

TITLE 9

TOWN OF DAYTON

ZONING

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CHAPTER 1
Title and Purposes

§ 9-1. ***Title.*** A Code to provide for the establishment of zoning districts within which the proper use of land and natural resources shall be encouraged and regulated; to establish minimum standards for open space, building and population density; to regulate the occupancy and use of dwellings, buildings and structures, that may hereafter be erected, altered, or moved; to provide for the administration hereof; to provide for a method of amending; to provide for conflicts with other acts, codes, or regulations; to provide for the collection of fees for the furtherance of the purpose of this Code; to provide for petitions and public hearings, to provide for appeals; and to provide for penalties for the violation of this Code.

§ 9-2. ***Short Title.*** These regulations shall be known and may be cited as “THE ZONING CODE OF DAYTON.”

§ 9-3. ***Purposes.*** It is the purpose of this Zoning Code to promote the safety, health, morals, convenience, and general welfare; to encourage the use of lands and natural resources in the town in accordance with their character, adaptability, and suitability for particular purposes; to preserve social and economic stability, property values, and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the public streets and highways; to facilitate adequate provision of streets and highways, sewerage and drainage, water supply and distribution, educational, and other public resources, by establishing herein standards for community development in accordance with these objectives and by providing for the enforcement of such standards.

THE TOWN COUNCIL DOES ORDAIN AND ENACT INTO LAW THE FOLLOWING ARTICLES AND SECTIONS.

CHAPTER 2
Zoning Districts and Map

§ 9-4. ***Establishment of Zoning Districts.*** For the purpose of promoting the public health, safety, morals, convenience, and the general welfare of the community, the Town of Dayton is hereby divided into districts of 10 different classifications, each district being of such number, shape, kind, and area, and such common unity of purpose, and adaptability of use that is deemed most suitable to carry out the purpose of this Code.

DISTRICT CLASSIFICATION

R-1	Residential District
R-2	Residential District
R-3	Residential District
B-1	Business District
B-2	Business District
A-1	Agricultural District
A-2	Agricultural District
M-1	Industrial District
HB-1	Highway Business District
	Flood Plain Districts

(Amended December 10, 2007.)

§ 9-5. ***Zoning Map.*** The location and boundaries of the zoning districts established by this Code are denoted and defined as shown on the map entitled “Zoning Districts of Dayton, Virginia,” and certified by the Town Recorder.

The said map, together with everything shown thereon, is hereby incorporated into this Code as if fully set forth and described herein.

The Zoning Map shall be kept and maintained by the Zoning Administrator and shall be available for inspection and examination by the public at all reasonable times as any other public record.

§ 9-6. Scope of Regulations. The regulations applying to each district include specific limitation on the use of land and structure, height and bulk of structures, density of population, lot area, yard dimension, and area of lot that can be covered by structures.

§ 9-7. Rules for Interpretation of District Boundaries. Where uncertainty exists with respect to the precise location of any of the aforesaid districts shown on the Zoning Map, the following rules shall apply:

- (a) Boundaries shown as following or approximately following streets, highways, or alleys shall be construed to follow the center lines of such streets, highways or alleys.
- (b) Boundaries shown as following or approximately following platted lot lines or other property lines, such lines shall be construed to be said boundary lines.
- (c) Boundaries shown as following or approximately following the center line of streams, rivers, or other continuously flowing water courses shall be construed as following the channel center line of such water courses.
- (d) Boundaries shown as following or closely following the limits of the Town of Dayton shall be construed as following such limits.
- (e) Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the regulations of the more restrictive district shall govern the entire parcel in question, unless otherwise determined by the Board of Zoning Appeals.
- (f) Whenever any street, alley, or other public easement is vacated, the district classification of the property to which the vacated portions of land accrued shall become the classification of the vacated land.

§ 9-8. Annexed Territory. Any territory hereafter annexed to the Town shall continue to be subject to the county zoning classifications and regulations as such territory was subject at the time of annexation until otherwise changed by rezoning.

CHAPTER 3 **Administration and Enforcement**

§ 9-9. Administrative Officer. The provisions of this Code shall be administered by the Zoning Administrator or his designated assistant who shall:

- (a) Issue all zoning permits and make and maintain records thereof.
- (b) (Repealed May 1, 1995.)
- (c) Maintain and keep current Zoning maps, and records of amendments thereto.
- (d) Conduct inspections as prescribed by this Code and such other inspections as are necessary to ensure compliance with the various provisions of this Code.
- (e) The Zoning Administrator is hereby authorized to grant a modification from any provision contained in the Town of Dayton's zoning ordinances with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Zoning Administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the Zoning Administrator shall constitute a decision within the purview of § [15.2-2311](#) of the Code of Virginia, and may be appealed to the Zoning Board of Appeals as provided by that section. Decisions of the Zoning Board of Appeals may be appealed to the circuit court as provided by § [15.2-2314](#) of the Code of Virginia. The Zoning

Administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period. Code of Virginia § 15.2-2286.

(Amended May 1, 1995. Amended November 11, 2013.)

§ 9-10. Permits Required. (Repealed May 1, 1995.)

§ 9-11. Zoning Permit. No person shall erect, construct, enlarge, alter, repair, or improve any building or structure—if said activities require a building permit under the Uniform Statewide Building Code—without first obtaining a zoning permit for each such building or structure. Such zoning permits shall be issued by the Town Superintendent or other official designated by the council. (Amended May 1, 1995.)

§ 9-12. Forms for Zoning Permits. The applications for zoning permits shall be on such form as from time to time approved by the Council and shall indicate the location of the proposed construction, alteration, repair or improvement and shall show the dimension, height of the building and proposed use. The cost of such zoning permits shall be as established by the Council from time to time.

§ 9-13. Building Permit. (Repealed May 1, 1995.)

§ 9-14. **Certificate of Occupancy.** (Repealed May 1, 1995.)

§ 9-15. **Amendments.** The regulations, restrictions, boundaries, and options set forth in this Code may be amended, supplemented, revised, or repealed from time to time as conditions warrant, subject to the following conditions:

- (a) **Application:** An application for a proposed amendment shall be filed with the Administrator on behalf of the Council. An application may be instituted by a property owner (with respect to his own property) or his designated representative or upon motion of the Planning Commission or by resolution of the Council. The application shall contain such information and sketches as the Administrator determines are required to fully describe the proposed change; no application shall be deemed complete until all such materials have been supplied. (Amended September 16, 1996.)
- (b) **Public Hearing:** Public hearings shall be held as required by state law.
- (c) **Report to the Town Council:** The Planning Commission shall make a recommendation to the Town Council upon all such applications and no amendment shall be passed except by a majority vote of the councilmen present and voting.
- (d) (Repealed December 10, 2007.)

§ 9-16. **Fees.** Fees shall be established by the Town Council.

§ 9-17. **Penalties.** It shall be unlawful to erect, construct, reconstruct, alter, maintain, or use any building or structure, or to use any land in violation of any regulation in this Code. Any person, firm, association, or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or resists the enforcement of any of the provisions of this Code shall, upon conviction thereof, be subject to a fine of not less than Ten Dollars (\$10) nor more than One Thousand Dollars (\$1,000) together with the cost of the action; every day of violation shall constitute a separate offense. Compliance therewith may also be enforced by injunctive order.

§ 9-18. **Validity.** Should any section, clause or provision of this Code be declared by the Court to be unconstitutional or invalid, this judgment shall not affect the validity of the Code as a whole or any part thereof than the part judged invalid.

§ 9-19. **Conflicts With Other Laws.** In the interpretation and application of the provisions of this Code, these provisions shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, and the general welfare. Whenever the requirements of this Code are at variance with the requirements of other lawfully adopted rules, regulations, or codes, the most restrictive, or that imposing the higher standards, shall govern.

§ 9-20. **Repealer.** Any ordinance or code now in effect that conflicts with any provisions of this Code is hereby repealed, held to be invalid, and to no effect.

§ 9-21. **Effective Date.** This Code shall take effect and be in full force after its passage and publication according to law.

CHAPTER 4 **Definitions**

§ 9-22 **Definitions.** For the purpose of this ordinance, certain words and terms are defined as follows: (Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.)

- (1) **Abattoir:** (Repealed May 1, 1995.)
- (2) **Accessory use of Structure:** (Repealed May 1, 1995.)
- (3) **Acreage:** A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.

- (4) *Administrator, The:* The official charged with the enforcement of the zoning ordinance. He may be any appointed or elected official who is by formal resolution designated to the position by the governing body. He may serve with or without compensation as determined by the governing body.
- (5) *Agriculture:* The tilling of the soil, the raising of crops, and horticulture, but not including fruit packing plants or greenhouses. The term also includes the production, for commercial purposes, of animals such as cattle, sheep, goats, llamas, ducks, geese, and horses. Nevertheless, the term does not include poultry houses or hog farms. (Amended July 13, 1998.)
- (6) *Alteration:* Any change in the total floor area, use, adaptability, or external appearance of any existing structure.
- (6.1) *Amusement Center* Any building or portion of a building in which four or more video games or other amusement machines or devices are operated for money or other consideration. (Added May 1, 1995.)
- (7) *Automobile Graveyard:* Any lot or place which is exposed to the weather upon which more than five (5) motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.
- (8) *Basement:* A story having part but not more than one-half (1/2) of its height below grade. A basement shall be counted as a story for the purpose of height regulations, if it is used for business purposes, or for dwelling purposes by other than a janitor employed on the premises.
- (9) *Boarding House:* A building where, for compensation, lodging and meals are provided for at least five (5) and up to fourteen (14) persons.
- (10) *Building:* Any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals, or chattels.
- (11) *Building, Accessory:* A subordinate structure customarily incidental to and located upon the same lot occupied by the main structure. No such accessory structure shall be used for housekeeping purposes.
- (12) *Building, Height of:* The vertical distance measured from the level of the curb or the established curb grade opposite the middle of the front of the structure to the highest point of the roof, if a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable or gambrel roof. For buildings set back from the street line, the height shall be measured from the average elevation of the ground surface along the front of the building. (Amended February 7, 2000.)
- (13) *Building, Main:* The principal structure or one of the principal buildings on a lot, or the building or one of the principal buildings housing the principal use on the lot.
- (14) *Cellar:* A story having more than one-half (1/2) of its height below grade and which may not be occupied for dwelling purposes.
- (15) *Child Care Center:* Any facility operated for the purpose of providing care, protection and guidance for a fee to two or more children during a part of the day only. (Added December 3, 1990)
- (16) *Commission, The:* The Planning Commission of the Town.
- (17) *Dairy:* A commercial establishment for the manufacture and sale of dairy products.

- (18) *Dwelling:* Any structure which is designated for use for residential purposes except hotels, boarding houses, lodging houses, tourist cabins, apartments, and automobile trailers.
- (19) *Dwelling, Multiple-Family:* A structure arranged or designed to be occupied by more than one (1) family.
- (20) *Dwelling, Two-Family:* A structure arranged or designed to be occupied by two families, the structure having only two (2) dwelling units.
- (21) *Dwelling, Single Family:* A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.
- (22) *Dwelling Unit:* One or more rooms in a dwelling designed for living or sleeping purposes, and having at least one (1) kitchen.
- (23) *Family:* One or more persons occupying a premises and living in a single dwelling unit as distinguished from an unrelated group occupying a boarding house, lodging house, tourist home, or hotel.
- (24) *Front:* An open space on the same lot as a building between the front line of the building (excluding steps) and the front lot or street line, and extending across the full width of the lot.
- (25) *Garage, Private:* (Repealed May 1, 1995.)
- (26) *Garage, Public:* A building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, renting, selling, or storing motor-driven vehicles.
- (27) *Governing Body:* The Council of the Town of Dayton, Virginia.
- (28) *Guest Room:* A room which is intended, arranged, or designed to be occupied, or which is occupied, by one or more guests paying direct compensation therefore, but in which no provision is made for cooking. Dormitories are excluded.
- (29) *Hog Farm:* (Repealed May 1, 1995.)
- (30) *Home Care Facility:* A dwelling in which children are cared for or otherwise supervised for a fee. The proprietor must reside in the dwelling and must hire no employees to assist in the care and/or supervision of the children. At any one time, a home care facility may not care for and/or supervise more than five minor children not related to the proprietor by blood or marriage, nor may it care for and/or supervise more than seven minor children in total. No children may be cared for and/or supervised between the hours of 11:00 p.m. and 6:00 a.m. The facility shall bear no signs indicating the presence of a home care facility. (Added December 3, 1990)
- (31) *Home Garden:* A garden in a residential district for the production of vegetables, fruits and flowers generally for use and/or consumption by the occupants of the premises.
- (31.1) *Home Occupation, Level One* Any commercial endeavor which is undertaken in a structure used as a residence and meeting the following criteria:
- The person conducting the home occupation must be a resident of the Dwelling in which the home occupation is to be located.
 - The home occupation shall be operated only by persons residing in the Dwelling, with no other employees permitted.
 - The home occupation shall be clearly secondary to the use of the Dwelling as a residence and shall not occupy more than 25% of the living area of the Dwelling.

