

Article-3 Permits and Applications

Division 3-1 In General

Section 3-1-1 Preapplication Meeting¹

Prior to the submittal of any application associated with this Ordinance, a preapplication meeting may be held between the applicant, the Administrator, the Site Plan Review Committee, and any other relevant local, state, or federal representatives. During this meeting the applicant may submit a Concept Plan for preliminary review, comment, and recommendation by the Administrator.

Section 3-1-2 Community Meeting

- A. Where any application for permits contained within this Article would benefit from additional outreach with the community, any applicant may choose to hold a community meeting for public invitation intended to:
- (1) Better inform community members of the proposed application;
 - (2) Receive feedback from the community regarding the application prior to any required public hearing; and
 - (3) Address any concerns or opportunities posed by the community prior within the application.
- B. Community meetings shall be conducted by the applicant, at the applicant's expense, but the Administrator and other relevant Nelson County staff may participate or assist at their discretion.

Section 3-1-3 Minimum Submission Standards²

- A. The Administrator shall establish minimum standards for submission requirements of all applications associated with this Ordinance. Applications will only be considered complete and accepted by the Administrator once they contain all information required to meet the minimum standards of this Ordinance.

¹ Editor's Note: Preapplication and community meetings have been added as an optional service to applicants. These can be required for certain applications, such as large subdivisions, if desired.

² Editor's Note: The minimum submission standards found within the current Ordinance have been removed in favor of an administrative procedure that allows the Administrator authority to set minimum submission standards for each application as needed.

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- B. Upon written request by an applicant, the Administrator may waive or modify a submission requirement(s) upon a determination that the information is not necessary to evaluate the merits of the application, such waivers or modifications are for application requirements only and do not include variances or modifications from zoning district or use standards.
- C. Additional information may be required as deemed reasonably necessary by the Administrator, Planning Commission, Board of Supervisors, or any other County, State, or Federal official.

Section 3-1-4 Application Fee

Applications shall not be considered complete until all associated fees, as outlined in the County fee schedule, are paid in full at the time the application is submitted.

Section 3-1-5 Forms

Applications associated with this Ordinance shall be made on official paper or digital forms created by the Administrator and provided by the County.

Section 3-1-6 Ownership and Interests Disclosure

- A. An applicant shall disclose all equitable ownership of the real estate included in an application. In the case of corporate ownership, the name of stockholders, officers and directors shall be provided, and in any case the names and addresses of all of the real parties of interest in accordance with the Code of Virginia § 15.2-2289.
- B. Pursuant to the Code of Virginia § 15.2-2287 petitions brought by property owners, contract purchasers, or their Administrators, shall be sworn to under oath stating whether or not any member of the local Planning Commission or governing body has any interest in such property:³
 - (1) Either individually;
 - (2) By ownership of stock in a corporation owning such land, partnership;
 - (3) As the beneficiary of a trust; or
 - (4) As the settlor of a revocable trust; or

³ Editor's Note: This added section would require any ownership disclosure include where there is a conflict of interest with any Commissioner or Supervisor and that that disclosure be officially notarized.

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- (5) Whether a member of the immediate household or any member of the Planning Commission or governing body has any such interest.

Section 3-1-7 Oath Required⁴

Applications or applications for amendments (to the Zoning Ordinance or Official Zoning Map), variances, or special use permit, shall be sworn to under oath before a notary public, or other official before whom oaths may be taken.

Section 3-1-8 Delinquent Taxes and Charges; Outstanding Violations

- A. Pursuant to the Code of Virginia § 15.2-2286 (B), applicants shall produce satisfactory evidence that any taxes or other charges constituting a lien on the subject property are paid at the time the application is submitted or prior to issuance of the permit. The Administrator may waive this requirement for reasons of health, safety, or public welfare, provided that the applicant or owner has entered into a plan with the County Treasurer to pay all delinquent taxes, fees and charges as set forth in this Ordinance.
- B. No application or permit shall be approved or issued if a zoning violation exists on a parcel of land included on such application or permit.⁵

Section 3-1-9 Reconsiderations

- A. If an application request for a Zoning Text or Map Amendment, Special Use Permit, or Variance has been denied, then such application, or one substantially similar, shall not be reconsidered sooner than 12 months from the date of the previous denial.
- B. The limits on reconsideration shall not impair the right of either the Planning Commission or the Board of Supervisors to propose any amendment to this Ordinance on their motion at any time.

Division 3-2 Zoning Text and Map Amendments

Section 3-2-1 In General

Pursuant to the Code of Virginia § 15.2-2286 (7) whenever public necessity, convenience, general welfare, or good zoning practice requires, the governing body may, from time to time, amend, supplement or change, by Ordinance, the boundaries of the Zoning Districts or the regulations established in this Ordinance.

⁴ Editor's Note: This section has been added as a best practice standard but Nelson County should consider whether they wish to require a notarized oath to be taken for all applications.

⁵ Editor's Note: Recommend including this provision to prevent any new zoning action being taken on a parcel of land that has an outstanding zoning violation.

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Section 3-2-2 Standards and Procedures

- A. Pursuant to the Code of Virginia § 15.2-2286 (7) any amendment to this Ordinance text or the Zoning Map may be initiated by:
- (1) Resolution of the Board of Supervisors;
 - (2) Resolution of the Planning Commission; or
 - (3) For Zoning Map amendments only, application of the owner, contract purchaser with the owner's written consent, or the owner's Administrator therefor, of the property which is the subject of the proposed Zoning Map Amendment (rezoning), addressed to the Board of Supervisors or Nelson County Planning Commission, who shall forward such application to the Board of Supervisors.
- B. **Zoning Map Amendments.** Applications for Zoning Map amendments, including Conditional Zoning requests, shall be accompanied by a Concept Plan⁶ in accordance with **Section 3-6-3**, of this Article.
- C. **Zoning Text Amendments.** The application for a text amendment to the Zoning Ordinance shall be filed with the Administrator. If the application proposes a change in a zoning classification or map boundaries, there shall be attached to the application:
- (1) Items required in **Section 3-2-2 (A)(2)**, as shown above.
 - (2) A written description of the nature and extent of the amendment desired together with an explanation of the reasons for seeking a change.
- D. **Standards for Review.**
- (1) Once the application is submitted in accordance with **Division 3-1** of this Article and has been determined to be complete, the County shall evaluate the application and may request that the applicant make revisions, as necessary.

⁶ Editor's Note: This provision has been modified to only require a concept plan for rezoning applications in the County. Section 3-6-3 includes a provision for any required concept plan that allows the Zoning Administrator to require a site plan if they deem the development too complex to be adequately covered by a concept plan.

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- (2) The application for a rezoning or zoning text amendment shall be referred to the Planning Commission for public hearing and recommendation. The Planning Commission shall present their recommendation on the proposed ordinance or amendment, including the district maps, to the Board of Supervisors for public hearing and action. No recommendation or action shall be rendered until public notifications and hearings have been conducted in accordance with **Division 3-11** of this Article and the Code of Virginia.
 - (3) The Planning Commission shall advise the Board of Supervisors of their recommendation within 100 days. If after 100 days no recommendation has been made, the governing body shall assume that the Planning Commission concurs with the applicant and supports the amendment. The Board of Supervisors shall thereafter take any action it deems appropriate, unless the applicant requests an extension for a defined period not to exceed a total of 90 calendar days from the date of the public hearing.
 - (4) All motions, resolutions, or applications for amendment to the Zoning Ordinance and/or Zoning Map shall be acted upon, and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution, or application for amendment to the Zoning Ordinance or map, or both; otherwise, the amendment shall be deemed approved.
 - (a) In the event of and upon a withdrawal by the applicant, processing of the motion, resolution, or petition shall cease without further action as otherwise would be required.
- E. All changes affecting the Zoning Map that are approved by the Board of Supervisors shall be entered onto the official Zoning Map within 60 days following the approval of such changes.

