

## **ARTICLE 10 ADMINISTRATION AND PROCEDURES**

### **10-1 Administration**

#### **10-1.1 Zoning Administrator.**

The provisions of this Ordinance shall be enforced by the designated agent of the County of Westmoreland, who shall be known as the Zoning Administrator. The zoning administrator shall have all necessary authority on behalf of the County Board of Supervisors to administer and enforce the Zoning Ordinance. His authority shall include:

1. Ordering in writing the remedying of any condition found in violation of this Ordinance.
2. Insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311 of the Code of Virginia and Article 11 of this Ordinance.
3. In specific cases, making findings of fact and, with concurrence of the County Attorney, conclusions of law regarding determinations of rights accruing under § 15.2-2307 of the Code of Virginia.
4. The Zoning Administrator shall respond within ninety days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.
5. In addition to the regulations and requirements herein contained concerning the administration of this Ordinance, the Zoning Administrator may establish reasonable additional administrative forms and procedures deemed necessary for the proper administration of this Ordinance.
6. Such other powers as may be granted in the Code of Virginia.

#### **10-1.2 Certified Copy.**

A certified copy of the Zoning Ordinance, as adopted and including any amendments, shall be filed in the office of the Zoning Administrator of Westmoreland County and in the office of the Clerk of the Circuit Court of Westmoreland County, Virginia.

#### **10-1.3 Processing Fees and Costs.**

- (1) The County intends that at least part of the cost of administering this Ordinance be borne by those responsible for development. Therefore, at the time of submission of an application for any permit, review, or processing as required by this Ordinance, applicants must pay a fee to Westmoreland County in accord with the fee schedule established by the Board of Supervisors which may be modified by the Board from time to time.

- (2) If the costs to the County for processing an application exceed the estimated average cost that the fee is based on, the County may require that the applicant pay an additional fee to cover those additional costs. Such additional fee shall be paid prior to final action on the application by the County. The County will calculate any additional fees in accord with its adopted fee schedule. Items that may be included in additional costs include all costs borne by the County in processing the application, such as staff time and costs for research, field work, meetings, as well as copying, printing, postage and delivery of materials. The County will notify the applicant of the costs no less than 21 days prior to final action.
- (3) In addition to the fees provided for in 10-1.3 (1), the applicant shall also pay the cost of required public notice for public hearings. Such costs must be paid to the County prior to the submission of the notice for publication. When the Board determines that a zoning request, a change in zoning district classification request, a special exception application or special use permit application should be re-advertised for any reason, not caused by the applicant, the cost of such re-advertisement shall be waived.

**10-1.4 Payment of Real Estate Taxes Prior to Processing Any Land Use Permit Application**

At the time of submission of an application for a special exception, special use permit, variance, rezoning, subdivision plat, site plan, land disturbing permits, home occupation permits or other land use permit, satisfactory evidence shall be provided to the County that any delinquent real estate taxes properly assessed against the subject property have been paid.

**10-2 Board of Zoning Appeals.**

**10-2.1 General Provisions (Purpose, Authority and Membership)**

- (1) A Board of Zoning Appeals shall be appointed in accordance with the provisions of § 15.2-2308 of the Code of Virginia, 1950, as amended. Powers, duties and appeal procedures shall conform to the provisions of § 15.2-2309, et seq, of the Code of Virginia, 1950, as amended.
- (2) The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance.
- (3) The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary to carry out its authorized business.
- (4) The Board shall consist of five (5) members and shall be appointed by the Circuit Court of Westmoreland County. Members shall be residents of Westmoreland County. The Board shall receive compensation for traveling expenses and may receive other such compensation as may be authorized by the Board of Supervisors. Appointments to fill vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

- (5) The term of office shall be for five (5) years. One of the five (5) appointed members may be an active member of the Planning Commission.
- (6) Any member of the Board may be removed, for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Circuit Court, after a hearing held after at least fifteen (15) days written notice.
- (7) Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- (8) The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.
- (9) The County Administrator shall appoint a staff member to serve as secretary to the Board of Zoning Appeals, without vote and shall prepare minutes of meetings, keep all records and conduct official correspondence of the Board. In the absence of the secretary at any meeting, the Board shall appoint some other person, who may or may not be a member of the Board, to prepare the minutes thereof.

#### **10-2.2 Rules and Regulations**

- (1) The meeting of the Board of Zoning Appeals shall be held at the call of its chairman or, in his absence, the acting chairman, or at such times as a quorum of the Board may determine.
- (2) The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- (3) The Board 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 Board and shall be a public record.
- (4) All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board 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 upon which the Board is required to pass.
- (5) For the conduct of any hearing and the taking of any action or transaction of official business, a quorum shall be required of not less than three (3) members of the Board.
- (6) In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

**10-2.3 Powers and Duties.**

The Board of Zoning Appeals shall have the following powers and duties:

- (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 or of any ordinance adopted pursuant thereto, in accord with Section 10-3.15 of this Ordinance, including decisions of the Zoning Administrator and Article 3 decisions by the Planning Commission. The decision on such appeals shall be based on the Board's judgment of whether the administrative decision was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision. In the case of interpreting the zoning map, the board shall interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board shall not have the power to change the locations of district boundaries as established by Ordinance.
- (2) To authorize upon appeal or original application in specific cases a variance as defined in § 15.2-2201 of the Code of Virginia, from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done and the requirements in Section 10-3.13 of this Ordinance.
- (3) No provision of this section shall be construed as granting any Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of any ordinances duly adopted by the Board of Supervisors.
- (4) When giving any required notice to owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- (5) Records. The Board 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 full records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.
- (6) Periodic Reports. The Board shall submit a report of its activities to the Board of Supervisors at least once each year.
- (7) Limitation. All provisions of this Ordinance relating to the Board shall be strictly construed. The Board, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this Ordinance and in strict compliance with all limitations contained therein.

- (8) Decisions Subject to Judicial Review. In accord with § 15.2-2314 of the Code of Virginia, as amended, all decisions and findings of the Board shall be final decisions, and shall be subject to judicial review in the following manner:
- A) Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the County, may present to the Circuit Court of Westmoreland County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.
  - B) Upon the presentation of such petition, the court shall allow a Writ of Certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Zoning Appeals and on due cause shown, grant a restraining order.
  - C) The Board of Zoning Appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
  - D) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
  - E) Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from. In the event the decision of the Board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the Writ of Certiorari.

