

Article 3 | Review and Approval Procedures

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Sec. 3.1 General

3.1.1 Form of Application

Applications required under this article must be submitted in a form and in such numbers as specified below. Application forms and checklists of required submittal information are available from the official responsible for accepting the application.

3.1.2 Application Filing Fees

- A. Fee Required.** Applications must be accompanied by the fee that has been established by the Town Council.
- B. Fee Exemptions.** Fees are not required with applications initiated by the Town Council, Planning Commission, Board of Zoning Appeals, County of Loudoun, Loudoun County Public Schools or fire and rescue companies. Application filing fees shall be required of any other public or private applicant.
- C. No Refunds.** Unless otherwise expressly stated in this article, application fees are nonrefundable.

3.1.3 Application Completeness, Accuracy, and Substantial Amendment

- A. Required Completeness and Accuracy.** An application will be considered complete if:
 - 1. It is submitted in the required number and form;
 - 2. It includes all mandatory information;
 - 3. It is accompanied by the applicable fee;
 - 4. All information material to the application is accurate. This provision does not preclude the identification and correction of inaccurate or misleading information submitted by the applicant after an application is accepted; and
 - 5. Proof of Payment of all Taxes and Other Charges: Prior to submission of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a Zoning Map Amendment, Zoning Concept Plan or Proffer Amendment, Special Exception, Variance, Site Plan, BAR Permit, Zoning Permit, or prior to the issuance of final approval, applicant shall provide satisfactory evidence from the Director of Finance and Administrative Services that any delinquent real estate taxes, nuisance charges, stormwater management utility fees due and any other charges that constitute a lien on the subject property, that are owed to the Town which have been properly assessed against the property have been paid. (Per Sec. 15.2-2286.B. of the Code of Virginia, 1950, as amended.)
- B. Acceptance for Processing.** Determination of application completeness shall be made within ten (10) business days of application filing except in the case of Variances and Appeals of Administrative Decisions, which shall be governed by the provisions of Sec. 3.13.5C and 3.14.3D. If an application is determined to be incomplete, the Land Development Official shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. The deficiencies must be addressed by the applicant in writing within thirty (30) days of the date of the deficiency notice provided by the Land Development Official. If all of the deficiencies are not addressed, the application shall be

considered withdrawn. In the event an application is deemed withdrawn under this provision, the applicant shall be entitled to a refund of 90 percent of the application filing fee.

- C. Substantial changes after acceptance.** During the review of an application, the proposed use, density/intensity or layout is substantially changed such that 1) there is an increase of 5% or more of the total number of residential units proposed; or 2) there is an increase of 5% or more of total floor area for non-residential uses proposed; or 3) there is a re-arrangement/re-location of specified land uses, structures or land bays within the rezoning area; or 4) there are additional modification requests included after acceptance. When an application is resubmitted for continued review, the Land Development Official shall survey the application within ten (10) business days of receipt and render a finding as to whether the submitted information is deemed a substantial change to the application. If the Land Development Official finds the application has been substantially changed:
1. The Land Development Official shall provide a written determination of their finding.
 2. Regardless of the number of prior reviews, the application shall revert to a first submission review, and the applicant shall request an extension of the application review period prescribed in this Section and such notice shall specify the required extension. The number of submissions shall remain unchanged and the application shall be subject to applicable review fees.
 3. Upon receipt of the Land Development Official's written finding, the applicant will then have ten (10) business days to provide the Land Development Official with a written request to withdraw the additional information. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

3.1.4 Burden of Proof or Persuasion

In all cases, the applicant shall have the burden of establishing that an application complies with applicable approval criteria.

3.1.5 Pre-Application Conference

A pre-application conference is required in the case of Zoning Map Amendments (including Proffer Amendments and Concept Plan Amendments), Special Exception Applications and Town Plan Amendments. In all other cases, applicants are encouraged to schedule and attend a pre-application conference with the appropriate planning department staff prior to submitting an application for review under this article. The purpose of a pre-application conference is to inform the applicant of review procedures, submittal requirements, development standards, and other pertinent matters before the applicant finalizes the development proposal. Staff opinions presented during a pre-application conference are informational only and do not represent a commitment on behalf of the town regarding the acceptability of the development proposal. If a rezoning proposes a residential use and proffers are prohibited per Sec. 3.3.3.E. below, then suggesting, requesting or discussing proffers in the pre-application conference is prohibited.

3.1.6 Official Review

In conducting required reviews, the Land Development Official or the Zoning Administrator, as the case may be, shall be authorized to distribute the application and other submittals to other departments and agencies for the purpose of soliciting

comments and ensuring that the proposal complies with all applicable standards and requirements.

3.1.7 Reserved

3.1.8 Summary of Procedures

The following table provides a summary of the procedures in this article. In the event of conflict between this summary table and the detailed procedures in this article, the detailed procedures shall govern.

Procedure	Section No.	Review and Decision-Making Authority					Notices (Written, Placard, Newspaper)
		Staff	PC	BZA	BAR	Council	
Zoning Ord. Text Amendments	3.2	R	<R>	—	—	<DM>	N
Zoning Map Amendments	3.3	R	<R>	—	—	<DM>	W, P, N
Special Exceptions	3.4	R	<R>	—	—	<DM>	W, P, N
Minor Special Exceptions	3.4	R				<DM>	W,P,N
Demolition Permits (BAR)	3.6	R			<DM>	<A>	W,P
Temporary Use Permits	3.5	DM	—	<A>	—	—	—
Zoning Permits	3.7	DM	—	<A>	—	—	—
Wall Check Plats	3.8	DM	—	<A>	—	—	—
Occupancy Permits	3.9	DM	—	<A>	—	—	—
Certificate of Appropriateness	3.10	R	—	—	<DM>	A	W, P
Architect. Control Cert. of Approval	3.11	R	—	—	<DM>	A	W, P
Commission Permits (Public Projects)	3.12	R	<DM>	—	—	<A>	W,P,N
Variances	3.13	R	—	<DM>	—	—	W, P, N
Administrative Decisions	3.14	DM	—	<A>	—	—	W, P, N*
Proffer Appeals	3.15	DM	—	—	—	<A>	N

PC = Plan. Comm.; BZA = Bd. of Zoning Appeals; BAR = Bd. of Architectural Review; Council = Town Council

R = Review Body (Responsible for Review and Recommendation)

DM = Decision-Making Body (Responsible for Final Decision to Approve or Deny)

A = Authority to hear and decide appeals of Decision-Making Body's action

<> = Public Hearing Required

*W,P,N notice only on appeal to BZA

3.1.9 Public Hearing Notices

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

A. Written Notice.

1. Landowner Initiated Cases. In any case involving a zoning map amendment, special exception or variance which is initiated at the request of a landowner, such landowner shall be designated by the Planning Commission, Town Council or Board of Zoning Appeals as the appropriate and responsible party for sending any written notice required by this section and Section 15.2-2204 of the Code of Virginia, 1950, as amended.

2. Cases Involving 25 or Fewer Tax Map Parcels. For a zoning map amendment, special exception or variance that involves 25 or fewer tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:
 - a. **Owners, etc.** The owner or owners, their agent or the occupant, of each parcel involved and to the owner or owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.
 - b. **Planned Development District:** In addition, if any portion of the affected property is within a planned development district then written notice of a public hearing shall be provided to any incorporated property owners associations within the planned development district that have members owning property located within 2,000 feet of the affected property.
 - c. **Public Land:** In addition, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract.
 - d. **When/Type of Mail:** Notice shall be sent at least ten (10) calendar days before the hearing by registered or certified mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books.
 - e. **Continued Hearing:** If the hearing is continued, notice shall be re-mailed.
3. Cases Involving More Than 25 Tax Map Parcels. For a zoning map amendment, special exception or variance application that involves more than 25 tax map parcels, the Planning Commission, Town Council, Board of Zoning Appeals, or designee as appropriate shall provide written notice of the public hearing to:
 - a. **Owners, etc.** The owner, owners, or their agent of each parcel involved and to the owner or owners, or their agent of all abutting property and property immediately across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth.
 - b. **Planned Development District:** In addition, if any portion of property that is the subject of a proffered zoning map amendment and/or is within a planned development district then written notice of a public hearing shall be provided to any landowner subject to such existing proffered conditions in accordance with § 15.2-2302 of the Code of Virginia, 1950, as amended.
 - c. **When/Type of Mail:** Notice shall be sent at least ten (10) calendar days before the hearing by first class mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books.
 - d. **Continued Hearing:** If the hearing is continued, notice shall be re-mailed.
4. Zoning Ordinance changes that decrease density. For a Zoning Ordinance text change that decreases the allowed dwelling unit density of any parcel of

land, the Planning Commission or its representative shall provide written notice of the public hearing to:

- a. Owners, etc.** The owner, owners or their agent of each parcel involved and to the owner or owners, or their agent of all abutting property and property immediately across the street or road from the property affected, including those properties which lie in other localities of the Commonwealth. However, written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners or their agents of lots shown on a subdivision plat approved and recorded pursuant to the Subdivision and Land Development Regulations where such lots are less than 11,500 square feet.
 - b. When/Type of Mail:** Notice shall be sent at least ten (10) calendar days before the hearing by first class mail to the last known address of an owner as listed in the current Loudoun County real estate tax assessment records or current real estate tax assessment books.
 - c. Continued Hearing:** If the hearing is continued, notice shall be re-emailed.
- 5. Notice to Adjoining Localities.** When a comprehensive plan amendment, zoning map amendment, or special exception application involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, written notice of the application shall be given by the local commission, or its representative, at least ten (10) calendar days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.
- 6. Contents of Written Notice.** All required written notice shall contain:
 - a.** The time, date and place of hearing;
 - b.** A brief description of the matter being heard;
 - c.** Identification of the land that is the subject of the application (including the tax map number of the property and complete street address of the property, if any); and
 - d.** The assigned case file number.
- 7. Notice by Town.** Notwithstanding any other provisions of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the Town, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
- 8. Certification.** At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the Director of Planning and Zoning certifying that written notices have been sent and such affidavit shall include a list of names of those to whom notice was sent. A copy of such affidavit shall be presented at the beginning of the public hearing on the application.
- 9. Failure to Receive Notice.** Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.
- 10. Condominium Ownership.** In the case of a condominium, written notice may be sent to the unit owners' association instead of to each individual unit owner.

11. Notice to County. For a comprehensive plan amendment, a zoning map amendment, or special exception application involving any parcel of land located within one-half mile of a boundary of an adjoining locality in the Commonwealth, then written notice shall also be given by the Zoning Administrator to the chief administrative officer or his designee, of such adjoining locality. Such notice must be mailed at least ten (10) days prior to the hearing.
12. Notice to Airport Owner. For a comprehensive plan amendment, a zoning map amendment, or special exception application involving any parcel of land located within 3,000 feet of a boundary of a licensed public-use airport, then written notice shall also be given at least thirty (30) days before the public hearing to the owner of the public-use airport, and the notice shall advise of the opportunity to submit comments or recommendations.
13. Notice involving Electric Transmission Corridors. When a comprehensive plan amendment designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the Zoning Administrator to each electric utility with a certified service territory that includes any part of such designated electric corridor transmission corridors or routes at least ten (10) days prior to the hearing.
14. Board of Architectural Review Written Notice. For cases before the Board of Architectural Review, the town shall mail written notice of the public hearing by first class mail at least ten (10) calendar days prior to the public hearing.

B. Placard Notice. Placard notice shall be posted by the applicant, using a form of placard approved by the Town Council, at least fifteen (15) calendar days and no more than twenty (20) calendar days prior to each public hearing. Certification of posting shall be provided to the Director of Planning, Zoning and Development, except that such certification shall be provided to the Zoning Administrator for public hearings before the Board of Zoning Appeals.

1. Location of Placards. Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two abutting properties and at the access points to said property. Placards shall be weatherproof.
2. Contents of Placards. Placards shall contain:
 - a. The time, date and place of the hearing;
 - b. A brief description of the matter being heard;
 - c. Identification of the land that is the subject of the application including the property tax identification number, tax map number and complete address of the property, if any; and
 - d. The assigned case file number.
3. Maintenance and Removal of Placards. The applicant shall maintain all placards up to the time of the hearing and shall remove all posted placards no later than fifteen (15) calendar days after the public hearing has been closed.
4. Penalties. It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in Sec. 17.3.

C. Newspaper Notice. The Town shall give newspaper notice prior to each public hearing.

1. Type of Newspaper. Notice shall be published in a newspaper or newspapers of general circulation in the locality
2. Contents of Newspaper Notice. The notice shall contain:
 - a. The time, date and place of the hearing;
 - b. A brief description of the matter being heard;
 - c. Identification of the land that is the subject of the application including the property tax identification number, tax map number and complete address of the property, if any;
 - d. In the case of a zoning map amendment, including an amendment to an approved concept plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the Town Comprehensive Plan shall be included within the notice; and
 - e. The assigned case file number.
 - f. References to the place or places in the Town where copies of the proposed plans, ordinances or amendments may be examined.
3. Time of Newspaper Notice. The notice shall appear at least once a week for two (2) successive weeks with not less than six (6) days elapsing between the first and second publication. The second advertisement shall be published no more than twenty-one (21) calendar days and no fewer than five (5) calendar days prior to the public hearing.

D. Notice Requirements for Particular Hearings. The following hearings require the following form of notice:

1. Appeals to Town Council. Public hearings on appeals to the Town Council require that the Town provide newspaper notice of the hearing.
2. Appeals to Board of Zoning Appeals. Public hearings on appeals to the Board of Zoning Appeals require that the Town provide newspaper notice of the hearing.

E. Cost of Notice. The cost of all notice required by this section shall be paid by the applicant. The costs of placing the original newspaper notice are included in the application fee. However, the cost of newspaper notices for re-hearings or additional hearings required by the applicant's actions shall be paid by the applicant.

F. Additional Notice Required.

1. Deferral. If an item is not heard at the time for which it was noticed and the public hearing is not opened, but is deferred at that time to another date, all notice required by this section shall be given for the deferred public hearing.
2. Closed Public Hearings. If a public hearing is closed but the particular agenda item is not completed, no additional notice is required as long as the date(s) for completion of the public hearing agenda is announced at the hearing that has been closed.

WRITTEN NOTICE REQUIREMENTS				
Circumstance	Section	Written	Recipient	When/Mailing Type
Rezoning, S.E., Minor S.E. or variance involving less than 25 parcels	3.1.9.A.2.a	Yes	See Sec. 3.1.9.2.a-d	10 days prior to hearing by registered or certified mail
Rezoning, S.E., Minor S.E. or variance involving more than 25 parcels	3.1.9.A.3	Yes	See Sec. 3.1.9.2.a-b	10 days prior to hearing by registered or certified mail
Zoning Ordinance text change that decreases density	3.1.9.A.4	Yes	3.1.9.A.4.a	10 days prior to hearing by 1 st class mail
Town Plan amendment, Rezoning, S.E., or Minor S.E. within ½ mile of adjoining locality	3.1.9.A.5	Yes	Chief admin. officer, or his designee, of such adjoining locality	10 days prior to hearing
Town Plan amendment, Rezoning, S.E., or Minor S.E. within 3,000 feet of public airport	3.1.9.A.12	Yes	Owner of airport	30 days prior to hearing
Town Plan amendment designates or alters routes of electric transmission lines of 150 kilovolts or more	3.1.9.A.13	Yes	Each electric utility with a certified service territory that includes any part of the designated routes	10 days prior to hearing
BAR meeting	3.1.9.A.14	Yes	Adjacent property owners	10 days prior to hearing by 1 st class mail

3.1.10 Inactive Applications

Any Zoning Map Amendment application or Special Exception application officially accepted as complete by the town for processing that later has processing suspended by request of the applicant or by lack of activity by the applicant for a period of six (6) months or more shall be deemed inactive. The period of inactivity shall be measured from the time staff issued comments or correspondence that required revisions to the application or some affirmative act in response by the applicant but no subsequent revisions or demonstrable progress toward approval of the application has been made.