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Division 3-3 Conditional Zoning and Proffers

Section 3-3-1 Purpose and Intent

Conditional Zoning provides a method for permitting the reasonable and orderly development of land through Zoning Map Amendment with reasonable conditions governing the use and development of such property. As authorized under the Code of Virginia §§ 15.2-2296 through 15.2-2303.3 reasonable conditions may be voluntarily proffered for the protection of the community when combined with existing Zoning Ordinance district regulations. The exercise of authority shall not be construed to limit or restrict powers otherwise granted nor to affect the validity of any Ordinance adopted by the locality which would be valid without regard to this Division. In addition, the provisions of this Division shall not be used for the purpose of discrimination in housing.

Section 3-3-2 Standards and Procedures

- A. **Initiation.** Only an owner of the subject parcel or their agent may apply for a Conditional Zoning Map Amendment.
- B. **Application requirements.** Conditional Zoning applications shall comply with all requirements for a Zoning Map Amendment pursuant to **Division 3-2**, above; and include the following:
 - (1) An impact analysis demonstrating justification of proposed proffers;
 - (2) A statement describing the nature of the proposed development and explaining the relationship of the development to the Comprehensive Plan;
 - (3) A statement setting forth a maximum number of dwelling units or lots proposed, including density and open space calculations where applicable to any residential development, or a statement describing the types of uses proposed and the approximate square footage for each nonresidential development;
 - (4) A statement detailing any special amenities that are proposed;
 - (5) A statement of the public improvements both on and off site that are proposed for dedication and/or construction and an estimate of the date for providing such improvements;
 - (6) A Concept Plan, as detailed in **Section 3-6-3**, listing and detailing the nature and location of any proffered conditions and those proposed circumstances which prompted the proffering of such conditions; and

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- (7) A statement setting forth the proposed approximate development schedule.
- C. **Proffer Statement.** All proposed proffers shall be:
- (1) In writing;
 - (2) On a form approved by the Administrator;
 - (3) In accordance with the Code of Virginia §§ 15.2-2297 and 15.2-2303;
 - (4) Accompanied by a statement signed by the applicant and the owner or their Administrators which states:
 - (a) “Each proffer made in connection with this application for rezoning was made voluntarily and complies with applicable law. No Administrator of the County has suggested or demanded a proffer that is unreasonable under applicable law. I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission”
- D. **Time to Submit.** All proposed proffered conditions shall be submitted by the following deadlines:
- (1) **Before the Planning Commission’s Public Hearing.** Proposed proffers, regardless of whether they are signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to Planning at least 14 calendar days before the Commission's public hearing on the zoning map amendment.
 - (2) **Before the Board of Supervisors’ Public Hearing.** Proposed proffers, signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to Planning no later than nine calendar days before the Board's advertised public hearing on the zoning map amendment.
 - (a) The Administrator may establish written guidelines that require signed proffers to be submitted a reasonable time prior to the public hearing to allow for review by County officers and employees and by the public.

Section 3-3-3 Amendments and Variations Prior to Final Decision

- A. The Board of Supervisors may accept amended proffers prior to a final decision if they:

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- (1) Do not materially affect the overall proposal and are made voluntarily, and in writing, prior to the deadline for preparation of the advertisement of the public hearing by the Board of Supervisors on the rezoning request.
 - (a) If the Board of Supervisors determines that the amendment materially affects the overall proposal, the application with the amended proffers shall be remanded back to the Planning Commission for a public hearing and recommendation.
- B. Once the Board of Supervisors has approved proffered conditions, no material amendment or variation of such adopted conditions will be made until public hearings, in accordance with **Division 3-11 of this Article** and with Code of Virginia § 15.2-2302, have been held before the Board of Supervisors and the Planning Commission.
 - (1) If the proposed amendment or variation of conditions does not affect conditions of use or density, the Board of Supervisors may waive the requirement for a public hearing in accordance with the Code of Virginia § 15.2-2302, and under **Division 3-11** of this Article.

Section 3-3-4 Effect of Decision; Period of Validity

- A. All such conditions shall be in addition to the regulations provided for in the zoning district to which the land is rezoned.
- B. Upon the approval of any such rezoning, all conditions proffered and accepted by the governing body shall remain in full force and effect until amended or varied by the Board of Supervisors.
 - (1) If the Board of Supervisors rezones the land as part of a new or substantially revised Zoning Ordinance, such conditions shall continue in full force and effect automatically without notice or filing.

Section 3-3-5 Record of Conditional Zoning

- A. Pursuant to the Code of Virginia § 15.2-2300, each conditional rezoning shall be designated on the Zoning Map by an appropriate symbol designed by the Administrator.
- B. In addition, the Administrator shall keep and maintain a conditional zoning index which shall provide ready access to the ordinance creating such conditions in addition to the regulations provided for in the particular zoning district and which shall be available for public inspection. The Administrator shall update the Index annually and no later than November 30 of each year.

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Division 3-4 Special Use Permits

Section 3-4-1 Intent

- A. A use requiring a Special Use Permit is a use that may be appropriate in a zoning district, but because of its nature, extent, or external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this division is to establish procedures and standards for review and approval of Special Use Permits that provide for such special consideration.
- B. The following will be met either by the proposal made in the application or by the proposal as modified and amended and made part of the Special Use Permit:
 - (1) **Conformity with Comprehensive Plan and policies.** The proposal as submitted or as modified shall conform to the Comprehensive Plan of the County or to specific elements of such plan and to official policies adopted in relation thereto, including the purposes of this Ordinance.
 - (2) **Impact on neighborhood.** The proposal as submitted or as modified shall not have undue adverse impact on the surrounding neighborhood, including, but not limited to: traffic congestion, noise, lights, dust, odor, fumes, and vibration with due regard for timing of operation, screening, or other matters which might be regulated to mitigate adverse impact.

Section 3-4-2 Applicability

In accordance with the Code of Virginia § 15.2-2286, a Special Use Permit is required for the development of any use designated in **Article 6, Use Matrix**, as a use requiring a Special Use Permit in accordance with this section, or as required by use standards provided in **Article 7, Use Performance Standards**, of this Ordinance.

Section 3-4-3 Standards and Procedures

- A. An application for a Special Use Permit shall be made by all property owners, a contract purchaser with the owners' written consent, or the owners' Administrator.
- B. In addition to the general application requirements supplied in **Division 3-1** of this Article, the applicant shall provide information and data to:
 - (1) Demonstrate that the proposed use, when complemented with additional measures, if any, will be in harmony with the purposes of the specific district in which it will be placed;

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- (2) Demonstrate that there will be no undue adverse impact on the surrounding neighborhood in terms of public health, safety, or general welfare and show measures to be taken to achieve such goals;
 - (3) Is appropriately located with respect to County infrastructure including but not limited to transportation facilities, water supply, wastewater treatment, fire and police protection, and waste disposal;
 - (4) Demonstrate that the use will not tend to create congestion in streets, roads, alleys, and other areas; and
 - (5) Show that the proposal meets the applicable specific and general standards required by this Ordinance.
- C. **Concept Plan.**⁷ Applications for a Special Use Permit shall be accompanied by a Concept Plan in accordance with **Section 3-6-3, of this Article.**
- D. **Standards for Review.**
- (1) **Administrator Review.** The Administrator shall review any application requesting a Special Use Permit for its compliance with the provisions of this Ordinance and the Comprehensive Plan.
 - (a) If the application is not complete, then the Administrator shall notify the applicant of the deficiencies of the application and of the actions to be taken to remedy such deficiencies to complete the application.
 - (b) The Administrator shall supply the applicant with a reasonable amount of time to remedy any deficiencies associated with an incomplete application. The time allowed shall be based on the deficiencies. If the applicant fails to remedy the deficiencies before the end of the supplied timeline, the application shall be deemed incomplete and will need to be resubmitted pursuant to the provisions of this Article.
 - (2) **Planning Commission Review.** When it has been determined that the application is complete, the Administrator shall submit the application to the Planning Commission which shall make a recommendation to the Board of Supervisors following a public hearing in accordance with **Division 3-11 of this Article.**

⁷ Editor's Note: Special use permit applications have been modified to no longer require a minor site plan and instead now require a concept plan to be submitted which can be more general and less demanding on the applicant. If deemed necessary, the Administrator can still require a site plan to be accompanied by a special use permit for larger, more intense, uses.

