

## Article XVIII. Administration and Enforcement

### Sec. 70- 183 Administrator

- (a.) Appointment A zoning administrator shall be appointed by the town council to administer and enforce this chapter, and shall serve at the pleasure of the governing body for such compensation as shall be fixed by resolution of the town council. The zoning administrator may also hold another office in the town.
- (b.) Powers and Duties The zoning administrator is authorized and empowered on behalf of and in the name of the town council to administer and enforce literally the provisions of this chapter and amendments thereto. In addition to responsibilities specifically prescribed or reasonably implied elsewhere in this chapter, the zoning administrator or his designee shall have the following powers and duties:
1. Issue Zoning Permits The zoning administrator shall, upon demonstration by the applicant that a proposed use or structure complies with all applicable requirements of this chapter, issue zoning permits.
  2. Issue Sign Permits The zoning administrator shall issue a sign permit for all signs requiring such a permit, in accordance with the provisions of Sec. 70-152 of this chapter.
  3. Issue Temporary Use Permits The zoning administrator shall issue temporary use permits, in accordance with the provisions of Sec. 70-136 of this chapter.
  4. Issue Home Occupation Permits The zoning administrator shall issue home occupation permits, in accordance with the provisions of Sec. 70-137 of this chapter.
  5. Issue Zoning Certificates The zoning administrator shall issue a zoning certificate upon completion of work for which a zoning permit was issued, provided that the work is in conformity with all requirements of this chapter.
  6. Interpretation and Maintenance of Zoning Ordinances The zoning administrator shall provide written interpretations of these chapter regulations when there is uncertainty as to the applicability of ordinance provisions or requirements. He shall also maintain a true and accurate copy of this chapter, including all amendments and interpretations.
  7. Interpretation and Maintenance of Official Zoning Map The zoning administrator shall interpret the official zoning map as it relates to specific properties within the town. He shall also maintain the official zoning map by indicating all rezonings, as provided in Sec. 70-13 of this chapter.
  8. Maintain Records The zoning administrator shall maintain permanent and current records required by this chapter, including but not limited to zoning permits, zoning certificates, and all official actions on administrative appeals and variances, conditional use permits, chapter amendments, rezonings, complaints of violations of any of the provisions of this chapter, and the subsequent action taken on each such complaint. All such records shall be open to public inspection.
  9. Transmit Applications The zoning administrator shall transmit all complete rezoning, conditional use, variance and other applications required by this chapter to the town council, planning commission, or board of zoning appeals as the case may be. The zoning administrator shall issue conditional use permits or variances only after a conditional use or variance has been approved by the board of zoning appeals or town council, whichever applies, in accordance with the regulations of this chapter.

10. Enforce Chapter The zoning administrator shall conduct inspections of structures and property to determine compliance with this chapter and shall take all necessary steps to remedy any condition found in violation hereof. In the case of violation, the administrator shall notify in writing any person responsible for violating any provision of this chapter or amendments thereto, or in violation of a plan approved thereunder, specifying the nature of the violation and ordering appropriate corrective action. If such notice of violation is not complied with before the expiration of the time period set forth in such notice, the zoning administrator shall order the discontinuance of such noncompliance, and may bring legal action to insure compliance with this chapter, including injunction, abatement or other appropriate action or remedy.
11. Register Nonconformities The zoning administrator shall be responsible for the identification and registration of all nonconforming lots, buildings, structures, uses and activities.
12. Confirmation of Fee Payment The zoning administrator shall confirm that any fees, as established herein, have been paid prior to taking any action for which such fees are required.
13. Other The zoning administrator shall carry out other duties and responsibilities as authorized by the town council in order to fulfill the purpose and intent of this chapter.