- A. Once an application is deemed inactive it may be reactivated by the applicant at any time in the following six (6) months. If an applicant wishes to reactivate an application during this subsequent six (6) month period, the applicant must notify the town in writing of their intent to proceed with the application, grant the town an appropriate extension of time and pay a reactivation fee as established by the Town Council. Any application that is not re-activated prior to the end of the allowed one (1) year period of inactivity shall lapse and be of no further effect and no further processing of the application shall occur. The application is considered withdrawn and a new application must be submitted with the appropriate fee. For example, if a rezoning application has been accepted and staff issued comments on July 1, 2003 but no response has been received from the applicant by January 1, 2004, the application is deemed inactive. If applicant makes no attempt to reactivate the application by June 30, 2004, the application is considered withdrawn.

- B. Once an application is reactivated, the inactivity period rules still apply, so that a reactivated application can subsequently be deemed inactive again if suspended by request of the applicant or by lack of activity by the applicant for a period of six (6) months. Thereafter the process described above is repeated and the application will either be reactivated again or deemed withdrawn.



Sec. 3.2 Zoning Ordinance Text Amendments

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the Town Council may amend, supplement, change or repeal the regulations in the Zoning Ordinance in conformity with the provisions of Article 7, Chapter 22, Title 15.2 of the Code of Virginia, 1950, as amended and as set forth in this section.

3.2.1 Initiation of Text Amendments

Where the public necessity, convenience, general welfare and good zoning practice require it, amendments to the text of this Zoning Ordinance may be initiated by (1) Town Council through the adoption of a resolution of intention to consider amending the Zoning Ordinance or by (2) motion of the Planning Commission. Amendments may also be initiated by (3) a landowner who may file a petition asking the Town Council to consider a resolution of intent to amend the ordinance text. The Town Council shall either adopt such resolution, initiating the text amendment requested, or shall deny the petition.

3.2.2 Public Hearing Notice

The Planning Commission and Town Council shall hold public hearings on proposed Zoning Ordinance Text Amendments. Each public hearing requires notice as set out in Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in 3.1.9.

3.2.3 Planning Commission Review and Recommendation

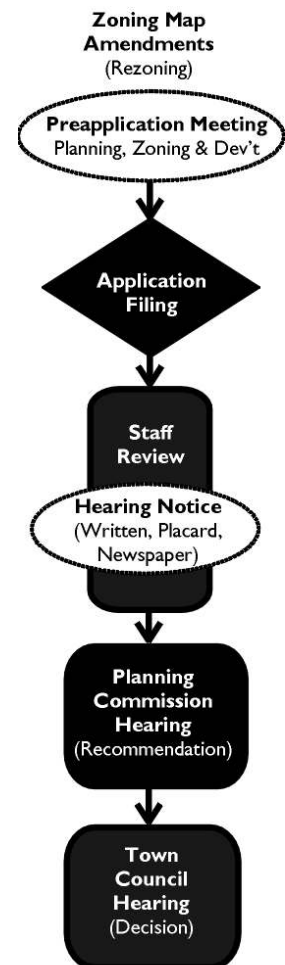
The Zoning Administrator shall set a time and a place for a public hearing by the Planning Commission on a proposed Zoning Ordinance Text Amendment. Following the public hearing, the Planning Commission shall forward the proposed amendment to the Town Council, together with its recommendation and a statement setting forth its reasons for such recommendation. The Planning Commission shall make its recommendation within 100 days after the first meeting of the Commission after the proposed amendment has been referred to it unless the Town Council specifies a shorter time period, or unless the proposed amendment has been withdrawn by the applicant prior to the expiration of the time period.

3.2.4 Town Council Review and Decision

Once the Planning Commission has forwarded a recommendation to the Town Council, the Zoning Administrator shall set a time and a place for a public hearing by the Town Council. The Town Council shall act upon a text amendment within twelve (12) months of the acceptance of the application unless the applicant requests or consents to action beyond that period or unless the proposed amendment has been withdrawn.

3.2.5 Approval Criteria

In acting on proposed text amendments, the Planning Commission and Town Council shall consider whether the proposal is consistent with the *Town Plan* and the stated purposes of this Zoning Ordinance (See Sec. 1.5).



*Appeals of Council's decisions are heard by the Circuit Court. Appeals must be filed within 30 days.

Sec. 3.3 Zoning Map Amendments (Rezoning)

3.3.1 Purpose

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the Town Council may amend, supplement, change or repeal the regulations in the Zoning Ordinance, or the zoning boundaries or classification of property on the Zoning Map, in conformity with the provisions of Article 7, Chapter 22, Title 15.2 of the Code of Virginia, 1950, as amended and as set forth in this section.

3.3.2 Planned Developments

Planned Development Districts shall be established in accordance with the Zoning Map Amendment procedures of this section, as supplemented by the standards and procedures of Sec. 8.2.

3.3.3 Initiation of Application

Where the public necessity, convenience, general welfare and good zoning practice require it, amendments to the zoning boundaries or classification of property shown on the Zoning Map may be initiated (1) by resolution of the governing body or (2) by motion of the local planning commission. Amendments may also be initiated by (3) by petition of

the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment.

- A.** Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, or 15.2-2303.4 of the Code of Virginia, 1950, as amended, may apply to the Town Council for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by Sec. 3.1.9 Public Hearing Notices to any landowner subject to such existing proffered conditions. Further, the approval of such an amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a nonconforming use.
- B.** There shall be no such amendment or variation of any conditions proffered pursuant to VA. Code §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, or 15.2-2303.4 until after a public hearing before the Town Council advertised pursuant to the provisions of Sec. 3.1.9 Public Hearing Notices. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, the Town Council may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.
- C.** Once amended pursuant to this section, the proffered conditions shall continue to be an amendment to the Zoning Ordinance and may be enforced by the Zoning Administrator pursuant to the applicable provisions of this chapter.
- D.** Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to VA. Code §§ 15.2-2297, 15.2-2298, 15.2-2303, 15.2-2303.1, or 15.2-2303.4 as amended, shall impair the right of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions.
- E. Residential Rezoning.** Any rezoning that contains a residential component filed on or after July 1, 2016, is subject to the requirements of Va. Code § 15.2-2303.4. Any such rezoning that is outside of an exempt area as defined by that statute shall be prohibited from submitting proffers to mitigate potential impacts attributable to the proposed new residential development. This prohibition shall not apply to an application for a proffer condition amendment amending a rezoning for which the application was filed prior to July 1, 2016. Based on the applicability of Va. Code § 15.2-2303.4, rezoning applications shall be treated with regard to proffers as described below:

Proposed Use	Rezoning Filed prior to July 1, 2016	Rezoning Filed July 1, 2016 or Later
Nonresidential	Proffers accepted	Proffers accepted
Mixed Use (Nonresidential with a Residential Component)	Proffers accepted	Proffers prohibited for Residential component only
Residential	Proffers accepted	Proffers prohibited
Residential use in an Exempt Area	NA	Proffers accepted

Amendment to add Residential to Rezoning Approved before July 1, 2016	Proffers accepted	Proffers accepted
Amendment to add Residential to Rezoning Approved after July 1, 2016	NA	Proffers prohibited

In situations where the acceptance of proffers is prohibited, an alternate procedure for reviewing applications will apply. These alternate procedures are noted where applicable in sections below.

3.3.4 Pre-application Conference

Prior to filing an application, the applicant shall meet with staff from the Department of Planning and Zoning to discuss the requirements and the nature of the proposal. For purposes of this conference, the applicant may provide a sketch plan of the proposed use drawn to scale, showing the general layout of the development and the relationship to the surrounding area. This sketch plan shall be submitted at least two weeks before the date of the pre-application conference. The results of the pre-application meeting shall be documented and distributed to the applicant and participating staff.

- A. Residential Rezoning:** If a rezoning proposes a residential use and proffers are prohibited per Sec. 3.3.3.E above, then suggesting, requesting or discussing proffers in the pre-application conference is prohibited.

3.3.5 Application Filing

- A.** Rezoning applications shall be filed with the Department of Planning and Zoning. The required application form must be completed and signed by the applicant and owner(s) of the property.
- B.** Upon receipt of an application, the Land Development Official shall acknowledge acceptance or rejection of the application in writing within ten (10) business days from the date of submittal.
- C.** Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment. Once the Department of Planning and Zoning has received all comments, the comments shall be forwarded to the applicant for resolution.

3.3.6 Submittal Requirements

All rezoning applications shall be accompanied by the following items. All rezoning applications in a Planned Development District shall submit the additional information required under Section 8.2 Procedures:

- A. Application.** An application, on a form provided by the town, completed and signed by the applicant and owner(s) of the property. The applicant shall keep this information current at all times during the processing of the application.
- B. Fee.** Associated fee, payable to the Town of Leesburg.
- C. Disclosure Statement.** A disclosure statement of the real parties in interest, on a form provided by the town, signed by the applicant and notarized, in accordance with Section 15.2-2289 of Code of Virginia, 1950, as amended. The applicant shall keep this information current at all times during the processing of the application.

D. Existing Conditions Plan.

1. Boundary outline of the subject property;
2. Existing planimetric information on the subject property;
3. Names and route numbers of all boundary roads or streets, and the width of existing rights-of-way;
4. Existing topography with 5' contours;
5. Existing utility easements;
6. Structures within 200 feet of proposed structure or use;
7. Existing landscaping and treed areas; and
8. Scale, north arrow and date.

E. Concept Plan. Twenty (20) copies, or other number as determined by the Land Development Official, of a concept plan, drawn to a scale of 1 inch = 100 feet, or a scale agreed to by the Town, illustrating the following features:

1. Insert vicinity map;
2. Total area of property in square feet and acres;
3. Tax map parcel or pin number of the subject property;
4. Conceptual grading with 5' contours and directional arrows depicting overland drainage;
5. Scale, north arrow and date;
6. Adjacent owner names, zoning and use;
7. Vehicular and pedestrian points of access to the property;
8. Existing and proposed utility easements;
9. Conceptual sewer and water connections to each proposed structure;
10. Existing and proposed structures;
11. Required yards and height and proposed setbacks and building heights, both in tabular form and graphically shown on the Concept Plan;
12. Environmental and historic features, including but not limited to sites or structures listed on the National Register of Historic Places or the Virginia Landmarks Register, or in the *Town Plan* Historic Resources element;
13. Structures within 200 feet of proposed structure or use;
14. Existing and proposed landscaping, screening and buffering;
15. Tree save areas, which may include individual trees and groupings;
16. Additional information as may be required by the Land Development Official to provide a comprehensible application given the rezoning proposal. Any additional information that may be required will be discussed as part of the pre-application meeting;
17. Building Elevations for all new construction or major alterations to existing structures;
18. All submittal documents (e.g., Statement of Justification, proffers, etc.) shall be submitted in a word format (.DOC);

19. All plans shall be submitted in a digital format (.PDF and .DXF);
20. Where a proposed structure lies within 50' of the boundary of the property, cross-sections extending 50 feet from within the subject property and extending 50 feet into the adjoining property shall be provided;
21. Where a street is proposed, a typical section shall be provided. The typical section should include the location and dimensions of: curb and gutter, on-street parking (if provided), travel lanes, landscaping areas, and sidewalk. The section should extend from building face to building face or 20' beyond the paving section; and
22. A lighting plan shall be provided to depict the general location of lighting fixtures and their general lighting distribution pattern.

F. Statement of Justification. Twenty (20) copies, or other number as determined by the Land Development Official, of a written statement of justification describing:

1. The nature of the request and uses proposed;
2. Traffic Impact Summary that shall include the following: (1) a Trip Generation Table that lists the proposed land uses and the daily and peak hour trip generation as shown in the current edition of the Institute of Traffic Engineers Trip Generation Manual; (2) A Statement whether traffic impact does or does not require mitigation and a description of any proposed mitigation as concluded by the Traffic Impact Analysis; and (3) a description of any proposed public road improvements
3. Impacts on adjacent uses and measures proposed to mitigate such impacts. If a rezoning proposes a residential use and proffers are prohibited per Sec. 3.3.3.E above, then any mitigation must be on-site and shall not be the subject of a proffer;
4. Area calculations for each use;
5. Dwelling unit count and mix or proposed building Floor Area Ratio (F.A.R.);
6. Relationship of the proposal to the Town Plan;
7. Justifications for each of the required approval criteria; and
8. Any proposed variations or modifications of submittal requirements.

G. Traffic Impact Analysis. Traffic impacts, including the maximum expected trip generation and the distribution of such trips by mode and the time of day based on current Institute of Transportation Engineers (ITE) Manual, internal road network, and connection into the existing transportation network. A traffic study, as described in Article 7 of the Design and Construction Standards Manual, will be required for all applications where the proposed land use:

1. Is adjacent to a road that currently carries or is proposed to carry more than 500 vehicle trips per day (VPD); or
2. Contains a road proposed to carry more than 500 vehicle trips per day (VPD); or
3. Is adjacent to a road that currently or is proposed to carry 100 or more peak hour vehicle trips per day; or
4. If the traffic study for the proposed activity is more than one (1) year old.

5. **Waiver Provision.** This requirement may be waived at the discretion of the Land Development Official at the applicant's written request filed with the initial application. Any such waiver shall be based upon a finding that such analysis is unnecessary due to the existence of previous studies and analyses which adequately cover the extent of the proposed development and its traffic impact, or if applicant supplies adequate proof that the proposed use does not increase the number of employees or customers using the site, or if otherwise justified by the applicant. The Land Development Official shall set forth in writing the reasons for the determination.

H. Rezoning Plat. A rezoning plat, signed and sealed by a certified land surveyor, completed not longer than six (6) months in advance of the date of the application, that contains the following information:

1. Boundaries of the entire property, with bearings and distances of the perimeter property lines and of each existing and proposed zoning district.
2. Total area of the property and of each existing and proposed zoning district presented in square feet and acres.
3. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat.
4. Location of all existing buildings and structures.
5. Names and route numbers of all boundary roads or streets, and the width of existing rights-of-way

I. Proffers.

1. Generally. If the applicant desires to proffer reasonable conditions along with the rezoning application, either a set of signed proffers or a draft set of proffers shall accompany the application.
2. Residential Rezoning. If a rezoning proposes a residential use and proffers are prohibited per Sec. 3.3.3.E above, then no proffers shall accompany the application.

J. Fiscal Impact Analysis. A fiscal impact analysis that demonstrates the long-term fiscal benefits and costs to the Town of the proposal.

K. Conceptual Grading Plan. A Conceptual grading plan is required for all rezoning applications. This plan shall be based upon field shot topography, aerial topography, or Loudoun County GIS topography and shall at a minimum include the following information:

1. Adequate existing and proposed contours and spot shots to confirm that adequate drainage and stormwater management can be provided for the site.
2. The location of potential SWM/BMP facilities including sufficient preliminary SWM/BMP computations to ensure that the site layout will not have to be significantly altered to provide these facilities at time of the construction drawings.
3. A clear depiction of the location of any potential areas of existing or proposed steep slopes (greater than 3:1) including locations and heights of any required retaining walls as well as any conceptual stabilization measures, proposed ground covers, etc.

L. Reduced Plat. An 8.5" × 11" reduction of the concept plan.

M. Archeological/Historic Information. The applicant shall provide the following information with the initial submission to determine if there are historic and/or archeological resources of local, state or national significance that are worthy of protection on the proposed site;

1. Structures, any portion of which is 50 years of age or older, located on any portion of land designated to be rezoned, require an Intensive Level architectural survey conducted in accordance with the latest version of State Historic Preservation Office (SHPO) survey standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate the structure and the site for its local, state, or national significance as an individual resource or as a district using:
 - a. The National Register Criteria for Evaluation listed in 36 CFR 60.4; and
 - b. The Criteria for Designation listed under Section 7.5.10.B.1 of the Zoning Ordinance.
2. An archeological survey shall be conducted in accordance with the latest version of SHPO standards by an individual or firm that meets the professional qualification standards set forth in 36 CFR 61, Appendix A to evaluate any archeological deposits on the property that may be of local, state, or national significance using the National Register Criteria for Evaluation listed in 36 CFR 60.4.
3. A letter from the State Historic Preservation Office concurring with the evaluations listed above.
4. Recommendations for mitigating the adverse impact of any proposed development on significant historic structures and significant archeological resources that exist on the property. Avoidance of adverse impacts is the preferred mitigation alternative, although other mitigation alternatives may be considered if consistent with local historic preservation guidelines and historic resource best management practices.