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- (a) Failure of the Commission to act within one hundred (100) calendar days of the first meeting of the Commission after official submission of the proposal shall be deemed approval, unless the proposed Special Use Permit has been withdrawn by the applicant prior to the expiration of such time period or the time period has been extended by mutual agreement by the County and the applicant.
 - (3) **Board of Supervisors Review.** The Board of Supervisors shall hold a public hearing after notice in accordance with **Division 3-10** of this Article, and pursuant to the Code of Virginia § 15.2-2286, the Board of Supervisors will make a decision within such reasonable time as may be necessary, which shall not exceed 12 months from the date that the application is determined complete unless the applicant requests or consents to action beyond such period or unless the applicant withdraws their application, or as otherwise specified by the Code of Virginia.
 - (a) Pursuant to Code of Virginia § 15.2-2309, the Board of Supervisors may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be followed.
 - (4) If an applicant seeks both an amendment to the Zoning Ordinance and a Special Use Permit for the same property, both applications may be made jointly and processed at the same time if the proposed amendment does not add a Special Use not previously permitted by the terms of this Ordinance.
- E. **Criteria.** All applications for Special Use Permits shall be reviewed using the following criteria:
- (1) The use shall not tend to change the character and established pattern of development of the area or community in which it proposes to locate;
 - (2) The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of neighboring property;
 - (3) The proposed use shall be adequately served by essential public or private services such as streets, drainage facilities, fire protection and public or private water and sewer facilities; and
 - (4) The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.

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- F. Upon approval of the application by the Board of Supervisors, a Site Plan, if required, shall be filed with the Planning and Zoning Director and reviewed by the Planning Commission pursuant to **Division 3-6** of this Article.

Section 3-4-4 Effect of Decision; Period of Validity

- A. A Special Use Permit authorizes only the particular use(s) and associated development that is approved and shall not ensure approval for any other permit or development approval.
- B. Unless otherwise specified in this Ordinance or specified as a condition of approval, the height limits, yard spaces, lot area, sign requirements, and other specified standards shall be the same as for other uses in the district in which the Special Use is located.
- C. Unless a time limit has been included as a condition, a Special Use Permit, including any approved plans and conditions, shall run with the land, and shall not be affected by a change in ownership, but shall expire as provided **in (D) below**.⁸
- D. A Special Use Permit shall expire upon the first to occur of the following:
 - (1) If a time limit has been included as a condition the Special Use Permit shall expire on the predetermined date, unless renewed as provided in **(E) below**.
 - (2) If the applicant does not obtain Site Plan approval or commence the use granted by the Special Use Permit within two (2) years (or such longer time as the governing body may approve) from the date of the approval;
 - (3) If an activity operating under an approved Special Use Permit ceases for a period greater than two (2) years; or
 - (4) Upon expiration of a Site Plan for the use granted by the Special Use Permit.
- E. Renewal of a Special Use Permit with a conditioned time limit:

⁸ Editor's Note: Recent changes in State Code now allow localities to prescribe a time limit to SUPs with restrictions to the amount of time allowed to be imposed on a residential SUP. This section has been added to allow Nelson County to impose time limits to SUPs which would require them to reapply at the expiration of their SUP.

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- (a) A renewal shall be for the purpose of allowing a new period of time for the operation of a currently valid Special Use Permit, provided, however, that the Board of Supervisors shall not approve a renewal application for a use which is no longer allowed as a Special Use Permit in the zoning district in which the Special Use Permit is located.
- (b) The procedure for the renewal of a Special Use Permit shall be the same as specified herein for the approval of the original permit, except that the Administrator may waive any submission requirement if such requirement is deemed not necessary for an adequate review of the application.
- (c) Any Special Use Permit that is not renewed prior to the established time shall expire.

Section 3-4-5 Revocation

A Special Use Permit previously granted pursuant to this Ordinance may be revoked by the Board of Supervisors, after notice and hearing as provided in **Division 3-10** of this Article and in accordance with the Code of Virginia § 15.2-2204, if it is determined there has not been compliance with the conditions of the Permit.

Division 3-5 Variances

Section 3-5-1 Intent

Pursuant to the Code of Virginia § 15.2-2309 the purpose of a variance is to allow for a reasonable deviation from the provisions of this Ordinance regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, other relief or remedy is not available, such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance.

Section 3-5-2 Standards and Procedures

A. Authority.

- (1) Pursuant to the Code of Virginia § 15.2-2309 (2) and (6) the Board of Zoning Appeals (BZA) is authorized to review applications for a variance, if the applicant proves the burden and provides evidence that the application meets the standard for a variance and the criteria set out in this Ordinance.

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- (2) The BZA may approve, approve with conditions deemed necessary in the public interest, including limiting the duration of a permit and requiring a guarantee or bond to ensure the conditions will be complied with, or deny an application for a variance in accordance with the procedures and standards of this Article.

B. Standards for Review.

- (1) After application is made as required in **Division 3-1** of this Article, the Administrator shall review the application for compliance with this Ordinance.
 - (a) Each application for a variance shall include a Concept Plan, which may be general and schematic and shall show required details established in **Section 3-6-3** of this Article, unless the Administrator waives or modifies requirements due to the scope and nature of the proposed use.
- (2) When it has been determined that the application is complete, the Administrator shall submit the application to the BZA for a public hearing. No recommendation or action shall be rendered until public notice is given in accordance with Division 10 of this Article. The Administrator shall also transmit a copy of the application to the local Planning Commission, which may send a recommendation to the BZA or appear as a party at the hearing.
- (3) Pursuant to the Code of Virginia §15.2-2309 (2) a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or its improvements at the time of the effective date of the Ordinance, and:
 - (a) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
 - (b) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - (c) That such condition or situation of the property concerned is not of so general or recurring a nature that it could be resolved with an amendment to this Ordinance;

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- (d) 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; and
 - (e) The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to the Code of Virginia § 15.2-2309 (6) or the process for modification of this zoning ordinance pursuant to the Code of Virginia § 15.2-2286 (A) (4) at the time of the filing of the variance application.
- C. Any variance granted to provide a reasonable modification to a property or its improvements requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable.
- D. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the BZA under this section is required in order for such request to be granted.

Section 3-5-3 Effect of Decision; Period of Validity

- A. Issuance of a variance shall authorize only the particular variance that is approved. A variance, including any conditions, shall run with the land, and not be affected by a change in ownership except for variances provided in **Section 3-5-2, C**, above.
- B. Use or development authorized by the variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable Ordinances and regulations of the County. A variance, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval.
- C. After the BZA has granted a variance, it shall become void after 12 months if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted, or if the BZA does not specify some longer period than one (1) year for good cause shown.