### **10-3 Procedures for Application Review and Approval**

#### **10-3.1 Types of Permit Applications**

This Ordinance provides for the following types of permit applications for land use and development:

1. Plan of Development Process (Land Disturbance Permit)

2. Zoning Permit (including signs)
3. Building Permit
4. Occupancy Permit
5. Site Plan approval and Plan of Development approval, in accord with requirements of the Chesapeake Bay Preservation Overlay District (Article 3), Site Plan provisions (Article 9), and in accord with the Subdivision Ordinance
6. Subdivision Plat approval, in accord with the Subdivision Ordinance
7. Zoning Amendments, generally
8. Conditional Zoning Procedures
9. Zoning Amendments for Planned Industrial Park Zoning Districts
10. Special Exception Permit
11. Variance
12. Commission Permit (“2232 Review”)
13. Appeals to the Board of Zoning Appeals
14. Zoning Amendment Generally or Conditional Zoning Procedures in tandem with Special Exception Permit
15. Additional Governmental Approvals

**10-3.2 Public Hearing Procedures**

1. Advertisement and Notice is Required.

Prior to each public hearing involving planning and zoning matters before the Planning Commission, the Board of Supervisors or the Board of Zoning Appeals, the County shall provide advertisement and written notice as may be required by §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

2. Notice by County.

Notwithstanding any other provisions of this section, whenever the notices required under this Section are sent on behalf of an agency, department or division of the County, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the pertinent application or case.

3. Notice and Certification by Applicant.

For any application for amendment or development approval for which a public hearing is required before the Planning Commission and the Board of Supervisors and which is initiated by an applicant, the applicant shall be responsible for providing notice in accord with § 15.2-2204 of the Code of Virginia. A certification of notice and a listing of the persons to whom notice has been sent shall be filed with the Zoning Administrator by the applicant at least five days prior to the first public hearing of the Commission. A counterpart of such affidavit shall be presented to the Planning Commission or the Board of Supervisors at the beginning of its public hearing. The applicant may rely upon records of the local real estate assessor's office to ascertain the names of persons entitled to notice.

4. Condominium Ownership.

In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

5. Additional Notice Required for Deferrals

If an item is not heard at a public hearing for which it was noticed, but is deferred to a specific date, no additional notice at a public hearing is required by this Section.

6. Additional Notice Required for Recessed Public Hearings.

If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

7. Speakers at Public Hearings.

All witnesses and speakers presenting facts, evidence or opinion at any public hearing shall provide their name, address and affiliation, if any, for the record. Witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements. At the discretion of the person presiding over the hearing, speakers may be limited as to the time they are allowed to speak.

**10-3.3 Plan of Development Process (Land Disturbance Permits)**

In accord with the provisions of Article 3, Chesapeake Bay Preservation Area Overlay District.

**10-3.4 Zoning Permits**

- (1) Zoning Permit Required. No principal or accessory building, structure or use, permitted by right or permissible by special exception, may be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a zoning permit issued by the Zoning Administrator. A zoning permit is required in all cases where a building permit is required. Failure to obtain a zoning permit shall be a violation of this chapter and punishable under

Article 11. The Zoning Administrator shall maintain a record of all zoning permits and a copy shall be furnished, upon request, to any person. It shall be the responsibility of the owner or agent, to obtain such permits.

- (2) Application for Zoning Permit. Each application for a zoning permit shall be made to the Zoning Administrator, who shall require and be furnished by the applicant with all plans and documents as may be determined to be necessary to evaluate whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance. Each application shall be accompanied by three (3) copies of a scale drawing. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land, and the location of such building or use with respect to the property line of said parcel of land and to the right-of-way of any street or highway adjoining said parcel of land. Any other information which the Administrator may deem necessary for consideration of the application may be required. 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. One copy of the drawing shall be returned to the applicant with the permit.

In order for an application for a zoning permit to be deemed complete, each such application shall be accompanied by the following items, unless waived by the Zoning Administrator as not pertinent. The Zoning Administrator may also require additional information necessary in order to determine if the application conforms with the provisions of this Ordinance.

- A. A statement from the Health Department that all applicable regulations and requirements for water and wastewater facilities have been complied with.
- B. A complete description of the intended use or uses.
- C. If a dwelling, the number of housekeeping units within the structure.
- D. A plot plan signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways; provided, no part of which is to be located less than the required setback distance from any property line or right-of-way of any public highway.
- E. Number, size, location and lighting of signs, if any.
- F. Off-street parking and other facilities.
- G. Proposed utilities and their locations.
- H. Drainage design and proposal.
- I. Topographic map, if determined to be necessary by the Zoning Administrator.
- J. Fee in accord with the fee schedule adopted by the County Board.

- (3) Standards for Issuance. Zoning permits issued on the basis of plans and applications approved by the zoning administrator authorize only the use, arrangement and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Article 11.

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a zoning permit shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this chapter, a zoning permit shall be issued to the applicant by the zoning administrator. If an intended use is found to be in compliance with this Ordinance, before proceeding, the applicant is still required to ensure compliance with the Virginia Uniform Statewide Building Code, and all other applicable laws, ordinances and regulations.

Approval or denial of a zoning permit shall be made within ten (10) business days of the time at which the Zoning Administrator has deemed that the zoning permit application is complete.

- (4) Duration of Valid Zoning Permit. Any zoning permit issued shall be valid for one year. If an applicant has not completed construction of the building after one year of receiving the permit, the applicant may re-apply.

### **10-3.5 Building Permits**

1. Building Permit Required. No principal or accessory building, structure or use shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a building permit issued by the Building Official. Failure to obtain a building permit shall be a violation of this chapter and punishable under Article 11 of this Ordinance. The Building Official shall maintain a record of all building permits and a copy shall be furnished, upon request, to any person.
2. Application for Building Permit. An application for a Building Permit shall be made to the Building Official, who shall require and be furnished with all such plans and documents as may be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this ordinance and with the Virginia Statewide Uniform Building Code.

In order for an application for a Building Permit to be deemed complete, each such application shall be accompanied by the following items, unless an item is deemed not pertinent by the Building Official, and such additional information as the Building Official may require as being necessary in order to determine if the application conforms with the provisions of this Ordinance and the Building Code:

- A. The size and shape of the parcel of land on which the proposed building is to be constructed
  - B. Scale drawings which accurately show the design, construction, dimensions and materials of all proposed buildings and structures
  - C. The location of such buildings and structures with respect to the property lines of said parcel of land, and the right-of-way of any street or highway adjoining said parcel of land.
  - D. Proposed utilities and their location.
  - E. Drainage scheme.
  - F. Fee in accord with the fee schedule adopted by the County Board.
3. Standards for Issuance. Building permits issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Article 11 of this Ordinance.

No building permit shall be issued before receipt of a zoning permit for the proposed use and structure. Building and zoning permits for the same use and structure may be submitted, reviewed and approved concurrently.