(c.) Granting of modifications

1. The Zoning Administrator is authorized to grant a modification from any provision contained in the New Market Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Zoning Administrator finds in writing that:
  - i. The strict application of the ordinance would produce undue hardship;
  - ii. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
  - iii. The authorization of the modification will not be of substantial detriment to adjacent property, and the character of the zoning district will not be changed by the granting of the modification.
2. Prior to the granting of the modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification and an opportunity to respond to the request within 21 days of the date of the notice. The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this subsection c. The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided by Sec. 70-197.

Sec. 70- 184 Zoning Permits

- (a.) Required No building or structure or parts thereof shall be constructed, assembled, moved, enlarged, structurally altered, or demolished, nor shall any land or structures be put to any use, until an application for a zoning permit, accompanied by the required fee,

has been received and approved by the zoning administrator. No such permit shall be issued except in conformity with the provisions of this chapter, or upon written order from the board of zoning appeals or town council in the form of a variance or conditional use permit as provided in this chapter. This section shall in no case be construed as requiring a zoning permit in the event of a change in ownership or tenancy only, without a change in use or intended use, provided that no alteration or additions are proposed for such building or structure.

- (b.) Review by Planning Commission The zoning administrator may request a review by the planning commission of a request for a zoning permit prior to the issuance of the zoning permit in order to determine if the contemplated use is in accordance with the district and/or overlay district for which the permit will apply.
- (c.) Application Applications for zoning permits shall be made in writing on forms provided by the zoning administrator. Where required by this chapter, applications shall be accompanied by a site plan, in accordance with the provisions of Article XVII of this chapter, unless such requirements are waived by the zoning administrator, pursuant to Sec. 70-172 of this chapter. All other applications shall be accompanied by three (3) copies of a scale drawing, which shall show the following information:
1. The actual dimensions and shape of the parcel of land on which the proposed or existing building is to be erected, constructed, assembled, moved, enlarged, altered, demolished or changed in its use.
  2. The nature of the existing use or proposed use of the building or land.
  3. The zoning district in which the lot or parcel of land is located, including the identification of floodplain or historic area overlay districts, where applicable.
  4. The exact size and location on the lot of all buildings, structures or uses existing, proposed extensions thereto, or buildings or structures to be constructed thereon, with respect to the property line of said parcel and to the right-of-way of any street or road adjoining said parcel of land.
  5. In the case of new construction, additions or alterations, the height of the building or structures.
  6. The location and arrangement of off-street parking.
  7. The number of dwelling units, if any, to be provided.
  8. All other information as may be required by the zoning administrator to determine conformance with and provide for the enforcement of this chapter.
- (d.) Issuance If the proposed building or use is in conformity with the provisions of this chapter, the zoning permit shall be issued to the applicant by the zoning administrator. If the proposed building or use is not in conformity with the provisions of this chapter, the zoning permit shall be refused by the zoning administrator, who shall state the reasons for denial upon the application. One copy of all such forms shall be returned to the applicant by the zoning administrator after he shall have marked such copy as either approved or disapproved and attested to the same by his signature on the copy. One copy of all such

forms shall be retained by the zoning administrator for his permanent records, and one copy shall be sent to the Shenandoah County building inspector. If no planning commission review has been requested by the zoning administrator, the zoning permit shall be issued or refused within thirty (30) days from the date of application, unless additional time is permitted by this chapter. If the planning commission review has been requested by the zoning administrator, the zoning permit shall be issued or refused within sixty (60) days from the date of referral of the completed application to the commission, unless additional time is permitted by this chapter. Such referral of an application to the planning commission shall be made promptly upon the receipt of the application by the zoning administrator.

- (e.) Expiration Every zoning permit shall expire and be void unless the activity authorized therein shall commence within one (1) year of the date of issue. If the work described therein has begun within such one (1) year period, such permit shall expire two (2) years from the date of issuance thereof. Expired zoning permits may be granted a one time, one (1) year extension by the zoning administrator. No further extensions will be allowed, and a new permit must be applied for before work shall commence or continue.

