

ATTACHMENT C

Nelson County, Virginia, Zoning & Subdivision Ordinance
Draft Article 2 – Administration
February 26, 2025

Article-2 Administration

Division 2-1 Zoning Administrator and Subdivision Agent

Section 2-1-1 Appointment, Powers, and Duties¹

- A. This Ordinance and the Zoning Map shall be administered, interpreted, and enforced by the Zoning Administrator (Administrator), who shall be appointed by the Board of Supervisors. The Administrator shall exercise their authority at the pleasure of the Board of Supervisors and may designate someone to act in their stead.
- B. The Administrator shall have such duties as are conferred by this Ordinance and the Code of Virginia § 15.2-2286(4), including:
 - (1) Enforce and administer this Ordinance;
 - (2) Interpret and determine zoning district boundaries and provisions of this Ordinance;
 - (3) Review and approve all related planning and zoning permits and applications as required per **Article 3, Permits and Applications**;
 - (4) Accept, review, certify, and forward all plats for conformance with this Ordinance;
 - (5) Establish any other procedures not expressly listed in this Ordinance to help facilitate the administration and enforcement of the Ordinance;
 - (6) Exercise such additional powers and perform such additional duties as may be set forth in this Ordinance, or as requested by the County Administrator or Board of Supervisors;
 - (7) Maintain records as required by this Ordinance, the Board of Supervisors, or any other chapter of the County Code; and
 - (8) Submit an annual report no later than March 1 of each year to the Commonwealth of Virginia’s Department of Housing and Community Development containing the total fee revenue collected by the locality over the preceding calendar year in connection with the processing, reviewing, and

¹ Editor’s Note: Much of the text in this section is new and outlines the specific duties of the Planning Director. Provisions from Section 3-1 of the Subdivision Ordinance have been incorporated here.

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permitting of applications for residential land development and construction activities, pursuant to Code of Virginia § 15.2-2209.3.

- C. The Agent shall act as both Zoning Administrator and Subdivision Agent or may designate any qualified individual as such.
- D. The Agent may hold another office in the County.
- E. The Agent, or their designee, shall act as staff to the Planning Commission.

Division 2-2 Planning Commission

Section 2-2-1 Appointment, Terms, and Membership²

- A. In order to promote the orderly development of the County, a County Planning Commission shall be created and organized pursuant to the Code of Virginia, §§ 15.2-2203 and 15.2-2210.
- B. The Planning Commission shall consist of six (6) members, five (5) voting members consisting of one (1) member from each election district, appointed by the Board of Supervisors, and one (1) non-voting Board of Supervisors representative, elected by the Board of Supervisors to sit on the Planning Commission meetings and act as a liaison between the two bodies.³
- C. Each member shall be appointed for a four-year (4) term and members may be re-appointed without limitation.
- D. All members of the Planning Commission on the effective date of this Ordinance may continue as members until completion of their current terms, in accordance with the Code of Virginia § 15.2-2203.
- E. Members appointed to fill a vacancy shall serve the unexpired term of the member being replaced.
- F. The Board of Supervisors may request members to serve beyond the expiration of their term until such a time a successor can be appointed.

² Editor's Note: This and the following section contain the provisions from Chapter 9, Article II, of the County Code. Recommend that the provisions governing the creation and procedures of the Planning Commission be repealed from Chapter 9 and adopted in this Ordinance. This repeal will need to take place during adoption to avoid conflicting statutes.

³ Editor's Note: This is a recommended change from the current organization of the Planning Commission. We are recommending that the Board of Supervisors representative on the Planning Commission be a non-voting member.

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Section 2-2-2 Powers and Duties

- A. The Planning Commission shall perform the duties as provided in this Ordinance and pursuant to the Code of Virginia, §§ 15.2-2221, 15.2-2230 and 15.2-2285.
- B. In addition to the duties detailed in Section 2-2-2(A), the Planning Commission shall also have the following duties:
 - (1) To review for approval or denial:⁴
 - (a) All major site plans; and
 - (b) Any subdivision of 51 lots or greater.

Section 2-2-3 Meetings and Procedures

The Planning Commission shall conduct meetings and public hearings pursuant to the Code of Virginia, §§ 15.2-2214 through 15.2-2217.

Section 2-2-4 Expenditures; Gifts and Donations.

The Planning Commission may expend sums appropriated to it for its purposes and activities pursuant to the Code of Virginia § 15.2-2222, et seq.