No building permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a building permit, however, shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If the proposed structure is in conformity with the provisions of this Ordinance and the Virginia Uniform Statewide Building Code, a building permit shall be issued to the applicant by the Building Official.

Approval or denial of a building permit shall be made within ten (10) business days of the time at which the Building Official has deemed that the application for permit is complete.

- 4. Duration of Valid Building Permit. Building permits issued shall be valid for one year.

**10-3.6 Occupancy Permit**

- 1. Occupancy Permit Required. Land may be used, and buildings occupied, structurally altered, erected, or changed in use for any purpose as permitted in the District in which such land or building is located, only after an occupancy permit has been issued by the Building Official. Such a permit shall state that the building or the proposed use, or the use of the land,

complies with the provisions of this Ordinance. A similar permit shall be issued for the purpose of maintaining, renewing, or changing a nonconforming use. An occupancy permit either for the whole or a part of a building or the use of the land shall be applied for simultaneously with the application for a building permit.

2. **Standards for Issuance.** The Occupancy Permit shall be issued within ten business (10) days after final approval by the Building Official of the erection or structural alteration of such building or part which has conformed with the provisions of this Ordinance and all previously issued permits and approvals for the site, including building permits, zoning permits and site plans. No Occupancy Permit shall be granted until all improvements shown on any approved site plan have been completed in accordance therewith.

### **10-3.7 Site Plan and Plan of Development**

Site Plan approval and Plan of Development approval shall be in accord with requirements of Site Plans set forth in Article 9 (Site Plans), Article 3 (Chesapeake Bay Preservation Overlay District), and with the Subdivision Ordinance of the County of Westmoreland.

### **10-3.8 Subdivision Plat**

Subdivision Plat approval shall be in accord with the Subdivision Ordinance of Westmoreland County.

### **10-3.9 Zoning Amendments, generally**

1. **Authority for Change.** Whenever the public necessity, convenience, general welfare, or good zoning practice require, the County Board of Supervisors may, by ordinance, amend, supplement, repeal or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the Board of Supervisors, or by motion of the Planning Commission, or by petition of any property owner or contract purchaser with the owner's written consent, addressed to the Board of Supervisors, in accord with the procedures and requirements of this Ordinance. Such amendments require a majority vote of the Board of Supervisors after recommendation by the Planning Commission, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard; and that notice shall be given of the time and place of such hearing as provided for in §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.
2. **Submission of Application for Amendment.** Every application for amendment of the Zoning Ordinance or Map shall contain the following items, as applicable. Applicability shall be determined by the Planning Director who may waive or modify any of the designated submission items if appropriate given the nature of the application and so as to facilitate review by the County and the public. Five (5) copies of the complete application shall be submitted. A rezoning application may be submitted concurrently with a special exception application.

- A. The applicant's name, address, phone number and email address, and signature.
- B. The applicant's authorized representative's name, address, phone number and email address.
- C. The property owner's name, address, phone number and email address and signature.
- D. A summary of existing data and conditions of the property, including the Existing zoning classification, Tax Map and parcel numbers, Address of the property, and Total acreage of the property.
- E. A plan of the property, at a scale of 1"=200', showing the extent of the area to be rezoned, streets bounding and intersecting the area, the land use and zone classification of abutting districts, and photographs of the area to be rezoned and abutting areas.
- F. A Conceptual Plan at a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, indicating the locations of existing and proposed topography based upon available topographic data, vegetation, floodplain, wetlands, structures, uses, streets, and areas for off-street parking and loading.
- G. A boundary survey of the property to be rezoned
- H. Information at the time of submission, on the subject property and all parcels contiguous to the subject property and any property within 100 feet of the boundary, including Existing zoning, Existing land use, Proposed land use and Historic buildings or structures.
- I. A statement of justification that explains the circumstances in the proposed district and the abutting districts and any other factors on which the applicant relied as reasons for supporting the proposed zoning amendment, including the degree of compliance of the proposed request and subsequent development plans with the provisions of the Comprehensive Plan.
- J. The approximate time schedule for the beginning and completion of development in the area and any proposed phasing of the development.
- K. A Concept Development Plan for the property, to a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, showing the proposed development of the property, including the proposed general relationships of uses within the site and external to the site, structures, uses, streets, parking areas, open space areas, vegetation, sidewalks and trails and means of access to the existing road system.
- L. A Traffic Study that shows the projections for trip generation, traffic volume and levels of service on site and on the adjacent road system, including provisions for safely accommodating both vehicular and pedestrian traffic.

- M. Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed business facilities, and any other information describing the relationship of the proposed development to the needs of the market area.
- N. A statement of Impact Mitigation describing and analyzing the various impacts of the proposed rezoning, including fiscal, environmental conditions, and public facilities and utilities impacts, and the proposed methods for mitigating any anticipated impacts.
- O. Any development conditions or proffers.
- P. Disclosure of Real Parties in Interest.
- Q. Certificate of Payment of Taxes, verifying that real estate taxes have been paid for all property included in the application.
- R. Record of Pre-Application Conference.
- S. Fees, in accord with the fee schedule adopted by the Board of Supervisors.
- T. A statement describing in detail the existing character of the area.

**3. Staff Review of Application**

- A. Pre-Application Conference. Prior to filing an application, an applicant shall meet with the Planning Director and discuss the proposed application and land uses and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made to the Planning Director and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. The Planning Director shall respond to each written request for a pre-application conference within fifteen (15) calendar days of receipt.
- B. Review of Application for Completeness. No application shall be accepted and reviewed unless determined by the Planning Director to be complete. A complete application is one which meets the minimum submission requirements established herein. Each application shall be reviewed to determine if it includes the minimum submission requirements. The Planning Director shall maintain a current log of all pending complete applications.
- C. Acceptance of Complete Application. Within fifteen (15) calendar days of submission of the application, the Planning Director shall either officially accept the application as complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review. If a notice of

incompleteness is issued, the applicant may resubmit the application with the additional data required. Upon resubmission, the Planning Director will review the resubmitted application in the manner provided in this section for the original application. If the application is not resubmitted within sixty (60) days of being determined incomplete, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

- D. Referrals. Upon official acceptance of the application for zoning amendment, the Planning Director shall forward a copy of the application to all County departments and county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application. Each reviewing agency shall prepare a staff report of referral comments which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning. All referral comments shall be provided to and reviewed by the Director of Planning within thirty (30) calendar days after an application has been officially accepted. The Planning Director shall forward to the applicant a written review of the issues raised by the application.
- E. Applicant Response. Upon receipt of the written report from the Planning Director, an applicant may submit a written request for a meeting with the Planning Director to discuss the matters contained in the report and the application. Such request shall include a response to the matters raised in the Director's written report.
- F. Required Action by Other Entities. In the event that this ordinance requires that an application not be granted until acted upon by some government board or agency other than the County Planning Commission and Board of Supervisors, the Planning Director shall forward the application for amendment to such board or agency for appropriate action prior to notification to an applicant that an application is ready to be presented to the Planning Commission or Board of Supervisors. The Planning Commission may make its recommendations on an application contingent on required action by the other boards or agencies.
- G. Report and Notice to Applicant. The Planning Director shall compile the referrals and other information pertinent to the application, prepare a written staff report with proposed findings and recommendations as to the application, and notify the applicant that the report is complete and the application is ready to be presented to the Planning Commission and Board of Supervisors for public hearing.
- H. Submission to Planning Commission. Within sixty (60) days of formal acceptance of the application, the Planning Director shall forward the application and staff report to the Planning Commission for its review.