- The home occupation shall not generate significantly more traffic than is typically generated by residential uses in the neighborhood.
- The exterior of the dwelling shall show no evidence of the attendant home occupation. There shall be no outside display of products, goods, or commodities in conjunction with the home occupation. The use of a sign shall also be prohibited.

(Added December 10, 2007)

(31.2) *Home Occupation, Level Two*

A commercial endeavor undertaken in a structure used as a residence which does not qualify as a Level One Home Occupation but does meet the following criteria:

- The proprietor of a home occupation must reside in the Dwelling, and either (i) have a direct or indirect, legal, equitable, or beneficial interest in the Dwelling or (ii) have the written approval of a person with such an interest for the conduct of the home occupation.
- The home occupation shall be operated by persons residing in the Dwelling but may employ up to two other persons.
- The home occupation shall not occupy more than 25% of the living area of the Dwelling.
- Except for the daily commute of employees, the home occupation shall not generate significantly more traffic than is typically generated by residential uses in the neighborhood.
- The exterior of the Dwelling shall show no evidence of the attendant home occupation. There shall be no outside display of products, goods or commodities in conjunction with the home occupation. The use of a sign shall also be prohibited.

(Added December 10, 2007)

(32) *Hospital:*

An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged and sanatoriums, but in all cases excluding institutions primarily for mental patients, epileptics, alcoholics, or drug addicts. (Amended May 1, 1995.)

(33) *Hospital, Special Care:*

An institution rendering care primarily for mental patients, epileptics, alcoholics, or drug addicts. (Amended May 1, 1995.)

(34) *Hotel:*

A building designed or occupied as the more or less temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

(35) *Kennel:*

A place prepared to house, board, breed, handle or otherwise keep or care for dogs for sale or in return for compensation.

(36) *Livestock Market:*

A commercial establishment wherein livestock is collected for sale and auctioned off.

(37) *Lot:*

A parcel of land occupied or to be occupied by a main structure or group of main structures, either shown on a plat of record or considered as a unit of property and described by metes and bounds. (Amended May 1, 1995.)

(38) *Lot, Corner:*

A lot abutting on two or more streets at their intersection. Of the two sides of a corner lot the front shall be deemed to be the shortest of the sides fronting on streets. (Amended May 1, 1995.)

- (39) *Lot, Depth of:* The distance between the front and rear lot lines. (Amended May 1, 1995.)
- (40) *Lot, Interior:* Any lot other than a corner lot.
- (41) *Lot, Width of:* The distance between side lot lines. (Amended May 1, 1995.)
- (42) *Lot of Record:* A lot which has been recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia.
- (43) *Manufacturer and/or Manufacturing:* The processing and/or converting of raw, unfinished materials or products, or either of them, into articles or substances of different character, or for use for a different purpose.
- (44) *Mobile Home:* A Mobile Home is anything (i) designed for human habitation, (ii) designed for transportation, after fabrication, on streets and highways on its own wheels or on flatbed or other trailers, and (iii) arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy, except for minor and incidental unpacking and assembly operation, location on jacks or permanent foundations, connection to utilities and the like. A Mobile Home retains its character as such—and remains subject to the same regulations and restrictions—even if not used for residential purposes. (Amended February 7, 2000.)
- (45) *Mobile Home Park or Subdivision:* Any area designed to accommodate two or more mobile homes intended for residential use where residence is in mobile homes exclusively.
- (45.1) *Neighborhood Public Utility* Facilities which are (i) related to utility services such as electricity, telephone, cable television, natural gas, water or sewer and (ii) of a type generally used to provide service to the immediate vicinity of the facility. The term does not include Telecommunications Antennas or Towers. The term also does not include any utility poles which (i) exceed 65 feet in height, (ii) have cross arms exceeding six feet in length, or (iii) have a diameter in excess of 36 inches. Finally, the term does not include anything included within the definition of 'Wide-Area Public Utility' below. (Added November 6, 2000.)
- (46) *Nonconforming Lot:* (Repealed May 1, 1995.)
- (47) *Nonconforming Activity:* (Repealed May 1, 1995.)
- (48) *Nonconforming Structure:* (Repealed May 1, 1995.)
- (49) *Off Street Parking Area:* Space provided for vehicular parking outside the dedicated street right-of-way.
- (49.1) *Pool Hall* A building or a portion of a building in which four or more pool or billiard tables are operated for money or other consideration. (Added May 1, 1995.)
- (50) *Public Utility:* Electricity, water, sewer, gas and other utilities served to a dwelling or structure, including all distribution lines.
- (51) *Public Water and Sewer Systems:* A water or sewer system owned and operated by a municipality or county, or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the State Corporation Commission, and subject to special regulations as herein set forth.
- (52) *Rear:* An open, unoccupied space on the same lot as a building between the rear line of the building (excluding steps) and the rear line of the lot and extending the full width of the lot.
- (53) *Required Open Space:* Any space required in any front, side, or rear yard.

- (54) *Restaurant:* Any building in which for compensation food or beverages are dispensed for consumption on the premises including, among other establishments, cafes, tea rooms, confectionery shops, or refreshment stands.
- (55) *Retail Stores and Shops:* Buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood, and lumber yards), such as the following which will serve as illustration: drug store, newsstand, wood store, candy shop, milk dispensary, drygoods and notions store, antique shop and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop, and beauty shop.
- (56) *School:* A place for systematic instruction in any branch or branches of knowledge.
- (57) *Setback:* The minimum distance by which any building or structure must be separated from the front lot line.
- (58) *Side:* An open, unoccupied space on the same lot as a building between the side line of the building (excluding steps) and the side line of the lot, and extending from the front yard line to the rear yard line.
- (59) *Story:* That portion of a building, other than the basement, included between the surface of the floor and the surface of the floor next above it. If there be no floor above it, the space between the floor and the ceiling next above it.
- (60) *Story, Half:* A space under a sloping roof which has the line intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use.
- (61) *Structure:* Anything constructed or erected the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, signs, etc.
- (61.1) *Telecommunications Antennas* When used anywhere in this Code, the term Telecommunications Antenna shall have the meaning set forth in § 9-228. (Added November 6, 2000.)
- (61.2) *Telecommunications Towers* When used anywhere in this Code, the term Telecommunications Tower shall have the meaning set forth in § 9-228. (Added November 6, 2000.)
- (62) *Tourist Court, Auto Court, Motel Cabins, or Motor Lodge:* One or more buildings containing individual sleeping rooms designed for or used temporarily by automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.
- (63) *Tourist Home:* A dwelling where only lodging is provided for compensation for up to fourteen (14) persons (in contradiction to hotels and boarding houses) and open to transients.
- (64) *Town House:* A single-family unit being one of a group of three or more such units attached to the adjacent dwelling or dwellings by party walls with lots, utilities and other improvements being designed to permit individual and separate ownership of such lots and dwelling units.
- (65) *Travel Trailer:* A mobile unit less than 29 feet in length and less than 4,500 pounds in weight which is designed for human habitation.
- (66) *Use, Accessory:* A subordinate use, customarily incidental to and located upon the same lot occupied by the main use.

- (67) *Wayside Stand, Roadside Stand, Wayside Market:* Any structure or land used for the sale of agricultural or horticultural produce, livestock, or merchandise produced by the owner or his family on their farm.
- (67.1) *Wide-Area Public Utility* Facilities which are (i) related to utility services such as electricity, telephone, cable television, natural gas, water or sewer and (ii) used to provide service beyond the immediate vicinity of the facilities. The term includes electrical substations, telephone switching facilities, and similar equipment. The term does not include Telecommunications Antennas or Towers. (Added November 6, 2000.)
- (68) *Yard:* An open space on a lot other than a court unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

§ 9-22.1. Supplemental Definitions—Adult Businesses. Notwithstanding any contrary provision in this title, Adult Businesses are distinct from and mutually exclusive of all other uses defined or referenced in this code. Accordingly, if a use falls within the definition of an Adult Business, it cannot qualify as a “retail store,” “restaurant,” or other use.

For purposes of this Title, the following definitions apply:

- (1) *Adult Business:* An Adult Business is (i) an Adult Theatre, (ii) Adult Store, (iii) any business providing Adult Entertainment, or (iv) any other establishment that regularly emphasizes materials or demonstrations relating to Specified Sexual Activities or Specified Anatomical Areas or is intended for the sexual stimulation or titillation of patrons.
- (2) *Adult Theatre:* An Adult Theatre is an establishment which presents for the viewing or listening of patrons materials characterized by (i) their emphasis on Specified Sexual Activities or Specified Anatomical Areas or (ii) the intent to provide sexual stimulation or titillation of patrons.
- (3) *Adult Store:* An Adult Store is an establishment which sells or rents
- a) Materials (whether printed or in electronic, optical, magnetic, or other media) characterized by
 - i) Their emphasis on Specified Sexual Activities or Specified Anatomical Areas or
 - ii) Their predominant purpose being to provide sexual stimulation or titillation of patrons, or
 - b) Toys, novelties, instruments, devices or paraphernalia which represent human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.
- Nevertheless, if the aforementioned items constitute only an insubstantial portion of an establishment’s stock-in-trade, the establishment shall not be considered an Adult Store.
- (4) *Adult Entertainment:* Adult Entertainment is dancing, modeling, or other live performances in which the performance (i) is characterized by an emphasis on Specified Anatomical Areas or Specified Sexual Activities, or (ii) is intended for the sexual stimulation or titillation of patrons. Adult Entertainment also includes the presentation of materials or images (irrespective of the media) characterized by their emphasis on Specified Sexual Activities or Specified Anatomical Areas or the intent to provide sexual stimulation or titillation of patrons.
- (5) *Specified Anatomical Areas:* Specified Anatomical Areas are as follows:

- a) If less than completely and opaquely covered: human genitals, pubic region, buttock; and the female breast below a point immediately above the top of the areola, and
- b) Irrespective of coverage: human male genitals in a discernibly turgid state.

(6) *Specified Sexual Activities:* Specified Sexual Activities are as follows:

- a) The display of—or the reference to—human genitals in a state of sexual stimulation or arousal;
- b) Acts of human masturbation, sadomasochistic abuse, sexual penetration with an inanimate object, sexual intercourse or sodomy, or
- c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(Added July 11, 2005.)

CHAPTER 5
R-1 Residential District

§ 9-23. *Legislative Intent.* This district is intended to be used for low density single family residential development with accessory uses necessary or compatible with residential surroundings. The additional permitted uses, by review of the Town Council, includes facilities sometimes required to provide the basic elements of a basic and attractive residential area.

§ 9-24. *Uses Permitted as a Matter of Right.*

- (a) One single family dwelling, occupied by a family or not more than two unrelated persons.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (c1) Home Care Facilities, as defined. (Added December 3, 1990)
- (d) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building. Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-25. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) Schools, as defined.
- (b) Churches or similar places of worship, with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.).
- (e) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (f) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)

AREA REGULATIONS
(For Dwellings Only)

§ 9-26. **Minimum Lot Area.** The minimum lot area shall be 10,000 square feet if public water and sewer is available, if only one of such services is available the minimum lot area shall be 15,000 square feet and if neither is available the minimum lot area shall be 20,000 square feet. There shall be no more than one dwelling unit on each lot.

§ 9-27. **Front Yard.** For all uses permitted as a matter of right the minimum depth of the front yard shall be 30 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard. (Amended November 11, 2013.)

§ 9-28. **Frontage.** The minimum lot width at the setback line shall be 80 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-29. **Minimum Depth.** The minimum depth of each lot shall be 100 feet.

§ 9-30. **Side Yard.** For a single story dwelling located on interior lots a side yard shall not be less than 10 feet in width and the sum of the two side yards shall be not less than 20 feet. For dwellings of more than one story there shall be side yards of not less than 15 feet each. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-27. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building. (Amended May 1, 1995. Amended November 11, 2013.)

§ 9-31. **Rear Yard.** For dwellings there shall be a rear yard of not less than 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-32. **Height Regulations.** No dwelling shall exceed 2-1/2 stories or 35 feet in height whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-33. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-34. **Off Street Parking.** As regulated in Chapter 20.

§ 9-35. **Signs.** As provided in Chapter 21.1.

CHAPTER 6
R-2 Residential District

§ 9-36. **Legislative Intent.** This district is intended to be used for low to moderate density residential development for single family, two, three, or four family dwellings and town house units, as well as other compatible uses.