#### Sec. 70- 185 Permits Issued Prior to Adoption of Chapter

Nothing contained in this chapter shall require any change in the plans of construction of any building or structure for which a zoning permit was granted prior to the effective date of this chapter; however, such construction must commence within thirty days after this chapter becomes effective, and be completed within a period of one year after construction is initiated. A one time, six-month extension may be granted by the town council, upon recommendation by the planning commission. If construction is discontinued for a period of six months or more, further construction shall be in conformity with the provisions of this chapter for the district in which the construction is located.

#### Sec. 70- 186 Amendments to the Comprehensive Plan

A text and/or future land-use map amendment to the Comprehensive Plan may be initiated by the Town Council, the Planning Commission, or any resident of the Town. Persons requesting amendments to the Comprehensive Plan shall complete an application provided by the Zoning Administrator, and future land-use map amendment requests shall be filed concurrently with a conditional rezoning request in accordance with Sec. 70-188.1 of this article. All amendments to the Comprehensive Plan shall be processed in accordance with Sec. 15.2-2229 of the Code of Virginia.

#### Sec. 70- 187 General Procedure for Proposed Use Amendments to this Chapter

- (a.) If, in any district established under this chapter, a use listed in this chapter is not specifically permitted within that district and an application is made by a property owner or his agent to the zoning administrator for such use, the administrator shall refer the application to the planning commission. After notice is given as required by law, the planning commission and town council shall hold a joint public hearing, in accordance with the provisions of Sec. 70-188 of this Article. Within sixty (60) days of the date of referral to the planning commission, the commission shall recommend to the town council one of the following actions:
  1. Amend this chapter, making the use applied for a permitted use in that district;

2. Amend this chapter, making the use applied for a permitted use with a conditional use permit in that district;
  3. Amend this chapter by rezoning, thereby allowing the use; or
  4. Deny that use in that district.
- (b.) If after sixty (60) days no recommendation has been made, the governing body shall assume that the planning commission concurs with the applicant and supports amending this chapter. The town council shall thereafter take such action as it deems appropriate, in accordance with the provisions of Sec. 70-188 of this Article.

Sec. 70- 188 Amendments to Chapter

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the town council may amend, supplement, change, modify or repeal this chapter, including the district uses and regulations, the official zoning map, district boundaries, or classifications of property, in accordance with the Code of Virginia, Article 7, Chapter 22, Title 15.2, as amended, and as set forth herein:

- (a.) Any such amendment may be initiated by resolution of the town council, by motion of the planning commission, or by petition of any property owner addressed to the zoning administrator, who shall refer such petition to the planning commission. Such petition shall be in writing, on a form provided by the zoning administrator, and shall include such information as may be deemed necessary by the administrator for the proper consideration of the proposed amendment. Such petition shall be accompanied by the payment of fees and charges as established in this Article. In addition, and when any such petition is made by a property owner, there shall be attached to such petition the names and addresses of the owner or owners of the property of the proposed change, and of all abutting property and property immediately across the street or road from the property affected; provided, however, that the inaccuracy or inadequacy of any such list of owners shall not in any manner affect the validity of any proceeding had or taken by the town council with respect to the matter contained in such petition.
- (b.) All proposed amendments to this chapter shall be referred to the planning commission for recommendation and report prior to action thereon by the town council. The planning commission shall study proposals to determine:
1. The need and justification for the change.
  2. The effect of the change, if any, on the property, on surrounding properties, and on public services and facilities, and when pertaining to a change in the district classification of property, the appropriateness of the property for the proposed change as related to the guidelines set forth at the beginning of each district classification.
  3. The relationship of the proposed amendment to the purposes of the town's Comprehensive Plan and to the general planning program, with appropriate consideration as to whether the proposed change will further the proposals of this chapter and the general welfare of the entire community.