Division 2-3 Board of Zoning Appeals

Section 2-3-1 Appointment, Terms, and Membership

- A. Pursuant to the Code of Virginia, § 15.2-2308, et seq., a Board of Zoning Appeals (BZA) shall be created and organized as follows:
 - (1) A BZA consisting of five (5) members and one alternate, who are residents of Nelson County, shall be appointed by the circuit court.
 - (2) The term of office shall be for five (5) years, except that of the first five (5) members appointed, one shall serve for five (5) years, one for four (4) years, one for three (3) years, one for two (2) years, and one for one (1) year. One of the five (5) appointed members shall be an active member of the Planning Commission.
 - (3) The secretary of the BZA shall notify the court at least 30 days in advance of the expiration or a term of office, or promptly if a vacancy occurs. A member whose term expires shall continue to serve until the successor is appointed and qualifies.

⁴ Editor's Note: This section includes the minimum powers and duties allowed to the Planning Commission per the Code of Virginia and the two additional duties listed under this subsection. Additional powers or duties can be included here if desired.

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- (a) Appointments for vacancies occurring by means other than expiration of term shall be appointed for the unexpired term.
 - (4) Any BZA member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the court which appointed them, after a hearing held after at least 15 days' notice.
 - (5) Members of the BZA may receive such compensation or reimbursement as authorized by the Board of Supervisors. Within the limits of funds appropriated by the Board of Supervisors, the BZA may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
Powers and Duties⁵
- B. Pursuant to the Code of Virginia § 15.2-2309, the BZA shall have the following powers and duties after required notice and hearing as provided in the Code of Virginia § 15.2-2204:
- (1) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Ordinance as outlined in **Article 3, Division 10**.
 - (2) To authorize upon appeal or original application a variance, as defined in the Code of Virginia § 15.2-2201 from the terms of this Ordinance. Standards and procedures for determining variances are outlined in **Article 3, Division 5** of this Ordinance.
 - (3) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary, in accordance with the Code of Virginia § 15.2-2309.
 - (4) The provisions of this section shall not be construed as granting the BZA the power to rezone property, change the locations of district boundaries as established by this Ordinance, or to base decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

Section 2-3-2 Meetings and Procedures

- A. The BZA shall adopt such rules and regulations as it may consider necessary.

⁵ Editor's Note: This section includes text from section 14-2 of the existing Ordinance that has been streamlined and condensed. The legislative authority to grant SUPs has been removed from the BZA.

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- B. Meetings of the BZA shall be held at the call of its Chair or at such times as a quorum of the BZA may determine.
- C. A quorum shall be at least three (3) members. A favorable vote of three (3) members of the BZA shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter on which the BZA is required to pass.
- D. The BZA shall choose annually its own Chair and Vice-Chair. The Vice-Chair shall act in the absence of the.
- E. The Chair, or in their absence, the acting Chair, may administer oaths and compel the attendance of witnesses.
- F. The BZA shall appoint a secretary whose duty it shall be to keep the minutes and other records of the actions and deliberations of the BZA and perform such other duties as the BZA shall direct. The secretary may be a salaried County employee and shall perform the duties of secretary of the BZA in addition to their other regular duties.
- G. The BZA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the BZA and shall be public record.
- H. All meetings of the BZA shall be open to the public.
- I. County staff who are not part of the County’s legal counsel, applicant, landowner, or landowner’s agent/attorney may have communications with a member of the BZA prior to a hearing but may not discuss the facts or law relative to a particular case. However, all communications shall comply with the requirements of the Code of Virginia § 15.2-2308.1.

Division 2-4 Enforcement

Section 2-4-1 Authority

- A. As provided in **Article 1** of this Ordinance, conformity with the Ordinance is required. Failure to comply with the requirements of the Ordinance constitutes a violation thereof and is declared to be unlawful.
- B. As authorized by the Code of Virginia § 15.2-2286(A)(4) the Agent or designee shall be responsible for enforcing the provisions of this Ordinance.

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- C. Any person who knowingly makes any false statements, representations or certifications in any record, report, or other document, either filed or requested pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Agent under this Ordinance in monitoring discharges, shall be guilty or liable of this Article.

Section 2-4-2 Complaints and Inspection

- A. Any person who alleges that violation of the Ordinance has occurred may file a complaint with the Agent or designee. Such complaint shall stipulate the cause and basis thereof and the location of the alleged violation. The Agent or designee shall properly record the complaint, investigate the facts thereof, and take action thereon as provided by the Ordinance.
- B. The Agent may enter upon or inspect any land or structure to ensure compliance with the provisions of this Ordinance, after requesting and receiving approval of the landowner to enter upon land for these purposes. If consent is not given by the landowner, the Agent may enter upon land with an inspection warrant in accordance with the Code of Virginia § 15-2.2286(A)16.