N. Zoning Modifications/Waivers Analysis. Every request for a modification and/or waiver of a zoning requirement shall be accompanied by a detailed justification statement that must answer the following questions:

- (1) How is the requested modification/waiver intended to achieve a more reasonable use of the subject property;
- (2) How does it achieve an innovative design;
- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.

1. **Buffer Yard Modifications/Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan;
 - b. A calculation of the square footage reduction in the required buffer yard; and
 - c. A calculation of the difference in number and type of the plant materials required and proposed.

2. **Other Modifications/Waivers.** For other types of modifications/waivers, information shall also include illustrations, exhibits, and/or, section drawings to best depict the effect of the requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

3.3.7 Request for Waivers/Modifications of Submittal Requirements

Any submittal requirements that accompany the application (with the exception of the associated fee) may be waived by the Land Development Official. The applicant must clearly indicate by section and paragraph in the application and in a letter attached to the application, which waiver or modification is requested and provide a justification for each modification/waiver requested. To grant a waiver or modification the Land Development Official must determine that a requirement is not necessary for the full and adequate consideration of the application. The Land Development Official shall set forth in writing the reasons for such determination.

3.3.8 Consistency with Town Plan

All rezoning applications shall be reviewed for consistency with the *Town Plan*. Inconsistency with the *Town Plan* may be one reason for denial of an application.

3.3.9 Public Hearing Notice

The Planning Commission and Town Council shall each hold a public hearing on proposed Zoning Map Amendments. Each public hearing requires notice as set out in Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in 3.1.9.

3.3.10 Planning Commission Review and Recommendation

Upon acceptance of a completed application, the Zoning Administrator shall set a time and a place for a public hearing by the Planning Commission. Following the public hearing, the Planning Commission shall forward the proposed amendment to the Town Council, together with a statement setting forth its reasons for such recommendation. If the Planning Commission has not forwarded a recommendation to the Town Council within one hundred (100) days of the date of the first scheduled Planning Commission meeting on the application, such inaction by the Planning Commission shall be deemed a recommendation of approval, unless the applicant has withdrawn the application or a time extension has been approved by the Planning Commission.

3.3.11 Request for Time Extension – Planning Commission

A written request to extend the 100-day time limit for Planning Commission review and recommendation may be made by the applicant at any time. The written request shall include a schedule for future submission of required information. The Planning Commission shall base its decision to grant an extension on an analysis of the progress being made on the application and the appropriateness of the schedule for future submissions that shall be provided by the applicant in conjunction with the request for a time extension. If a time extension is granted by the Planning Commission, the time period extension will commence on the expiration date of any previous time period extension or original 100-day time period.

3.3.12 Town Council Review and Decision

Once the Planning Commission has forwarded a recommendation to the Town Council, the Zoning Administrator shall set a time and a place for a public hearing by the Town Council on said amendment.

3.3.13 Request for Time extension – Council

A written request to extend the twelve-month time limit for Council review and recommendation may be made by the applicant at any time. The written request shall include a schedule for future submission of required information. The Council shall base its decision to grant an extension on an analysis of the progress being made on the application and the appropriateness of the schedule for future submissions that shall be provided by the applicant in conjunction with the request for a time extension. If a time extension is granted by the Council, the time period extension will commence on the expiration date of any previous time period extension or original date of application acceptance.

3.3.14 Withdrawal of Applications

Any application filed with the Town of Leesburg may be withdrawn upon written request by the applicant at any time. However, if the request for withdrawal is made after publication of the notice of hearing, such withdrawal shall be only with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing. No new application concerning any or all of the same property shall be filed within twelve (12) months of the consent to withdrawal action unless the consent of action specifies that the time limitation shall not apply and permits the application to be withdrawn “without prejudice.”

3.3.15 Approval Criteria

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

- A.** Consistency with the *Town Plan*, including but not limited to the Land Use Compatibility policies;
- B.** Consistency with any binding agreements with Loudoun County, as amended, or any regional planning issues, as applicable;
- C.** Mitigation of traffic impacts, including adequate accommodation of anticipated motor vehicle traffic volumes and emergency vehicle access;
- D.** Compatibility with surrounding neighborhood and uses; and
- E.** Provision of adequate public facilities.

3.3.16 Proffers

- A.** As part of an application for a rezoning, a property owner may voluntarily proffer in writing the provision of reasonable conditions to apply in addition to the requirements provided for in the applicable regulations. If an applicant desires to proffer reasonable conditions, such proffered conditions may include written statements, site plans, profiles, elevations, and/or other demonstrative materials and shall be subject to the following procedures and regulations:
 - 1.** The applicant shall submit signed proffers in writing to the Land Development Official not less than twenty-one (21) calendar days prior to Planning Commission public hearing.
 - 2.** Any proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the conditions contained therein.

3. Any proffered conditions shall run with the land and be under the control of the record owner.
4. Upon approval of a rezoning with proffers, any site plan, subdivision plat, or other application for development thereafter submitted shall be in conformance with all proffered conditions. No plan or plat shall be approved without said conformance.
5. For purposes of this section, conformance shall be determined by the Zoning Administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design and engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations and other demonstrative materials proffered by the applicant.
6. Once signed proffered conditions are submitted and the public hearing before the Town Council has begun, no substantial modification to any proffered condition shall be made unless, by majority vote, the Town Council authorizes such modification.

B. Residential Rezoning. If a rezoning proposes a residential use and proffers are prohibited per Sec. 3.3.3.E above, then no proffers shall accompany the application.

3.3.17 Successive Applications

Upon denial by the Town Council of any rezoning application, no new application concerning any or all of the same property shall be filed within twelve (12) months of the date of denial unless the Council action specifies that this time limitation shall not apply.

3.3.18 Appeals

An action contesting a decision of the Town Council, adopting or failing to adopt a proposed Zoning Map Amendment, shall be filed within thirty (30) days of the decision with the circuit court having jurisdiction of the land affected by the decision.

3.3.19 Amendment to Official Zoning Map

No changes or amendments to the Official Zoning Map shall be adopted, except in compliance and conformity with all procedures and requirements of this Zoning Ordinance. If, in accordance with procedures of this Zoning Ordinance, changes are made in district boundaries or other such information portrayed on the Official Zoning Map, such changes shall be made by the Zoning Administrator within thirty (30) days after adoption of the amendment. It shall be unlawful for any person to make any unauthorized change in the Official Zoning Map.

3.3.20 Minor Modifications

A Minor Modification to the approved rezoning concept plan or proffers may be approved at the sole discretion of the Land Development Official where it is determined that the following criteria are met:

- A. Changes are limited to minor layout, design or dimensional modifications in response to issues of topography, drainage, underground utilities, structural safety, vehicular circulation or requirements of government agencies;
- B. There are no negative impacts to the surrounding properties;
- C. Modifications shall not include the addition of any structure or addition to any structure in excess of five percent (5%) or 2,500 square feet, whichever is less;

- D. No new conditions, proffers or amendments are necessary;
- E. There are no code enforcement complaints or actions pending on the site;
- F. Proposed changes do not increase intensity of use. Examples include, but are not limited to, increased seats, employees, visitors, customers, vehicle trips or hours of operation;
- G. Modifications may be requested for:
 1. A setback to accommodate healthy existing trees and/or their root zones;
 2. Setbacks to accommodate an error in siting;
 3. Change to the location of design of buffers, landscape areas or trees provided there is no reduction in plant materials or area;
 4. Change or reduction in vehicle loading areas;
 5. Reduction in number of parking spaces by an amount not to exceed 10 percent of the spaces required per Section 11.3 (Parking Standards Table).

Sec. 3.4 Special Exceptions

3.4.1 Purpose and Intent

The special exception and minor special exception processes provides the Town Council with the opportunity to exercise discretionary powers in considering the establishment of certain uses that, due to their nature, design or location, may have the potential for adverse impacts on adjacent land uses and/or the health, safety or welfare of the community. This Zoning Ordinance designates such uses “special exception uses” or “minor special exception uses”. When considering such uses, the Town Council shall have the authority to impose conditions that are designed to remove or mitigate potentially adverse impacts upon the community or other properties in the vicinity of the proposed use. Special exception or minor special exception uses shall only be allowed if reviewed and approved in accordance with the procedures of this section.

3.4.2 Initiation of Application

An application for a special exception or minor special exception may be filed with the Department of Planning and Zoning by a property owner, board or bureau of any government or their agent, or other parties provided by law.

3.4.3 Pre-application Conference

Prior to filing an application for special exception or minor special exception, the applicant shall meet with representatives from the Department of Planning and Zoning to discuss the requirements of this section and the nature of the special exception or minor special exception use proposed. For purposes of this conference, the applicant shall provide a sketch plan of the proposed use drawn to scale, showing the general layout of the special exception or minor special exception and the relationship to the surrounding area. This sketch plan shall be submitted at least two weeks before the date of the pre-application conference. The results of the pre-application meeting shall be documented and distributed to the applicant and participating staff.



*Appeals of Council's decisions are heard by the Circuit Court. Appeals must be filed within 30 days.

3.4.4 Application Filing

- A. Special Exception or minor special exception applications shall be filed with the Department of Planning and Zoning. The required application form must be completed and signed by the applicant and owner(s) of the property.
- B. Upon receipt of an application, the Land Development Official shall acknowledge acceptance or rejection of the application within ten (10) business days from the date of submittal
- C. Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment. Once the Department of Planning and Zoning has received all comments, the comments shall be forwarded to the applicant for resolution.

3.4.5 Concurrent Review

If the property subject to the special exception application or minor special exception is also under consideration for rezoning, the special exception or minor special exception application may be reviewed concurrently with the rezoning application. The Zoning Administrator shall have the authority to determine if the special exception or minor special exception application(s) shall be permitted to track with the rezoning based upon the level of detail supplied by the applicant (i.e., sufficient detail to satisfy the requirements of Sec. 3.4.6). A separate application form and applicable fee must be submitted for each review process. A concurrent review of the special exception or minor special exception application and the rezoning application shall automatically waive the specific time limitations otherwise applicable to special exception or minor special exception matters, but will not waive any of the time limitations applicable to rezonings as set out in Section 3.3.

3.4.6 Submittal Requirements

A special exception or minor special exception application shall be accompanied by the following items:

- A. **Application.** An application on a form provided by the town, completed and signed by the applicant and owner(s) of the property. The applicant shall keep this information current at all times during processing of the application.
- B. **Fee.** Associated fee, payable to the Town of Leesburg.
- C. **Statement of Compliance.** Written statement with supporting evidence regarding compliance with the Approval Criteria of Sec. 3.4.12 Approval Criteria and applicable use standards of Sec. 9.3 if applicable. This statement may be combined with the Written Statement required in Sec. 3.4.6F.
- D. **Disclosure Statement.** A disclosure statement of the real parties in interest on a form provided by the town, signed by the applicant and notarized, in accordance with Section 15.2-2289 of the Code of Virginia, 1950, as amended. The applicant shall keep this information current at all times during processing of the application.
- E. **Special Exception Plat.** Twenty (20) copies, or other number as determined by the Land Development Official, of a concept plan, drawn to a scale of 1 inch = 100 feet, or a scale agreed to by the town, containing the following information:
 - 1. Boundaries of the entire property;

2. Total area of the property in square feet and acres;
3. Location of all existing and proposed structures, including but not limited to lighting, signs and buildings;
4. Location and distance of all off-site structures within fifty (50) feet of the property, (Including but not limited to lighting, signs and buildings);
5. Required yards and height and proposed setbacks and building heights, both in tabular form and graphically shown on the plat, and the distances of all existing and proposed structures to the lot lines;
6. Public right(s) of way, indicating names, route numbers, and width;
7. Proposed means of ingress and egress to the property from a public street for vehicular and pedestrian traffic;
8. Parking spaces, existing and/or proposed, indicating minimum distance from the nearest property line(s);
9. Where applicable, seating capacity; usable outdoor recreation area, emergency access, fencing, limits of clearing, landscaping and screening, outside lighting, loudspeakers and required and/or proposed improvements to public right(s) of way; and
10. Existing zoning designation and use of subject and adjacent properties.
11. Building Elevations for all new construction or major alterations to existing structures;
12. All submittal documents (e.g., Statement of Justification) shall be submitted in a word format (.DOC);
13. All plans shall be submitted in a digital format (.PDF and .DXF);
14. Existing topography with 5 feet contours;
15. Existing and proposed landscaping, screening and buffering;
16. Scale, north arrow and date;
17. Tax map parcel or pin number of the subject property;
18. Conceptual grading with 5 feet contours and directional arrows depicting overland drainage;
19. Adjacent owner names;
20. Existing and proposed utility easements;
21. Environmental and historic features, including but not limited to sites or structures listed on the *National Register of Historic Places* or the *Virginia Landmarks Register*, or in the *Town Plan* Historic Resources element;
22. Tree save areas, which may include individual trees and groupings;
23. Additional information as may be required by the Land Development Official to provide a comprehensible application given the special exception or minor special exception proposal. Any additional information that may be required will be discussed as part of the pre-application meeting;
24. Where a proposed structure lies within 50 feet of the boundary of the property, cross-sections extending 50 feet from within the subject property and extending 50 feet into the adjoining property shall be provided;

25. Where a street is proposed, a typical section shall be provided. The typical section should include the location and dimensions of: curb and gutter, on-street parking (if provided), travel lanes, landscaping areas, and sidewalk. The section should extend from building face to building face or 20 feet beyond the paving section; and
26. A lighting plan shall be provided to depict the general location of lighting fixtures and their general lighting distribution pattern.

F. Written statement describing the proposed use and providing the following information:

1. Type of operation;
2. Hours of operation;
3. Traffic Impact Summary that shall include the following: (1) a Trip Generation Table that lists the proposed land uses and the daily and peak hour trip generation as shown in the current edition of the *Institute of Traffic Engineers Trip Generation Manual*; (2) A Statement whether traffic impact does or does not require mitigation and a description of any proposed mitigation as concluded by the Traffic Impact Analysis; and (3) a description of any proposed public road improvements.
4. Impacts on adjacent uses and measures proposed to mitigate such impacts.

G. Traffic Impact Analysis. Traffic impacts, including the maximum expected trip generation and the distribution of such trips by mode and the time of day based on current *Institute of Transportation Engineers (ITE) Manual*, internal road network, and connection into the existing transportation network. A traffic study, as described in Article 7 of the *Design and Construction Standards Manual*, will be required for all applications where the proposed land use:

- a. Is adjacent to a road that currently carries or is proposed to carry more than 500 vehicle trips per day (VPD); or
- b. Contains a road proposed to carry more than 500 vehicle trips per day (VPD); or
- c. Is adjacent to a road that currently or is proposed to carry 100 or more peak hour vehicle trips per day; or
- d. If the traffic study for the proposed activity is more than one (1) year old.
- e. Waiver Provision. This requirement may be waived at the discretion of the Land Development Official at the applicant's written request filed with the initial application. Any such waiver shall be based upon a finding that such analysis is unnecessary due to the existence of previous studies and analyses which adequately cover the extent of the proposed development and its traffic impact, or if applicant supplies adequate proof that the proposed use does not increase the number of employees or customers using the site, or if otherwise justified by the applicant. The Land Development Official shall set forth in writing the reasons for the determination.

H. Zoning Modifications/Waivers Analysis. Every request for a modification and/or waiver of a zoning requirement shall be accompanied by a detailed justification statement that must answer the following questions:

- (1) How is the requested modification and/or waiver intended to achieve a more reasonable use of the subject property;
- (2) How does it achieve an innovative design;

- (3) How does it improve upon existing regulations or otherwise exceed the public purpose of the existing regulations; and
- (4) Demonstrate that it is not requested for the primary purpose of achieving maximum density on the subject property.

1. **Buffer Yard Modifications Waivers.** For buffer yard modifications/waivers, information shall also include the following:
 - a. An exhibit illustrating the extent and location of the required buffer yards overlaid on the proposed plan.
 - b. A calculation of the square footage reduction in the required buffer yard; and
 - c. A calculation of the difference in number and type of the plant materials required and proposed.
2. **Other Modifications/Waivers.** For other types of modifications/waivers, information shall also include illustrations, exhibits, and/or section drawings to best depict the effect of the requested waiver/modification. Computations shall be included to illustrate the net effects of the request on, as applicable, including, but not limited to, lot size, total open space area, numbers of parking spaces, gross floor area of commercial uses and residential density compared to development that fully complies with all applicable requirements of the Zoning Ordinance.