§ 9-37. **Uses Permitted as a Matter of Right.**

- (a) Any use permitted as a matter of right in the R-1 residential district.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (d) Two, three, or four family dwellings and/or town houses. All dwelling units must be occupied by families and/or not more than four unrelated persons.
- (e) (Repealed December 10, 2007.)

- (f) Accessory uses and buildings provided such uses are incidental to the principal use and do not include any activities commonly conducted as a business. Any accessory buildings shall be located on the same lot with the principal building.

§ 9-38. Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) Schools, as defined.
- (b) Churches or similar places of worship with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.)
- (e) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (f) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (g) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (h) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS (For Dwellings Only)

§ 9-38.1. Division of Multiple Family Dwellings. Wherever a multiple family dwelling is constructed in accordance with the regulations of this classification and the structure as a whole meets the requirements of this classification, individual units may be sold without regard to area requirements. No such sale of individual units of a multiple family dwelling shall be deemed a subdivision. This section is subject to the provisions of Chapter 16. (Added October 29, 1990.)

§ 9-39. Minimum Lot Area. The minimum lot area where public water and sewer is available shall be 9,000 square feet for a one family dwelling, 12,500 square feet for a two family dwelling, 15,000 square feet for a three family dwelling and 17,500 square feet for a four family dwelling. If only one of such services is available the minimum lot area shall be 150% of the foregoing areas and if neither water nor sewer service is available the minimum lot area shall be 200% of that specified where both services are available.

§ 9-40. Front Yard. If the dwelling unit fronts on a street of at least 50 feet in width then the minimum depth of the front yard shall be 30 feet. If the street is less than 50 feet in width then the setback shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard. (Amended November 11, 2013.)

§ 9-41. Frontage. The minimum lot width at the setback line shall be 75 feet for a one family dwelling, 100 feet for a two or three family dwelling and 120 feet for a four family dwelling. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-42. Minimum Depth. The minimum depth for a one family dwelling shall be 100 feet, for a two family dwelling 125 feet, and for a three or four family dwelling 150 feet.

§ 9-43. Side Yard. Dwellings located on interior lots will require the following side yards:

For a one family dwelling the sum of the two side yards shall be not less than 20 feet, each side yard to be not less than 10 feet in width; for two or three family dwellings each side yard shall be not less than 15 feet in width but the sum of the two side yards shall be not less than 35 feet; for a four family dwelling each side yard shall not be less than 20 feet in width but the sum of the

two side yards shall not be less than 45 feet. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-40. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building. (Amended May 1, 1995. Amended November 11, 2013.)

§ 9-44. Rear Yard. All dwellings shall have a minimum rear yard of 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-45. Height Regulations. No dwelling shall exceed three stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-46. Maximum Lot Coverage. For one, two, and three family dwellings the total coverage including dwellings and accessory buildings shall not exceed 40% of the lot area and for four family dwellings the total coverage shall not exceed 35% of the lot area.

§ 9-47. Town Houses. See Chapter 16 for regulations.

§ 9-48. Off Street Parking. As regulated in Chapter 20.

§ 9-49. Signs. As provided in Chapter 21.1.

CHAPTER 7 **R-3 Residential District**

§ 9-50. Legislative Intent. This district is intended to be used for medium to high density development, residential and institutional use with necessary or compatible accessory uses.

§ 9-51. Uses Permitted as a Matter of Right.

- (a) Any use permitted as a matter of right in the R-1 or R-2 residential districts.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Multiple family dwellings, condominiums, and town houses. All dwelling units, single family or otherwise, must be occupied by families and/or not more than five unrelated persons.
- (d) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (e) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.

§ 9-52. Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Schools, as defined.
- (b) Churches or similar places of worship with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.)
- (e) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.

- (f) Hospitals, but not an animal hospital.
- (g) Funeral homes.
- (h) University and college buildings and functions.
- (i) (Repealed May 1, 1995.)
- (j) Fraternities, sororities, and denominational student headquarters.
- (k) Residential human care facility, including family care homes, foster homes, or group homes serving mentally retarded or other developmentally disabled persons not related by blood or marriage. No conditions may be imposed on this use as a prerequisite for authorization except those conditions imposed to assure compatibility with other permitted uses and these conditions shall not be more restrictive than those imposed on other dwellings in the same district unless such additional conditions are necessary to protect the health and safety of the residents of such facilities. [Ed.: *But see* Va. Code, § 15.2-2291.]
- (l) Clubs, fraternities, lodges, meeting places and other organizations not including any use that is customarily conducted as a gainful business.
- (m) Police, fire, and rescue squad stations.
- (n) Post offices.
- (o) Governmental, non-profit, and charitable agencies, providing services to the public. (Amended May 1, 1995.)
- (p) Nursing homes and dwelling units for retirement developments.
- (q) A planned unit development as regulated in Chapter 15.
- (r) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (s) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (t) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS
(For Dwellings Only)

§ 9-52.1. Division of Multiple Family Dwellings. Wherever a multiple family dwelling is constructed in accordance with the regulations of this classification and the structure as a whole meets the requirements of this classification, individual units may be sold without regard to area requirements. No such sale of individual units of a multiple family dwelling shall be deemed a subdivision. This section is subject to the provisions of Chapter 16. (Added October 29, 1990.)

§ 9-53. Minimum Lot Area. The lot area requirements for a single, two family, three family, or four family dwelling shall be in accordance with the R-2 district; for other multiple family structures the lot area requirements shall be not less than 17,500 square feet plus an additional 2,000 square feet for each additional dwelling unit.

§ 9-54. Front Yard. If the street on which the dwelling fronts is 50 feet or more in width then all dwelling units shall be at least 35 feet from the street right-of-way. If the street is less than 50 feet in width then the setback shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-55. Frontage. Minimum lot width at the setback line shall be 75 feet for a one family dwelling, 100 feet for a two or three family dwelling and 120 feet for all other multiple family dwellings. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-56. Minimum Depth. The minimum depth for a one family dwelling shall be 100 feet; for a two family dwelling 125 feet and for other multiple family dwellings 150 feet.

§ 9-57. **Side Yard.** Dwellings located on interior lots will require the following side yards: For a one family dwelling the sum of the two side yards shall be not less than 25 feet, each side yard to be not less than 10 feet in width; for two or three family dwellings each side yard shall be not less than 15 feet in width but the sum of the two side yards shall be not less than 35 feet; for a four family and other multiple family dwellings each side yard shall be not less than 20 feet in width but the sum of the two side yards shall be not less than 45 feet. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-54. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building. (Amended May 1, 1995.)

§ 9-58. **Rear Yard.** All dwellings shall have a minimum rear yard of 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-59. **Height Regulations.** Dwellings shall not exceed 3 stories or 40 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-60. **Maximum Lot Coverage.** For one, two, and three family dwellings the total coverage including dwellings and accessory buildings shall not exceed 40% of the lot area and for all other multiple family dwellings the total coverage shall not exceed 35% of the lot area.

§ 9-61. **Town Houses.** See Chapter 16 for regulations.

§ 9-62. **Off Street Parking.** As regulated in Chapter 20.

§ 9-63. **Signs.** As provided in Chapter 21.1.

§ 9-64. **Condominiums.** See Chapter 17 for regulation.

CHAPTER 8 **B-1 Business District**

§ 9-65. **Legislative Intent.** This district is intended to be used for general business to which the public requires direct and frequent access.

§ 9-66. **Uses Permitted as a Matter of Right.**

- (a) (Repealed December 10, 2007.) (*Note:* With respect to property being used for residential purposes as of December 10, 2007, this repeal shall take effect only upon the transfer (by deed, devise, intestacy, or otherwise) of the property. The previous text read as follows: “Any use permitted as a matter of right in the R-1, R-2, or R-3 Residential Districts but those uses permitted in these residential districts shall be subject to the area regulations, parking, sign, and height regulations of the district in which such use is permitted and if permitted in more than one district then the regulations of the less restrictive district shall prevail. Town houses shall be subject to Chapter 16 of this ordinance. Condominiums are subject to Chapter 17.”)
- (b) The following uses which are permitted with a Special Use Permit in R-3 Residential District: those set out in §9-52 (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), and (p). (Amended December 10, 2007.)
- (c) Retail stores of less than 20,000 square feet in which substantially all stock is kept indoors. (Amended May 1, 1995.)
- (c1) Restaurants. (Added May 1, 1995.)
- (d) (Repealed May 1, 1995.)
- (e) (Repealed May 1, 1995.)
- (f) (Repealed May 1, 1995.)
- (g) (Repealed May 1, 1995.)

- (h) Veterinary establishments provided that all animals shall be kept inside soundproofed, air conditioned buildings.
- (i) Banks.
- (j) Barber shops, beauty parlors, chiropody, or similar personal service shops.
- (k) Garden centers, greenhouses, and nurseries.
- (l) Pet shops.
- (m) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (n) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (o) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (p) (Repealed May 1, 1995.)
- (q) (Repealed November 6, 2000.)
- (r) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-67. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Residential human care facility, including family care homes, foster homes, or group homes serving mentally retarded or other developmentally disabled persons not related by blood or marriage. No conditions may be imposed on this use as a prerequisite for authorization except those conditions imposed to assure compatibility with other permitted uses and these conditions shall not be more restrictive than those imposed on other dwellings in the same district unless such additional conditions are necessary to protect the health and safety of the residents of such facilities.
- (a1) Residential uses located above a business use, in the same Building. With respect to property currently (Added December 10, 2007.)
- (a2) Upon a clear and convincing showing that the Town's interests in promoting a thriving business district will not be infringed, any residential use permitted as a matter-of-right in the R-1, R-2, or R-3 Residential Districts. Notwithstanding the remaining provisions of this Chapter, such uses shall be subject to the area regulations, parking, sign, and height regulations of the district in which such use is permitted (and if permitted in more than one district, then the regulations of the more restrictive district shall prevail). (Added December 10, 2007.)
- (b) Pool Halls, bowling alleys, dance halls, and amusement centers.
- (c) Mobile home parks in accordance with Chapter 18.
- (c1) Child Care Centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (c2) Hotels and motels. (Added May 1, 1995.)
- (c3) Service stations but major repairs shall be under cover, and all tires shall be stored inside. (Added May 1, 1995.)
- (c4) General service, automobile repair, other repair shops provided not more than 10 persons are employed on the premises in a single shift (not including persons whose principal duties are off premises) and provided that all storage and activities are conducted within a building. Examples of repair shops other than automobile repair shops are: cleaning and dyeing establishments, laundries, painting, printing and plumbing jobs, dressmaking, millinery and tailoring shops, radio and television repair shops, upholstery and furniture repair shops. (Added May 1, 1995.)
- (c5) Auction houses. (Added May 1, 1995.)

- (c6) Hospitals. (Added May 1, 1995.)
- (c7) Warehouses and commercial storage facilities. (Added September 16, 1996.)
- (d) Other neighborhood retail business uses upon a finding by governing body that such uses are of the same general character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.
- (e) Wide-Area Public Utilities. (Added November 6, 2000.)
- (f) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)

AREA REGULATIONS

§ 9-68. Minimum Lot Area. None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.

§ 9-69. Front Yards. If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.

§ 9-70. Frontage. No minimum required but building must front on public street, but not an alley. (Amended May 1, 1995.)

§ 9-71. Minimum Depth. None required.

§ 9-72. Side Yard. On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 25 feet. There shall be a side yard setback from an intersecting street of not less than 25 feet. In all other cases the side yard for commercial buildings shall not be required.

§ 9-73. Rear Yard. None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 20 feet.

§ 9-74. Height Regulations. Buildings shall not exceed three stories or 40 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-75. Maximum Lot Coverage. The total coverage, including main and accessory buildings, shall not exceed 40% of the lot area.

§ 9-76. Off Street Parking. As regulated in Chapter 20.

§ 9-77. Signs. As provided in Chapter 21.1.

CHAPTER 9 B-2 Business District

§ 9-78. Legislative Intent. This district is intended to be composed of land and structured use to furnish a wider range of retail goods and services to satisfy the household and personal needs of the neighborhood.

§ 9-79. Uses Permitted as a Matter of Right.

- (a) All of the uses permitted as a matter of right or with a special use permit in the B-1 Business District except the uses permitted under §§ 9-67(a), 9-67(a1), 9-67(a2), 9-67(e), or 9-67(f). (Amended May 1, 1995; amended November 6, 2000; amended December 10, 2007.) (Note: Those uses permitted under §9-66(a) are included within this paragraph for properties for which § 9-66(a) remains in effect. See the note regarding that section.)
- (b) General service, automobile repair, or other repair shops as permitted under § 9-67(c4) but without the limitation as to the number of employees.