**4. Amendment to Application**

An application may be amended by the submission of additional information or proposed changes to the application after it has been officially accepted. If the additional information or proposed changes submitted are to conform with

recommendations made by County staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line.

However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the Planning Director shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the review process including public hearings. If any portion must be repeated, the Director shall notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes must be withdrawn, submitted as a new application, or will require the applicant to approve an extension of the time limits prescribed in this Section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the Director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

#### **5. Withdrawal of Application**

An application for rezoning may be withdrawn at any time upon written request by the applicant and with the consent of either the Planning Commission or the Board of Supervisors, whichever body has advertised the hearing. There shall be no refund of rezoning fees in the case of withdrawal either before or after advertising. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action.

#### **6. Planning Commission Review.**

Within sixty (60) calendar days after a zoning amendment application has been submitted to the Planning Commission from the Planning Director, and generally within one hundred twenty (120) days after official acceptance of the application by the County, the Planning Commission shall hold a public hearing on the application after notice as required by § 15.2-2204 of the Code of Virginia.

#### **7. Report by Planning Commission**

The Planning Commission shall report to the Board of Supervisors its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the County Board within one hundred (100) days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, shall be deemed a recommendation for approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period.

If the proposed amendment consists of a change in the text of this Ordinance, the Commission may recommend revisions to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accord with sound zoning practice and the adopted Comprehensive Plan, is in

furtherance of the purposes of this Ordinance and is not more intensive than the advertised/noticed proposed use. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.

In recommending the approval or denial of any proposed amendment to this Ordinance, the Planning Commission should state its reasons for such recommendation.

Tabling or deferring an application for rezoning on the grounds of inadequate data may be requested by the applicant for a period of no longer than ninety (90) days, after which the application shall be considered to be automatically withdrawn. All costs involved in re-applying and re-advertising shall be paid by the applicant.

**8. Board of Supervisors Review and Action.**

After receiving the report of the Planning Commission, or after the lapse of one hundred (100) days past the initial meeting of the Planning Commission on the application without Commission recommendation, the Board of Supervisors shall hold its own public hearing after notice and advertising required by § 15.2-2204 of the Code of Virginia. The Board may approve the zoning amendment as requested by the applicant, it may deny the amendment, or it may approve a zoning classification of less intensity than that requested, if available in the Ordinance, without holding a new hearing. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing. The Board of Supervisors must act on the proposed zoning amendment within one year of official acceptance of the application, unless a delay is requested in writing from the applicant and the Board chooses to accept such request.

**9. Evidentiary Matters Before the Board of Supervisors**

All information, testimony or other evidence presented by an applicant for a zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Board of Supervisors determines that an applicant is presenting evidence which is substantially or materially different from that presented to the Commission, the Board may refer the application back to the Commission for such additional consideration and action as the Board may deem appropriate. All costs in re-advertising shall be paid by the applicant.

**10. Contesting a Decision of the Board of Supervisors**

Every action contesting a decision of the of Board of Supervisors for granting or failing to adopt a proposed zoning ordinance or amendment thereto, or granting or failing to grant a special exception shall be filed within thirty (30) days of such decision with the Westmoreland County Circuit Court.

**11. Criteria for Consideration of Zoning Map Amendments.**

In considering requests for zoning map amendments or text amendments, the Planning Commission and Board of Supervisors should consider, among other issues, the following factors:

- A. whether the rezoning request, if granted, would further the public interest, and whether it conforms with the goals, objectives, and policies of the Comprehensive Plan;
- B. whether the rezoning is consistent with the County's plan for future land use, as identified in the Comprehensive Plan, and established character of the area and land use patterns;
- C. whether the rezoning is justified by changed or changing conditions;
- D. whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
- E. whether utility, sewer and water, transportation, school, recreation, stormwater management and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;
- F. whether the rezoning will be compatible with properties and uses in the vicinity and not have an adverse impact on these properties or their values; and
- G. whether there are adequate sites available elsewhere in the County for the proposed use, or uses, in districts where such uses are already allowed.
- H. whether the impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning provides sufficient measures to mitigate such impacts
- I. whether a reasonable and viable economic use of the subject property exists under the current zoning.
- J. whether the effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality is compatible with the County's Comprehensive Plan.
- K. whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base.
- L. whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes, including housing and business, as determined by population and economic studies.
- M. the effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of the County.

- N. the effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.
- O. for an amendment of the text of this Ordinance, the Planning Commission and Board of Supervisors shall also consider whether the proposed text amendment is consistent with the Comprehensive Plan and whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

**12. Joint Public Hearing.**

The Board of Supervisors and the Planning Commission may hold a joint public hearing following proper public notice under § 15.2-2204 of the Code of Virginia, as amended.

**13. Majority Requirement for Change in Ordinance.**

An affirmative vote of at least a majority of the members of the County Board shall be required to adopt, amend, or reenact a zoning ordinance.

**14. Timing of Application Consideration and Reconsideration**

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of the Planning Commission and the Board of Supervisors meetings and the schedule of newspaper publication relative to public notice.

Upon the denial of any application filed to change a zoning district designation, no further application concerning any or all of the same property shall be filed for rezoning to the same use in less than twelve (12) months from the time of denial by the County Board of Supervisors, unless this requirement is specifically waived by the Board.

**10-3.10 Conditional Zoning**

**(1) Purpose.**

It is the purpose of this section to provide a more flexible and adaptable zoning method in order to mitigate the impacts of new development and land use through 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 part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing, prior to a public hearing before the Board of Supervisors, certain conditions and restrictions on the use and development of his property in order to mitigate the impacts of the proposed use. Such conditions are in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296, et seq., of the Code of

Virginia, as amended. The provisions of this section shall not be used for the purpose of discrimination in housing.