3.4.7 Waivers/Modifications of Submittal Requirements

Any submittal requirements that accompany the application, with the exception of the applicable fee, may be waived by the Land Development Official. The applicant must clearly indicate by section and paragraph in the application or in a letter attached to the application, which waiver or modification is requested and provide a justification for each modification/waiver requested. To grant a waiver or modification the Land Development Official must determine that a requirement is not necessary for the full and adequate consideration of the application. The Land Development Official shall set forth in writing the reasons for such determination.

3.4.8 Public Hearing Notice

The Planning Commission and Town Council shall each hold a public hearing on proposed Special Exception applications. Minor Special Exceptions will not be reviewed by the Planning Commission. Only Town Council shall hold a public hearing on proposed Minor Special Exception applications. Each public hearing requires notice as set out in Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in Sec. 3.1.9.

3.4.9 Planning Commission Review and Recommendation

Upon acceptance of a completed application for special exception, the Zoning Administrator shall set a time and a place for a public hearing by the Planning Commission. Following the public hearing, the Planning Commission shall forward the proposed special exception to the Town Council, together with its recommendation and a statement setting forth its reasons for such recommendation. The Planning Commission shall forward its recommendation within a reasonable time unless the Town Council sets a specific time period or unless the application has been withdrawn by the applicant. The Planning Commission shall not review and make recommendations to Town Council on minor special exception applications.

3.4.10 Town Council Review and Decision

Once the Planning Commission has forwarded a recommendation to the Town Council on special exception applications, or applications for minor special exception have been accepted for review, the Zoning Administrator shall set a time and place for a public hearing by the Town Council. The Town Council shall take action to approve, approve with conditions or deny the application within a reasonable time of the public hearing.

3.4.11 Withdrawal of Applications

Any application for special exception or minor special exception filed with the Town may be withdrawn upon written request by the applicant at any time. However, if the request for withdrawal is made after publication of the notice of public hearing, such withdrawal shall be only with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing. No new application concerning any or all of the same property shall be filed within twelve (12) months of the consent to withdrawal action unless the consent of action specifies that the time limitation shall not apply and permits the application to be withdrawn "without prejudice." In the event an application is withdrawn, all action on the application will cease and the file will be closed out.

3.4.12 Approval Criteria

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

- A.** The proposed use will not adversely affect the use of neighboring properties.
- B.** The use shall comply with applicable zoning district regulations and applicable provisions of the adopted Town Plan, including but not limited to the Plan's Land Use Compatibility policies.
- C.** The location, size and height of buildings structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings.
- D.** The proposed use will be such that pedestrian and vehicular traffic generated will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on the streets serving the site.

3.4.13 Compliance with Use Standards

As part of its special exception or minor special exception approval action, the Town Council shall have the authority to waive or modify applicable use standards for particular uses set forth in Sec. 9.3 when determined necessary to accommodate reasonable use of the subject property. The Town Council shall have no authority to waive or disregard any of the Approval Criteria of Sec. 3.4.12.

3.4.14 Conditions and Safeguards

The Town Council may impose such additional conditions and safeguards as deemed necessary for the protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of this Zoning Ordinance. Additional conditions may include, but need not be limited to, the following:

- A.** Hours of operation;

- B.** Landscaping, screening, buffer-yard and other site-related development standards;
- C.** Access to the subject property;
- D.** Lighting of the site, to include intensity and shielding, so as not to adversely affect adjacent or nearby property owners;
- E.** Noise limitations as necessary to protect nearby property owners;
- F.** Location, size and height of buildings;
- G.** Location and height of walls and fences;
- H.** Timing or phasing of development;
- I.** Control of smoke, dust and odors; and
- J.** Bonds and other performance guarantees, as required to ensure standards are met and plans are met and plans are implemented.

3.4.15 Amendments to Approved Special Exceptions

An amendment is a request for any enlargement, expansion or increase in intensity, or relocation of any previously approved and currently valid special exception or minor special exception use or condition thereof.

- A.** The application and review process for an amendment of a special exception or a minor special exception shall be the same as specified for the approval of the original exception unless the request complies with the criteria in Subsection B and C below.
- B.** The Zoning Administrator may permit modifications to an approved special exception or minor special exception when it is determined that such modifications are 1.) in substantial conformance with the approved special exception or minor special exception, and are 2.) demonstrably necessary to address the following:
 - 1.** Minor layout, design or dimensional modifications in response to issues directly related to topography, drainage, underground utilities, structural safety, vehicular circulation or requirements of government agencies; or,
 - 2.** Realignment of principal buildings and parking areas within an approved building envelope to improve accessibility for pedestrians and/or vehicles.
- C.** In reviewing a request for modification of an approved special exception or minor special exception, the Zoning Administrator shall determine the following conditions are met:
 - 1.** There are no negative impacts to the surrounding properties;
 - 2.** Modifications shall not include the addition of any structure or addition to any structure in excess of five percent (5%) or 2,500 square feet of the cumulative total gross floor area of the approved special exception or minor special exception use, whichever is less;
 - 3.** No new conditions, proffers or amendments are necessary;
 - 4.** There are no code enforcement complaints or actions pending on the site; and,

5. Proposed changes do not increase intensity of use. Examples include, but are not limited to, increased seats, employees, visitors, customers, vehicle trips or hours of operation.

D. Any amendment to an approved special exception not qualifying for administrative review pursuant to paragraphs B and C above shall be reviewed pursuant to the Minor Special Exception review procedures provided in Section 3.4. Special Exceptions.

3.4.16 Termination of Use

A special exception or minor special exception use shall be deemed terminated upon the occurrence of any of the following conditions:

A. Lapse of Approval. Special exception or minor special exception approval shall lapse and be of no further effect two years after the date of the approval by the Town Council unless a site plan has been officially accepted for review. Notwithstanding the foregoing, special exception or minor special exception approval shall lapse and be of no further effect three years after the date of the approval by the Town Council unless a zoning permit or occupancy permit has been issued for the use.

B. Abandonment or Cessation. If a special exception or minor special exception use is discontinued, vacant or inactive for any reason for a continuous period of two (2) years or more, the special exception or minor special exception approval shall lapse and be of no further effect and the use shall be re-established only if a new special exception or minor special exception approval is obtained.

3.4.17 Revocation

A special exception or minor special exception approval may be revoked by the Town Council, upon non-compliance and/or violation of any condition attached to the special exception or minor special exception, after notice and a public hearing pursuant to Section 15.2-2309 of the Code of Virginia, 1950, as amended and as set forth in Sec. 3.1.9. Public Hearing Notices.

3.4.18 Successive Applications

No application for a special exception or minor special exception use, which has been denied wholly or in part by the Town Council, shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions found to be sufficient by Town Council to justify consideration by the Town Council.

3.4.19 Appeals

An action contesting a decision of the Town Council granting or failing to grant a special exception or minor special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision.

Sec. 3.5 Temporary Use Permits

3.5.1 Filing of Application

Any person desiring to establish a temporary use shall submit an application for a temporary use permit to the Zoning Administrator on an application provided by the town at least ten (10) business days prior to the date the permit is to take effect. The Zoning Administrator may approve a shorter time period for filing if good cause is shown. The

applicant must submit proof of ownership of the property or present evidence to show approval of the property owner for the use requested.

3.5.2 Agency Notification

The Zoning Administrator shall notify the police department, fire department, public works department, engineering department, and any other affected agency, of the nature of the proposed activity.

3.5.3 Issuance or Denial of Permit

If the Zoning Administrator finds that the application complies with the standards set forth in this article and other applicable provisions of law, the Zoning Administrator shall issue a temporary use permit, setting forth the duration of the permit and such conditions as will protect the health, safety, and welfare of the public and nearby property owners. Otherwise, the Zoning Administrator shall deny the application. The Zoning Administrator may require a \$500.00 cash bond to ensure removal of all structures, trash, debris and signs associated with a temporary use.

3.5.4 Termination

At the end of the time period for which the temporary use was permitted, including any renewal or extension periods, the use shall be discontinued, and all temporary structures and signs shall be removed within five (5) business days. Failure to comply with this requirement shall be a violation of this Zoning Ordinance and may result in forfeiture of the posted bond.

3.5.5 Renewals, Extensions

Requests for the renewal or extension of a temporary use permit shall be made to the Zoning Administrator. The procedure for the renewal of a temporary use permit shall be the same as specified in this article for the approval of the original temporary use permit.

3.5.6 Revocation of Permit

The Zoning Administrator may revoke a temporary use permit at any time upon the failure of the owner or operator of the use covered by the permit to observe all requirements of the permit, this article, and other relevant provisions of law, including failure to obtain appropriate business licenses. Notice of such revocation shall be given in writing by the Zoning Administrator to the owner or operator of the use, by hand-delivery or certified mail, setting forth the reasons for the revocation, the date and time upon which the revocation is effective, and the appeals procedure. This provision shall not preclude the use of any other remedy prescribed by law with respect to violations of the provisions of this Zoning Ordinance.

3.5.7 Appeal

Any person aggrieved by an action of the Zoning Administrator in granting, denying or revoking a temporary use permit may appeal the decision to the Board of Zoning Appeals in accordance with the procedures of Sec. 3.14. In the case of an appeal from the revocation of a temporary use permit, the aggrieved party may request a meeting with the Zoning Administrator. Within two (2) business days of the meeting, the Zoning Administrator shall inform the aggrieved person, in writing, of the decision to affirm, modify, or rescind revocation of the permit.

Sec. 3.6 Demolition Permits

3.6.1 Applicability

Unless otherwise expressly exempted, a person shall not demolish or begin demolition of a structure or part of a structure without obtaining a demolition permit from the Zoning Administrator.

3.6.2 Exemptions

A demolition permit is not required for any of the following activities unless the property is located in the H-1 Overlay District (see Sec. 3.10.6):

- A.** Demolition of a fence or swimming pool;
- B.** Demolition work performed is in conjunction with remodeling, alteration, or repair of a structure for which a zoning permit is obtained; or
- C.** Demolition of a structure with a total gross floor area of less than 150 square feet.

3.6.3 Application Submittal

Every application for a demolition permit shall be submitted to the Zoning Administrator and be accompanied by plans in duplicate, drawn to scale in black line or blueprint, showing actual shape and dimensions of the lot upon which the demolition is to take place; the exact location, size, elevation and height of any building or structure to be moved or demolished; the existing and intended use of each building or structure or part thereof; the number of families or housekeeping units the building is designed to accommodate; and, such other information required by the Zoning Administrator with regard to the lot and neighboring lots as may be necessary for the enforcement of this Zoning Ordinance.

3.6.4 Display of Permit

Upon receipt, a demolition permit shall be posted in a prominent place on the premises during the period of demolition or moving. Before a demolition permit is issued the plans and intended use shall indicate conformity in all respects to the provisions of this Zoning Ordinance.

3.6.5 Lapse of Permit

Every demolition permit shall expire and become void unless the activity authorized therein commences within one year of the date of issue.

Sec. 3.7 Zoning Permits

3.7.1 When Permits Required

No wall, building, structure, or part thereof, shall be built, constructed, reconstructed, moved, altered or added to; no excavation or filling operation shall commence; no activity which requires a Loudoun County building permit shall commence; and no change in use or nonresidential tenancy shall be permitted until an application is submitted and a zoning permit is issued by the Zoning Administrator, in accordance with the provisions of this Zoning Ordinance. Change in nonresidential tenancy shall not be construed to mean a change of business name or a change in the ownership/operator of a legally permitted business.

3.7.2 Zoning Permit Fees

Fees established by the Town Council shall be paid at the time of application and are non-refundable. Any proffered contributions due upon issuance of a particular zoning permit shall be paid at the time of issuance along with any public facilities fees required under the Leesburg Town Code.

3.7.3 Application Submittal

Every application for a zoning permit shall be accompanied by plans in duplicate, drawn to scale in black line or blueprint, showing actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part; the exact location, size, elevation and height of any building or structure to be erected or altered; the existing and intended use of each building or structure or part thereof; the number of families or housekeeping units the building is designed to accommodate and, when no buildings are involved, the location of the present use and proposed use to be made of the lot. It shall be the responsibility of the applicant to provide any additional information necessary for the Zoning Administrator to determine the proposed use, building, structure or alteration complies with all provisions of this Zoning Ordinance.

3.7.4 Approved Plans

One copy of the plans shall be returned to the owner when they have been approved by the Zoning Administrator, together with the approved or disapproved zoning permit. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on actual survey. The lot and location of the building thereon shall be staked out on the ground before construction is started.

3.7.5 Site Plans

Where a site plan has been submitted to and approved by the Leesburg Planning Commission in accordance with the provisions of Chapter 13, Article IV, of the Leesburg Town Code, one copy of the approved site plan may be substituted for the plans required above. The site plan case number must be indicated on the permit along with a copy of the plan approval letter issued by the staff project planner.

3.7.6 Standards for Issuance

No zoning permit shall be issued where the structure to be constructed or the use contemplated would be in violation of the provisions of this Zoning Ordinance or any other applicable Town law, ordinance or regulation. In addition, no permit shall be issued if the proposed use violates the terms of approval of a rezoning, special exception, subdivision, proffer, variance or other approval. The issuance of such zoning permit shall not, however, afford protection to any owner who is found to be violating this or any other applicable law, ordinance or regulation.

3.7.7 Display of Permit

Upon receipt, a zoning permit shall be posted in a prominent place on the premises during the period of construction, reconstruction, enlargement or moving.

3.7.8 Review Time

Zoning permits shall be issued or denied within ten (10) business days of application.

3.7.9 Lapse of Permit

A zoning permit shall expire and become void if the authorized work is not commenced within one (1) year of the date of issuance. The Zoning Administrator may, upon good cause shown, extend a permit with or without charge for an additional period not exceeding one (1) year.

Sec. 3.8 Wall Check Plat

3.8.1 Wall Check Plat Required

The erection of a building shall not proceed beyond the corners of a concrete slab or the placement of the corners of the foundation, whichever is applicable in establishing the exact location of all corners of the building, until such location as indicated by a certified land surveyors plat (known as a “wall check”) has been submitted to and approved by the Zoning Administrator.

Sec. 3.9 Application for Occupancy Permit

3.9.1 Certificates Required

Upon satisfactory completion of all work for which a Loudoun County Building Permit has been issued, including installation of all applicable improvements as required under the Leesburg Zoning Ordinance and Subdivision and Land Development Regulations, the applicant shall request zoning approval for an Occupancy Permit on such certificate as supplied by the County of Loudoun.

- A.** In order to better guarantee the success of planted materials required to be installed as part of a site plan, between the months of December – February and June – August, unless conditions allow as determined by the Zoning Administrator, only landscape bonds calculated using the Town of Leesburg Landscape Bond Schedule will be accepted for Zoning approval on Occupancy Permit certificates supplied by Loudoun County.

3.9.2 Submittal Requirements

The applicant shall submit to the Zoning Administrator one (1) copy of an as-built house/building location plan, prepared by a certified surveyor or registered engineer, and such plan shall indicate the following information:

- A.** The dimensions of the lot or parcel, the boundary lines thereof, and the area of land contained therein.
- B.** The location or, dimensions (including height) of any building structure or addition.
- C.** The perpendicular distance from all property lines to the nearest point of each building, structure or addition, shown to the nearest foot.
- D.** The existing and intended use of each building or structure or part thereof, including the number of dwelling units within a dwelling.
- E.** The location and configuration of any off-street parking space(s), the number of spaces provided, and information as to the surfacing of such areas.
- F.** The existence of any area designated as 100-year floodplain.
- G.** The signature and certification number, if applicable, of the person preparing the plat.