- (c.) The planning commission shall not recommend, or the town council adopt any amendment to this chapter until notice has been given and a public hearing has been held, in accordance with Sec. 15.431 of the Code of Virginia, as amended. The planning commission and town council shall hold at least one joint public hearing on such proposed amendment, after notice has been published once a week for two (2) successive weeks in a newspaper having a general circulation in the jurisdiction. Not less than six (6) days shall elapse between the first and second publication. Such notice shall specify the time, date and place of the hearing at which persons affected may appear and present their views. After enactment of any such amendment, further publication shall not be required. In the case of a proposed amendment to the zoning map, such public notice shall state the general usage and density range of such proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Comprehensive Plan. When a proposed amendment of this chapter involves a change in the zoning classification of twenty-five (25) or less parcels of land, then, in addition to advertising as required above, written notice shall be given at least five (5) days before the hearing to the owners, their agents, or the occupant of each parcel involved, and to the owners, their agents or the occupants of all abutting property and property immediately across the street or road from the property affected, whether such adjacent property is located in the town or lies in the county. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be re-mailed. Whenever the required notices are sent by an agency, department or division of the local governing body, such notices may be sent by first class mail; provided, however, that a designated representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Costs of any notice required under this Section shall be taxed to the applicant.
- (d.) The planning commission may make appropriate changes in the proposed amendment and, within sixty (60) days from the date that such proposed amendment is referred to the commission, unless a longer period shall have been established by mutual agreement between the town council and planning commission, the planning commission shall present its recommendations and appropriate explanatory materials to the governing body. Recommendations of the planning commission shall be advisory only, and shall not be binding on the town council. Failure of the planning commission to report sixty (60) days after the date of referral to the commission shall be deemed as approval of the change or amendment, and the town council may proceed to take such action as it deems appropriate, in accordance with the provisions of this Section.
- (e.) After public hearing and recommendation by the planning commission, the town council may make appropriate changes or corrections in the proposed amendment; provided that, in the case of a proposed amendment to the zoning map, no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as required by law. Ordinances amending this chapter or the official zoning map shall be enacted in the same manner as all other ordinances.
- (f.) Any petition for amendment may be withdrawn from consideration and fees refunded upon written request by the applicant at any time prior to the submission of any public hearing notice for advertisement. If the request for withdrawal is made after publication of the notice of hearing, or if the petition has been denied by the town council, substantially the same petition shall not be considered within twelve (12) months of the

withdrawal or denial. This provision shall not be held to impair the right of either the planning commission or town council to propose any amendment to this chapter on their own motion at any time.

Sec. 70- 188.1 Conditional Zoning

(a.) Purpose and Intent

Frequently, when competing and incompatible uses conflict traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptive zoning methods are needed to permit differing land uses and at the same time recognize the effects of change. It is the intent of this section to provide a more flexible and adaptive zoning method to cope with situations found in such zones by conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned, as allowed by sections pertaining to conditional zoning, Code of Virginia, 1950, as amended.

(b.) Voluntary Proffer of Conditions

Any owner of land who is making application for a zoning reclassification of their property may, as part of their rezoning application, voluntarily proffer in writing reasonable conditions prior to public hearing before the planning commission and town council. Such conditions shall be in addition to those regulations provided in this chapter for the particular zoning district sought in the application, provided that:

1. The rezoning itself must give rise for the need for the conditions;
2. Such conditions shall have a reasonable relation to the rezoning;
3. Such conditions may include the voluntary dedication of real property to the Town and the voluntary cash payments for or construction of substantial public improvements. However, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the Town's capital improvement program pursuant to Code of Virginia § 15.2-2239, as amended, provided, however, that nothing herein shall prevent the Town from accepting such proffered conditions subject to such conditions becoming incorporated into the Town's capital improvement program;
4. All conditions shall be in conformity with the Comprehensive Plan as defined in § 15.2-2223 of the Code of Virginia, as amended;
5. Such conditions shall not include the requirement to create a property owners' association under Code of Virginia § 15.2-508 et seq., as amended, which includes a condition that members of the association pay an assessment for the maintenance of public facilities owned by a public entity. Code of Virginia § 15.2-2298.