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Division 3-6 Concept Plans & Site Plans

Section 3-6-1 Purpose and Intent

- A. The purpose of this section is to promote the orderly development of certain activities in the County and to ensure that such activities are developed in compliance with this Ordinance and other applicable regulations and in a manner harmonious with surrounding properties and in the interest of the general public health, safety, and welfare. More specifically, the Site Plan shall be used to review:
- (1) The project's compatibility with its environment and with other land uses and buildings existing in the area;
 - (2) The ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians;
 - (3) The quantity, quality, utility, and type of the project's required community facilities; and
 - (4) The location and adequacy of the project's landscape improvements and provision for drainage and utilities.

Section 3-6-2 Applicability

- A. This Division provides the requirements and applicability of the following:
- (1) Concept Plans.
 - (2) Minor Site Plans.
 - (3) Major Site Plans.
- B. A Concept Plan shall be required for:
- (1) Applications for a Zoning Map Amendment (Rezoning);
 - (2) Applications for Conditional Zoning;
 - (3) Applications for a Special Use Permit; and
 - (4) Applications for a Variance.
- C. A Minor Site Plan shall be required for:
- (1) Development of any building, structure, or improvement; or
 - (2) A change or intensification in use that results in:

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- (a) An increase of required number of on-site parking spaces;
 - (b) Grading, erosion, land disturbance, or the removal of vegetation or landscaping;
 - (c) A change to the traffic patterns of the development site; or
 - (d) Any other change determined by the Administrator to have a significant impact to the public health, safety, and welfare of the County.
- D. A Major Site Plan shall be required for:
- (1) Projects with a total land disturbance greater than (1) acre of land-disturbed area;
 - (2) Commercial uses;
 - (3) Industrial uses;
 - (4) Three (3) or more dwelling units on one lot; or
 - (5) The erection of a structure or structures exceeding a total of 5,000 square feet.
- E. A Site Plan shall not be required in any of the following circumstances:
- (1) Development of up to two (2) dwelling units on one (1) lot or parcel;
 - (2) Development of any structure accessory to a dwelling unit;
 - (3) Agricultural activities; or
 - (4) Temporary uses with an approved Concept Plan.
- F. Site Plans for Residential Planned Communities shall be governed by the provisions of **Article 4, Division 7**, of this Ordinance.

Section 3-6-3 Concept Plan Specification and Contents

- A. The purpose of the Concept Plan is to graphically depict the concept or reasons for the requested action relative to the Zoning Ordinance and its provisions.
- B. A Concept Plan shall be submitted to the Administrator accompanying applications.
- C. The Concept Plan may be general and schematic and shall show:
 - (1) A certified plat of the subject property showing metes and bounds of all property lines, existing streets, and subdivisions – with reference to a record subdivision plat or the County’s tax map.

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- (2) The names and addresses, as shown on the current real estate tax assessment books, or property owners abutting the property or owners located across the road/street.
- (3) Topography as shown by contour lines with a contour interval of not more than five feet.
- (4) Proposed land uses to be developed.
- (5) The general layout, orientation, and information describing buildings and improvements, including but not limited to parking, landscaping, fencing, signs, and trash enclosures, height, setbacks, and restriction lines.
- (6) If any, the approximate total number, density, type, and price range of dwelling units and the range of lot sizes for the various dwelling types.
- (7) If any, the general location of proposed open space and recreational areas.
- (8) If any, the general location and type of commercial uses to be developed.
- (9) The general location and character of the proposed roads, pedestrian circulation, trails, public utility, and storm drainage systems.
- (10) A statement on the proposed development schedule.
- (11) A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the development.
- (12) Any additional information as deemed reasonably necessary by the Zoning Administrator.
- (13) Concept Plans shall be drawn to scale and include a scale bar.
- (14) Concept Plans shall include an approval block located along the right side of all sheets included.
- (15) The Zoning Administrator may require a full Major Site Plan in lieu of a Concept Plan if the project is deemed complex and requiring additional detail for review.

Section 3-6-4 Site Plan Specifications and Contents, Generally

- A. Site Plans, or any portion thereof, involving engineering, architecture, landscape architecture or land surveying, shall be prepared by persons professionally certified in the Commonwealth of Virginia to do such work.

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- B. Site Plans shall be prepared to the scale of one (1)-inch equals 50 ft. or larger; no sheet shall exceed 42 inches in any dimensions.
- C. Site Plans may be prepared on one (1) or more sheets to clearly show the information required by this section and to facilitate the review and approval of the plan. If prepared on more than one (1) sheet, match lines shall clearly indicate where the several sheets join.
- D. When more than one (1) sheet is required to cover the entire project, a cover sheet, general in nature, shall be provided to identify all individual sheets of an application in proper relationship to each other.
- E. Site Plans shall include a signature panel to indicate approvals from the following:
 - (1) Planning and Zoning Director.
 - (2) Virginia Department of Transportation.
 - (3) Virginia Department of Health.
 - (4) Thomas Jefferson Soil and Water Conservation District.
 - (5) Nelson County Service Authority.
- F. Profiles shall be submitted on plan sheets. Special studies as required may be submitted on standard cross section paper and shall be an appropriate scale.
- G. All horizontal dimensions shown on Site Plans shall be in feet and decimals of a foot to be closest to 1/100 of a foot; and all bearings in degrees, minutes, and seconds to the nearest ten seconds.
- H. When the development is to be constructed in stages or units, a final development schedule shall be included with the Site Plan that shows the order of construction of such stages, an approximate completion date for the construction of each stage, and a final cost estimate of all improvements within each stage.
- I. A Site Plan for a particular development stage or unit other than the first, shall not be approved until the Site Plan has been approved for the immediately preceding stage or unit.

Section 3-6-5 Minor Site Plan Specifications and Contents

- A. A Minor Site Plan shall consist of the following:
 - (1) Project name and property owner(s) name(s) and address(es);

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- (2) A description of the use and development along with the zoning classification;
- (3) Property lines;
- (4) Adjacent property tax map numbers and owner names;
- (5) Tax parcel number;
- (6) Acreage of the lot, scale, and north arrow;
- (7) The location, dimensions, height, and proposed setbacks from property lines and from bodies of water for all existing and proposed buildings and structures;
- (8) Existing and proposed driveways, vehicle access, and parking areas;
- (9) The location of streams and bodies of water;
- (10) The approximate limit of any floodplain limits, any drainage district, wetlands, or mapped dam break inundation zone.
- (11) For the purposes of protecting life and property from impounding structure failure consistent with requirements in Code of Virginia §§ 10.1-602, 10.1-606.3, and 15.2-2284, as amended, delineation of any dam break inundation zones shall be designated.
 - (a) This requirement does not apply to any development that is proposed to be downstream of a dam for which a dam break inundation zone map is not on file with the County at the time of submission of the Site Plan.
 - (b) All dam break inundation zones shall be identified and labeled with the name of the impoundment and the date of the study that established the dam break inundation zone.
 - i. When a state-regulated impounding structure is proposed to be constructed or altered, an approximate delineation of the future dam break inundation zone shall be provided with the submission of the Site Plan.
 - ii. Site Plans proposing developing within a dam break inundation zone will be submitted to the Department of Conservation and Recreation (DCR) for review and adjacent property owners will be notified.