**(2) Conditions as Part of a Rezoning or Amendment to the Zoning Map.**

Any applicant seeking a rezoning may voluntarily proffer reasonable conditions in addition to the regulations provided for the zoning district by this Zoning Ordinance in accordance with the guidelines in paragraph (C) below, provided that:

- (A) The rezoning itself must give rise for the need for the conditions;
- (B) Such conditions shall have a reasonable relation to the rezoning;
- (C) Such conditions may include a cash contribution to Westmoreland County, in accord with the County's adopted Capital Improvements Program;
- (D) Such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire department or other public facilities not otherwise provided for in the Residential Subdivision Ordinance of Westmoreland County;
- (E) Such conditions shall not include payment for construction of off-site improvements except those provided for in the Residential Subdivision Ordinance of Westmoreland County;
- (F) No condition shall be proffered that is not related to the physical development or physical operation of the property; and
- (G) All such conditions shall be in general conformity with and not contrary to the Comprehensive Plan for Westmoreland County.

**(3) Administrative Steps.** Approval of Conditions as part of a rezoning amendment to zoning map. The owner of the property which is the subject of a rezoning request shall, if he elects to obtain conditional zoning, voluntarily proffer in writing such conditions as he deems appropriate at the time of filing an application to rezone the property.

- A) **When Proffers Are Made.** To be considered by the Planning Commission, proffers must be submitted with the application prior to public hearing notification. Proffered conditions made at the Planning Commission meeting shall be forwarded to the County Board prior to the Board's public hearing. The Board of Supervisors may consider additional proffers, deletions and/or amendment to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request prior to the public hearing at which the Board of Supervisors renders its decision.
- B) **Contents of Proffers.** For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following

statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Board of Supervisors, and the undersigned." Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

- C) Review and Revision of Proffered Conditions. Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Board of Supervisors has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any proffered condition shall be approved without a second advertised public hearing thereon.
- D) Modifications to Proffers. After the Board of Supervisors' public hearing has been advertised, should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the County Board before the application and the modified conditions can be reviewed and acted on by the Board of Supervisors.
- E) Additional Conditions. Should additional conditions be proffered by the applicant at the time of the public hearing before the Board of Supervisors, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before both the Planning Commission and the Board of Supervisors, which hearing may be held either separately or jointly.

**(4) Enforcement and Guarantees.** The Zoning Administrator shall be vested with all necessary authority on behalf of the Board of Supervisors of Westmoreland County to administer and enforce conditions attached to a rezoning or amendment to the zoning map, and such authority includes:

- (A) the ordering in writing of the remedy of any noncompliance with such conditions,
- (B) the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and
- (C) requiring a guarantee, satisfactory to the Board of Supervisors, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and

so conditioned, which guarantee shall be reduced or released by the Zoning Administrator upon submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.

Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permit, as may be appropriate. Upon approval by the Board of Supervisors, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in this Ordinance.

- (5) Records.** The Zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready Records. The zoning map shall show by an appropriate symbol on the map access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.
- (6) Petition for Review of Decision.** Any Zoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of paragraph (D) above may petition the Board of Supervisors for review of the decision of the Zoning Administrator. All such petitions for review shall be filed with the Zoning Administrator and with the County Administrator within thirty days of the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved.
- (7) Amendments and Variations of Conditions.** There shall be no amendment or variation to the conditions created pursuant to the provisions of paragraphs (B) and (C) above, until after a public hearing before the Board of Supervisors advertised pursuant to the provisions of § 15.2-2204 of the Code of Virginia, 1950, as amended.
- (8) Substantial Conformance Required.** Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with the approved zoning and all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any County official in the absence of said substantial conformity. For the purpose of this Section, substantial conformity means that conformity which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.
- (9) No Permits Shall Be Issued That Do Not Comply With Proffers.** Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other

penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

- (10) Change of Approved Conditions.** Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. If the amendment concerns an approved site plan or plan of development, such application shall include the submission requirements for a site development plan set forth in this Ordinance, except that the Planning Director may waive any submission requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application.

#### **10.3.11 Creation of a Planned Industrial Park Zoning District.**

- (1) Procedure. Section 10.3.9 of this Ordinance sets forth the process to be followed when the zoning district classification of a property or a group of properties is changed. That procedure is to be followed when the zoning district classification of a property or a group of properties is to be changed to Industrial Planned Unit Development. This section sets forth additional standards, requirements, and considerations to supplement and augment the requirements of Section 10.3.9.

- (2) Required Submittals. In addition to the prerequisites set forth above, and in addition to the submittals required pursuant to section 10.3.9 of this Ordinance, no application for a change in zoning district classification shall be deemed to be complete until the Planning Director finds that each of the items described below are included and complete.

(A) Narrative. The application shall include a written narrative which describes:

- (1) The general nature of the proposed development and the types of uses anticipated;
- (2) The existing conditions and development of the subject property; and
- (3) The nature and extent of the proposed development including, but not limited to all structures to be constructed during the initial development, the quantity and types of roads to be developed, the quantity and types of water, sewer, power, and telecommunications infrastructure to be developed.

(B) Environmental Assessment. The application shall include an environmental assessment which describes: (i) the existence and extent of the following resources on or near the subject property; (ii) the extent

and probability to which the ultimate development might impact and will impact these resources; and (iii) measures to be undertaken to minimize and/or avoid such impacts:

- (1) historic and archaeological resources
- (2) threatened and endangered species
- (3) wetlands
- (4) wildlife habitat
- (5) air quality
- (6) water quality
- (7) prime agricultural land
- (8) toxic or hazardous wastes
- (9) noise from operations
- (10) transportation
- (11) water supply
- (12) waste water disposal
- (13) stormwater runoff
- (14) groundwater
- (15) marine resources
- (16) all other relevant environmental resources

(C) Review by Relevant Agencies. In addition to the environmental assessment described above, the applicant shall also advise the following public agencies of the proposed development and afford the agencies a minimum of thirty (30) days to provide written comments.

- 1 U.S. Army Corps of Engineers
- 2 U.S. Fish and Wildlife Service
- 3 Virginia Department of Conservation and Recreation
- 4 Virginia Department of Environmental Quality
- 5 Virginia Department of Historic Resources
- 6 Virginia Marine Resources Commission

(D) Public Impacts. The application shall also identify the public impacts of the proposed development, including the benefits to accrue to the public and the impacts to public services and resources.