- (b1) Retail stores permitted under § 9-66(c) but without the limitations as to size and outdoor stock. This paragraph permits but is not limited to automobile dealerships, lumber yards, and manufactured housing lots. (Added May 1, 1995.)
- (c) Radio or television broadcasting stations, studios, or offices, except transmission towers.
- (d) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (e) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (f) (Repealed May 1, 1995.)
- (g) (Repealed May 1, 1995.)
- (h) (Repealed May 1, 1995.)
- (i) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-80. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) (Repealed May 1, 1995.)
- (b) Processing and manufacturing establishments that are not objectionable because of smoke, odor, dust or noise but only when such processing and manufacturing is incidental to a retail business conducted on the premises and where not more than 10 persons are employed on the premises in the processing or manufacturing activities.
- (c) (Repealed May 1, 1995.)
- (d) Tire recapping and vulcanizing within a completely enclosed building and with no outdoor storage of tires, discarded rubber or similar material.
- (d1) (Repealed May 1, 1995.)
- (e) Other retail business uses upon finding by the governing body that such uses are of the same character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.
- (f) Wide-Area Public Utilities. (Added November 6, 2000.)
- (g) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (h) Adult Businesses (Added July 11, 2005)

AREA REGULATIONS

§ 9-81. *Minimum Lot Area.* None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.

§ 9-82. *Front Yards.* If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.

§ 9-83. *Frontage.* No minimum required but building must front on public street, but not an alley. (Amended May 1, 1995.)

§ 9-84. *Minimum Depth.* None required.

§ 9-85. *Side Yard.* On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 20 feet. There shall be a side yard setback from an intersecting street of not less than 20 feet. In all other cases, the side yard for commercial buildings shall not be required.

§ 9-86. **Rear Yard.** None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 20 feet.

§ 9-87. **Height Regulations.** Buildings shall not exceed three stories or 45 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-88. **Maximum Lot Coverage.** The total coverage, including main and accessory buildings, shall not exceed 75% of the lot area.

§ 9-89. **Off Street Parking.** As regulated in Chapter 20.

§ 9-90. **Signs.** As provided in Chapter 21.1.

CHAPTER 10 **M-1 Industrial District**

§ 9-91. **Legislative Intent.** This district is intended primarily for manufacturing, processing, storage, wholesaling, and distribution activities.

§ 9-92. **Uses Permitted as a Matter of Right.**

- (a) Any use permitted in the B-2 Business District as a matter of right or by special use permit except the uses permitted under § 9-80(h). (Amended July 11, 2005.)
- (b) Building material sales or storage yards except materials shall not be extracted from the premises.
- (c) Contractors' equipment storage yards or plants.
- (d) Cold storage, frozen food, and bottling plants.
- (e) Grain and feed manufacturing and storage.
- (f) Veterinary hospitals.
- (g) Other than the uses prohibited under this chapter, all industrial or manufacturing operations, compounding, processing, packaging, or treatment of products.
- (h) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (i) (Repealed May 1, 1995.)
- (j) (Repealed May 1, 1995.)
- (k) (Repealed May 1, 1995.)
- (l) Water treatment facilities.
- (m) Sewage treatment facilities.
- (n) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-93. **Uses Prohibited.** The following uses are prohibited:

- (a) Slaughter houses, but this paragraph does not prohibit the killing or processing of poultry. (Amended May 1, 1995.)
- (b) Acid manufacturers.
- (c) Ammonia, bleaching powder or chlorine manufacturers.
- (d) Asphalt manufacturers or refining.
- (e) Blast furnaces.
- (f) Boiler works.

- (g) Brick, tile or terra-cotta manufacturers not requiring ovens.
- (h) Coke ovens.
- (i) Creosote treatment or manufacturers.
- (j) Distillation of bones.
- (k) Fat rendering.
- (l) Dyestuff manufacturers.
- (m) Fertilizer manufacturers.
- (n) Forge plants.
- (o) Fuel manufacturing.
- (p) Gas manufacturers or storage in excess of one thousand cubic feet.
- (q) Gelatin or glue manufacturers or any process involving recovery from fish or animal material.
- (r) Glass manufacturers.
- (s) Gunpowder manufacturers or storage.
- (t) Incineration or reduction of garbage, dead animals, outfall, or refuse other than by an authorized public agency.
- (u) Iron, steel, brass or copper works or foundry.
- (v) Lime, gypsum or plaster of paris manufacturers.
- (w) Oil, paint, turpentine or varnish manufacturers.
- (x) Pulp mills.
- (y) Petroleum products.
- (z) Printing ink manufacturers.
- (aa) Rendering plant or other comparable processing of fish or animal material.
- (bb) Sawmills.
- (cc) Melting or refining of metals.
- (dd) Soap manufacturing.
- (ee) Stockyards.
- (ff) Tanning, curing or storage of raw hides or skins or leather dressing or coloring.
- (gg) Tar distillation or manufacturers.
- (hh) Any use reasonably deemed harmful to health, safety or welfare because of undue noise, vibration, smoke, dust, odor, heat or glare.

§ 9-93.1. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with the provisions contained in Chapter 22:

- (a) Wide-Area Public Utilities
- (b) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25.
- (c) Any other use which the Council determines is consistent with the character of the M-1 zoning classification and which is not unreasonably offensive to owners and occupants of adjacent lands.
- (d) Adult Businesses. (Added July 11, 2005.)

(Amended November 6, 2000; amended July 11, 2005.)

AREA REGULATIONS

- § 9-94. **Minimum Lot Area.** None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.
- § 9-95. **Front Yards.** If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.
- § 9-96. **Frontage.** No minimum required but building must front on a public street, but not an alley. (Amended May 1, 1995.)
- § 9-97. **Minimum Depth.** None required.
- § 9-98. **Side Yard.** On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 15 feet. There shall be a side yard setback from an intersecting street of not less than 15 feet. In all other cases the side yard for commercial buildings shall not be required.
- § 9-99. **Rear Yard.** None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 15 feet.
- § 9-100. **Height Regulations.** Buildings shall not exceed 3 stories or 45 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.
- § 9-101. **Maximum Lot Coverage.** The total coverage including main and accessory buildings shall not exceed 85% of the lot area.
- § 9-102. **Off Street Parking.** As regulated in Chapter 20.
- § 9-103. **Signs.** As provided in Chapter 21.1.

CHAPTER 11
A-1 Agricultural District
(Repealed July 13, 1998)

CHAPTER 11.1
A-1 Agricultural District
(Enacted July 13, 1998)

[Ed.: The Town's former A-2 classification was amended and redesignated as A-1 on July 13, 1998.]

- § 9-128.1. **Legislative Intent.** This classification is intended to allow Agriculture and closely related activities. (Amended July 13, 1998.)
- § 9-128.2. **Uses Permitted as a Matter of Right.**
- (a) Agriculture; general farm use (including the current employment of land and buildings supporting accepted farming practice) for the purpose of raising, harvesting and selling crops or for the feeding, breeding, management and sale of, or the produce of, livestock, fur-bearing animals or honey bees or for dairying and the sale of dairy products or any other agricultural use of animal husbandry or horticultural use or any combination thereof. Farm use shall include the preparation and storage of the products raised on such land for man's use and animal use. Nothing in this paragraph, however, shall authorize poultry houses or hog farms. (Amended July 13, 1998.)
 - (b) The growing and harvesting of timber and the maintenance of structures needed for the execution of those activities. This shall not include either uses or structures related to the production, manufacture or storage of wood products.
 - (c) Public and private conservation areas and structures for the retention of water, soil, open space, forest or wildlife resources.

- (d) Public and private parks, playgrounds, recreational grounds and grounds for games and sports except those the chief activity of which is carried on, or is customarily carried on as a business.
- (e) Single family dwelling if incidental to the above listed uses.
- (f) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (g) (Repealed November 6, 2000.)
- (h) Water treatment facilities.
- (i) Sewage treatment facilities.
- (j) Neighborhood Public Utilities. (Amended November 6, 2000.)(k)
- (k) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-128.3 Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Any use permitted Rockingham County's A-1 or A-2 zoning classification by right or as a special use. The primary intent of this paragraph (a) is to reduce any hardship on farmers occurring as a result of annexation, by giving them the right to petition the council and be heard, should the county zoning code allow uses not permitted herein. (Added July 13, 1998.)
- (b) Wide-Area Public Utilities. (Added November 6, 2000.)
- (c) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (d) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS

§ 9-128.4 Application of Area Regulations. Notwithstanding any other provision of this title, (a) the area and dimensional regulations in this chapter apply to dwellings only, (b) area and dimensional regulations for farm uses shall be established by the Board of Zoning Appeals upon application of the landowner, and (c) other uses shall be controlled by the area and dimensional regulations of the least restrictive zoning classification which allows the use and provides area and dimensional regulations. (Added May 1, 1995.)

§ 9-128.5. Minimum Lot Area. Minimum lot area shall be 20,000 square feet. There shall be no more than one single family dwelling unit on each lot.

§ 9-128.6. Front Yards. The minimum depth of the front yard shall be 35 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-128.7. Frontage. The minimum lot width at setback line shall be 100 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-128.8. Minimum Depth. Minimum depth of each lot shall be 150 feet.

§ 9-128.9. Side Yard. For a single story dwelling the side yard shall be not less than 10 feet in width; however, the sum of the two side yards shall be not less than 25 feet. For a dwelling of more than one story there shall be side yards of not less than 15 feet each. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet, provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building.

§ 9-128.10. **Rear Yard.** For dwellings there shall be a rear yard of not less than 35 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-128.11. **Height Regulations.** No dwelling shall exceed two and one-half stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-128.12. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-128.13. **Off Street Parking.** As regulated in Chapter 20.

§ 9-128.14. **Signs.** As provided in Chapter 21.1.

CHAPTER 12
A-2 Agricultural District
(Repealed July 13, 1998)

CHAPTER 12.1
A-2 Agricultural District
(Enacted July 13, 1998)

[Ed.: The Town's former A-1 classification was amended and redesignated as A-2 on July 13, 1998.]

§ 9-128.15. **Legislative Intent.** This district is designed primarily to accommodate farming and kindred rural activities, permitting the development of other uses by special use permit.

§ 9-128.16. **Uses Permitted as a Matter of Right.**

- (a) Agriculture, general farming, including dairying.
- (b) Orchards.
- (c) Nurseries.
- (d) Churches or similar places of worship, with accessory structures.
- (e) Golf courses, miniature golf courses and golf driving tees.
- (f) Public Parks, playgrounds, and playfields.
- (g) Swimming pools and tennis courts.
- (h) Grain storage bins as a primary use.
- (i) Greenhouses.
- (j) Tree farms.
- (k) Wildlife areas, game refuges and forest preserves.
- (l) Single family dwellings but not including residential subdivisions.
- (m) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (n) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (o) Hospitals, but not an animal hospital.
- (p) (Repealed November 6, 2000).
- (q) Neighborhood Public Utilities. (Added November 6, 2000.)
- (r) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-128.17. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Cemeteries and memorial gardens.
- (b) Clubs, fraternities, lodges and meeting places of other organizations not including any use that is customarily conducted as a gainful business.
- (c) Family campgrounds.
- (d) (Repealed July 13, 1998.)
- (e) Home occupations as regulated under Chapter 19.
- (f) Police, fire and rescue squad stations.
- (g) (Repealed July 13, 1998.)
- (h) Raising fur-bearing animals and pelt processing.
- (i) Schools, as defined.
- (j) Funeral homes.
- (k) Gravel pits and quarries.
- (l) Convalescent, nursing and rest homes.
- (m) Machine shops with equipment and materials under cover.
- (n) Manufacture and sale of feed and other farm supplies.
- (o) Radio or television transmitting stations and towers.
- (p) Riding academies and stables.
- (q) Dumps and sanitary landfill operations.
- (r) Shooting range or galleries.
- (s) Farm, lawn and garden machinery and equipment sales and service.
- (t) Airports.
- (u) Roadside stands or markets.
- (v) Blacksmith shops.
- (w) Wineries.
- (x) Water treatment facilities.
- (y) Sewage treatment facilities.
- (z) Mobile home parks in accordance with Chapter 18.
- (aa) Any use permitted Rockingham County's A-1 or A-2 zoning classification by right or as a special use. The primary intent of this paragraph (aa) is to reduce any hardship on farmers occurring as a result of annexation, by giving them the right to petition the council and be heard should the county zoning code allow uses not permitted herein. (Added July 13, 1998.)
- (bb) Wide-Area Public Utilities. (Added November 6, 2000.)
- (cc) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (dd) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS

§ 9-128.18 **Application of Area Regulations.** Notwithstanding any other provision of this title, (a) the area and dimensional regulations in this chapter apply to dwellings only, (b) area and dimensional regulations for farm uses shall be established by the Board of Zoning Appeals upon application of the landowner, and (c) other uses shall be controlled by the area and dimensional regulations of the most restrictive zoning classification which allows the use and provides area and dimensional regulations. (Added May 1, 1995.)