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- (c) If DCR determines it would change any spillway design flood standards for an impounding structure, the developer shall submit an engineering study meeting state standards to the state department of conservation and recreation prior to final approval of the proposed development.
 - i. Following the completion of the engineering study, and prior to any development within the dam break inundation zone, the developer shall change the proposed development so that it does not alter any spillway design flood standards for the impounding structure or shall pay fifty (50) percent of the contract-ready costs for necessary upgrades to any impounding structure attributable to the development, together with administrative fees required by state law.
 - ii. The payment shall be made to the Virginia Dam Safety, Flood Prevention and Protection Assistance Fund as provided by state law.
- (12) Modifications to existing drainageways;
- (13) Installation or modification of a stormwater best management practice (BMP);
- (14) Compliance with any proffers, variances, and/or County-imposed conditions; and
- (15) All public and private rights-of-way, including easements, their names, and widths.
- (16) All information to show compliance with applicable community design requirements as required in **Article 8, Community Design Standards**, of this Ordinance.

Section 3-6-6 Major Site Plan Specifications and Contents⁹

- A. A Major Site Plan shall include all of the required content and provisions of **Section 3-6-5**, above.
- B. In addition to the requirements of **Section 3-6-5**, a Major Site Plan shall also include all of the required elements deemed necessary by the Administrator.

⁹ Editor's Note: The required contents of a Major site plan shall be determined by the Administrator and kept in a checklist format in the Planning and Zoning Office to be shared with applicants. This allows more flexibility in requirements depending on the application and gives the Administrator opportunities to adjust said checklist without the need for a zoning text amendment.

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- (1) The Administrator shall keep a list of all required Major Site Plan elements in the Nelson County Planning and Zoning Office and make it readily available and easily accessible to all.
- (2) The Administrator shall update the list of required Major Site Plan elements from time to time, as needed.
- (3) The Administrator may waive or add to the list of required Major Site Plan elements at their discretion.

Section 3-6-7 Waiver of Requirements

- A. The Administrator may waive the requirement for a Minor Site Plan, or any required element specified within it, upon consideration of the factors outlined below, provided that no such waiver shall be deemed to be a waiver of any other ordinance provision or requirement.
- B. The Planning Commission may waive the requirements for a Major Site Plan or any required element specified within it upon consideration of the following factors:
 - (1) Where it can be clearly established by the applicant that the use will not require the improvements subject to review in this Ordinance.
 - (2) Where it can be clearly demonstrated that a waiver will be in keeping with the intent of this Ordinance.
 - (3) Where it can be clearly shown that the application for a Site Plan and building permit involves building and safety regulations which are not critical to the purpose and intent of this Ordinance.
 - (4) Where it can be clearly established by the applicant that such waiver will not have an adverse effect on:
 - (a) The public health, safety, welfare, and convenience;
 - (b) The planning for and provision of adequate public facilities, utilities, drainage, environmental controls, and transportation facilities;
 - (c) Preservation of agricultural, forestry and conservation lands; and
 - (d) Other relevant considerations related to the Comprehensive Plan.
- C. An applicant may seek a waiver from a requirement for a Site Plan and shall, upon request, provide written documentation to the Administrator addressing the applicable conditions for waiver.

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- D. For Major Site Plan waivers, the Administrator shall refer the request and applicant's supporting documentation to the Planning Commission for action at its next regularly scheduled meeting. The applicant shall be notified in writing of the outcome of such action by the Administrator within ten (10) days upon action by the Planning Commission.
- E. Notwithstanding any grant of waiver the applicant is not relieved by such grant of having to obtain all necessary permits and approvals, including but not limited to a building permit, erosion and sediment control plan approval, stormwater management permit coverage, and, upon completion of improvements, a certificate of occupancy.

Section 3-6-8 Standards and Improvements

- A. **Improvements Required.** All improvements required by this Ordinance shall be installed at the cost of the developer and in accordance with design and construction standards of the County.
- B. **Specifications.** In cases where specifications have been established either by the Board of Supervisors, the Virginia Department of Transportation for construction of streets, etc., or this Ordinance for related facilities and utilities, such specifications shall be followed. The most restrictive specifications will prevail.
- C. **Standards and Improvements¹⁰.** In addition to those improvements and standards specified in other sections of this Ordinance, the following minimum standards and improvements shall also be required for all Site Plans:
 - (1) All streets in the proposed development shall be designed and constructed by the developer at no cost to the locality.

¹⁰ Editor's Note: Many of the improvements standards listed here are already included in the current ordinance. This last has been expanded to include additional standard recommendations. Recommend that Nelson County review this list of standards and consider reducing or removing the standards that may not be appropriate for the entirety of the County. If needed, some of the standards can be changed to only apply to certain Zoning Districts.

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- (2) The arrangement of streets in developments shall make provision for the continuation of existing streets in adjoining areas and proposed streets on adjacent approved Site Plans. The street arrangement shall be such as to cause no unnecessary hardship to owners of adjoining property when they plat their land and seek to provide for convenient access to it. Where, in the opinion of the Commission, it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary line of such property. Half streets along the boundary of land proposed for development will not be permitted. Wherever possible, streets should intersect at right angles. In all hillside areas streets running with contours shall be required to intersect at angles of not less than sixty (60) degrees, unless approved by the Administrator upon recommendation of the highway engineer.
- (3) Whenever a proposed development contains or is adjacent to a limited-access highway or expressway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of the land between such highway and the proposed development. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited-access highway or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.
- (4) Major streets shall approach major or minor streets at an angle of not less than eighty (80) degrees, unless the Planning and Zoning Director, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contour, terrain, or matching of existing patterns.
- (5) The minimum width of proposed streets, measured from lot line to lot line, shall be as shown on the major street plan, or if not shown on such plan shall be as specified by the Virginia Department of Highways for acceptance into the State Secondary System.
- (6) All public streets shall be constructed to requirements as specified by the Virginia Department of Highways for acceptance into the State Secondary System.

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- (7) Private streets will be so constructed as to alignment and grade, that the minimum grade is no greater than the Virginia Department of Highways Standards for the particular terrain. Road metal or base shall be of a material and width acceptable to the Virginia Department of Highways. Proper drainage shall be installed and maintained.
- (8) Proposed streets which are obviously in alignment with other already existing and named streets, shall bear the names of the existing streets. In no case shall the names of proposed streets duplicate existing street names irrespective of the use of the suffix street, avenue, boulevard, driveway, place, lane, or court. Street names shall be indicated on the preliminary and final plats, and shall be approved by the Planning and Zoning Director. Names of existing streets shall not be changed except by approval of the governing body.
- (9) The developer shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including contour intervals, drainage plans and flood control devices. The developer shall also provide plans for all such improvements together with a properly qualified engineer's or surveyor's statement that such improvements when properly installed, will be adequate for proper development. The highway engineer shall then approve or disapprove the plans. The developer shall also provide any other information required by the highway engineer. The developer shall install and maintain the approved storm drainage facilities and other stormwater management facilities in accordance with applicable Virginia Stormwater Management Program regulations.
- (10) Adequate fire hydrants in a development at locations approved by the Planning and Zoning Director shall be installed by the developer, provided adequate public water is available. The location of the fire hydrants shall meet the National Board of Fire Underwriters specifications.
- (11) When a Site Plan is located on public roads of less than 50 feet in total width, additional right-of-way shall be dedicated to achieve a minimum 50-foot-wide right-of-way where appropriate as determined by the Administrator in consultation with the County Attorney. All building setbacks shall be measured from the additional dedicated right-of-way.
- (12) No alley on a Site Plan shall have a right-of-way of less than 20 feet.
- (13) All street and highway construction standards and geometric design standards shall be in accordance with **Article X, Subdivision**.