(c.) Force and Effect of Conditions

The governing body, when acting on an application for a zoning reclassification may adopt as part of the zoning map the proffered conditions in whole or in part, as set forth by the applicant. Once adopted by the governing body, such proffered conditions shall be binding on the use and development of the property and shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance and/or map. There shall be no amendment or variation of conditions created pursuant to the provisions of this section until after a public hearing before the planning commission and town council pursuant to the provisions of Section 15.1-431 of the Code of Virginia, 1950, as amended.

(d.) Enforcement

The zoning administrator shall keep records of all conditions attached to a rezoning, which shall be readily accessible to the public. The zoning map shall show by appropriate symbol the existence of conditions accepted for rezonings. In addition, the zoning administrator shall remain a conditional zoning index which shall list all parcels rezoned under conditional zoning and the conditions agreed upon. Failure to meet all conditions shall constitute cause to deny the issuance of a zoning permit or certificate. The zoning administrator shall administer and enforce the conditions attached to a rezoning using the following means:

1. The ordering in writing of the remedy of any noncompliance with such conditions.
2. The bringing of legal action to insure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding.
3. The requirement of a guarantee, satisfactory to the town council, in an amount sufficient for the construction of any improvements required by the conditions or a contract for the construction of such improvements. The applicant's guarantee shall be reduced or released by the zoning administrator upon the submission of satisfactory evidence of the completion of the improvements.

Sec. 70- 189 Schedule of Fees

The town council in accordance with the provisions of Sec. 15.2-2286 of the Code of Virginia, as amended, shall establish a schedule of fees, charges and expenses for appeals, amendments, advertising notices, applications for rezoning (except where initiated by the town), applications for conditional use permits, zoning permits, temporary use permits, sign permits and other matters pertaining to this chapter. The schedule of fees, charges and expenses shall be available in the office of the zoning administrator and may be altered or amended only by the town council. No action will be initiated on any action or appeal unless and until payment of fees, charges and expenses has been made in full. No portion of any fee payment shall be returned to any applicant unless notice has been received prior to any action taken which will result in cost associated with the application.

Sec. 70- 189.1 Payment of Delinquent Taxes

Prior to the initiation of an application for a conditional use permit, variance, rezoning or other land use permit, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the town which have been properly assessed against subject property have been paid.

Sec. 70- 190 Violations and Penalties

- (a.) All departments, officials and public employees of this jurisdiction which are vested with the duty and authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this chapter. Any such permit, if issued in conflict with the provisions of this chapter, shall be null and void.
- (b.) Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the cause and basis thereof, shall be filed with the zoning administrator, who shall record properly such complaint, investigate, and take action thereon as provided by this chapter.
- (c.) Any person, firm or corporation, whether as principle or agent, employed or otherwise, violating, causing or permitting the violation of any of the provisions of this chapter other than Sec. 70-152.2 shall be guilty of a misdemeanor and, upon conviction thereof, may be fined not less than ten dollars (\$10.00) or more than one thousand dollars (\$1,000.00). Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this chapter continues. In addition, any permits or certificates issued by the town to such person, firm or corporation may be revoked by the town.
- (d.) Any person, firm or corporation, whether as principle or agent, employed or otherwise, and whether owner or occupant, violating, causing or permitting the violation of Section 70-152.2 shall be punishable by a fine of up to \$2,000. Failure to abate the violation within ten days shall be punishable by a separate additional fine of up to \$2,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$2,500. In addition, any permits or certificates issued by the town to such person, firm or corporation may be revoked by the town.

Sec. 70- 191 Legal Remedies for Violations

Any violation or attempted violation of this chapter, or of any rule or regulation adopted hereunder, may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceeding.

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