§ 9-128.19. **Minimum Lot Area.** Minimum lot area shall be 20,000 square feet. There shall no more than one single family dwelling unit on each lot.

§ 9-128.20. **Front Yards.** The minimum depth of the front yard shall be 35 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-128.21. **Frontage.** The minimum lot width at setback line shall be 100 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-128.22. **Minimum Depth.** Minimum depth of each lot shall be 150 feet.

§ 9-128.23. **Side Yard.** For a single story dwelling the side yard shall be not less than 10 feet in width; however, the sum of the two side yards shall be not less than 25 feet. For a dwelling of more than one story there shall be side yards of not less than 15 feet each. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet, provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building.

§ 9-128.24. **Rear Yard.** For dwellings there shall be a rear yard of not less than 35 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-128.25. **Height Regulations.** No dwelling shall exceed two and one-half stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-128.26. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-128.27. **Off Street Parking.** As regulated in Chapter 20.

§ 9-128.28. **Signs.** As provided in Chapter 21.1.

CHAPTER 12.2

HB-1 Highway Business District

(Enacted November 1, 1999.)

§ 9-128.50. **Legislative Intent.** This district is intended to allow a complimentary mix of uses along John Wayland Highway and Mason Street. Low density, low traffic uses are allowed near the highway. Compatible higher density uses are also allowed, provided they are set back from the highway and are organized into developments designed to minimize the burden on the public infrastructure. (Enacted November 1, 1999.)

Article One

Land within a Commercial Planned Unit Development

§ 9-128.51. **Application** The provisions of this Article shall apply only to property which is within a Commercial Planned Unit Development ("CPUD"). (Enacted November 1, 1999.)

§ 9-128.52. **CPUD's Generally.** CPUD's are intended to provide optional methods of land development which encourage imaginative solutions to design problems and minimize the burden on public infrastructure. Developments thus established are to be largely self-contained, with as few entrances onto existing streets and highways as possible. (Enacted November 1, 1999.)

§ 9-128.53. Permitted Uses. Within a CPUD, the following uses are permitted in accordance with an approved master plan:

- (a) Professional, administrative, and clerical offices.
This provision, in conjunction with paragraph (q) below, allows certain goods or equipment to be stored in connection with an administrative office. All goods shall be stored indoors and all equipment shall be fully screened from view from public highways and other properties. Such screening shall be accomplished through fencing or landscaping.
- (b) Retail stores of less than 25,000 square feet in which substantially all stock is kept indoors.
This provision allows gasoline stations, provided that the buildings shall be less than 25,000 square feet and substantially all products for sale are stored indoors *or* underground.
- (c) Retail stores of any size, without any limitations as to outdoor stock.
This paragraph permits but is not limited to automobile dealerships, lumber yards, and manufactured housing sellers.
- (d) Restaurants.
- (e) Banks and similar financial institutions.
- (f) Hotels and motels.
- (g) General service, automobile repair, other repair shops provided not more than 10 persons are employed on the premises in a single shift (not including persons whose principal duties are off premises) and provided that all storage and activities are conducted within a building. Examples of repair shops other than automobile repair shops are: cleaning and dyeing establishments, laundries, painting, printing and plumbing jobs, dressmaking, millinery and tailoring shops, radio and television repair shops, upholstery and furniture repair shops.
- (h) Radio or television broadcasting stations, studios, or offices, but not transmission towers.
- (i) Nursing homes and retirement home projects.
- (j) Hospitals, but not an animal hospital.
- (k) Personal service establishments, including barber shops, beauty parlors, and similar enterprises.
- (l) Greenhouses and nurseries.
- (m) Recreational uses including community centers, golf courses, swimming pools, parks, playgrounds or any other public recreational uses.
- (n) Community facilities such as churches and other religious institutions.
- (o) Child Care Centers, as defined, in conformity with the character of the neighborhood.
- (p) Bowling alleys.
- (q) Accessory uses and buildings incidental to the principal use.
- (r) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (s) Other neighborhood business uses upon a finding by governing body that such uses are of the same general character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.

(Enacted November 1, 1999.)

§ 9-128.54. Minimum Size. The minimum size of any CPUD shall be five acres of contiguous land. There is no minimum size for individual lots within a CPUD. (Enacted November 1, 1999.)

§ 9-128.55. Setbacks. No building within a CPUD may be located or maintained within 75 feet of John Wayland Highway or Mason Street.

Additionally, all buildings within a CPUD shall set back from the perimeter of the CPUD by at least 50 feet. This 50 foot setback can be reduced to 30 feet, if the area is planted with dense landscaping sufficient to block sightlines, pedestrian traffic, and

vehicular traffic within 15 years. This landscaping must be maintained and replanted as necessary for the buffer reduction to remain in force.

(Enacted November 1, 1999.)

§ 9-128.56. Height Restrictions. No structure shall exceed three stories or 45 feet in height whichever is less. Accessory structures shall not exceed 15 feet in height. (Enacted November 1, 1999.)

§ 9-128.57. Standards for Improvements. The town's standards and policies concerning streets, utilities, drainage, and monuments as expressed in Title 8 of this code and related addenda shall apply to improvements within CPUD's. (Enacted November 1, 1999.)

§ 9-128.58. Entrances onto Major Highways; Traffic. CPUD's shall be designed so as to minimize entrances onto John Wayland Highway or Mason Street. In no event shall a CPUD have more than one entrance within any 500 linear foot segment of John Wayland Highway or Mason Street. Entrance standards and procedures are controlled by the Virginia Department of Transportation.

Streets and parking areas within a CPUD shall be designed to allow for smooth and efficient traffic flow.

(Enacted November 1, 1999.)

§ 9-128.59. Protection of Agricultural Uses. All CPUD's shall be designed so as to maintain an appropriate separation between the uses within the CPUD and any adjoining agricultural uses. (Enacted November 1, 1999.)

§ 9-128.60. Off Street Parking. Off street parking shall be as regulated in Chapter 20, provided that all parking required for any use within a CPUD shall be located within the CPUD, notwithstanding any provisions to the contrary in Chapter 20. (Enacted November 1, 1999.)

§ 9-128.61. Signs. As provided in Chapter 21.1. (Enacted November 1, 1999.)

§ 9-128.62. Administrative Procedure for a CPUD.

- (a) With respect to land zoned HB-1, a CPUD may be established upon the submission of a master plan, which may consist of one or more sheets, and shall show
 - (1) The boundaries of the proposed CPUD.
 - (2) The overall scheme of development including the general location of the various types of uses to which the property will be put, and the provision of this chapter which allows the use. (For example, "Bank: § 9-128.53(e)")
 - (3) The general location of all streets and easements of right-of-way, and the location of and specifications for all proposed entrances onto John Wayland Highway, Mason Street, or other existing public streets.
 - (4) The general location of all parking areas, and a notation as to the number of parking spaces in each.
 - (5) The proposed general location of all buildings and other improvements.
 - (6) Reasonably detailed plans for water, sanitary sewer, storm sewer, and other utilities.
 - (7) Proposed agreements, rules, or covenants which will govern the use of any property within the development.
 - (8) Proposed building types, height, and approximate floor areas.
 - (9) Any landscaping required by law.
- (b) The Planning Commission shall review the master plan and other documents filed and shall issue to the Council a recommendation for approval, disapproval, or approval with modification of the layout, scheme of development, deed restrictions, or other matters concerning the development.
- (c) In reviewing the application and the Planning Commission's recommendation, the Council will be guided by the standards and intent expressed in this Article. If the Council approves the application for the CPUD, the owner or developer may proceed to develop any section of the project upon the submission and approval of a final plan for that section. The final plan shall comply in all respects with the requirements for final plats set forth in

§ 8-12 of this code. The final plan need be approved only by the Planning Commission, which shall issue approval if it complies with this section and it is in substantial compliance with the master plan. Such approval shall be contingent upon the guaranty requirement of paragraph (d) of this section.

- (d) Before a final plan is approved, the installation of all improvements required by Title 8 or any other provision of law shall be guaranteed as provided in § 8-27 of this code.

(Enacted November 1, 1999.)

§ 9-128.63. *Amendment of Plans.*

- (a) Except as provided in paragraph (b) of this section, the procedures governing the issuance of new master plans shall govern amendments to existing plans. A master plan is amended through the approval of a superseding plan.
- (b) In existing CPUD's, the owner or owners of a portion of the property in the development may apply for the amendment of the master plan as it relates to their property only. Such application will be approved only if the amendment would not materially change the character of the development, all other requirements are met, and the council determines that the amendment is appropriate.
- (c) Any amendments to final plans shall be made in accordance with law pertaining to the amendment of subdivision plats. If a final plan amendment does not entail a master plan amendment, no additional procedures need be followed. If the final plan as amended would deviate from the master plan, the master plan must be amended also.

(Enacted November 1, 1999.)

§ 9-128.64. *Abandonment of Project.* Upon the abandonment of a project authorized under this section or upon the expiration of two years from the authorization of the CPUD which has not by then been commenced, the authorization shall expire and the land and structures thereon may be used without such approval for any other lawful purpose permissible in the HB-1 District. (Enacted November 1, 1999.)

Article Two

Land Not within a Commercial Planned Unit Development

§ 9-128.65. *Application.* The provisions of this Article shall apply only to property not within a Commercial Planned Unit Development established under Article One of this Chapter. (Enacted November 1, 1999.)

§ 9-128.66. *Permitted Uses.* The following uses are permitted as a matter of right within the HB-1 District:

- (a) Single family dwellings, occupied by families or not more than two unrelated persons.
- (b) Professional, administrative, and clerical offices.

This provision, in conjunction with paragraph (e) below, allows certain goods or equipment to be stored in connection with an administrative office. All goods shall be stored indoors and all equipment shall be fully screened from view from public highways and other properties. Such screening shall be accomplished through fencing or landscaping.
- (c) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (d) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (e) Accessory uses and buildings, provided such uses are incidental to the principal use. Any accessory building shall be located on the same lot with the principal building.
- (f) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

(Enacted November 1, 1999.)

§ 9-128.66A. *Uses allowed with Special Use Permit.* The following uses may be permitted in accordance with the provisions contained in Chapter 22:

- (a) Wide-Area Public Utilities.

- (b) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25.
- (c) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

(Enacted November 6, 2000.)

§ 9-128.67. Minimum Lot Area. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--the minimum lot area shall be 20,000 square feet. (Enacted November 1, 1999.)

§ 9-128.68. Dwelling Units Per Lot. There shall be no more than one dwelling unit on any lot. (Enacted November 1, 1999.)

§ 9-128.69. Front Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) The minimum depth of the front yard shall be 40 feet from the street right-of-way if the street is 50 feet or greater in width, and if the street is less than 50 feet in width, then the minimum front yard shall be 35 feet from the center of the street.
- (b) In no case shall an accessory building be located or extend into the front yard.

(Enacted November 1, 1999.)

§ 9-128.70. Frontage. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) The minimum lot width at the setback line shall be 100 feet.
- (b) Lots must abut on a public street--not an alley--for a distance of not less than 50 feet.

(Enacted November 1, 1999.)

§ 9-128.71. Minimum Depth. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--the minimum depth of each lot shall be 100 feet. (Enacted November 1, 1999.)

§ 9-128.72. Side Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) One story buildings located on interior lots must have side yards of at least 15 feet in width; however, the sum of the two side yards shall be not less than 35 feet.
- (b) Buildings of more than one story shall have side yards of not less than 20 feet each.
- (c) Additionally, for buildings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-128.69.
- (d) For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building.

(Enacted November 1, 1999.)

§ 9-128.73. Rear Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--

- (a) Principal structures must have a rear yard of not less than 30 feet.
- (b) Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

(Enacted November 1, 1999.)

§ 9-128.74. Height Regulations. Except for farming and agricultural uses—whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) No dwelling shall exceed 2-1/2 stories or 35 feet in height whichever is less.
- (b) Accessory buildings shall not exceed 15 feet in height.

(Enacted November 1, 1999.)

§ 9-128.75. Maximum Lot Coverage. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--buildings shall cover not more than 40% of the lot area. (Enacted November 1, 1999.)

§ 9-128.76. Off Street Parking. As regulated in Chapter 20. (Enacted November 1, 1999.)

§ 9-128.77. Signs. As provided in Chapter 21.1. (Enacted November 1, 1999.)

CHAPTER 13
Flood Plain Districts and Regulations
(Repealed August 6, 1990)

CHAPTER 13.1
Flood Plain Districts and Regulations
(Enacted August 6, 1990)

§ 9-135.1. Purpose. The purpose of these provisions of this chapter is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (a) Regulating activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- (b) Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
- (c) Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
- (d) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

§ 9-135.2. Applicability. These provisions shall apply to all lands within the jurisdiction of the Town of Dayton, Virginia, and identified as being in the 100-year floodplain by the Federal Insurance Administration.