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- (14) Private vehicular travel lanes or driveways designed to permit vehicular travel on the site and to and from adjacent property and parking areas shall be constructed not less than 20 feet in width, except within parking areas where it shall be not less than 22 feet.
- (15) Cul-de-sacs are to be designed in accordance with the standards specified in **Article X, Subdivision**.
- (16) Interior travel lanes, driveways, and parking bays are to be congruous with the public street to which the travel lanes, driveways and parking bays are connected. At a minimum, all surfaces shall be Class "A" prime and double seal. Every parking bay shall be so constructed that no vehicle when parked will overhang property lines or moving travel lanes.
- (17) Adequate easements shall be provided for drainage and all utilities. Where easements do not follow the established lot lines, the nearest edge of any easement shall be a minimum of 5 feet from any building.
- (18) The developer shall provide for all utilities and services required, to include both on-site and off-site improvements. The determination of the exact improvements required, i.e., size of lines and capacities, is to be established by the developer in conference with the County Administrator acting on the advice of appropriate officials, authorities, departments, and/or consultants having expertise on the subject.
 - (a) Tests and/or other methods of soil evaluation deemed necessary by the Virginia Department of Health wherever required shall be the responsibility of the developer.
 - (b) Utilities shall include but not be limited to electric, gas, water, sewer, storm drainage, telephones and/or cable television.
- (19) Adequate fire hydrants, with assurance of adequate water supply and distribution systems will be provided by the developer. Fire hydrants will be provided in the total area to be planned and in such locations as are approved by the Planning Commission or its designated Administrator.
- (20) All landscaping shall be designed in compliance with **Article VIII, Community Design Standards**, of this Ordinance.

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- D. **Performance Bond.** After a Major Site Plan has been approved, and before any construction or land disturbance can occur, the developer shall furnish to the County an irrevocable letter of credit, cash escrow, or bonds (collectively referred to as “performance bond”) from a certified Virginia Lending Institution by corporate surety in a form and amount sufficient to guarantee the completion of all required improvements.
- (1) The cost of required improvements shall be determined by a bona fide estimate of construction cost prepared by a duly licensed engineer and such estimate shall be provided at the expense of the developer.
 - (2) The amount of the performance bond or other guarantee shall be 110% of the estimated construction cost.
 - (3) In the event the Administrator has rejected any such agreement or bond, the owners or developer shall have the right to have such determination made by the Board of Supervisors.
 - (4) If such performance bond contains an expiration date and all improvements have not been completed, then 30 days prior to expiration provisions shall be made for extension of the bond.
 - (5) The performance bond or other appropriate security shall not be released until construction has been inspected and accepted by the Zoning Administrator and by the Virginia Department of Transportation, where appropriate, except for an allowable periodic partial release in accordance with the Code of Virginia § 15.2-2245.
- E. **Supervision and Inspections.** It shall be the responsibility of the developer to provide adequate supervision and inspections on the site during the installation of all required improvements, and to have a responsible supervisor together with one (1) set of approved plans, profiles, and specifications at the site at all times when work is being performed.
- F. **Acceptance of Improvements.** The approval of the Site Plan or the installation of the improvements as required in this Ordinance shall in no case serve to bind the County to accept such improvements for maintenance, repair, or operation thereof. Such acceptance of each type of improvements shall be subject to the County and/or State regulations.

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Section 3-6-9 Review

- A. **Site Plan Review Process.** Unless otherwise provided in another Article of this Ordinance, every Site Plan required by this Article shall be submitted to the Administrator who shall take the following actions:
- (1) Review the Site Plan for completeness. If deemed incomplete or having insufficient information for review, the application will be refused and returned to the applicant with a written list of deficiencies.
 - (2) Review the Site Plans for conformity with applicable development regulations and approved Concept Plans. Site Plans will be provided to the Site Plan Review Committee¹¹ and all relevant County departments and reviewing agencies for written comment.
 - (3) The Administrator shall notify the applicant of the action taken with respect to the Site Plan, which may include approval or disapproval.
- B. **Administrative Review.**¹² Minor Site Plans required under **Section 3-6-3** are subject to administrative approval by the Administrator.
- (1) The Administrator is responsible for the review, processing, and the requesting of additional agency and consultant reports relative to a Site Plan which has been submitted.
 - (2) Developers are encouraged to discuss the proposals contained in the Site Plan as submitted with the Administrator prior to official request for approval of that plan.
- C. **Planning Commission Review.** Major Site Plans required under **Section 3-6-4** are subject to approval by the Planning Commission.
- (1) Once determined complete, the Administrator shall forward the Major Site Plan to the Planning Commission for their review.
 - (2) The Administrator shall notify the applicant of the action taken with respect to the Major Site Plan, which may include approval or disapproval.

¹¹ Editor's Note: This provision is the only mention of the existing Site Plan Review Committee. Nelson County should consider whether or not they want to continue using the Site Plan Review Committee in the future.

¹² Editor's Note: This section lays out provisions to allow for administrative approval of any minor site plan and approval of major site plans by the Planning Commission. This can be modified to be administrative approval of all site plans if desired.

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D. Time Period for Approval.

- (1) Pursuant to Code of Virginia, § 15.2-2259, Site Plans shall be approved or disapproved within 60 days after they have been officially submitted and accepted for review, if State agency review is required, within 35 days of receipt of approvals from all reviewing agencies. If disapproved, the reasons for disapproval shall be identified by reference to specific duly adopted Ordinances, regulations, or policies and shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plan.
- (2) Pursuant to Code of Virginia, § 15.2-2259 a Site Plan that has previously been disapproved but has been modified, corrected, and resubmitted shall be acted on within 45 days of resubmission.

Section 3-6-10 Amendment of Site Plans

A. **Amendments of Minor Site Plans.** All amendments of Minor Site Plans shall be approved by the Administrator.

B. **Amendments of Major Site Plans.**

- (1) If it becomes necessary for an approved Major Site Plan to be changed, the Administrator may, at the applicant's request, administratively approve a minor amendment to the Site Plan if the change or amendment does not:
 - (a) Alter a recorded plat;
 - (b) Conflict with specific requirements of this Ordinance or proffered conditions;
 - (c) Change the general character or content of an approved Concept Plan or use;
 - (d) Have an appreciable effect on adjoining or surrounding property;
 - (e) Result in any substantial change of external access points;
 - (f) Increase the approved number of dwelling units or other buildings or height of buildings.
 - (g) Decrease the minimum specified yard and open spaces; and
 - (h) Substantially change architectural or site design features.

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- (2) Amendments not in accordance with a) through (h) of this Section shall be considered as a new Site Plan and shall be subject to the provisions of Division 3-6 of this Article.
- C. If the Administrator fails to act on a request for an amendment to a Site Plan within 45 calendar days, it shall be considered approved.
- D. Upon final approval of the revised Site Plan by the Administrator, the Administrator shall transmit an approved set of plans to the authorized project Administrator and retain one copy of any correspondence and plans for the County records.

Section 3-6-11 Compliance with Approved Site Plan Required

- A. It shall be unlawful for any person to construct, erect, or substantially alter any building or structure, or develop, change, or improve land for which a Site Plan is required, except in accordance with an approved Site Plan. Deviation from an approved Site Plan without the written approval of the Administrator shall void the Site Plan and require submission of a new Site Plan for approval.
- B. No permit shall be issued for any structure in any area covered by the Site Plan that is required under the provisions of this Article except in conformity with such Site Plan which has been duly approved.
- C. The Building Official shall be responsible for enforcing the requirements as set forth in the final approved Site Plan, before issuance of a certificate of occupancy, and shall give written notice to the Administrator that the Site Plan has been completed before issuing the certificate of occupancy.
- D. Upon the satisfactory completion of the installation of all required improvements shown on the approved Site Plan, the developer shall submit completed As-Built Plans to the Utilities and Environmental Codes Departments, in accordance with all applicable regulations of the Nelson County Code. Such shall be submitted at least one week prior to the anticipated occupancy of any building for the review and approval by the County agent for conformity with the approved site plan and the ordinances and regulations of the County and State agencies.
- E. Where structures are completed and ready for occupancy prior to the completion of all improvements required by the Site Plan, the owner may provide bond with surety adequate to guarantee the completion of Site Plan, as outlined in **Section 3-6-8**, above, and upon providing of such bond with surety as agreed upon by the Zoning Administrator, a permit may be issued for the occupancy of those structures already completed.