Sec. 3.10 Certificate of Appropriateness (H-1 Overlay: Old and Historic District)

3.10.1 Applicability

A Certificate of Appropriateness shall be required prior to the alteration of any building or structure (defined for the purposes of this section as anything man-made, including, but not limited to outbuildings, fences, walls, lamp posts, light fixtures, signs, signposts, driveways, walkways and paving) located in the H-1 Overlay District and specifically including any of the following activities:

- A. Site Improvements.** Including but not limited to removal, enlargement, or reconstruction of: driveways, walkways, and other paving; lampposts and landscape lighting; fences and walls; gazebos and pergolas. Not to include plant materials or installation of movable, non-permanent play equipment.
- B. Exterior Modification of Existing Buildings and Structures.** Including, but not limited to: the installation of a seasonal weather enclosure; any attachment of a shade structure to a principal building; the removal, replacement, or addition of windows, doors, and chimneys; the alteration of porches and decks; the alteration or addition of commercial storefronts on existing buildings and changes to exterior paint and color. Exterior paint and color shall not include painted murals as reviewed by the Leesburg Commission on Public Art under the Public Art policy in accordance with the Leesburg Public Art Guidelines. Not to include routine maintenance as defined in Sec. 7.5.9.A Routine Maintenance Exclusion.
- C. Additions to Existing Buildings and Structures.** Including, but not limited to: the construction of new porches and decks; the expansion of the square footage so that it increases the height or the footprint of the existing structure.
- D. New Construction.**
- E. Demolition and Relocation of Existing Buildings and Structures, in whole or in part.**
- F. Signs, in accordance with Section 15.14.**
- G. Exemptions.** The following structures are exempt from review by the Board of Architectural Review and the requirement for a Certificate of Appropriateness (COA):
 1. Platform Deck: An at grade platform deck not exceeding twelve (12) inches in height, no less than two (2) feet from the side and rear property lines, not exceeding two hundred (200) square feet in area, without footers for support but supported by the ground only and located in the rear yard only.
 2. Shade Structure, Unattached: As defined in Article 18, and pursuant to the performance criteria in Section 9.5.4.



*Appeals of BAR's decisions are heard by the Town Council. Appeals must be filed within 30 days.

3. Tent: As defined in Article 18, and pursuant to the performance criteria in Section 9.5.4.

3.10.2 Required Contents of Applications

- A. General.** When making application for a Certificate of Appropriateness, applicants must submit information for consideration by the Board of Architectural Review, including the following:
1. All affected architectural elevations, floor plans and roof plan drawn to scale showing existing conditions, proposed alterations, and proposed new construction;
 2. Site plans drawn to scale with land parcel boundaries showing footprints of existing buildings, footprints of proposed new construction, and required setbacks;
 3. Complete materials list including product specification sheets and/or material or samples of materials as deemed necessary;
 4. Photographs of the affected building elevations and any deteriorated conditions. For proposed new construction, photographs or drawings relating the proposed project to the surrounding streetscape;
 5. Proposed colors including color chips from the paint manufacturer;
 6. Exterior light fixtures and/or lighting plan when required by Article 12.
 7. A landscape plan, when required by Article 12.
 8. A narrative providing justification for the request; and
 9. For the replacement of windows in contributing historic resources, an assessment of each window proposed for replacement including a statement of condition, photographs, and the following detailed information:
 - a. Dimensions of the window opening and the size of the proposed replacement window;
 - b. Depth of reveal of the existing and proposed window;
 - c. Proportions of the window frame and sash for the existing and proposed window;
 - d. Configuration of window panes in the existing and proposed window;
 - e. Muntin profiles for the existing and proposed window;
 - f. Material of the proposed window;
 - g. Paint color
 - h. Characteristics of the glass in the proposed window; and
 - i. Assorted window details such as arched tops, hoods, or other decorative elements.
- B. Sign Permits.** When making application for a Certificate of Appropriateness, applicants must submit the following information:
1. A scale drawing of the proposed sign;
 2. Proposed materials for the sign and its support and the lighting method to be used;
 3. The proposed sign message;
 4. The style and size of lettering; and
 5. A sketch or photograph showing the proposed location of the sign on the building or site.

C. Waiver of Certain Requirements. Upon written request from the applicant, the Preservation Planner may tentatively waive any of the above requirements deemed not to be necessary for review of the application. These waivers may be over-ruled by the Board of Architectural Review, if additional information is determined to be required at the Board of Architectural Review's meeting to consider the application. The Preservation Planner is the staff liaison to the Board of Architectural review and is responsible for the processing and review of applications within the Town's historic districts.

3.10.3 Application Filing Deadline and Fee

Applications for Certificate of Appropriateness must be made on forms provided by the Zoning Administrator and must be accompanied by a filing fee in accordance with the latest Schedule of Fees adopted by the Town Council. Complete applications must be submitted at least seventeen (17) days before the scheduled monthly meeting at which the applicant is requesting consideration.

3.10.4 Public Hearing Notice

Written and Placard notice of public hearings before the Board of Architectural Review shall be provided in accordance with the requirements of Sec. 3.1.9A and Sec. 3.1.9B. Newspaper notice is not required.

3.10.5 Review of Plans in a Timely Manner

The Board of Architectural Review shall vote and announce its decision on any matter properly before it at the conclusion of the public meeting on the matter. The Board of Architectural Review shall render a final decision upon any matter properly before it within seventy-five (75) days or less after the first public hearing on the matter. Any application not acted upon within this 75-day period shall be deemed approved unless the parties mutually agree to extend the action time beyond this 75-day period to a date certain.

3.10.6 Board Action on Applications; Review and Approval Criteria

In response to applications for Certificates of Appropriateness, the Board of Architectural Review shall be authorized to approve the application, deny the application or approve the application in modified form. See Sec. 7.5.6 for the Preservation Planner's administrative review authority.

A. The design guidelines upon which approval or denial is to be based are the Old and Historic Design Guidelines, adopted by the Town Council January 27, 2009 and as amended from time to time, and which include the Secretary of the Interior's Standards for Rehabilitation as referenced as Appendix A. These guidelines will be used to evaluate all projects in accordance with Section 3.10.1 Applicability. Except that approval or denial of sign applications in the Old and Historic District are to be based on the Old and Historic District Sign Guidelines dated January 4, 2006 and as amended from time to time.

3.10.7 Board Authority to Seek Outside Advice

The Board of Architectural Review may seek technical advice from outside its members on any application. If the Board of Architectural Review seeks outside advice, the Board of Architectural Review shall provide a copy of the consultant's report to the applicant and shall render a decision on the application within seventy five (75) days from the date of the first public hearing.

3.10.8 Form of Decision

All decisions of the Board of Architectural Review granting or refusing a Certificate of Appropriateness shall be in writing, a copy of which shall be sent to the applicant and a copy filed with the town office.

3.10.9 Explanation of Disapproval

In the case of denial of a Certificate of Appropriateness, the Board of Architectural Review shall state the reasons for such denial in writing and transmit the written statement to the applicant. In the statement, the Board of Architectural Review may make suggestions that would help the applicant in the resubmission of an application.

3.10.10 Zoning Permits; Accurate Drawings of Approved Plans Required

Before issuing zoning permits for any work that has been approved by the Board of Architectural Review, the Zoning Administrator shall require applicants to submit plans that accurately reflect any changes or conditions imposed by the Board of Architectural Review in its approval of projects.

3.10.11 Conformance with Permit Required

All work performed pursuant to issuance of a Certificate of Appropriateness shall conform to the approved plans and specifications and to any modifications required by the permit. In the event work is performed not in conformance with the permit, the Zoning Administrator shall notify the responsible person or firm in writing of the violation and shall take the necessary legal steps to ensure that the work is performed in conformance with the permit.

3.10.12 Lapse of Approval

A Certificate of Appropriateness (COA) shall lapse and become void unless:

- A.** Construction is commenced within twenty-four (24) months from the date the COA was issued.
- B.** Prior to the sunset of twenty-four month period in (A.) above, the applicant has obtained a six-month extension from the Zoning Administrator by clearly demonstrating to the Zoning Administrator diligent pursuit of other necessary land development approvals. The Zoning Administrator shall include notification of the request for an administrative extension to adjacent property owners. There is no limit to the number of six-month extensions that an applicant may obtain.

3.10.13 Change of Plans after Issuance of Permit

Any change in the work plan subsequent to the issuance of a Certificate of Appropriateness shall require submittal of a new application and issuance of a new permit except that modifications to approved projects may be administratively approved by the Preservation Planner in accordance with Section 7.5.6.D of the Zoning Ordinance.

3.10.14 Appeals

- A. Reconsideration by the Board of Architectural Review.** The Board of Architectural Review shall not reconsider any application that has been denied except in cases where an applicant submits an application that has been amended to substantially address the Board of Architectural Review's reasons for denial of the original application.
- B. Appeals to Town Council.** Appeals to the Town Council from any final decision of the Board of Architectural Review may be made by any resident, property or

business owner, or applicant by filing a petition with the Clerk of Council, setting forth the basis of the appeal, within thirty (30) days after the final decision of the Board of Architectural Review is rendered. Upon receipt of the appeal, the Clerk of the Council shall promptly schedule a public hearing as soon as reasonably practicable and comply with all applicable notice requirements. The Board of Architectural Review shall file certified or sworn copies of the record of its action, which includes the minutes and documents it considered when rendering its decision and the Clerk shall forthwith transmit to the Town Council all the papers constituting the record upon which the action was taken. If the applicant wishes the Town Council to consider the transcript of the hearing as part of the record, the applicant shall pay all costs of the transcription of the hearing. Pursuant to Code of Virginia Sec. 15.2-2306, the filing of the petition shall stay the decision of the Board of Architectural Review pending the outcome of the appeal to the Town Council, except that the filing of such petition shall not stay the decision of the Board of Architectural Review if such decision denies the right to raze, demolish or move any structure or building subject to the provisions of this section. In any appeal, the Town Council shall review the Board of Architectural Review record, consider the written appeal and the criteria set forth in the Old and Historic District Guidelines and to that end shall have all the powers of the Board of Architectural Review. The Town Council may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made. The Council review shall be limited to the issues raised on appeal. The failure of the Town Council to affirm, modify, or reverse the decision of the Board of Architectural Review within 75 days from the date of the petition is filed shall be deemed to constitute an affirmation of the Board of Architectural Review's decision, unless all parties to the appeal agree in writing to extend such time period.

- C. Appeals to the Circuit Court of Loudoun County.** Appeals to the Circuit Court of Loudoun County from any decision of the Town Council may be made by any person by filing a petition at law, setting forth the alleged illegality of the action of the Town Council within thirty (30) days from the final decision rendered by the Town Council. The filing of the said petition shall stay the decision of the Town Council pending the outcome of the appeal to the Court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the Town Council in whole or in part, if it finds upon review that the decision of the Town Council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion or it may affirm the decision of the Town Council.



*Appeals of BAR's decisions are heard by the Town Council. Appeals must be filed within 30 days.

Sec. 3.11 Architectural Control Certificates of Appropriateness (H-2 Corridor Overlay District)

3.11.1 Applicability

Unless otherwise expressly exempted, no structure, building, or sign located on land shall be erected, reconstructed, altered or restored on property subject to the H-2 Overlay District standards of Sec. 7.6 until the plans for such shall have been approved by the Board of Architectural Review in accordance with the Architectural Control Certificate of Appropriateness procedures of Sec. 3.11.

3.11.2 Exemptions

The provisions of this section shall not apply to any of the following:

- A.** Regular maintenance of structures, buildings, or signs (as opposed to the reconstruction, alteration or restoration).
- B.** Single-family detached dwellings;
- C.** Attached dwellings (including townhouses and duplexes); and
- D.** Construction within approved Planned Development Districts.

3.11.3 Demolition Permit Review and Approval Criteria

- A.** In reviewing demolition applications, the Board of Architectural Review shall consider the following:
 - 1. The designation of the particular structure as historic or non-historic in the Certified Local Government Grant Building Surveys;
 - 2. The criteria listed in the H-2 Design Guidelines; and
 - 3. The ability of the owner to put the subject property to reasonable beneficial use.

3.11.4 Definitions

For the purposes of this section, changing the exterior color and/or materials of a structure, building or sign shall be deemed an alteration and not regular maintenance. For the purposes of this section a structure shall also include, but not be limited to outbuildings, fences, walls, lamp posts and light fixtures.

3.11.5 Required Contents of Applications

- A. General.** Except as hereinafter provided, when filing an application for a Certificate of Appropriateness, applicants must submit information for consideration by the Board of Architectural Review, including ten (10) copies of the following:
 - 1. All architectural elevations drawn to scale;
 - 2. Site plans;
 - 3. Complete exterior materials samples;
 - 4. Photographs or drawings relating the proposed project to the surrounding streetscape;
 - 5. Proposed colors;
 - 6. Lighting;

7. Landscaping, as required by Article 12; and
8. Proposed signage, as required by Article 15.

B. Sign Permits. When filing application for a Certificate of Appropriateness for signs, applicants must submit the following information:

1. A scale drawing of the proposed sign;
2. Proposed materials for the sign, including supports, and the lighting method to be used;
3. The style and size of the lettering; and
4. A sketch or photograph showing the proposed location of the sign on the building or site.

C. Waivers of Certain Requirements. Upon written request from the applicant, the Preservation Planner may waive any of the above requirements deemed not to be necessary for review of the application. However, these waivers may be over-ruled by the Board of Architectural Review if additional information is determined to be required at the Board of Architectural Review's meeting to consider the application.

3.11.6 Form of Application

Applications for Certificates of Appropriateness must be made on forms provided by the Department of Planning and Zoning. Complete applications must be submitted at least seventeen (17) days before the next regularly scheduled meeting of the Board of Architectural Review. The Land Development Official or Board of Architectural Review may require a revised application with a new application date when alterations or modifications are made to the accepted application.

3.11.7 Public Hearing Notice

Written and Placard notice of public hearings before the Board of Architectural Review shall be provided in accordance with the requirements of Sec. 3.1.9A and Sec. 3.1.9B. Newspaper notice is not required.

3.11.8 Review of Plans in a Timely Manner

The Board of Architectural Review shall vote and announce its decision on any matter properly before it at the conclusion of the public meeting on the matter. The Board of Architectural Review shall render a final decision upon any matter properly before it within seventy-five (75) days or less after the first public hearing on the matter. Any application not acted upon within this 75 day period shall be deemed approved unless the parties mutually agree to extend the action time beyond this 75 day period to a certain date certain.

3.11.9 Board Actions on Applications

In response to applications for Certificates of Appropriateness, the Board of Architectural Review shall be authorized to approve the application, deny the application, or approve the application in modified form.

3.11.10 Forms of Decision

All decisions of the Board of Architectural Review granting or denying a Certificate of Appropriateness shall be in writing, a copy of which shall be sent to the applicant and a copy filed with the town office.

3.11.11 Explanation of Disapproval

In the case of denial of a Certificate of Appropriateness request, the Board of Architectural Review shall state the reasons for such denial in writing and transmit the written statement to the applicant. In the statement, the Board of Architectural Review may make suggestions that would assist the applicant in the resubmitting of an application.

3.11.12 Accurate Drawings of Approved Plans Required

Before issuing permits for any work which has been approved by the Board of Architectural Review, the Land Development Official shall require applicants to submit plans that accurately reflect any changes or conditions imposed by the Board of Architectural Review in its approval of projects.

3.11.13 Conformance with Certificate Required

All work performed pursuant to issuance of a Certificate of Appropriateness shall conform to the approved plans and specifications and to any modifications required by the Certificate. In the event work is performed not in conformance with the Certificate, the Zoning Administrator shall notify the responsible person or firm in writing of the violations and shall take the necessary legal steps to ensure that the work is performed in conformance with the Certificate.

3.11.14 Administrative Approval of Certificates

- A. Change of Plans after Issuance of Certificate.** Any change in the approved plans subsequent to the issuance of a Certificate of Appropriateness shall be submitted to the Preservation Planner prior to construction of the modified feature. The Preservation Planner may administratively approve the following modifications: (a) change in the color of brick selected for a project; (b) change in the profile of door and window moldings; (c) change in the type of siding used in a small area which does not exceed ten percent (10%) of the total area of a building; and (d) change in the style of a door or window. A report of administrative approvals shall be made to the Board of Architectural Review at its next meeting.
- B. Signs.** The Preservation Planner shall have the authority to administratively review and approve requests for Certificates of Appropriateness for all signs in the H-2 Corridor Overlay District if the Preservation Planner determines that the requested sign(s) meet the standards set forth in Article 15 of the Zoning Ordinance, the H-2 Corridor Overlay District Design Guidelines and the H-2 Corridor Sign Guidelines.