§ 9-135.3. Compliance and Liability.

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.
- (b) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the floodplain area, or that land uses permitted within such area will be free from flooding or flood damages.
- (c) This chapter shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision thereunder.

§ 9-135.4. Abrogation and Greater Restrictions. This chapter supersedes any ordinance currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this chapter.

§ 9-135.5. Severability. If any section, subsection, paragraph, sentence, clause, or phase of this chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this chapter. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this chapter are hereby declared to be severable.

§ 9-135.6. Definitions. The following definitions shall apply within this chapter:

- (a) *Base Flood/ One-Hundred Year Flood*..... The flood having a one percent chance of being equaled or exceeded in any given year. (Amended January 28, 2008.)
- (a1) *Base Flood Elevation*: The elevation shown on the Flood Insurance Rate Map (FIRM) described in § 9-135.7 below that indicates the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. (Added January 28, 2008.)
- (a2) *Basement*: Any area of a building having its floor subgrade (below ground level) on all sides. (Added January 28, 2008.)
- (b) *Board of Zoning Appeals*..... The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this chapter.
- (c) *Development*..... Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, paving, filling, grading, excavation, mining, dredging, drilling operations, or storage of equipment or materials. (Amended January 28, 2008.)
- (c1) *Elevated Building*. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers). (Added January 28, 2008.)
- (c2) *Encroachment*..... The advance or infringement of uses, plant growth, fill excavation, Buildings, permanent Structures or development into a Floodplain, which may impede or alter the flow capacity of a Floodplain. (Added January 28, 2008.)
- (d) *Existing Manufactured Home Park/Subdivision* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the initial effective date of these regulations.
- (e) *Expansion to an Existing Manufactured Home Park or Subdivision* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.)
- (f) *Flood or Flooding*
 1. A general or temporary condition of partial or complete inundation of normally dry land area from
 - a. The overflow of inland or tidal waters; or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water

exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by some similarly unusual and unforeseeable event with results as defined in paragraph 1(a) of this definition.

- (f) *Flood or Flooding* 1. A general or temporary condition of partial or complete inundation of normally dry land area from
 - a. The overflow of inland or tidal waters; or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by some similarly unusual and unforeseeable event with results as defined in paragraph 1(a) of this definition.

(Amended January 28, 2008.)

- (g) *Floodplain or Flood-Prone Area* Any land area susceptible to being inundated by water from any source. (Amended January 28, 2008.)

- (h) *Floodplain* (Deleted January 28, 2008.)

- (i) *Floodway* The channel of a river or other Watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than a designated height. (Added January 28, 2008.)

- (ii) *Freeboard* A factor of safety usually expressed in feet above a Flood level for purposes of Floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and hydrological effect of urbanization in the watershed. (Added January 28, 2008.)

- (j) *Historic Structure* Any structure that is:
 - (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district;
 - (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior or
 - (ii) Directly by the Secretary of the Interior in states without approved programs.

(Amended January 28, 2008.)

- (j1) *Lowest Floor* The lowest floor of the lowest enclosed areas (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in

violation of the applicable non-elevation design requirements of Federal Code 44 CFR § 60.3. (Added January 28, 2008.)

- (k) *Manufactured Home* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term “Manufactured Home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. (Amended January 28, 2008.)
- (l) *Manufactured Home Park/ Subdivision* A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.
- (m) *New Construction* For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (Amended January 28, 2008.)
- (n) *New Manufactured Home Park/Subdivision* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the initial effective date of these regulations.
- (o) *Recreational Vehicle* A vehicle which is:
 - (a) built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- (o1) *Shallow Flooding Area* A special flood hazard area with Base Flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. (Added January 28, 2008.)
- (o2) *Special Flood Hazard Area* ... The land in the Floodplain subject to one percent (1%) or greater chance of being Flooded in any given year as determined as determined under § 6-135.7 below. (Added January 28, 2008.)
- (p) *Start of Construction* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not

occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building. (Amended January 28, 2008.)

- (q) *Substantial Damage*..... Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (r) *Substantial Improvement* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structures continued designation as a “historic structure.”
- (s) *Watercourse*..... A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourses include specifically designated areas in which substantial Flood damage may occur. (Added January 28, 2008.)

§ 9-135.7. Description of District.

(a) *Basis of District:* The floodplain district shall include areas to one percent (1%) or greater chance of being Flooded in any given year. The basis for the delineation of the district shall be the one hundred (100) year flood elevations or profiles contained in the Flood Insurance Study for the Town of Dayton, Virginia, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated February 6, 2008, as amended. (Amended January 28, 2008, effective February 6, 2008.)

- (1) The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100) year floodplain boundary has been approximated. Such areas are shown as Zone A on the Flood Insurance Rate Map dated February 6, 2008. For these areas, the one hundred (100) year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100) - year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the town.
- (2) The Special Floodplain District shall be those areas identified as either an AE Zone or A1-30 zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided but for which no floodway has been delineated. (Added January 28, 2008.)

(b) *Overlay Concept:*

- (1) The Floodplain District described above shall be overlays to the existing underlying area as shown on the Official Zoning Map, and as such, the provisions for the floodplain district shall serve as a supplement to the underlying district provisions.
- (2) In case of any conflict between the provisions or requirements of the Floodplain District and those of any underlying district the more restrictive provisions and/or those pertaining to the floodplain district shall apply.

- (3) In the event any provision concerning a Floodplain District declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

§ 9-135.8. Official Zoning Map. The boundaries of the Floodplain District are established as shown on the Flood Insurance Rate Map which is declared to be a part of this chapter and which shall be kept on file in the office of the town superintendent.

§ 9-135.9. District Boundary Changes. The delineation of any of the Floodplain District may be revised by the town council where natural or man-made changes have occurred or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

§ 9-135.10. Interpretation of District Boundaries. Initial interpretations of the boundaries of the Floodplain District shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the District, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

§ 9-135.11. General Provisions Concerning Floodplain District.

- (a) *Permit Requirement:* All uses, activities, and development occurring within any Floodplain District shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the subdivision regulations in Title 8 of this Code. Prior to the issuance of any such permit, the zoning officer shall require all applications to include compliance with all applicable state and federal laws. Under no circumstance shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Alteration or Relocation of Watercourse:* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Marine Resources Commission, the Virginia State Water Control Board (a joint permit application is available from anyone of these organizations.) Notification of the proposal shall be given to all adjacent jurisdictions, the Division of Dam Safety and Floodplain Management (Department of Conservation and Recreation), and the Federal Insurance Administration. (Amended January 28, 2008.)
- (c) *Site Plans and Permit Applications:* All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:
 - (1) For structures to be elevated, the elevation of the lowest floor (including basement).
 - (2) For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
 - (3) The elevation of the one hundred (100) year flood.
 - (4) Topographic information showing existing and proposed ground elevations.
- (d) *Encroachment Provisions:*
 - (1) No new construction or development shall be permitted within the floodplain district unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one foot at any point.
 - (2) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one hundred (100) year flood elevation.
- (e) *Manufactured Homes:*
 - (1) Manufactured homes that are placed or substantially improved on sites:
 - (i) Outside of a manufactured home park or subdivision,

- (ii) In a new manufactured home park or subdivision,
- (iii) In an expansion to an existing manufactured home park or subdivision,
- (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood,

Shall be elevated on a permanent foundation such that the lowest referenced elevation of the manufactured home is elevated to a minimum of one foot above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement. (Amended January 28, 2008.)

- (2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of paragraph one above of this section shall be elevated so that either:

- (i) The lowest floor of the manufactured home is at or above the base flood elevation, or
- (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

- (f) Recreational Vehicles: Recreational vehicles shall either:

- (i) Be on the site for fewer than 180 consecutive days, and
- (ii) Be fully licensed and ready for highway use, or
- (iii) Meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes in paragraph § 9-135.11(e) above. (Amended January 28, 2008.)

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

§ 9-135.12. Design Criteria for Utilities and Facilities.

- (a) Sanitary Sewer Facilities: All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- (b) Water Facilities: All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- (c) Drainage Facilities: All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and onsite waste disposal sites. The town may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- (d) Utilities: All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- (e) Streets and Sidewalks: Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

§ 9-135.13. Variances. In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway area that will cause any increase in the one hundred (100) year flood elevation.
- (b) The danger that materials may be swept on to other lands or downstream to the injury of others.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- (j) The safety of access by ordinary and emergency vehicles to the property in time of flood.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (m) Such other factors which are relevant to the purposes of this chapter.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense, and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from exceptional hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100) year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

§ 9-135.14. Existing Structures in Floodplain Districts. The Substantial Damage or Substantial Improvement of any Structure shall require the entire Structure to be brought into full compliance with the provisions of this Chapter. (Amended January 28, 2008.)

CHAPTER 14
Conditional Zoning

§ 9-136. *Legislative Intent.* The intent of this chapter is to provide a more flexible and adaptable zoning method to cope with situations found in zoning districts whereby 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. This chapter is authorized by § 15.2-2298 of the Code of Virginia. (Amended December 10, 2007.)

§ 9-137. *Proffer of Conditions.* An owner may proffer reasonable conditions, in addition to the regulations established elsewhere in the ordinance, as part of an amendment to zoning district regulations or the zoning district map.

§ 9-138. *Requirements as to Conditions.* The proffered conditions shall be in writing and shall be made prior to the public hearing before the Town Council. The Council may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. (Amended December 10, 2007.)

§ 9-139. *Limitations on Conditions.* The following conditions and limitations apply as to the proffered conditions:

- (a) The rezoning itself must give rise to the need for the conditions.
- (b) The conditions proffered shall have a reasonable relation to the rezoning.
- (c) (Repealed December 10, 2007)
- (d) (Repealed December 10, 2007)
- (e) All conditions must be conformity with the Town's comprehensive plan. (Added December 10, 2007)
- (f) All conditions must comply with § 15.2-2298 of the Code of Virginia. (Added December 10, 2007)

§ 9-140. *Enforcement and Guarantees of Conditions.* The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendments to the zoning map including:

- (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 an injunction, abatement, or other appropriate action or proceeding; and
- (c) Requiring a guarantee, satisfactory to the Town Council in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.
- (d) Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

§ 9-141. *Records.* The zoning map shall show by 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 access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

§ 9-142. *Petition for Review of Decision.* Any zoning applicant who is aggrieved by the decision of the Zoning Administrator pursuant to the provisions of § 9-140 may petition the Town Council for the review of the decision of the Zoning Administrator.

§ 9-143. *Amendments and Variations of Conditions.* There shall be no amendment or variation of conditions created pursuant to the provisions of § 9-139 until after a public hearing before the governing body advertised pursuant to the applicable provisions of state law.

CHAPTER 15
Planned Unit Residential Development

§ 9-144. **General Description.** The regulations established in this chapter are intended to provide optional methods of land development which encourage more imaginative solutions to design problems. Residential areas thus established would be characterized by unified building and site development program, open space for recreation, and the provision for promotional religious, educational and cultural facilities which are integrated with the total project. The planned unit residential development is permitted in an R-3 District and must have a minimum of 5 acres or more.

§ 9-145. **Permitted Principal and Accessory Uses and Structures.** The following uses are permitted:

- (a) Single family detached dwellings.
- (b) Two family dwellings.
- (c) Town houses in accordance with Chapter 16.
- (d) Condominiums, in accordance with Chapter 17.
- (e) Multiple family dwellings.
- (f) Nursing homes and retirement home projects.
- (g) Retail stores, convenience shops, personal service type establishments, restaurants, food and drug stores.
- (h) General service facilities.
- (i) Banks.
- (j) Barbershops, beauty parlors, chiropody, or similar personal service shops.
- (k) Greenhouses and nurseries.
- (l) Recreational uses including community centers, golf courses, swimming pools, parks, playgrounds or any other public recreational uses.
- (m) Community facilities such as churches and other religious institutions.
- (n) Physicians offices.
- (o) Public utilities, as defined.
- (p) Accessory uses and buildings incidental to the principal use.

§ 9-146. **Business and Commercial Uses.** No more than 10% of the gross development area may be set aside and used for commercial purposes.

§ 9-147. **Density Requirements.** The overall density shall not exceed 10 dwelling units per net development acre. Net development acreage is determined by subtracting the area set aside for churches, schools, commercial uses and streets right-of-way from the gross development area. Any land set aside for common open space or recreational use shall be included in determining the number of dwelling units permitted.

§ 9-148. **Minimum Size of Planned Unit Development.** The minimum size of any planned unit development shall be 5 acres.

§ 9-149. **Area Regulations.** There shall no no minimum lot size, no frontage requirements, no minimum depth, front setbacks, side or rear yard requirements nor coverage maximums.

§ 9-150. **Off Street Parking.** Off street parking shall be as regulated in Chapter 20.