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Section 3-6-12 Period of Validity

- A. In accordance with Code of Virginia, § 15.2-2261 approval of a Site Plan submitted under the provisions of this Article shall expire five (5) years after the date of such approval unless building permits have been obtained for construction in accordance therewith.
- B. The application for and approval of minor modifications to an approved Site Plan shall not extend the period of validity of such plan and the original approval date shall remain the controlling date for purposes of determining validity.

Division 3-7 Zoning Permits

Section 3-7-1 Applicability

- A. No building or other structure shall be erected, moved, expanded, structurally altered, nor shall any building, structure, or land be established or changed in use without the owner or owners first obtaining a permit issued by the Administrator verifying that the building, structure, or use complies with the requirements of this Ordinance.
- B. No such permit shall be issued for a building, structure, or use unless it complies with the provisions of this Ordinance, or a Special Use Permit authorizing a use, variance, or written order from an appeal has been approved as provided by this Ordinance.

Section 3-7-2 Standards and Procedures

- A. Zoning Permit applications shall be reviewed using the procedures and minimum submission requirements established by the Administrator.
- B. The following shall be submitted to the Administrator for review:
 - (1) Site Plans shall be submitted as required in **Division 3-6, Site Plans**, of this Article.
 - (2) When Site Plans are not required, each Zoning Permit application shall be accompanied by a scale drawing or plan on a plat, or aerial GIS map when the property has not ever been surveyed, with dimensions, that shows:
 - (a) Lot lines;
 - (b) Location of buildings on the lot including setback measurements from each property boundary;
 - (c) Suitable notations indicating the proposed use of all land and buildings;

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- (d) Points of connection to public water and sewer and/or location of wells and septic systems and reserve drainfields;
 - (e) The proposed nature and manner of grading the site, including proposed treatment of slopes more than ten percent (10%) to prevent soil erosion and excessive runoff. In cases where an erosion and sedimentation control permit is required, the necessary plans and data shall be submitted as required in the Nelson County Erosion and Settlement Control Ordinance.
 - (f) Delineation of all floodplain limits;
 - (g) Any additional information requested by the Administrator.
- C. If the proposed building or use is in conformity with the provisions of this Ordinance, a permit shall be issued to the applicant by the Administrator.
- D. The Administrator shall act on any application received within 30 days after receiving the application. Failure on the part of the Administrator to act on the application within the established time limit shall be deemed to constitute approval of the application.
- E. A Zoning Permit, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary permits or development approvals as otherwise required.
- F. Where an individual septic system is to be used, the owner/Administrator shall submit either a bare application (an application for an individual lot submitted to the Virginia Department of Health for which a representative of this Department will do the required site evaluation to issue a sewage disposal system construction permit) or an AOSE (Authorized Onsite Soil Evaluator) application for each lot to the Virginia Department of Health. The soils work for either application shall show the primary drainfield area together with a reserve area equal to:
 - (1) For Class 1 and 2 soils, a minimum of fifty (50) percent of the capacity of the primary area; and
 - (2) For all other soil classes, a minimum of one hundred (100) percent capacity of the primary area.

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- (3) Where an alternative waste treatment system is to be used, the developer/property owner shall provide to the Building Official and Planning Director documented proof that the soils and parent materials are satisfactory to the Virginia Department of Health, and shall obtain approval of the alternative waste treatment system from the appropriate state agencies, including the Virginia Department of Environmental Quality and the Virginia Department of Health. Such documented proof and approval shall be filed at the time a building permit and zoning permit are applied for.
- (4) In all zoning districts, the reserve area for an alternative waste treatment system shall be sufficient to accommodate a minimum of one hundred (100) percent of the capacity of the primary area.

Section 3-7-3 Period of Validity

- A. An approved Zoning Permit shall become null and void if the use described in the Zoning Permit has not begun within one (1) year from the date of issuance unless the applicant requests renewal.
 - (1) If the work described in any Zoning Permit has not been substantially completed within two (2) years of the date of issuance, the permit shall expire and be revoked by the Administrator.
- B. Prior to expiration of an approved Zoning Permit, if the applicant requests extension, the Administrator may grant extensions for additional periods as determined to be reasonable, taking into consideration, although not exclusively, the size and nature of the development, due diligence of the applicant to proceed, and other applicable laws in effect at the time of the extension request.

Division 3-8 Temporary Use Permit

Section 3-8-1 Applicability

Any temporary use or structure as identified in **Article 6, Use Matrix**, of this Ordinance, will not be conducted or erected without a temporary use permit issued by the Zoning Administrator or structure permit issued by the Building Official in accordance with the requirements in this Division. Standards and Procedures

Section 3-8-2 Standards and Procedures

- A. An application for a Temporary Use Permit shall be submitted to the Administrator for review.

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- B. The Administrator shall evaluate Temporary Use Permit applications to determine if any substantial impacts to public health, safety, or welfare may occur due to the proposed use's operational details, which may include, but not be limited to, location, size, number of attendees, frequency of events, or hours of conduct.
- C. No Temporary Use Permit will be issued unless it is demonstrated by the applicant that the following requirements are met:
 - (1) Adjacent uses shall be suitably protected from any adverse effects of the use;
 - (2) The use shall not create hazardous conditions for vehicle or pedestrian traffic, or result in traffic in excess of the capacity of the streets serving the use;
 - (3) Adequate refuse management, security, emergency services, and similar necessary facilities and services shall be available for the temporary use or structure, and all necessary sanitary facilities will be approved by the County Health Department;
 - (4) The site is suitable for the proposed use, considering flood hazard, drainage, soils, and other conditions which may constitute a danger to life, health, or property;
 - (5) The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover, and vegetation; and
 - (6) The use shall not have a substantial adverse impact on public safety.
- D. The Zoning Administrator may impose reasonable conditions on the proposed use to ensure compliance with these standards, or other applicable provisions of the law.

Section 3-8-3 Period of Validity

- A. **Duration.** A Temporary Use Permit will be valid for 12 months or less, as determined by the Zoning Administrator.
- B. **Extension.** A request for an extension of such permit shall be made to the Zoning Administrator at least 30 days before the expiration of the original time limit, who will make an administrative decision for approval or denial.
 - (1) An extension shall be applied for annually if the temporary use is to continue.
- C. **Termination.** At the end of such permitted time period, including extensions as approved by the Zoning Administrator, the use shall be discontinued and all temporary structures and signs shall be removed within 48 hours.

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D. Revocations.

- (1) Any Temporary Use Permit previously issued pursuant to this Ordinance may be revoked by the Zoning Administrator if it is determined there has not been compliance with the conditions of the Permit.
- (2) Such revocation will be delivered to the owner or operator of the use, by hand-delivery or certified mail, setting forth the following:
 - (a) Reason(s) for the revocation;
 - (b) Date and time upon which the revocation is effective; and
 - (c) The appeals procedure, in accordance with **Division 3-10 of this Article**.

Division 3-9 Zoning Determinations

Section 3-9-1 Applicability

In administering, interpreting, and enforcing this Ordinance, the Zoning Administrator shall provide a written response to persons who have filed a specific request in writing for a decision or determination on zoning matters within the scope of the Administrator's authority.