1. Economic Development. The application should describe to what extent the proposed development will further the purposes of the County's Overall Economic Development Program, including expanded employment opportunities and an expanded and diversified economic base.
2. Water and Sewer Infrastructure. The application should describe the means of providing water and disposing of wastewater. When the public provision of water and sewer will be required, the application shall indicate that the existing infrastructure and capacity is adequate for the proposed development.
3. Other Public Utilities. The application should identify those public utilities which are available and which are needed for the proposed

development. The application should indicate whether or not there currently exists the capacity to serve the proposed development.

4. Transportation. The application should describe and identify the impacts to the existing transportation system. The application should also include written verification from the Virginia Department of Transportation that access from the subject property to public roads can meet the minimum standards required by VDOT for industrial uses.

(E) Additional Information. The application shall also include the following information.

1. Ownership. The application shall identify each individual, firm, and/or corporation which has any interest in the title to the subject property(s). Copies of the deed shall also be included. When any corporation has any interest in the title, all officers of the corporation and all shareholders with a greater than ten percent (10%) interest in the corporation shall also be identified.
2. Contracts. Any and all contracts or agreements to convey any portion of the title to the subject property shall be a part of the application. A copy of such contract shall be included with the application. If at any time prior to the action of the Board of Supervisors on the request for the change in zoning district classification, such a contract or agreement is made or agreed to, or altered or amended in any way, then such contract or agreement, or alteration or amendment shall become a part of the application and shall be immediately added to the application and made public. Any violation of this requirement is hereby deemed to be of a substantial nature and shall be grounds to rescind the change in zoning district classification if approved.
3. Long Term Maintenance and Operation. The application shall describe the institutional framework which is intended to assure the long term maintenance and operation of the facilities.
4. A preliminary site plan shall be prepared in accordance with Article 9 of this Ordinance and shall be submitted with the application.
5. Nearby Properties. The application shall include a map which identifies each property which is located in part, or in whole, within one thousand (1000) feet of any property boundary line of the subject property. If and when the application is scheduled for public hearing, the Zoning Administrator shall provide a notice of the public hearings to the applicant. The applicant shall be responsible for sending, by certified mail with return receipt, this notice to each of these property owners. Such notice shall be postmarked twenty one (21) days prior to the date of the first scheduled public hearing. Proof of the mailing of these notices and proof of receipt shall be submitted to the Zoning Administrator at least one business day prior to the first public hearing.

- (4) **Public Hearing Before the Planning Commission.** Once the Planning Director finds that the application is complete as described in 10-3.11 (2) above, the application will be advertised as required and scheduled for public hearing in accordance with Section 10-3.9 of this Ordinance.
- (A) The Planning Commission shall review the application according to the following criteria.
1. The proposal will provide public benefit by increased employment opportunity or by an increased and diversified economic base, or by other means.
  2. The proposal will not result in undue or unreasonable impacts to adjacent and nearby properties.
  3. Where the proposal will result in impacts to natural resources, such impacts are mitigated.
  4. Existing utilities and public services are adequate in capacity to serve the proposed development.
  5. There will be an institutional framework available to assure the long term maintenance and operation of the facilities.
  6. The proposal meets all other considerations for good planning and zoning.
  7. The proposal is in conformance with the Comprehensive Plan.
- (B) When the Planning Commission completes its review as provided herein, it shall forward the application to the Board of Supervisors with a recommendation.
- (5) **Public Hearing Before the Board of Supervisors.** The Board of Supervisors shall consider the application for a change in zoning district classification to Industrial Planned Unit Development after receiving a recommendation from the Planning Commission. No such hearing shall be scheduled until and after the Planning Commission shall have voted and made its recommendation to the Board of Supervisors. The Board of Supervisors shall consider the recommendation from the Planning Commission, and shall review the application based on the seven criteria set forth in paragraph 10-3.11 (4) (A) above.
- (6) **Time for Development.** Any proposed development for an Industrial Planned Unit Development should generally have three (3) years from the date of approval of the change in zoning district classification to be developed, although it might take a longer time period for an industry to actually locate in the industrial park and to commence operations. Any Industrial Planned Unit Development which fails to be developed in such three year time period may be subject to a change in zoning district classification to a less intensive zoning district as part of a comprehensive plan revision.

**10-3.12 Special Exception Permit**

- (1) The location of uses designated as "Special Exception (S/E)" or listed in a zoning district as a "permissible use", shall require a special exception in addition to any required zoning permit. Responsibility for obtaining such a Special Exception permit rests with the owner or owner's agent.
- (2) Special Exceptions may be approved by the Board of Supervisors subject to such conditions as it deems necessary to carry out the intent of this Ordinance, the Comprehensive Plan, and the purposes of zoning as set forth in the Code of Virginia. Only those Special Exception permits that are expressly authorized in a particular zoning district, or elsewhere in this Ordinance may be approved. The Board of Supervisors may approve Special Exception permits subject to conditions on such permits that shall apply to the property or use, regardless of any change in ownership.
- (3) Conditions and Restrictions. In approving a Special Exception Permit, the Board of Supervisors may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional setbacks from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Board may require a guarantee or bond to ensure that conditions imposed will be complied with. When a deadline established by a condition requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, the deadline shall remain valid longer than five years if it was valid on January 1, 2009 and as provided in Section 15.2-2209.1, Code of Virginia. All required conditions shall be set out in the documentation approving the Special Exception Permit.
- (4) An application for a special exception under the provisions of this section shall be submitted on forms provided by the Administrator. The applicant will then be issued a temporary sign describing the proposed special exception and will be required to post the sign for public view at a conspicuous position on the property in question. The applicant shall assure that the sign remains so posted for a period of seven (7) days, or such longer period as the Administrator may require, and shall then return the sign to the Administrator with a signed statement attesting to the fact that the sign remained in public view for the required period. The applicant must complete a Westmoreland County, Virginia, Project Information form. Special exception permit applications shall contain the same information as required for zoning amendment applications set forth in Section 10-3.9 of this Ordinance and may be submitted concurrently with a rezoning application.
- (5) The application for such special exceptions shall be referred to the Planning Commission which shall give written notice to the owner or owners, their agent or the occupant of all abutting property and property immediately

across the street or road from the property affected, including property in an adjoining Virginia county.

The Planning Commission shall conduct a public hearing advertised pursuant to the provisions of §15.2-2204 of the Code of Virginia, 1950, as amended, and thereafter shall submit its recommendations to the Board of Supervisors. The Board of Supervisors shall also consider this application following public hearing advertised pursuant to the provisions of §15.2-2204 of the Code of Virginia, 1950, as amended.