§ 9-151. **Streets.** Lots are not required to front on dedicated streets and private streets may be utilized provided that each lot shall have vehicular and pedestrian access to a dedicated street through a prescribed easement or common area. Where private streets are used there shall be no responsibility on the part of the Town for any maintenance or snow removal.

§ 9-152. Administrative Procedure for a Planned Unit Residential Development. Within the R-3 District the planned residential development shall not be permitted until the following conditions have been complied with:

- (a) Special use permit must be obtained pursuant to the provisions of Chapter 22. When a special use application is applied for it shall be accompanied by a master plan and the master plan must show the overall development scheme including the use or uses, dimensions and locations of proposed sites and other open spaces with such pertinent information as may be necessary to determine the contemplated arrangement or use. The master plan must also be accompanied by the proposed agreement, provisions or covenants governing the use, maintenance and continued protection of the planned development, prescribed easements and any common areas that are not to be dedicated to and accepted by the Town of Dayton.

All easements must be recorded with or prior to the first lot conveyance. The proposed master plan shall be prepared by and have the seal of an architect or engineer duly registered to practice in the State of Virginia.

- (b) If all the land and all of the buildings within the planned residential development are to be kept in one ownership and operated by such owner through lease or other arrangements with other persons, then the master plan need not contain the prescribed easements or covenants or agreements for the use, maintenance and continued protection of the development. In the event of transfer of title of any lot or building within the planned residential area, however, prior to delivery of the deed such matters must be filed and approved.
- (c) After the application is filed the Planning Commission shall review the conformity of the proposed development and may recommend conditions regarding layout, and performance of the development, requiring appropriate deed restrictions, which recommendations shall be made to the Town Council for action.
- (d) The tract or parcel of land involved must either be in one ownership or the subject of an application filed jointly by the owners of all the property included.
- (e) The proposed development must be designed to produce an environment of stable and desired character and not out of harmony with its surrounding neighborhood.
- (f) If the Town Council approves the special use permit and the proposed master plan, the owner or developer may then proceed to develop the project but before doing so he shall prepare a final plan of each section of the project before it is developed. The final plan shall be subject to approval by the Planning Commission only and must conform with the master plan previously filed and approved. The final plan shall be in such form as to be recorded, show building lines common land and street easements and other applicable features. No building permit shall be issued until a final plan of the proposed development, together with protective covenants, restrictions and easements is approved by the Planning Commission and recorded by the owner-developer. Final plans may be prepared by engineers, architects, or surveyors licensed in Virginia.
- (g) Ownership of the streets and common areas shall be vested in either the owner-developer or in a nonprofit corporation of property owners made up of all of the lot owners within the development and the articles of incorporation and bylaws of such association shall be subject to approval by the Planning Commission.

§ 9-153. Abandonment of Project. Upon the abandonment of a project authorized under this chapter or upon the expiration of two years from the authorization of the planned development which has not by then been commenced, the authorization shall expire and the land and structures thereon may be used without such approval for any other lawful purpose permissible within the use-area district in which the planned development is located.

CHAPTER 16

Town House Regulations

Town Houses shall be subject to the following special zoning regulations:

§ 9-154. Zoning Districts Allowing Town Houses. Town houses are permitted in residential zoning districts R-2 and R-3 and in B-1 Business District. In the R-2 zone town houses must comply with all the provisions set forth in that district as well as the provisions of this chapter. In the R-3 and B-1 zones clusters of up to 10 town house units may be constructed.

§ 9-155. Height Regulations. Town houses may be erected up to 40 feet in height from the average level of the ground adjacent to the front exterior wall.

§ 9-156. *Area Regulations.* Minimum lot area for any town house project or development shall be calculated at 1,600 square feet per town house but individual town houses within the project or development may have less square footage than this amount if approved by the governing body. The maximum number of units per gross acre of the development shall not exceed 10 units per acre.

§ 9-157. *Width Regulations.* Wherever a structure containing townhouses is constructed in accordance with the regulations of this chapter and the structure as a whole meets the requirements of this chapter, individual units may be sold without regard to the area requirements of the underlying zoning classification. No such sale of individual townhouses shall be deemed a subdivision.

§ 9-158. *Yard Regulations.*

- (a) *Side.* Each town house group shall have minimum side yards of 15 feet. In the case of town house projects of 2 or more groups the minimum distance between groups of structures shall be 30 feet.
- (b) *Front.* Front setback shall be as established in the various zones where town houses are permitted.
- (c) *Rear.* The rear yard requirements shall be as set forth in the various zones where town houses are permitted.
- (d) *Corner.* Corner lots shall provide a yard equal to the front yard on each street.

§ 9-159. *Special Regulations.*

- (a) *Common Areas.* If a town house development includes common areas in addition to the town house lots, the common areas shall be maintained by and be the sole responsibility of the developer-owner of the town house development until such time as the developer-owner conveys such common area to a non-profit corporate owner whose members shall be all of the owners of the town houses in the town house development. This land shall be conveyed to and be held by said nonprofit corporate owner solely for recreational and parking purposes of the owners of the individual town house lots in the development. In the event of such conveyance by the developer-owner to a nonprofit corporate owner, deed restrictions and covenants, shall provide, among other things, that any assessments or charges for cost of maintenance of such common areas shall constitute a pro-rata lien upon the individual town house lots. Maintenance of town house exteriors, lawns, special lighting and drainage shall be provided in a manner so as to discharge any responsibility of the Town.
- (b) *Parking.* Required off-street parking spaces of at least two spaces per town house shall be provided on the individual lots or within a common area maintained by the nonprofit corporate association, or by the developer, as provided in subsection (a) of this section. Front yard parking areas are prohibited unless waived in writing by the Planning Commission. Reference is made to chapter 20 for further details as to parking.
- (c) *Common Wall Architectural Treatment.* Common walls enclosing attached town house units shall be of noncombustible construction or other approved assembly of materials giving a minimum fire resistance as required by the statewide building code or if no such requirement is in such code then of not less than two hours duration.
- (d) *Exterior Facades.* (Repealed May 1, 1995.)

CHAPTER 17 **Condominiums**

§ 9-160. Condominiums shall be governed by the Condominium Act, Title 55, Chapter 4.2, Code of Virginia, 1950, as amended.

§ 9-161. *Conversion of Condominiums.* Proposed conversions, condominiums, and the use thereof which do not conform to this zoning outline must secure a special use permit prior to conversion, pursuant to Chapter 22.

CHAPTER 18
Mobile Home Parks

§ 9-161.1. Mobile Homes Must Be In Parks. Notwithstanding any other provision of this title, but subject to § 15.2-2290 of the Code of Virginia, no Mobile Home may be placed in the Town of Dayton except in a mobile home park. (Added May 1, 1995; amended February 7, 2000.)

§ 9-162. Any mobile home placed in the Town of Dayton after the date of enactment or amendment of this ordinance shall meet the following requirements:

- (a) All mobile homes shall meet the plumbing requirements and the electrical wiring and connection, construction, blocking, and anchoring requirements of the Virginia State Building Code and shall display the seal of a testing laboratory approved by the State of Virginia.
- (b) All mobile homes shall be completely skirted; such that no part of the undercarriage shall be visible to a casual observer, in accordance with methods and materials approved by the Zoning Administrator.
- (c) All mobile homes shall be supplied with public water and wastewater disposal or such individual service evidenced by permits from the Health Department.

§ 9-163. Mobile Home Park and Setback Requirements. All mobile home parks shall meet the following minimum area and setback requirements:

- (a) All mobile home parks shall have a minimum area of at least five (5) acres. A minimum of ten (10) spaces shall be completed and ready for occupancy before the first occupancy is permitted.
- (b) The overall density of any mobile home development shall not exceed seven (7) units per net acre. The density of any particular acre within such park shall not exceed eight (8) units per net acre. For density purposes, net acreage shall be defined as all land within the development except land in the one hundred (100) year flood plain, land needed for the right-of-way width of ninety (90) feet or more, and land dedicated for other non-street public uses.
- (c) No main or accessory building shall be located closer than twenty-five (25) feet to any property line of a mobile home park.

§ 9-164. Mobile Home Park Lot Requirements. All mobile home lots shall meet the following requirements:

- (a) The area of any mobile home lot shall not be less than 3,400 square feet. Lot coverage, herein defined as the percentage of the mobile home lot area covered by the mobile home stand and any mobile home accessory structure, driveway, and parking area, excluding patios, shall not exceed thirty-five percent (35%) as an average, nor forty percent (40%) for a given lot; the minimum area of any site devoted to common open space shall be five thousand (5,000) square feet.
- (b) No mobile home or permanent building shall be closer than twenty (20) feet to any mobile home.
- (c) The minimum length of a mobile home lot shall be eighty-five (85) feet; the minimum width shall be forty (40) feet. On all lots larger than the minimum, the ratio of length to width shall not exceed 2.2 to 1.0.
- (d) Where laundry facilities are not made available, the rear yard of each mobile home lot shall be provided with a clothesline which shall be exempt from setback and other requirements of mobile home accessory structures.
- (e) A patio of two hundred (200) square feet in area shall be provided adjoining each mobile home stand.

§ 9-165. Mobile Home Accessory Structures. All mobile home accessory structures erected or constructed after the date of enactment or amendment of this ordinance must meet the following requirements:

- (a) All mobile home accessory structures must meet the plumbing, electrical connection wiring, construction, and other applicable requirements of the Building Code.
- (b) Except in the case of an awning, ramada, or other shade structure, where a mobile home accessory structure is attached to the mobile home unit a substantial part of one wall of the accessory structure shall be flush with part of the mobile home unit, or such accessory structure shall be attached to the mobile home unit in a substantial manner of means of a roof. All mobile home accessory structures, whether attached or detached, shall be

designed and constructed as free standing structures. No detached mobile home accessory structure, except ramadas, shall be erected closer than twenty (20) feet to a mobile home.

- (c) Mobile home accessory structures, except ramadas, shall not exceed the height of the mobile home.
- (d) No mobile home accessory structure shall be erected or constructed on any mobile home lot except as an accessory to a mobile home.
- (e) Every room in a cabana, herein defined as any habitable mobile home accessory structure, shall have access to at least one exterior door opening without requiring passage through the mobile home; shall be ventilated either by windows capable of opening to the outside with an area five percent (5%) of the floor areas, or by a ventilation system capable of producing a change of air in the room every thirty (30) minutes, with at least twenty percent (20%) of the air supply taken from the outside; shall have a total glazed area not less than ten percent (10%) of the floor area of the cabana; and in the case of attached structures, shall not be constructed adjacent to more than one (1) exterior door in the mobile home, nor to more than one (1) side of the mobile home.
- (f) Awnings and other shade structures, except ramadas, shall conform to the requirements of applicable sections of the Building Code.
- (g) Where a ramada extends over a mobile home, it shall exceed the height of the mobile home by no more than thirty-six (36) inches nor less than eighteen (18) inches and shall have a clearance of not less than six (6) inches in a horizontal direction from each side of a mobile home. Cross braces, structural ties, or other architectural appurtenances shall not obstruct movement of any mobile home.
- (h) A ramada shall be enclosed or partly enclosed on any side, except that one side may be enclosed when the ramada roof is continuous with the roof of the cabana.
- (i) A ventilation opening of at least twenty-eight (28) square inches in area shall be provided at the highest point in the ramada roof; all chimneys or vents shall extend through the ramada roof and terminate a safe distance above the ramada.
- (j) Porches may be placed adjacent to mobile homes, provided they are constructed in accordance with the provisions of the Building Code.

§ 9-166. Mobile Home Park Application and Site Plan. Applicants for mobile home parks shall meet the following special requirements:

- (a) Site plans may be on one (1) or more numbered sheets of eighteen (18) by twenty-four (24) inches in size, and shall be legibly drawn at a scale consistent with its purpose.
- (b) The following information shall be required of site plans:
 - (i) The date of the site plan, the name of the surveyor or engineer preparing it, and the number of sheets comprising the site plan.
 - (ii) The scale and the north meridian, designated “true” or “magnetic.”
 - (iii) The name and signature of the owner, and the name of the proposed park; said name shall not closely approximate that of any existing mobile home park or subdivision in the Town of Dayton.
 - (iv) A vicinity map showing the location and area of the proposed park.
 - (v) The boundary lines, area, and dimensions of the proposed park, with the locations of property line monuments shown.
 - (vi) The names of all adjoining property owners, the location of each of their common boundaries, and the approximate area of each of their properties.
 - (vii) The location and dimensions of all existing streets and street right-of-way, easements, water, sewerage, drainage facilities, and other community facilities and utilities on and adjacent to the proposed park.
 - (viii) All existing significant natural and historical features on or adjacent to the proposed park, including, but not limited to, significant vegetation; lakes, streams, swamps, land subject to flooding, and other waterways; views from the property, and views from adjoining properties that might be affected the proposed park; existing structures; and topographic features shown by contour lines.