Section 3-9-2 Standards and Procedures

- A. Persons requesting a determination by the Administrator shall do so in writing on forms provided by the County. The Administrator shall sign and date the form upon receipt.
- B. The Administrator's response shall be provided within 90 days of the date of the request unless the requestor agrees to a longer period of time.
- C. When the requestor is not the owner or the owner's Administrator of the property subject to the request, the Administrator in accordance with the Code of Virginia § 15.2-2204 (H), shall provide written notice within ten (10) days of receipt of the request to the owner of the property at the owner's last known address as shown on the County's real estate assessment records.
- D. The Administrator's written decision or determination shall include a statement informing the recipient of the right to appeal the decision as provided in **Division 3-10, Appeals**, of this Article.

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Division 3-10 Appeals

Section 3-10-1 Appeals of Zoning Administrator Determinations and Decisions

- A. Pursuant to the Code of Virginia § 15.2-2311, an appeal to the BZA may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this Ordinance.
- B. Such appeal shall be taken within 30 days after the decision appealed from by filing with the Administrator, and with the BZA, a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the BZA all the papers constituting the record upon which the action appealed from was taken.
- C. A decision or interpretation of the Administrator shall be presumed correct and may not be reversed or modified unless there is evidence in the record that the decision is not correct, based on the relevant procedures and review standards of this Ordinance.

Section 3-10-2 Appeals to BZA Procedure

- A. Pursuant to the Code of Virginia § 15.2-2312, procedures for submitting an appeal or application shall be as follows:
 - (1) **Mailing Procedure.** Appeals and applications shall be mailed from the applicant seeking appeal to the BZA in care of the Administrator, and a copy of the appeal or application shall be mailed to the secretary of the Planning Commission. A third copy should be mailed to the individual, official, department, or agency concerned, if any.
 - (2) **Hearing.** The BZA shall fix a reasonable time for the hearing of an appeal, give public notice as outlined in **Division 3-10** of this Article as well as due notice to the parties in interest, and decide the same within 90 days of the filing of the appeal.
 - (3) **Decisions.** In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. In any hearing, if a BZA's attempt to reach a decision, results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

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Section 3-10-3 Appeals of BZA, PC, or BOS

- A. Pursuant to the Code of Virginia §§ 15.2-2314, and 15.2-2285, any person jointly or severally aggrieved by any decision of the BZA, Planning Commission, or Board of Supervisors or any taxpayer or any officer, department, board, or bureau of the County may appeal the decision to the circuit court of Nelson County.
- B. An application specifying the grounds on which the applicant is aggrieved shall be submitted 30 days after the filing of the decision in the office of the BZA.

Section 3-10-4 Construction in Violation of Ordinance without Appeal to BZA

- A. Pursuant to the Code of Virginia § 15.2-2313, construction of a building with a valid building permit deemed in violation of this Ordinance may be prevented, restrained, corrected, or abated by suit filed within 15 days after the start of construction by a person who had no actual notice of the issuance of the permit.
- B. The court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Administrator to the BZA.

Section 3-10-5 Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Administrator certifies to the BZA that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the BZA or by a court of record, on application and on notice to the Administrator and for good cause shown.

Division 3-11 Public Hearings and Notifications¹³

Section 3-11-1 Public Hearing Required

- A. In accordance with the Code of Virginia § 15.2-2204, the Planning Commission shall not recommend, nor shall the Board of Supervisors adopt or approve any plan, ordinance, amendment, or Special Use Permit, nor shall the BZA approve any variance, until it has held a duly advertised public hearing. Advertising and notice procedures shall be conducted according to the procedures under the Code of Virginia § 15.2-2204, as outlined in this Division.

¹³ Editor's Note: This section is new and includes language from the Code of Virginia § 15.2-2204 related to required public hearings and their notices.

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- B. The Planning Commission and Board of Supervisors may hold a joint public hearing after public notice as set forth herein, and if such joint hearing is held, public notice as set forth below need be given only by the Board of Supervisors.
- C. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice pursuant to the Code of Virginia § 15.2-2204.

Section 3-11-2 Advertisement and Mailings

- A. In accordance with Code of Virginia § 15.2-2204, the notice for each proposal shall provide:
 - (1) Where copies of the proposal may be examined; and
 - (2) The time and place of any hearing at which persons affected may appear and present their views.
- B. Notice of public hearings shall also be published twice in some newspaper published or having general circulation in the County.
 - (1) The first notice appearing no more than 28 days before and the second notice appearing no less than seven (7) days before the date of the meeting referenced in the notice.
- C. Property owner notification shall be sent by the Administrator a minimum of five (5) days prior to any public hearing, except where a longer timing is required.
 - (1) Notifications shall be mailed to:
 - (a) The owner, owners, or their Administrator of the subject property;
 - (b) Persons owning any adjacent property, including property across any road, railroad right-of-way or body of water;
 - (c) A locality's chief administrative officer or their designee when the subject property is located within 0.5 mile of the boundary of the adjoining locality at least ten (10) days prior to the hearing;
 - (d) The commander of the applicable military operation when the subject property is located within 3,000 feet of the boundary of a military base, installation or airport, excluding armories operation by the Virginia National Guard, at least 30 days prior to the hearing;

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- (e) The owner of a public use airport when the subject property is located within 3,000 feet of such airport at least 30 days prior to the hearing;
 - (f) For rezonings, the incorporated property owners' association within a planned development where the subject property is located within the planned development and the association's members also own property in the planned development that is located within 2,000 feet of any portion of the subject property; and
 - (g) In lieu of each individual unit owner, the unit owners' association or proprietary lessee's association when the property adjacent to the subject property is a condominium or cooperative, respectively.
- D. The following exceptions shall apply to property owner notification requirements, as outlined in this Section:
 - (1) When a proposed amendment to the Zoning Ordinance involves a tract of land not less than 500 acres owned by the Commonwealth of Virginia 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.
 - (2) For Zoning Map amendments impacting more than 25 parcels or Ordinance amendments that decrease residential density:
 - (a) Adjacent property owner notification is not required.
 - (b) Owner notification is not required for lots less than 11,500 square feet and shown on approved and recorded subdivision plat.
- E. Notice, as required above, shall be sent by registered or certified mail to the last known address of such property owner(s) as shown on the current real estate tax assessment records. Notice may be sent by first class mail; however, a representative of the County shall sign an affidavit that such mailings have been made and file such affidavit with the papers in the case.
- F. The cost of all notice requirements shall be paid by the developer/applicant in addition to any other fees involved in the application. The County shall bill the applicant for such costs.

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Section 3-11-3 Posting Notice on Property¹⁴

Additional notice of all public hearings involving rezonings and Special Use Permits shall be provided by means of posting a sign or signs, provided by the County, on the subject property which indicates that zoning action is pending.

- (1) The sign shall be posted on the subject property at least fifteen (15) days prior to the public hearing on the proposed SUP, rezoning, or variance.
- (2) The sign shall specify the date, time, and location of the public hearing.
- (3) The sign shall be placed so as to be clearly visible from the frontage road of the subject property.
- (4) The holding of a public hearing or the validity of action on an application will not be affected by the unauthorized removal of a notice which has been posted in accordance with this section.
- (5) It will be unlawful for any person, except the Administrator, to remove or tamper with any sign furnished during the period it is required to be maintained under this Section.

Section 3-11-4 Waiver of Notice

Actual notice of, or active participation in, a public meeting for which written notice is required shall waive the right of that party to challenge the validity of the proceedings based on failure of notice.

¹⁴ Editor's Note: This new provision would require a sign to be posted at any location where a public hearing will be conducted for a potential rezoning or SUP. This will hopefully increase clarity and transparency for the community.