3.11.15 Appeals

- A. Appeals to the Board of Architectural Review.** The Board of Architectural Review shall not hear the subject matter of any application which has been denied except in cases where an applicant submits an application so amended that it substantially addresses the Board of Architectural Review's reasons for denial of the original application.
- B. Appeals to the Town Council.** Appeals to the Town Council from any final decision of the Board of Architectural Review may be made by any resident, property or business owner, or applicant by filing a petition with the Clerk of Council, setting forth the basis of the appeal, within thirty (30) days after the final decision of the Board of Architectural Review is rendered. Upon receipt of the appeal, the Clerk of the Council shall promptly schedule a public hearing as soon as reasonably practicable and comply with all applicable notice

requirements. The Board of Architectural Review shall file certified or sworn copies of the record of its action, which includes the minutes and documents it considered when rendering its decision and the Clerk shall forthwith transmit to the Town Council all the papers constituting the record upon which the action was taken. If the applicant wishes the Town Council to consider the transcript of the hearing as part of the record, the applicant shall pay all costs of the transcription of the hearing. Pursuant to Code of Virginia Sec. 15.2-2306, the filing of the petition shall stay the decision of the Board of Architectural Review pending the outcome of the appeal to the Town Council, except that the filing of such petition shall not stay the decision of the Board of Architectural Review if such decision denies the right to raze, demolish or move any structure or building subject to the provisions of this section. In any appeal, the Town Council shall review the Board of Architectural Review record, consider the written appeal and the criteria set forth in the H-2 Corridor Design Guidelines and to that end shall have all the powers of the Board of Architectural Review. The Town Council may reverse, or affirm, wholly or partly, or may modify, any order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made. The Council review shall be limited to the issues raised on appeal. The failure of the Town Council to affirm, modify, or reverse the decision of the Board of Architectural Review within 75 days from the date of the petition is filed shall be deemed to constitute an affirmation of the Board of Architectural Review's decision, unless all parties to the appeal agree in writing to extend such time period.

- C. Appeals to the Circuit Court of Loudoun County.** Appeals to the Circuit Court of Loudoun County from any decision of the Town Council may be made by any person by filing a petition at law, setting forth the alleged illegality of the action of the Town Council within thirty (30) days from the final decision rendered by the Town Council. The filing of the said petition shall stay the decision of the Town Council pending the outcome of the appeal to the Court, except that the filing of such petition shall not permit any construction activity which was the subject of the application on appeal to the Town Council. The Court may reverse or modify the decision of the Town Council in whole or in part, if it finds upon review that the decision of the Town Council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion or it may affirm the decision of the Town Council.

3.11.16 Lapse of Approval

A Certificate of Appropriateness (COA) shall lapse and become void unless:

- A.** Construction has commenced within twenty-four (24) months from the date the COA was issued; or
- B.** Prior to the sunset of twenty-four month period in (A.) above, the applicant has obtained a six-month extension from the Zoning Administrator by clearly demonstrating to the Zoning Administrator diligent pursuit of other necessary land development approvals. The Zoning Administrator shall include notification of the request for an administrative extension to adjacent property owners. There is no limit to the number of six-month extensions that an applicant may obtain.

Sec. 3.12 Commission Permits (Public Project Review)

3.12.1 Applicability

Unless otherwise expressly exempted in accordance with Sec. 3.12.2, no street or connection to an existing street; park; public area; public building; public structure, public utility facility or public service corporation shall be constructed, established or authorized until the general location or approximate location, character and extent of such project has been approved by the Planning Commission as being substantially in accord with the adopted Comprehensive Plan.

3.12.2 Exemptions

- A.** The procedures of this section shall not apply to railroad facilities whether public or privately owned.
- B.** The procedures of this section shall not apply to paving, repair, reconstruction, improvement, drainage or similar work, provided such work does not involve a change in the location or extent of a public street or public area. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall not be exempt from the procedures of this section.
- C.** The procedures of this section shall not apply to normal service extensions of public utilities or public service corporations, provided such work does not involve a change in the location or extent of a public street or public area.
- D.** The procedures of this section shall not apply to public areas, facilities or uses that are deemed by the Land Development Official to be a feature already shown on the adopted Town Plan.
- E.** Public areas, facilities or uses that are identified within, but are not the entire subject of, an application for subdivision plat approval or site plan approval, may be deemed to be a feature shown on the Town Plan if the Town has defined standards governing the construction or establishment of such area, facility or use or the Town Council has approved it through the acceptance of a proffer in accordance with applicable procedures of this Zoning Ordinance.

3.12.3 Initiation of Application

An application for a Commission Permit shall be filed with the Land Development Official.

3.12.4 Application Filing

Required application forms, completed and signed by the applicant and property owner, shall accompany each application.

- A.** Upon receipt of an application, the Land Development Official shall acknowledge acceptance or rejection of the application in writing within ten (10) business days from the date of submittal.
- B.** Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment. Once the Land Development Official has received all comments, the comments shall be forwarded to the applicant for consideration and resolution.

3.12.5 Submittal Requirements

A commission permit application shall be accompanied by the following items:

- A. Application.** An application on a form provided by the town, completed and signed by the applicant and owner(s) of the property. The applicant shall keep this information current at all times during processing of the application.
- B. Plat.** Twenty (20) copies, or other number as determined by the Land Development Official, of a concept plan, drawn to a minimum scale of 1 inch = 100 feet containing the following information:
1. Boundaries of the entire property;
 2. Total area of the property in square feet and acres;
 3. Location of all existing and proposed structures (including but not limited to lighting, signs and buildings);
 4. Location and distance of all off-site structures within fifty (50) feet of the property (including but not limited to lighting, signs and buildings);
 5. All required minimum yards and the distances of all existing and proposed structures to the lot lines;
 6. Public right(s)-of-way, indicating names, route numbers, and width;
 7. Proposed means of ingress and egress to the property from a public street;
 8. Where applicable, parking spaces, emergency access, fencing, limits of clearing, landscaping and screening, outside lighting, loudspeakers and required and/or proposed improvements to public right(s)-of-way;
 9. Existing zoning designation and use of subject and adjacent properties;
 10. Site location map;
 11. All submittal documents shall be submitted in a format to be specified by the Town; and
 12. All plans shall be submitted in a digital format specified by the Town.
- C. Written statement.** A written narrative describing the proposed use and providing the following information:
1. Type of operation;
 2. Hours of operation; and
 3. Impacts on adjacent uses and measures proposed to mitigate such impacts.
- D. Waivers/Modifications of Submittal Requirements.** Any submittal requirements that accompany the application may be waived by the Land Development Official at the applicant's written request filed with the initial application. The applicant must clearly indicate by section and paragraph in the application or in a letter attached to the application, which waiver or modification is requested and provide a justification for each modification/waiver requested. To grant a waiver or modification the Land Development Official must determine that a requirement is not necessary for the full and adequate consideration of the application. The Land Development Official shall set forth in writing the reasons for such determination. When the Commission Permit is required in addition to a special exception, the Commission Permit submission requirements shall be combined with the submission requirements found in Section 3.4.6. and the application shall be reviewed concurrently.

3.12.6 Public Hearing Notice

The Planning Commission shall hold a public hearing on proposed Commission Permits. The public hearing requires notice as set out in Sec. 3.1.9.

3.12.7 Planning Commission Review and Recommendation

Upon receipt of a completed application, the Land Development Official shall set a time and a place for a public hearing by the Planning Commission. Following the close of the public hearing, and within sixty (60) days of acceptance of a complete application, the Planning Commission shall forward its finding to the Town Council, indicating their (Planning Commission) approval or disapproval of the proposed project, along with written reasons for its decision. Failure of the Planning Commission to take action within the required 60-day period shall be deemed approval of the project, unless the Town Council grants an extension of the time-frame.

3.12.8 Town Council

The Town Council shall be authorized to overrule the decision of the Planning Commission by a majority vote of its entire membership. Such action may be in response to the filing of an appeal in accordance with Sec. 3.12.10 or through the independent action of the Town Council. In acting to consider an appeal or overrule the Planning Commission's decision, the Town Council shall consider the proposed application as a new matter (de novo) and shall have 60 days from the date of the filing of the appeal to render a decision.

3.12.9 Approval Criteria

In acting on Commission Permits, the Planning Commission and Town Council, upon appeal or action to overrule, shall consider whether the proposed project is in substantial compliance with the adopted Town Plan.

3.12.10 Appeals

Applicants or other persons aggrieved by the Planning Commission's decision may appeal the decision to the Town Council by filing a notice of appeal with the Zoning Administrator. Such appeals must be filed within ten (10) days of the date of the Planning Commission's action on the Commission Permit.

Sec. 3.13 Variances

3.13.1 Jurisdiction and Authority

The Board of Zoning Appeals shall exercise the jurisdiction and authority to grant a variance from the literal terms of this Zoning Ordinance in accordance with the procedures, standards and limitations contained in this section.

3.13.2 Authorized Variances

Variances (as defined in Section 15.2-2201 of the 1950 Code of Virginia, as amended) from the regulations and restrictions contained in this *Zoning Ordinance*, may be granted only for the following:

- A. A variance from the provisions regulating the shape, size or area of a lot; or
- B. A variance from the provisions regulating the size, height, area, bulk, setback, open space, yards, or location of a building or structure.



*Appeals of BZA's decisions are heard by the Circuit Court. Appeals must be filed within 30 days.

3.13.3 Unauthorized Variance

The Board of Zoning Appeals shall not be empowered to grant a variance from any of the provisions of this Zoning Ordinance relating to the use or density of land, buildings or structures, including Floor Area Ratios, nor shall the Board of Zoning Appeals grant a variance for any use or activity within any floodplain area if any increase in the hundred (100) year flood elevations would result.

3.13.4 Initiation of Application

An application for a Variance shall be filed with the Zoning Administrator and Board of Zoning Appeals by a property owner, any person having a possessory interest in property with consent of the owner, governmental officer, department, board, bureau, or other party provided by law.

3.13.5 Application Filing

- A.** Applications for Variances shall be filed with the Zoning Administrator.
- B.** Required application forms, completed and signed by the applicant and property owner, shall accompany each application.
- C.** Upon receipt of an application, the Zoning Administrator shall acknowledge acceptance or rejection of the application within five (5) business days from the date of submission. Upon acceptance, the Zoning Administrator shall transmit a copy of the completed application to the Chairman of the Board of Zoning Appeals.

3.13.6 Submittal Requirements

All applications for variances shall be accompanied by the following items:

- A. An application** on a form provided by the town, completed and signed by the applicant and property owner;
- B. Associated fee**, payable to the Town of Leesburg.
- C. Written statement** with supporting evidence regarding compliance with the variance approval criteria of this section, including:
 - 1.** The particular provision of the Zoning Ordinance which prevents the proposed construction on, or use of the property;
 - 2.** The existing zoning of the property, including any previously approved conditions, proffers, or modifications;
 - 3.** The special circumstances, conditions or characteristics of the land, building or structure that prevent the use of the land in compliance with the terms of this Zoning Ordinance;
 - 4.** The particular hardship that would result if the specified provisions of the Zoning Ordinance were to be applied to the subject property;
 - 5.** The extent to which it would be necessary to vary the provisions of this Zoning Ordinance in order to permit the proposed construction on, or use of, the property;
 - 6.** An explanation of how the requested variance conforms to the Approval Criteria of Sec. 3.13.9; and

7. A disclosure statement of the real parties in interest on a form provided by the town, signed by the applicant and notarized, in accordance with Section 15.2-2289 of the Code of Virginia, 1950, as amended.

3.13.7 Public Hearing Notice

The Board of Zoning Appeals shall hold a public hearing on a proposed variance, within ninety (90) days of the date of acceptance of a complete application. The public hearing requires notice as set out in Section 15.2-2204 of the Code of Virginia, 1950, as amended and as set forth in Sec. 3.1.9.

3.13.8 Board of Zoning Appeals Review and Decision

The Board of Zoning Appeals shall take action to approve, approve with conditions or deny the variance within thirty (30) days of the close of its required public hearing. Any person may appear at the hearing in person or by an attorney at law.

3.13.9 Approval Criteria

No variance shall be approved by the Board of Zoning Appeals unless the Board of Zoning Appeals finds that all of the following statements are true with respect to the subject property:

- A. That strict application of the regulations of this *Zoning Ordinance* would unreasonably restrict the utilization of the property;
- B. That granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Zoning Ordinance when that restriction(s) that the applicant is seeking relief from became applicable to the applicant's land/land interest;
- C. That such need for a variance is not shared generally by other properties;
- D. That the granting of the variance will not be of substantial detriment to adjacent properties and nearby properties in the proximity of that geographical area;
- E. Such variance is not contrary to the stated purpose of this *Zoning Ordinance*;
- F. That any hardship was not created by the applicant for the variance;
- G. The property interest for which the variance is being requested was acquired in good faith;
- H. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this *Zoning Ordinance*;
- I. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
- J. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the *Zoning Ordinance*, pursuant to subdivision 6 of §15.2-2309 of the 1950 Code of Virginia, as amended, or the process for modification of a zoning ordinance to subdivision A4 of §15.2.2286 at the time of the filing of the variance application; and
- K. Sufficient evidence exists to support all of the required findings of this section.

3.13.10 Applicant's Burden of Persuasion

The burden of proof shall be on the applicant to prove by a preponderance of the evidence that the application meets the standards for a variance, as required, pursuant to §3.13.9 (Approval Criteria).

The applicant shall be required to demonstrate that the granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.

3.13.11 No Use Variances

The Board of Zoning Appeals shall have no authority to grant "use variances" or to otherwise approve the location of land uses in zoning districts in which such uses are not allowed under this Zoning Ordinance.

3.13.12 Conditions and Safeguards

In granting variances, the Board of Zoning Appeals may impose such additional conditions and safeguards upon the character, location and other features of the proposed structure or use as the Board of Zoning Appeals deems necessary for the protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of this Zoning Ordinance. Such conditions may include a financial guarantee or bond requirement to ensure compliance with all imposed conditions.

3.13.13 Withdrawal of Application

A variance may be withdrawn by the applicant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After that deadline, an application may be withdrawn only with the permission of the Zoning Administrator.

3.13.14 Re-Application

If a variance is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board of Zoning Appeals within twelve (12) months after the date of such denial.

3.13.15 Appeals

Any person aggrieved by the approval or denial of a variance by the Board of Zoning Appeals may appeal said decision to the Circuit Court within thirty (30) days from the date of the Board's decision.

Sec. 3.14 Appeals of Administrative Decisions

3.14.1 Authority

The Board of Zoning Appeals shall be authorized to hear and decide appeals where it is alleged there is an error in any decision of the Zoning Administrator or any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this Zoning Ordinance. In this capacity, the Board of Zoning Appeals exercises appellate jurisdiction as a quasi-judicial body; its responsibility is to determine the intent of this Zoning Ordinance when applied to a particular fact situation.



*Appeals of BZA's decisions are heard by the Circuit Court. Appeals must be filed within 30 days.

3.14.2 Right to Appeal

Appeals of Administrative Decisions may be filed by any person aggrieved by a decision of the Zoning Administrator, an administrative official or by any officer, board, bureau or other party provided by law.

3.14.3 Application Filing

- A.** Appeal applications shall be filed with the Zoning Administrator.
- B.** Required application forms, completed and signed by the applicant and property owner, shall accompany each application.
- C.** Appeals shall be filed within 30 days of the date of the decision being appealed if the decision was in writing and contained a statement that the recipient has a right to appeal the decision to the Board of Zoning Appeals per Sec. 15.2-2311 of the Code of Virginia, 1950, as amended.
- D.** Upon receipt of an application, the Zoning Administrator shall accept or reject the application within five (5) business days of the date of submission. Upon acceptance, the Zoning Administrator shall transmit a copy of the completed application to the Chairman of the Board of Zoning Appeals.

3.14.4 Effect of Filing

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, except as provided in Section 15.2-2311 of the Code of Virginia, 1950, as amended. If the Zoning Administrator or other official whose decision is being appealed certifies to the Board of Zoning Appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals, or by a court of record for good cause shown.

3.14.5 Record of Administrative Decision

The official whose decision is being appealed shall transmit to the Board of Zoning Appeals all papers constituting the record upon which the action appealed is taken.