- (6) Evaluation Criteria; Issues for Consideration. In considering a Special Exception Permit application, the following factors should be considered. The applicant also shall address these factors in its statement of justification:
- A. Whether the proposed Special Exception Permit is consistent with the Comprehensive Plan.
  - B. Whether the proposed Special Exception Permit will adequately provide for safety from fire hazards and have effective measures of fire control.
  - C. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
  - D. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
  - E. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.
  - F. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
  - G. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
  - H. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
  - I. The timing and phasing of the proposed development and the duration of the proposed use.
  - J. Whether the proposed Special Exception Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.
  - K. Whether the proposed Special Exception Permit at the specified location will contribute to or promote the welfare or convenience of the public.
  - L. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest

in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.

- M. Whether the proposed use will facilitate orderly and safe road development and transportation.
- N. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Exception Permit, the structures meet all code requirements of the County of Westmoreland.
- O. Whether the proposed Special Exception Permit will be served adequately by essential public facilities, services and utilities.
- P. The effect of the proposed Special Exception Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
- Q. Whether the proposed Special Exception Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
- R. The effect of the proposed Special Exception Permit use in enhancing affordable shelter opportunities for residents of the County.
- S. The location, character, and size of any outdoor storage.
- T. The proposed use of open space.
- U. The location of any major floodplain and steep slopes.
- V. The location and use of any existing non-conforming uses and structures.
- W. The location and type of any fuel and fuel storage.
- X. The location and use of any anticipated accessory uses and structures.
- Y. The area of each proposed use.
- Z. The proposed days/hours of operation.
- AA. The location and screening of parking and loading spaces and/or areas.
- BB. The location and nature of any proposed security features and provisions.
- CC. The number of employees.
- DD. The location of any existing and/or proposed adequate on and off-site infrastructure.
- EE. Any anticipated odors which may be generated by the uses on site.
- FF. Refuse and service areas.

- (7) No proposed sewage treatment facility will be approved if it involves the establishment of a buffer zone in any area within the Baylor Survey or which is leased by the Marine Resources Commission pursuant to an effective assignment of oyster planting ground and, further, any certificates or permits granted by any governmental agency for the construction of a sewage treatment plant will be conditioned on the requirement that the owner of the facility make such modifications, additions and other improvements as may be required to maintain water quality standards established by the State Water Control Board or other appropriate governmental agency and to avoid the necessity of buffer zones in any such area or areas. An application for a special exception for a sewer facility submitted in accordance with the foregoing section will be approved only after the applicant has established the conformance to these conditions.

- (8) For Uses to be Acted Upon by the Board of Supervisors, as listed in Article 2

Upon review of the application and supporting data, the Planning Commission shall make its recommendation to the Board of Supervisors as to whether the application complies with the Special Exception provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

Before submitting its recommendation to Board of Supervisors, the Planning Commission shall hold a public hearing which may be a joint public hearing with the Board, after notice as required by § 15.2-2204 of the Code of Virginia, as amended. Following the public hearing, the Commission shall forward its recommendation to the Board.

- (9) Board of Supervisors Review and Hearing.

For those uses that are listed as permissible upon approval by the Board, the Board shall consider the recommendations of the County Planning Commission before granting or denying approval of a Special Exception permit. Before rendering a decision on a particular Special Exception, the Board shall hold a public hearing, which may be a joint public hearing with the Planning Commission, after notice as required by § 15.2-2204 of the Code of Virginia, as amended.

- (10) Modifications to the Application or Conditions.

After the Planning Commission has made its recommendation to the Board of Supervisors, should the application be modified, or additional conditions be agreed to or offered by the applicant, then a second public hearing shall be held by the Planning Commission before the modified application can be heard by the County Board. The applicant shall be responsible for paying any additional advertising fees required for a subsequent public hearing before the Planning Commission or the County Board of Supervisors. The

Board may still impose reasonable conditions on the applicant, in accord with § 15.2-2286 of the Code of Virginia, as amended.

However, should additional information or modified conditions be submitted by the applicant after the Planning Commission has made its recommendation to the Board, which modifications or conditions were discussed at the public hearing before the Planning Commission, then a second public hearing before the Planning Commission shall not be required.

- (11) **Period of Validity.** In the event the activity authorized by a special exception issued under the provisions of this ordinance has not begun within 365 days after the date such permit was approved by the Board of Supervisors, such special exception shall be null and void, provided that special exceptions issued prior to April 12, 2006 on which the activity authorized has not begun within 365 days after the date of written notice given by the Zoning Administrator, shall be null and void. Such notification shall be sent to the address shown for the applicant at the time the special exception was issued. The Board of Supervisors, after notice given pursuant to §15.2-2204 of the 1950 Code of Virginia, may extend the special exception up to an additional 365 days; provided however, that no hearing before the Planning Commission shall be required prior to the hearing before the Board of Supervisors. A special exception approval related to a new residential or commercial development shall also remain valid longer than 365 days after the date such permit was approved by the Board of Supervisors if it was valid on January 1, 2009 and as provided in Section 15.2-2209.1, Code of Virginia. As a condition of approval, a Special Exception Permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such case, an extension may be granted prior to expiration by the original approving body, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a Special Exception Permit.
- (12) A petition to amend this ordinance or to obtain a Special Exception, either of which is substantially the same as a petition previously denied by the Board of Supervisors, shall not be accepted for reconsideration by the Board within a twelve-month period following the date of denial.
- (13) **Construction Already Commenced.** Nothing contained herein shall require any change in the plans or construction of any building or structure subject to a vested right prior to the effective date of this Ordinance.
- (14) When a case is referred to the Board of Supervisors by the Zoning Administrator under the provisions of Article 11 of the Zoning Ordinance, the Board may revoke or amend a Special Exception if the Board determines that there has not been compliance with the terms or conditions of the permit. No Special Exception may be revoked or amended except after notice and hearing as provided by § 15.2-2204 of the Code of Virginia.

**10-3.13 Variance**

1. **Variations Authorized.** The Board of Zoning Appeals may authorize variations from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done.

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variations shall be in harmony with the intended spirit and purpose of the Ordinance, the Board may grant a variance to alleviate those conditions, under the terms and procedures provided for herein.

No such variance shall be authorized by the Board unless it finds:

- A). That the strict application of the Ordinance would produce undue hardship;
  - B). That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - C). That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
  - D). That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.
2. **Board May Impose Conditions.** In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
  3. **Public Hearing Required.** No variance shall be authorized except after notice and hearing as required by §15.2-2204 of the Code of Virginia as amended.

**4. Unauthorized Variances**

- A No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
- B No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
- C No variance shall be authorized that would relate to nonconforming uses.
- D No variance shall be authorized that would reduce the amount of off-street parking space required by Article 5.
- E No variance shall be authorized that would relate to signs.
- F No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.
- G No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.
- H No variance shall be authorized merely for the purpose of convenience or economic hardship.