Section 2-4-3 Notice of Violation

- A. Upon completion of investigation and becoming aware of any violation of the provisions of this Ordinance, the Agent shall issue written notice of such violation to the person committing or permitting the violations.
- B. Notice of violation shall be mailed by registered or certified mail or hand delivered.
- C. The notice of violation shall state the violation, remedy, and right to appeal, pursuant to the Code of Virginia § 15.2-2311.
- D. Appeals of notice of violation shall be heard by the Board of Zoning Appeals in accordance with the procedures set forth in **Article 3, Division 10**, of this Ordinance.

Section 2-4-4 Remedies and Penalties for Violation⁶

- A. Upon becoming aware of any violation and determining validity of any of the provisions of this Ordinance, the Agent may institute appropriate action or proceedings, as permitted by law, including injunction, abatement to restrain, correction, or abatement.

⁶ Editor's Note: This section includes the provisions of section 15-2 of the existing ordinance that have been modified to allow for the issuance of both criminal and civil penalties to violators of this Ordinance in accordance with § 15.2-2209 of the Code of Virginia.

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- B. The remedies provided in the penalties sections below are cumulative and not exclusive except to the extent expressly provided therein.
- (1) **Criminal Penalties.** Any violations of the requirements of this Ordinance that result in a criminal penalty pursuant to the Code of Virginia § 15.2-2286(A)(5) shall be treated as provided by the Code of Virginia § 15.2-2286(A)(5).
 - (2) **Civil Penalties.**⁷ Any violation other than as provided in **Section 2-4-4 (B)(1)** for criminal penalties, shall be subject to the following civil penalties, as provided in the Code of Virginia § 15.2-2209 and subject to the following:
 - (a) **Procedure.** Proceedings seeking civil penalties for violations of this Ordinance shall commence either by filing a civil summons in the general district court or by the Agent issuing a ticket.
 - (b) **Civil summons or ticket.** A civil summons or ticket shall contain the name and address of the person charged, the violation, and methods of resolution.
 - (c) **Failure to Enter Waiver.** If a person accused of a violation does not elect to waive trial and admit liability, the case will be tried in general district court in the same manner and with the same appeal rights as allowed by law. The County shall prove the person's liability based on a preponderance of the evidence. A finding of liability will not count as a criminal conviction.
 - (d) **Fines.**
 - i. **Amount of Civil Penalty.** A civil violation shall be subject to a civil penalty pursuant to the Code of Virginia § 15.2-2209.
 - ii. **Daily Offense.** Each day during which a violation exists shall constitute a separate violation. However, in no event shall a violation arising from the same set of operative facts be charged more frequently than once in any ten-day period.
 - iii. **Maximum Aggregate Penalty.** The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed the limit pursuant to the Code of Virginia § 15.2-2209. If the violations exceed the limit, the violation may be prosecuted as a criminal misdemeanor as outlined above.

⁷ Editor's Note: Civil penalties have been added to the Ordinance as a less punitive form of violation enforcement. A schedule of penalties will need to be created by the County, based on the type of violation.

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Division 2-5 Fees⁸

Section 2-5-1 Fees and Charges

- A. The Board of Supervisors shall establish, by ordinance, a schedule of fees, charges and expenses, and collection procedures for Zoning Permits, Special Use Permits, Variances, appeals, amendments, site plan reviews, and any other matters pertaining to this Ordinance.
- B. The schedule of fees shall be available for inspection in the office of the Agent and may be altered or amended by the Board of Supervisors by ordinance amendment, pursuant to the Code of Virginia § 15.2-107.
- C. In situations where the Administrator anticipates expenses for professional services related to review of an application that will exceed the amount recouped by the imposition of standard fees, the County shall require the applicant to pay the cost of the professional review service.⁹
 - (1) Examples of projects for which a deposit may be warranted include (but are not limited to) rezoning requests, planned development districts, and Special Use Permits that require professional review.
 - (2) The payment shall solely be applied to payment of professional services by engineers, attorneys, surveyors, architects, landscape architects, etc., that are specifically engaged by the County to consult directly on the applicant's proposed project.
 - (3) Payment is an express condition of the County's determination upon the application. Payment does not guarantee approval of the application. Nor does payment create a client relationship between the applicant and the professional services provider.

⁸ Editor's Note: This section includes all relevant fees from the existing ordinance that have been removed and are recommended to be put into a county wide fee schedule adopted by the Board of Supervisors.

⁹ Editor's Note: This provision has been included as a recommended inclusion to the Ordinance to allow the County to charge applicants for any professional services review of applications that the County may not have the staff to complete.