3.14.6 Public Hearing Notice

The Board of Zoning Appeals shall hold a public hearing within ninety (90) days of the date of acceptance of the completed application. Notice of the public hearing shall be provided as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in Sec. 3.1.9. Any person may appear at the hearing in person or by an attorney at law.

3.14.7 Board of Zoning Appeals Review and Decision

- A.** The Board of Zoning Appeals shall render a decision on the appeal within thirty (30) days of the conclusion of the public hearing.
- B.** In exercising the appeal power, the Board of Zoning Appeals shall have all the powers of the official from whom the appeal is taken, and the Board of Zoning Appeals may reverse or affirm wholly or partly or may modify the decision being appealed.
- C.** If the Board of Zoning Appeals determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.

3.14.8 Approval Criteria; Findings of Fact

- A.** An appeal shall be sustained only if the Board of Zoning Appeals finds that the administrative official erred. However, the determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
- B.** The decision of the Board of Zoning Appeal shall be accompanied by specific, written findings of fact and conclusions of law clearly stating the reason for the decision. The Board of Zoning Appeals shall file with the Zoning Administrator its findings of fact and conclusions of law with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

3.14.9 Appeals

Any person aggrieved by a decision of the Board of Zoning Appeals may appeal said decision to the Circuit Court within thirty (30) days from the date of the Board's decision

3.14.10 Withdrawal of Application

An appeal may be withdrawn by the appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the required public hearing on the application. After this deadline, an appeal may be withdrawn only with the permission of the Board of Zoning Appeals.

Sec. 3.15 Appeals of Proffer Interpretations

3.15.1 Authority

In accordance with Section 15.2-2301 of the Code of Virginia, 1950, as amended, the Town Council shall be authorized to hear and decide appeals where it is alleged there is an error in any decision of the Zoning Administrator or any order, requirement, decision or determination made by an administrative official in the administration or enforcement of approved proffers associated with a zoning map amendment. In this capacity, the Town Council exercises appellate jurisdiction as a quasi-judicial body; its responsibility is to determine the intent of the proffered condition(s) when applied to a particular situation.

3.15.2 Right to Appeal

Appeals of administrative decisions pertaining to proffered conditions may be filed by any zoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 15.2-2299 of the Code of Virginia, 1950, as amended.

3.15.3 Application Filing

- A.** Appeal applications shall be filed with the Clerk of Council and the Zoning Administrator.
- B.** The required application form must be completed and signed by the applicant and property owner.
- C.** Appeals shall be filed within thirty (30) days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

- D. Upon receipt of an application, the Clerk of Council shall accept or reject the application within five (5) business days of the date of submission. Upon acceptance, the Clerk of Council shall transmit a copy of the completed application to the Town Council.

3.15.4 Record of Administrative Decision

The zoning administrator shall transmit to the Town Council all papers constituting the record upon which the action appealed is taken.

3.15.5 Public Hearing Notice

The Town Council shall hold a public hearing within thirty (30) days of the date of acceptance of the completed application. Notice of the public hearing shall be provided as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in Sec. 3.1.9. Any person may appear at the hearing in person or by an attorney at law.

3.15.6 Town Council Review and Decision

- A. The Town Council shall render a decision on the appeal within thirty (30) days of the conclusion of the public hearing.
- B. The Town Council may reverse or affirm wholly or in part or may modify the decision being appealed.

3.15.7 Approval Criteria; Findings of Fact

An appeal shall be sustained only if the Town Council finds that the Zoning Administrator erred. The decision of the Town Council shall be accompanied by specific, written findings of fact and conclusions clearly stating the reason for the decision. The Town Council shall file with the Zoning Administrator its findings with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

3.15.8 Appeals

Any person aggrieved by a decision of the Town Council may appeal said decision to the Circuit Court within thirty (30) days from the date of the Council's decision.

Sec. 3.16 Town Plan Amendments

3.16.1 Purpose

Whenever the public necessity, convenience, general welfare, or good planning practice requires, the Town Council may amend, supplement, or change the comprehensive plan of the Town (Town Plan), in conformity with the provisions as set forth in this section.

3.16.2 Initiation of Application

Where the public necessity, convenience, general welfare and good planning practice require it, amendments to the Town Plan may be initiated (1) by resolution of the governing body or (2) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent, of the property which is the subject of the Town Plan amendment. The application must contain the consent of those with a legal ownership interest in the property under consideration.

3.16.3 Pre-Application Conference

Prior to filing an application, the applicant may meet with representatives from the Department of Planning and Zoning to discuss the requirements and the nature of the proposal. For purposes of this conference, the applicant may provide a sketch plan of the

proposed use drawn to scale, showing the general layout of the development and the relationship to the surrounding area.

3.16.4 Application Filing

- A. Town Plan amendment applications shall be filed with the Department of Planning and Zoning. The required application form must be completed and signed by the applicant and owner(s) of the property.
- B. Upon receipt of an application, the Land Development Official shall acknowledge acceptance or rejection of the application in writing within ten (10) business days from the date of submittal.
- C. Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment.

3.16.5 Submittal Requirements

All Town Plan amendment applications shall be accompanied by the following items:

- A. **Application.** An application, on a form provided by the town, completed and signed by the applicant and owner(s) of the property. The applicant shall keep this information current at all times during the processing of the application.
- B. **Fee.** Associated fee, payable to the Town of Leesburg.
- C. **Disclosure Statement.** A disclosure statement of the real parties in interest, on a form provided by the town, signed by the applicant and notarized. The applicant shall keep this information current at all times during the processing of the application.
- D. **Statement of Justification.** Thirty (30) paper copies, or other number as determined by the Land Development Official, as well as one digital copy in a format specified by the Town, of a written statement of justification describing:
 - 1. The nature of the request and uses proposed;
 - 2. Assessment of the request relative to the following criteria:
 - a. How the amendment better realizes a Plan goal or objective (e.g., to provide a more compatible land use pattern; better transitions between land uses);
 - b. How the amendment may rectify conflicting Plan goals or objectives;
 - c. How the amendment may clarify the intent of a Plan goal or objective;
 - d. How the amendment may provide more specific Plan guidance;
 - e. How the amendment might adjust the Plan as a necessary result of a significant change in circumstance unforeseen by the Plan at the time of adoption;
 - f. How the amendment might adjust the Plan as a necessary result of a significant change in circumstances unforeseen by the Plan at the time of adoption;
 - 3. Description and analysis of how the requested amendment and associated development will comply with elements of the Town Plan, as well as their associated goals and objectives. These include, but may not be limited to, natural resources, parks and recreation, heritage resources, community design, land use, housing, economic development, transportation, and community facilities and services;

4. Fiscal analysis that compares general fund revenues, costs of services and required capital facilities improvements generated by development associated with the requested amendment. The comparison shall also analyze the current Town Plan land designation, allowable development associated with current designations, and Town Plan objectives related to residential and non-residential sources of general fund revenue sources; and
 5. Transportation analysis that shows how the amendment will address the objectives of the Town Plan's Transportation element, including mode choice, community integrity (as related to adjacent land uses), coordination of the transportation network and funding and scheduling for implementing improvements.
- E. Plat.** Thirty paper copies, or other number as determined by the Land Development Official, as well as one digital copy in a format specified by the Town, of a plat, signed and sealed by a certified land surveyor, completed not longer than six (6) months in advance of the date of the application, that contains the following information:
1. Insert vicinity map;
 2. Boundaries of the entire property, with bearings and distances of the perimeter property lines and of each existing and proposed zoning district;
 3. Total area of property in square feet and acres;
 4. Tax map parcel or pin number of the subject property;
 5. Topography with 5-foot contours;
 6. Scale, north arrow and date;
 7. Adjacent owner names, zoning, existing use, and use designated on the Town Plan Land Use Policy Map;
 8. Names and route numbers of all boundary roads or streets, and the width of existing rights-of-way;
 9. Automobile, bicycle, and pedestrian trail facilities and points of access to the property and adjacent to the property;
 10. Public transportation routes and facilities within 200 feet of the site (routes and facilities within a quarter mile of the site may be shown on a larger scale, inset map);
 11. Existing utility easements;
 12. Proposed sewer and water connections;
 13. Existing structures on the site and within 200 feet of the site;
 14. Required yards and height and proposed setbacks and height;
 15. Environmental features, including but not limited to features addressed in the Town Plan Natural Resources element and Green Infrastructure Policy Map;
 16. Historic features, including but not limited to sites or structures listed on the National Register of Historic Places or the Virginia Landmarks Register, or in the Town Plan Historic Resources element; and

17. Additional information as may be deemed appropriate by the Land Development Official to provide a comprehensible application given the proposal.

3.16.6 Request for Waiver/Modifications of Submittal Requirements

The Land Development Official may waive any submittal requirements that accompany the application (with the exception of the associated fee). The applicant must clearly indicate by section and paragraph in the application and in a letter attached to the application, which waiver or modification is requested and provide a justification for each modification/waiver requested. To grant a waiver or modification the Land Development Official must determine that a requirement is not necessary for the full and adequate consideration of the application. The Land Development Official shall set forth in writing the reasons for such determination.

3.16.7 Public Hearing Notice

The Planning Commission and Town Council shall each hold a public hearing on proposed amendment to the Town Plan. Each public hearing requires notice as set out in Article 3. The Planning Commission and the Council may hold a joint public hearing after public notice as set forth in the Code of Virginia.

3.16.8 Planning Commission Review and Recommendation

Upon acceptance of a completed application, the Land Development Officer shall set a time and a place for a public hearing by the Planning Commission. Following the public hearing, the Planning Commission shall forward the proposed amendment to the Town Council, together with a statement setting forth its reasons for such recommendation. If the Council desires an amendment it may direct the local Planning Commission to prepare an amendment and submit it to public hearing within sixty days after formal written request by the Council.

3.16.9 Town Council Review and Decision

Once the Planning Commission has forwarded a recommendation to the Town Council, the Land Development Officer shall set a time and a place for a public hearing by the Town Council on said amendment. In acting on any amendments to the Town Plan, the Town Council shall act within ninety days of the local planning commission's recommending resolution.

3.16.10 Request for Time Extension – Council

A written request to extend the ninety-day time limit for Town Council review and decision may be made by the applicant at any time. The written request shall include a schedule for future submission of required information. The Council shall base its decision to grant an extension on an analysis of the progress being made on the application and the appropriateness of the schedule for future submissions that shall be provided by the applicant in conjunction with the request for a time extension. If a time extension is granted by the Council, the time period extension will commence on the expiration date of any previous time period extension or original date of application acceptance.

3.16.11 Withdrawal of Applications

Any application filed with the Town of Leesburg may be withdrawn upon written request by the applicant at any time. However, if the request for withdrawal is made after publication of the notice of hearing, such withdrawal shall be only with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing. No new application concerning any or all of the same property shall be filed within twelve months of the consent to withdrawal action unless the consent of action

specifies that the time limitation shall not apply and permits the application to be withdrawn “without prejudice.”

3.16.12 Approval Criteria

The Planning Commission and Town Council shall use the criteria and information listed in sections 5.D and 5.E of this ordinance, in addition to other reasonable considerations, in making their decision regarding approval or disapproval of a Town Plan amendment application.

3.16.13 Successive Applications

Upon denial by the Town Council of any application for a Town Plan amendment, a new application that is substantially the same application that was denied shall not be reconsidered within twelve (12) months of the date of denial.

Sec. 3.17 Affordable Dwelling Unit Development

3.17.1 Purpose

The Affordable Dwelling Unit Program is established to assist in the provision of housing to persons of moderate income by (a) promoting the development of a full range of housing choices, and (b) requiring the construction and continued existence of dwelling units which are affordable for purchase by households whose income is greater than thirty percent (30%) and less than seventy percent (70%) and affordable for rental by households whose income is greater than thirty percent (30%) and less than fifty percent (50%) of the median income for the Washington Primary Metropolitan Statistical Area (PMSA).

"Affordable Dwelling Units (ADUs)" shall be defined as those units for which the rental and/or sales price is regulated pursuant to the provisions contained in this Article, as adopted by the Town Council. All affordable dwelling units shall comply with the following provisions and the Residential Zoning District Regulations for the Provision of Affordable Dwelling Units regulations contained in Section 5.10 of this Ordinance, Chapter 1450 of the Loudoun County Codified Ordinance, and any other relevant Town of Leesburg code or ordinance, per the “Town/County Agreement.” The Town/County Agreement shall be defined as the Memorandum of Agreement (MOA) as authorized and approved by the Town Council and the Loudoun County Board of Supervisors.

3.17.2 Applicability

- A.** The requirements of the Affordable Dwelling Unit Program shall apply to any site, or portion thereof, at one location which is (a) served by public water and sewer, and (b) the subject of an application for rezoning, special exception, site plan or preliminary subdivision plat which yields, as submitted by the applicant, twenty four (24) or more dwelling units at an equivalent density greater than one unit per gross acre.
 - 1.** For the purposes of this Ordinance, "site or portion thereof, at one location" shall include all adjacent undeveloped land of the property owner and/or applicant, under common ownership and/or control of the owner and/or applicant, including, but not limited to, land owned and/or controlled by separate partnerships, land trusts, or corporations in which the owner and/or applicant (to include members of the owner's and/or applicant's immediate family) is an owner of one (1) percent or more of the stock, and other such forms of business entities. Adjacent parcels of undeveloped land owned by separate members of the same family shall be exempt from the provisions

of this section when such separate ownership has existed for a period of no less than five (5) years.

2. Immediate family members shall include the owner's and/or applicant's spouse, children, parents and siblings.
 3. In instances where a lending institution, such as pension fund, bank, savings and loan, insurance company or similar entity has acquired, or acquires, an equity interest solely by virtue of its agreement to provide financing, such equity interest shall not constitute ownership and shall not be considered in making determinations of applicability. However, the acquisition of a fee interest by such lending institution due to foreclosure or project participation shall be considered as ownership in making determinations of applicability.
- B.** Any request for a rezoning or amendment thereto involving the rezoning of land within any planned development district, or zoning amendment which results in an increase in the total number of residential units shall be subject to this Ordinance. However, application of the provisions of this Article shall be limited to the increase in the total number of residential units, provided that the overall density of the project results in twenty four (24) or more units at a density of greater than one (1) unit per acre.
- C.** An owner and/or applicant shall not be exempt from the requirements of this Ordinance by submitting phased applications for rezoning, special exception, site plan or preliminary subdivision plat for less than twenty four (24) dwelling units at any one time. An owner and/or applicant may submit an application for rezoning, special exception, or preliminary subdivision plat for less than twenty four (24) units if the applicant agrees, in writing, that the next application or submission for the subject site, or portion thereof, shall meet the requirements of this Ordinance when the total number of dwelling units in the subject development has reached twenty four (24) units or more. This statement shall be included on the approved concept plan, special exception, site plan, or preliminary subdivision plat. Such statement shall be recorded among the Loudoun County land records and shall be indexed in the names of all owners of the site, or portion thereof, as such terms are defined above.
- D.** The requirements of this Article shall not apply to the following:
1. Special exception, site plan or preliminary subdivision plat applications filed in accordance with an approved rezoning which has proffered the provision of affordable dwelling units or other contributions toward the provision of affordable dwelling units prior to the effective date of this Ordinance.
 2. Proffer amendment, concept plan amendment, an amendment to a subdivision plat, modifications to an approved site plan and special exception amendment applications filed after the effective date of this Ordinance which deal exclusively with issues of building relocation, site access, stormwater drainage, or other engineering or public facility issues, or the preservation of historic structures, wetlands, child care facilities, or changes in the size of units, a reduction in the number of units, or which request the addition of a non-residential special exception use.
 3. Properties subject to proffers accepted by the Town Council, pursuant to Section 15.2-2303 of the Code of Virginia, prior to April 22, 2008.

4. Any request for a rezoning or concept plan amendment which involves the rezoning of land within a planned development district in order to redistribute existing units to the newly zoned property within the same development, but which does not result in an increase in the total number of residential units.
 5. Any request for a rezoning or concept plan amendment which involves the rezoning of land within a non-planned development district in order to redistribute existing units to the newly zoned property within the same development, but which does not result in an increase in the total number of residential units.
- E. At the applicant's discretion, the provisions of this Article and individual district regulations for affordable dwelling unit developments may be applied to developments which are exempt from these provisions, as stated in Section 3.17.2.D. In the event that an applicant proposes to provide affordable dwelling units in a development which is otherwise exempt, the Town shall waive any application fee associated with a rezoning and concept plan amendment proposing to change the rezoning or concept plan only in order to provide affordable dwelling units. Town review of such applications shall not exceed 180 days.

