five evenly spaced additional frame ties per side.

(c) All ties to the ground shall be able to carry a force of 4,800 pounds.
(Ord. No. 31A-127, 10-29-90)

Sec. 24-598. Recreational vehicles.

Recreational vehicles placed on sites must either be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use or meet requirements for placement, elevation and anchoring requirements for manufactured homes.

(Ord. No. 31A-127, 10-29-90)

Sec. 24-599. Design criteria for utilities and facilities.

(a) *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities shall be designed to eliminate infiltration of floodwaters into the systems up to the 100-year flood level and discharges from the systems into the floodwaters. In addition, they should be located and constructed to eliminate flood damage and impairment.

(b) *Water facilities.* All new or replacement water facilities shall be designed to eliminate infiltration of floodwaters into the systems and shall be located and constructed to minimize or eliminate flood damages.

(c) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites.

(d) *Septic tanks.* New or replacement septic tank drain fields shall be placed where they shall not be impaired or contaminated by a base flood. The Virginia Department of Health shall be consulted to verify compliance with this requirement.

(e) *Utilities.* All utilities, such as gas lines, electrical and telephone systems, being placed in floodprone areas should be located and constructed to eliminate the chance of impairment during a 100-year flooding occurrence.

(f) *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

(Ord. No. 31A-127, 10-29-90)

Sec. 24-600. Regulations for filling in flood fringe and approximated floodplain districts.

No permit shall be issued or approved until the site development plan for such fill meets the following requirements:

- (1) The filling of land shall be designed and constructed to minimize obstruction to and effect upon the flow of water and more particularly that:
 - a. Such fill will not result in any increase in flood levels during the occurrence of a 100-year flood discharge.
 - b. The flood-carrying capacity of the watercourse shall be maintained.
- (2) Fill shall be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead or other acceptable method. Any structure, equipment or material permitted shall be firmly anchored to prevent dislocation due to flooding;
- (3) Fill shall be of a material that will not pollute surface water or groundwater;
- (4) Where, in the opinion of the county engineer, additional topographic, engineering and other data or studies are necessary to determine the effects of flooding on a proposed structure or fill and/or the effect of such structure or fill on the flow of water in flood stage, the applicant shall submit such data or studies.

(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-228, 9-25-07)

Sec. 24-601. Watercourse modification.

The Federal Insurance Administrator, adjacent jurisdictions and the Department of Conservation and Recreation, Division of Soil and Water Conservation shall be notified prior to the alteration or relocation of any watercourse. The flood-carrying capacity to such watercourse shall be maintained.

(Ord. No. 31A-127, 10-29-90)

Sec. 24-602. Existing structures in floodplain districts.

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

- (1) Existing structures in the floodway district shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the 100-year flood elevation;
- (2) Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than 50 percent of its market value shall be elevated to or above the base flood elevation; and,
- (3) The substantial improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with the provisions of these regulations and the Virginia Uniform Statewide Building Code and shall require that the entire structure be brought into full compliance with these provisions.

(Ord. No. 31A-127, 10-29-90; Ord. No. 31A-228, 9-25-07)

Sec. 24-603. Variances; factors to be considered.

(a) *Factors in passing upon applications for variance.* In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within any floodway district that will cause any increase in the 100-year flood elevation.
- (2) The danger that materials may be swept onto other lands or downstream to the injury of others.
- (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
- (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (5) The importance of the services provided by the proposed facility to the community.
- (6) The requirements of the facility for a waterfront location.
- (7) The availability of alternative locations not subject to flooding for the proposed use.
- (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- (9) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
 - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
 - (12) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (13) Such other factors which are relevant to the purposes of this ordinance.
- (b) *Referral to qualified persons or agencies for technical assistance.* The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for flood protection and other related matters.
- (c) *Factors considered in variance application review.* In reviewing all variance applications, the board of zoning appeals shall consider the following factors:
- (1) Increases in flood heights;
 - (2) Additional threats to public safety;
 - (3) Extraordinary public expense;
 - (4) Creation of nuisances;
 - (5) Fraud or victimization of the public; and
 - (6) Conflicts with local laws or ordinances.
- (d) *Issuance.* Variances shall be issued only after the board of zoning appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.
- (e) *Notification of increased risk.* The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation increases the risks to life and property and will result in increased premium rates for flood insurance.
- (f) *Records of variance actions.* A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
(Ord. No. 31A-127, 10-29-90)

Secs. 24-604 - 24-613. Reserved.

Chapter 24

ARTICLE VI. OVERLAY DISTRICTS

DIVISION 4. AIRPORT APPROACH OVERLAY DISTRICT, AA

Sec. 24-614. Statement of intent.

The Airport Approach Overlay District is established for the purpose of protecting the public health, safety and general welfare by preventing obstructions that constitute a hazard to air navigation. This is accomplished by restricting the height of structures and objects of natural growth in the vicinity of any public or private airport in James City County. The Airport Approach Overlay District is intended to impose special requirements in addition to the regulations of the principal zoning district where it applies.
(Ord. No. 31A-88, § 20-195, 4-8-85)

Sec. 24-615. Designation of the Airport Approach Overlay District.

The governing body of James City County, Virginia, hereby establishes and delineates on the zoning district map the Airport Approach Overlay District, to be referred to on the zoning district map by the symbol AA.
(Ord. No. 31A-88, § 20-196, 4-8-85)

Sec. 24-616. Approach surface.

A surface to be known as the approach surface is hereby established and longitudinally centered along an extension of each runway. The approach surface begins at a point 200 feet from the end of the runway and at that point is 500 feet wide. The approach surface then runs along the extended centerline of the runway for a distance of 5,000 feet and at that point is 2,000 feet wide. The approach surface elevation at its beginning point is the same as the centerline elevation (extended) of the runway. It then increases in elevation at a slope of one foot vertical to 20 feet horizontal throughout its entire length.
(Ord. No. 31A-88, § 20-197, 4-8-85)

Sec. 24-617. Height limits.

No structure shall be erected to a height greater than that established by the dimensions set forth in section 24-616.
(Ord. No. 31A-88, § 20-198, 4-8-85)

Secs. 24-618 - 24-627. Reserved.