**5. Procedures for Variances**

- A. Application for Variance. Pursuant to provisions of this article and §15.2-2309 of the Code of Virginia, as amended, any person seeking a variance from the application of regulations of this chapter, shall first submit his proposal to the Zoning Administrator on a form to be provided by the Zoning Administrator, including therewith satisfactory evidence that any delinquent real estate taxes owed to the county which have been properly assessed against the subject property have been paid, and all plans and information relating to the application required by the Board of Zoning Appeals pursuant to §15.2-2310 of the Code of Virginia. The application shall be transmitted promptly to the secretary of the Board of Zoning Appeals, who shall place the matter on the docket to be acted upon by the board.
- B. Decision on Variance Application. Upon receipt of an application or appeal, the Board of Zoning Appeals shall fix a reasonable time for a hearing of such application or appeal in conformance with §15.2-2204 of the Code of Virginia.

The proposal shall then be advertised pursuant to provisions of §15.2-2204 of the Code of Virginia prior to public hearing by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of

the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

The Board of Zoning Appeals shall render a decision on any application submitted to it within sixty (60) days after the date of the hearing thereon.

- C. Burden of Applicant. The applicant for a variance shall bear the burden of producing evidence to support the required findings and to establish that the requested variance satisfies all standards for a Variance.
- D. Withdrawal of Application. An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the first public hearing. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on its merits.
- E. Re-Application. If any application is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board within twelve (12) months after the date of such denial.

**10-3.14 Commission Permit (“2232 Review”)**

**1. Permit Required**

In accord with the Code of Virginia, §15.2-2232, no street, park or other public area or public structure, public utility, public building or public service corporation facility other than railroads, whether publicly or privately owned, shall be constructed, established or authorized unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted comprehensive plan or part thereof.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

**2. Application**

An application for a commission permit shall be filed with the Zoning Administrator and shall meet the minimum submission requirements as prescribed for a zoning permit in Section 11-3.4.2. and in addition shall include a written statement of justification from the applicant as to why the proposed improvement should be deemed to be in accord with the Comprehensive Plan.

An application is not necessary for features already specifically shown on the Comprehensive Plan, as determined by the Planning Director.

### **3. Planning Commission Action**

In connection with any such determination, the Planning Commission may, and at the direction of the Board of Supervisors shall, hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

The Planning Commission shall communicate its findings pursuant to this section to the Board of Supervisors, indicating its approval or disapproval, along with written reasons therefore. Failure of the commission to act within sixty (60) days of submission of an application, unless such time is extended by the Board, shall be deemed approval.

### **4. Issuance of Permit; Board of Supervisors Review**

The Zoning Administrator, on behalf of the Planning Commission, shall issue a Commission Permit following approval by the Planning Commission pursuant to this section. The Board of Supervisors may overrule the action of the Commission by a vote of a majority of its membership.

### **5. Appeal of Denial Permit**

The owners or their agents may appeal the decision of the Planning Commission to the Board within ten (10) days after the decision of the Commission. The appeal shall be by written petition to the Board setting forth the complete reasons for the appeal. The appeal shall be heard by the Board of Supervisors within sixty (60) days of its submission. A majority vote of the Board of Supervisors shall overrule the Commission.

## **10-3.15 Appeals to the Board of Zoning Appeals**

### **1. When Appeals May be Taken**

- A. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality 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 article or any ordinance adopted pursuant thereto.
- B. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his 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 a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

**2. Appeal Procedure**

- A. Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, who shall provide a copy of the appeal to the secretary of the Board, and a third copy provided to the individual, official, department, or agency concerned, if any.
- B. Appeals requiring an advertised public hearing shall be accompanied by cash payments to the County in accordance with the Fee Schedule as set by County Board by resolution.
- C. Upon receipt of an application or appeal, the Board shall fix a reasonable time for the hearing, give public notice thereof in accord with § 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest.
- D. The Board shall make its decision within ninety days of the filing of the application or appeal.
- E. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance.
- F. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

**3. Withdraw of Appeal**

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant/appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in this article. After such deadline, an application or appeal may be withdrawn only with the permission of the Board. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits by the Board, either in whole or in part.

**4. Court Petition**

- A. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the County may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.

- B. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.
- C. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- D. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- E. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

**10-3.16. Zoning Amendment Generally or Conditional Zoning Procedures In tandem with Special Exception Permit**

When an application to rezone property as a Zoning Amendment or as a Conditional Zoning is proposed and the identified future use of the property is permitted with the issuance of a Special Exception, the applicant shall adhere to the requirements and procedures for both the Zoning Amendment or the Conditional Zoning and the Special Exception simultaneously, so that both applications can be considered at the same time.

**10-3.17. Additional Governmental Approvals.**

All departments, officials and public employees of the County vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits or licenses for uses, buildings or purposes only when they are in conformance with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

**10-4. Uses Not Permitted or Otherwise Provided for**

If, in a district established under this ordinance, a use is not specifically permitted, it shall not be allowed in that district, unless and until the Zoning Ordinance is amended in accord with the procedures set forth in this Article.

**10-5 Structure Maintenance, Demolition and Removal.**

- (1) Unoccupied or burned buildings, unsafe walls, open wells or other structures which endanger the public health or safety shall be repaired, secured or removed to eliminate such condition or prevent such endangerment. Prior to county removal of a building, property owners shall have an opportunity to establish the historical significance of any structure or property. Should such significance be present, the county will assist the property owner in obtaining state or federal listing of its historic status and/or assist in the pursuit of appropriate assistance to restore, rehabilitate or stabilize associated structures.
- (2) The owner of property having structures which endanger the public health or safety or illegally placed manufactured homes shall have reasonable notice and time to perform the necessary work to correct problems noted by the governing body or its agent. Notice shall include 1) certified or registered mail, return receipt requested, sent to last known address of the property owner and 2) publication of violation notice and intent to act once a week for two successive weeks in a newspaper having general circulation in the County. The County may, at its option, remove or secure any unoccupied or burned building, unsafe wall, open well, manufactured home or any other structure. No action shall be taken by the governing body or agent to remove or secure any unoccupied or burned building, unsafe wall, open well, manufactured home or any other structure for at least thirty (30) days following the later of the return of the receipt or newspaper publication.
- (3) In the event the County, through its own agents or employees, removes or secures any unoccupied or burned building, unsafe wall, open well, manufactured home or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected. Every charge authorized by this section, with which the owner of any such property has been assessed and which remains unpaid, shall constitute a lien against such property ranking on parity with liens for unpaid local taxes. The County shall provide advice to the landowner of optional installment methods that can be used to mitigate or repay any such lien.