3.17.3 Affordable Dwelling Unit Density Adjustments

A. Single Family Detached and Single Family Attached Units.

1. For active rezoning applications as of April 22, 2008, which requests approval of single family detached dwelling units or single family attached dwelling units, the proposed density may be adjusted upward as prescribed within the Land Use, Land Use Policy Map, Residential section of the Town Plan, unless such figure is modified pursuant to the provisions of Section 3.17.7, or the applicant provides cash in lieu of providing the single family detached units pursuant to Section 3.17.7.A.3.

In the case of preliminary subdivision plat applications which request approval of single family detached dwelling units or single family attached dwelling units, the proposed density may reflect an increase of twenty percent (20%), including the required number of affordable dwelling units, unless such figure is modified pursuant to the provisions of Section 3.17.8 or the applicant provides cash in lieu of providing the single family detached or attached units pursuant to Section 3.17.7.A.3.

2. In the event such increase exceeds the upper density limit set forth in the Comprehensive Plan, then the upper density limit set forth in the Comprehensive Plan applicable to the subject property may be increased up to twenty percent (20%) for the purposes of calculating the potential density which may be approved by the Town.

In the event that a density increase is approved pursuant to Section 3.17.3.A.1 above, not less than twelve and one half percent (12.5%) of the total number of dwelling units approved for the subject development shall be affordable dwelling units, for which the rental and/or sales price will be controlled pursuant to this Section, Loudoun County regulations and the Town/County Agreement.

B. Multi-Family Units

1. For rezoning and special exception applications as of April 22, 2008, that propose multi-family units, the proposed density may be adjusted upward as

prescribed within the Land Use, Land Use Policy Map, Residential section of the Town Plan.

In the case of site plan applications as of April 22, 2008 which request approval of multi family dwelling units, the proposed density may reflect an increase of ten percent (10%), including the required number of affordable dwelling units, unless such figure is modified pursuant to the provisions of Section 3.17.7.

2. In the event such increase exceeds the upper density limit set forth in the Comprehensive Plan, then the upper density limit set forth in the Comprehensive Plan applicable to the subject property shall be increased up to ten percent (10%) for the purposes of calculating the potential density which may be approved by the Town Council.
 3. In the event that a density increase is approved pursuant to Section 3.17.3.B.1 above, not less than six and one-quarter percent (6.25%) of the total number of dwelling units approved for the subject development shall be affordable dwelling units, for which the rental and/or sales price will be controlled pursuant to this Section.
 4. An applicant may, at his discretion, request approval from the Town Council or its designee, of up to a ten percent (10%) increase in the density on a subject parcel, provided that at least six and one quarter percent (6.25%) of the total number of units approved are affordable dwelling units, for which the rental and/or sales price is controlled pursuant to the provisions of this Section.
- C. In the case where affordable dwelling units are provided pursuant to Section 3.17.2.E above, the affordable dwelling unit to bonus density increase ratio required by Sections 3.17.3.A and B does not apply. The density of a development subject to voluntary provision of affordable dwelling units which is otherwise exempt, may be increased as pursuant to Section 3.17.3 In the event that a density increase is approved pursuant this Section, not less than twelve and one half percent (12.5%) of the total density bonus units approved for the subject development shall be affordable dwelling units, for which the rental and/or sales price will be controlled pursuant to this Section.

3.17.4 Designation of Affordable Units on Plats

- A. Approved site plans and/or record subdivision plats shall identify the specific number of for-sale units and/or percentage of units for rent which are to be regulated as affordable units pursuant to this Article.
 1. All plans or plats for developments containing affordable dwelling for-sale units shall identify specific units which are for sale or the percentage of units for rent under the affordable guidelines in this Section.
 2. All site plans for developments containing affordable dwelling rental units shall include information concerning the number of each type of unit, by bedroom count, which shall be maintained as affordable.
- B. Specifications regarding dwelling dimensions and the number of bedrooms in all affordable units shall meet the requirements established by the Affordable Dwelling Unit Advisory Board pursuant to Chapter 1450 of the Loudoun County Codified Ordinance, and the Town/County Agreement. In general, dwelling dimensions and the number of bedrooms in an affordable multi-family unit shall be comparable to equivalent market rate units on the subject parcel.

- C. Affordable dwelling units shall be of a building type and of an architectural style compatible with residential units permitted within the zoning district in which they are located and interspersed among market rate units in the proposed development.

3.17.5 Timing of Construction/Availability of Affordable Units

In a development which contains single family detached, single family attached, or multi-family lots or units, occupancy permits for no more than fifty percent (50%) of the market rate dwelling units shall be issued prior to the issuance of occupancy permits for fifty percent (50%) of the affordable dwelling units. Occupancy permits for no more than seventy-five percent (75%) of the market rate dwelling units shall be issued until occupancy permits have been issued for one hundred percent (100%) of the affordable dwelling units for the development.

3.17.6 Administration and Regulation

In a development which contains single family detached, single family attached, or multi-family lots or units, occupancy permits for no more than fifty percent (50%) of the market rate dwelling units shall be issued prior to the issuance of occupancy permits.

3.17.7 Modifications

- A. Modifications to the requirements of Sections 3.17.3 and 3.17.5 of the Affordable Dwelling Unit Program shall be allowed concurrently with applications for a rezoning, special exception, site plan or preliminary subdivision plat, upon a finding by the Town Council, upon recommendation of the Planning Commission. In the event that a modification to Section 3.17.3 is requested:
 1. Regardless of the density increase allowed, the percentage of affordable units any approved shall be no less than 12.5% for single family detached and single family attached developments, and 6.25% for multi-family unit developments; and
 2. The total affordable units proposed shall be no less than five percent (5%) of the total number of residential units within the project.
 3. Notwithstanding paragraphs 1. and 2. above, any request for rezoning, special exception, or preliminary subdivision plat which contains only single family detached units, a modification may be requested to provide cash in lieu of the units. Such cash must be paid prior to the first zoning permit. In the event that an applicant requests a modification to make such cash payment, the following criteria shall apply:
 - a. The cash formula of Section 3.17.7.E shall apply.
 - b. The decision to pay cash in lieu of providing the units has to be made at the time of approval of rezoning, special exception or preliminary subdivision plat.
 - c. No bonus density is to be granted for a development, when an applicant opts to provide cash in lieu of units.
- B. In reviewing a request for modification to Section 3.17.3, consideration shall be given, after providing significant justification, to the following:
 1. Existing unique or unusual site constraints including, but not limited to, potential adverse impacts on environmental resources and features on the subject parcel and adjacent parcels, and difficult soil conditions.
 2. Unusual costs associated with development of the subject property.

3. Overriding public needs, health issues, public safety issues, or public welfare issues which are better served by not providing the maximum number of affordable units otherwise required.
 4. In the case of a request for a concept plan amendment, consideration shall also be given to whether the amendment would result in a reduction in the previously approved rezoning's impact on public facilities and whether the existing proffer commitments for the previously approved rezoning exceed current adopted capital facility guidelines established in the Town Plan.
- C. In conjunction with Section 3.17.7.A above requesting such modifications, the Town Council may permit an applicant to request a modification to this ordinance so as to allow them to provide any combination of affordable dwelling units, land or contributions.
- D. Requests for modifications to the requirements of the Affordable Dwelling Unit Program, as applied to a given development, shall be submitted in conjunction with the application for rezoning, concept plan amendment, proffer amendment, special exception, site plan, or preliminary subdivision, as applicable. The applicant shall provide a justification for such request. The Affordable Dwelling Unit Advisory Board, per the Town/County Agreement, shall review requests for modifications and make its recommendation to the Town of Leesburg within sixty (60) days of receipt by the ADUAB from the Town, of a completed application.
- E. Cash contributions made pursuant to Section 3.17.7.C and 3.17.3.A shall be calculated according to the following formula:
Construction Price
of Prototypical ADU x .25 x # of ADU lots required = cash .75
- F. All cash, or the value of land contributions made pursuant to Sections 3.17.3.A and 3.17.7.C shall be calculated in terms of current dollars, adjusted by the CPI, at the time the actual contribution is officially transferred to the County per the Town/County Agreement, and paid prior to the issuance of the first zoning permit unless another time is approved by the Town Council at the time the modification is approved. Funds collected shall be placed in the Loudoun County Housing Trust.
- G. The time limits set forth in Section 15.2-2259 and 15.2-2260 of the Virginia Code shall be suspended during the pendency of an application filed pursuant to Section 3.17.7.

3.17.8 Compliance with State/Federal/Local Laws

- A. A development which provides, pursuant to Federal, State or other local programs, the same number or more affordable dwelling units as the number of affordable dwelling units required under Section 3.17.3 above, subject to terms and restrictions equivalent to the requirements of this Section, shall satisfy the requirements of the Affordable Dwelling Unit Program.
- B. A development which provides, pursuant to Federal, State, or other local programs, a fewer number of affordable dwelling units than required under Section 3.17.3 above, subject to terms and restrictions equivalent to the requirements of this Section, shall provide the additional number of affordable dwelling units necessary to make up the shortage.

- C. The rents and sales prices for affordable dwelling units provided pursuant to Federal, State, or other local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations, provided rents and sale prices shall not exceed those set pursuant to this Article.

3.17.9 Violations and Penalties

In addition to the provisions set forth in Article 17 of the Zoning Ordinance, the following shall apply whenever any person, whether owner, lessee, principal, agent, employee or otherwise, violates any provision of this Article, or permits any such violation, or fails to comply with any of the requirements hereof:

- A. Owners of affordable dwelling units who shall fail to submit executed affidavits or certifications, as required by this Section, shall be fined fifty (50) dollars per day per unit, up to a maximum of three thousand (3000) dollars per unit, until such affidavit or certificate is filed, but only after written notice and a ten-day compliance period is provided. Fines levied pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
- B. Tenants of affordable dwelling units who shall fail to submit executed affidavits or certifications, as required by this Section, Chapter 1450 of the Codified Ordinance of Loudoun County and/or the Town/County Agreement shall be subject to lease termination and eviction procedures, as provided in the Codified Ordinance.
- C. Owners and tenants of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Section knowing the statements contained therein to be false shall be guilty of a Class II misdemeanor and shall be subject to a fine up to one thousand (1000) dollars.
 - 1. Fines levied against owners pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
 - 2. Tenants of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Section knowing the statements contained therein to be false shall also be subject to lease termination and eviction procedures, as provided in the Codified Ordinance.
 - 3. Owners of individual affordable dwelling units who shall falsely swear that they continue to occupy their respective affordable dwelling unit as their primary domicile shall be subject to injunction or other suit, action or proceeding to require such owner to either sell the unit to someone who meets the eligibility requirements established pursuant to this Article or to occupy such affordable dwelling unit as a domicile.

3.17.10 Enforcement and Court Appeals

- A. The Zoning Administrator of the Town of Leesburg shall administer and enforce the provisions of The Town of Leesburg's Affordable Dwelling Unit Program in conjunction with the County staff, other than those enforcement remedies and rights assigned by the Town to the County in paragraph 3.17.9.
- B. Notwithstanding the provisions of Section 15.2-2311 of the Virginia Code, any person aggrieved by a decision of the Town of Leesburg's Zoning Administrator, may appeal such decision to the Town of Leesburg's Board of Zoning Appeals

by filing a petition of appeal which specifies the grounds upon which aggrieved within thirty (30) days from the date of the decision.

In the case of a decision made by the Affordable Dwelling Unit Advisory Board regarding an appeal of affordable dwelling unit for-sale or rental prices, or by any decision pursuant to 1450.03(a) Loudoun County Codified Ordinances in the administration of the Affordable Dwelling Unit Program, may appeal such decision to the Loudoun County Board of Supervisors by filing a petition of appeal which specifies the grounds upon which aggrieved within thirty (30) days from the date of the decision.

- C. Any petition of appeal properly filed pursuant to Paragraph B above shall not constitute a de novo proceeding and shall be considered by the Circuit Court in a manner similar to petitions filed pursuant to Section 15.2-2314 of the Virginia Code.

Sec. 3.18 Interim Waivers

- A. The Town Council shall have the authority to waive the requirements of the sections listed below:
 - Section 6.3.3.D Minimum yards/setbacks in the B-1 Downtown district
 - Section 6.4.3.D Minimum yards/setbacks in the B-2 Commercial district
 - Section 10.4.5.E Additional setback requirements from certain streets
 - Section 11.3 Number of parking spaces required
- B. The Town Council shall conduct a duly noticed public hearing pursuant to Section 3.3.9 of the Zoning Ordinance and may waive or modify said sections after finding:
 - 1. That the current regulations inhibit the implementation of the traditional urban form as prescribed in the Town Plan, and
 - 2. Which Town Plan objectives are unable to be implemented, and
 - 3. That the current regulation is in conflict with the Town Plan, and
 - 4. That the waiver does not create incompatibilities or negative impacts upon surrounding properties or uses.
- C. In approving a waiver to Section 11.3 (Parking Standards Table), the Town Council shall conduct a duly noticed public hearing pursuant to Section 3.3.9 of the Zoning Ordinance and may either;
 - 1. Utilize the provisions of Section 11.4.2 (Shared Parking/Joint Use), or
 - 2. Require the applicant to provide a parking study prepared by a certified planner or registered professional engineer which justifies a reduced parking requirement and certifies there will be no adverse impacts to the surrounding properties.
- D. If the waiver request is related to a Planned Development rezoning application, it may be processed simultaneously pursuant to Section 8.2.2E (Zoning Modification).

Sec. 3.19 Written Zoning Interpretations

3.19.1 Written Interpretations.

In accordance with Sections 15.2-2301 and 15.2-2311 of the Code of Virginia, as amended and Zoning Ordinance Section 2.5.1.E, the Zoning Administrator shall issue written interpretations of this Zoning Ordinance upon written request. Such interpretations shall be binding as to the applicant and to the specific facts presented in the application for interpretation after completion of the legislative thirty (30) day appeal period specified in Section 15.2-2311 Appeals to Board or Section 15.2-2301 Same, petition for review of decision of the Code of Virginia, as amended, as applicable.

- A. Written Requests for Interpretation.** All written requests for determinations and interpretations that address permissibility of a specific use or density shall include the following information at a minimum:
1. A statement that the letter writer is either the owner of the subject property or is authorized by the landowner to make the request;
 2. The date the landowner took title to the property;
 3. The address and Loudoun County Property Identification Number (PIN)
 4. A statement regarding the specific use or the specific density about which the inquiry is being made;
 5. Identification of the project name and/or a description of the project to be undertaken;
 6. Certification that the request concerns development of the specific project identified in 4 above;
 7. Identification of any variance, special exception, rezoning or similar legislative act that affects the property; and,
 8. Identification of any conditions (e.g. proffers) that affect the specific use or density.

3.19.2 Zoning Administrator's Response.

In accordance with Section 15.2-2286 of the Code of Virginia, as amended, and Zoning Ordinance Section 2.5.2 the Zoning Administrator shall respond to written requests for zoning interpretations within ninety (90) days unless the requester has agreed to a longer period of time.

3.19.3 Appeals and Changes, Modifications or Reversals of Written Interpretations.

- A. Right of Appeal.** In accordance with Section 15.2-2301 or 15.2-2311, as amended, as applicable, any person aggrieved by any written decision or determination of the Zoning Administrator has thirty (30) days to appeal the Zoning Administrator's decision/determination to the Board of Zoning Appeals in the case of a Zoning Ordinance determination in accordance with Zoning Ordinance Section 3.14 Appeals & Administrative Decisions or to the Town Council in the case of proffer interpretations in accordance with Zoning Ordinance Section 3.15 Appeals of Proffer Interpretations.
- B. Zoning Administrator's Right to Modify.** Code of Virginia Section 15.2-2311.C. permits the Zoning Administrator or other administrative officer to change, modify or reverse any decision/determination within sixty (60) days under certain conditions.