- (ix) Proposed layout, including interior streets with dimensions and such typical street cross sections and center lines profiles as may be required in evaluating the street layout; water, sewer, drainage, and utility lines, facilities and connections, with dimensions shown; location and types of solid waste collection facilities; interior monuments and lot lines, dimensions, and areas of mobile home lots, common open space and recreation areas, common parking areas, and other common areas; locations and dimensions of mobile home stands and parking spaces, management offices, laundry facilities, recreation buildings, and other permanent structures; location and nature of firefighting facilities, including hydrants, fire extinguishers, and other fire fighting equipment; location of fuel storage facilities and structure of high flammability; and location and dimensions of landscaping amenities, including street lights, sidewalks, planted areas, significant natural features to be retained, and fencing and screening.
- (c) The site plan shall be accompanied by a narrative statement describing how the standards and requirements set forth herein are to be met; a statement from the Health Official certifying approval of the proposed site plan; and where appropriate, statements from the Town Council and the Highway Engineer certifying approval of the streets and drainage, water and sewer, or utility system layouts by owners.

§ 9-167. Streets. An internal street system shall be provided to furnish convenient access to mobile home stands and other facilities in the park, shall be designed such that connection to existing drainage and utility systems is convenient, and shall meet the following requirements, in addition to such other reasonable standards and requirements as may be established by the Town Council.

- (a) All internal streets shall be permanently paved with a durable dust proof, hard surface. Minimum pavement widths shall be twenty-four (24) feet for streets providing access to forty (40) or more mobile home stands, and eighteen (18) feet for streets providing access to less than forty (40) mobile home stands. Widths shall be measured from curbface to curbface.
- (b) Dead end streets shall be limited in length to 400 feet, shall be provided with cul-de-sacs with turning areas of not less than forty (40) feet in radius, or with “T” or “Y” turning areas, and shall provide access to no more than twenty (20) mobile home stands.
- (c) Streets shall be adapted to the topography, shall follow the contours of the land as nearly as possible, and shall have safe grade and alignments. No grade shall exceed twelve percent (12%) or no curve shall have an outside radius of less than eighty (80) feet.
- (d) Driveway entrances to mobile home parks from any public street or road shall conform to the current construction standards of the Department of Highways and Transportation.

§ 9-168. Vehicle Parking. Off-street parking shall be provided for the use of occupants at the minimum ration of 2.0 car spaces (each space containing a minimum of one hundred eighty (180) square feet) for each mobile home. Each off-street parking area shall be paved or gravelled and have unobstructed access to either a public or private street. Each mobile home lot shall be equipped with at least one (1) paved or gravelled parking space; the remainder of the required spaces may be located not more than one hundred fifty (150) feet from the mobile home lot which it serves via the most direct common pedestrian route. However, in the case of a detailed development plan in which it is demonstrated that the purposes of this ordinance and the Comprehensive Plan will be equally well or better served by clusters or similar groupings utilizing open spaces of unusual topographical conditions, the requirements of parking may be varied so as to eliminate the requirement of having an individual parking space with each mobile home lot; provided, however, that in no case will parking be more than one hundred and fifty (150) feet from the mobile home lot. On street parking is prohibited unless the paved street on which the mobile fronts is expanded to accommodate additional parking lanes or parking bays.

§ 9-169. Lighting. All streets, walkways, and parking bays within the mobile home development shall be lightened by a system which consists of:

- (a) A one hundred seventy-five (175) watt mercury light for every three hundred (300) linear feet of roadway, or
- (b) A lighting system which supplies at least one-tenth (1/10) lumen per square foot of roadway, walkway, and parking bay.

§ 9-170. Utilities. After a five (5) year period, all utilities shall be underground, except control instrumentation and substations which must be screened by planted or ornamental walls. After five (5) years, no overhead wires for distribution purposes shall be permitted within the development.

§ 9-171. Disposition of Garbage and Rubbish. It shall be the responsibility of the mobile home park to collect or cause to be collected, and to dispose of garbage and rubbish as frequently as may be necessary. Dumpsters may be used with the approval of the Health Department, but shall be so located as to not be more than one hundred fifty (150) feet from any mobile home.

§ 9-172. Installation of Storage Tanks. Gasoline, liquified petroleum, gas or oil storage tanks shall be so installed as to comply with all Town, County, State and Federal fire prevention and protection regulations.

§ 9-173. Individual Walks. Paved common walks of a width of at least three (3) feet shall be provided on at least one (1) side of all streets, and wherever concentrations of pedestrian traffic can be expected, as between recreational facilities; walks may be incorporated into the street curb. Walk grades shall not exceed ten percent (10%); lights shall be provided sufficient to illuminate steps to a level of at least 0.3 footcandles. Paved individual walks of at least two (2) feet in width shall be provided to connect all mobile home stands with parking spaces or driveways and common walks.

§ 9-174. Open Spaces. Where mobile home lot sizes are relied on primarily to provide for open space, lots and stands shall be so grouped as to maximize the amount of usable space, while meeting the minimum yard requirements set forth in § 9-164 of this ordinance.

§ 9-175. Record of Tenants for Mobile Home Parks. The operator of a mobile home park shall keep an accurate register of all tenants occupying mobile homes located in the park. The register shall show the name and permanent residence address of the owner and occupants of any mobile home located in the park; the make and registration of any mobile home; the time and date of arrival and departure; and such other information as might be necessary to provide information about the occupants of the mobile home. These records shall be open to the law enforcement officers and public health officials whose duties necessitate acquisition of the information contained in the register. The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park.

§ 9-176. Certificate of Use and Occupancy Required. (Repealed May 1, 1995.)

CHAPTER 19
Home Occupations
(Repealed December 10, 2007)

CHAPTER 20
Minimum Off Street Parking Requirement

§ 9-180. (Repealed February 7, 2000.)

§ 9-181. (Repealed February 7, 2000.)

§ 9-181.1. (Repealed February 7, 2000.)

§ 9-182. (Repealed February 7, 2000.)

§ 9-183. (Repealed February 7, 2000.)

§ 9-184. (Repealed February 7, 2000.)

§ 9-184.1. General Requirement.

- (a) Subject to paragraph (b) below every use of property shall subject the property and its owners and occupants to the parking regulations of this chapter.
- (b) Upon the issuance of a special use permit under [Chapter 22](#), an owner or occupant may use property without meeting some or all of the regulations of this chapter.

Such special use permits will seldom be granted. In judging applications, the Council will consider all factors relevant to the application, including without limitation:

- (1) The impact on the neighborhood of allowing the use with relaxed parking standards;
- (2) The impact on traffic and parking in the Town of allowing the use with relaxed parking standards;

- (3) The degree to which the applicant seeks to relax the parking regulations;
- (4) Whether full compliance with this chapter is practicable for the property and use in question, and
- (5) The degree to which appropriate conditions in a special use permit could mitigate long-term or short-term difficulties created by the relaxation of standards.

(Added February 7, 2000; amended February 5, 2001)

§ 9-184.2. *Parking Classification; Spaces Required.* The number of parking spaces required by this Chapter shall be determined by the “Parking Classification” of the property usage, as established in this section.

If the Parking Classification of a property changes—whether due to transfer, lease, change of use, or otherwise—the property must comply with the parking requirements of the new classification. For example, a furniture store would be within the “Major Goods Retail Classification” described in paragraph (c). The premises could not be converted to the “General Retail Classification” unless the parking requirements of paragraph (b) are satisfied.

In applying these Parking Classifications, the rules of construction in § 9-184.3 shall control.

- (a) *General Residential Classification.* The General Residential Classification includes residential and accessory uses.
 - (1) Uses within this classification must have two parking spaces per Dwelling Unit.
 - (2) Even if the spaces required by paragraph (a)(1) above are available, all uses within this classification must also maintain sufficient parking to accommodate all residents and guests of the structure without parking on the public streets, except on an occasional basis.
- (b) *General Retail Classification.* The General Retail Classification includes all retail uses not expressly included elsewhere in this section. Without limitation, this classification includes supermarkets, convenience stores, department stores, hardware stores, agricultural supply stores, jewelry stores, clothing stores, florist shops, pharmacies, and auto parts stores. Uses within this classification must have two parking spaces, plus one space per 200 square feet of floor space.
- (c) *Major Goods Retail Classification.* The Major Goods Retail Classification includes retail uses specializing in the sale of durable goods which are physically large and of significant cost, except as expressly included elsewhere in this section. This classification includes furniture stores, appliances stores, dealers of farm tractors and implements, large machinery, [and automobiles]. Uses within this classification must have two parking spaces, plus one space per 300 square feet of floor space.
- (d) *Office, Business & Information Service Classification.* The Office, Business & Information Service Classification includes general offices and information service businesses, such as (i) professional establishments, such as doctors’, lawyers’, and accountants’ offices, (ii) personal service establishments such as barbers and beauty salons, (iii) banks, insurance, and real estate offices, and (iv) corporate management offices. Uses within this classification must have two parking spaces, plus one space per 250 square feet of floor space.
- (e) *Restaurants.* The Restaurants Classification includes businesses which supply prepared food or drink to the public. Uses within this classification must have two parking spaces, plus one space per 100 square feet of floor space.
- (f) *Automobile Repair Classification.* The Automobile Repair Classification includes entities which repair motor vehicles, including those which sell and install tires, mufflers, or batteries. Uses within this classification must have two parking spaces, plus one space per 200 square feet of floor space.
- (g) *General Service Classification.* The General Service Classification includes entities which (i) repair items other than motor vehicles, (ii) clean clothing (or allow customers to clean their own clothing), (iii) perform services such as house building, cleaning, plumbing, carpentry, landscaping or pest-control, or (iv) operate a printing or copying business. Uses within this classification must have two parking spaces, plus one space per 385 square feet of floor space.
- (h) *Industrial Classification.* The Industrial Classification includes those activities which are permitted only within the Town’s M-1 zoning classification. Uses within this classification must have two parking spaces, plus one space per 160 square feet of floor space.

- (i) *Primary & Middle School Classification.* The Primary & Middle School Classification includes day care facilities (except Home Care Facilities), preschools, elementary schools, and middle schools. Uses within this classification must have two spaces, plus 1.1 parking spaces per classroom.
- (j) *Secondary Education Classification.* The Secondary and Higher Education Classification includes high schools, colleges, and vocational schools. Uses within this classification must have six parking spaces per classroom.
- (k) *Inpatient Care Classification.* The Inpatient Care Classification includes hospitals, nursing homes, and homes for adults. Uses within this classification must have two parking spaces, plus one space per three beds.
- (l) *Cultural Facility Classification.* The Cultural Facility Classification includes libraries, art galleries, and museums. Uses within this classification must have two parking spaces, plus one space per 500 square feet of floor space.
- (m) *Hotel Classification.* The Hotel Classification includes hotels, motels, and boarding houses, but it does not include restaurants affiliated with hotels, which shall be treated separately under paragraph (e) of this section. Uses within this classification must have two parking spaces, plus one space per guest room.
- (n) *Assembly Classification.* The Assembly Classification includes theatres, stadiums, auditoriums, churches and other places of worship. It does not include places of assembly associated with schools, which are treated as part of the schools under paragraphs (i) or (j) of this section. Uses within this classification must have two parking spaces, plus one space per four seats in the main seating area.
- (o) *Civic Group Classification.* The Civic Group Classification includes fraternities and sororities (not providing living accommodations), civic and service organizations, and country clubs. Uses within this classification must have two parking spaces, plus one space for each five members.
- (p) *Bowling Alley Classification.* The Bowling Alley Classification includes Bowling Alleys. Uses within this classification must have two parking spaces, plus 3.6 spaces for each lane.
- (q) *Amusement Classification.* The Amusement Classification includes businesses which provide amusement or recreational services, such as video arcades, batting cages, miniature golf courses, and billiard parlors. Uses within this classification must have two parking spaces, plus one space per 220 square feet of floor space.
- (r) *Wholesalers Classification.* The Wholesalers Classification includes businesses within the definition set forth in § 3.1-2(q) of the Town Code. Uses within this classification must have two parking spaces, plus one space per 165 square feet of floor space.
- (s) *Home Occupation Classification.* Level One Home Occupations, as defined in § 9-22(33.1) of the Town Code require no parking other than that provided for the Dwelling. For Level Two Home Occupations, as defined in § 9-22(33.2) of the Town Code, the Dwelling and home occupation together must have two parking spaces, plus one space for each employee not residing in the facility. (Added December 10, 2007.)

(Enacted February 7, 2000.)

§ 9-184.3 Rules of Construction. For purposes of § 9-184.2,

- (a) If a single enterprise engages in property usage falling into multiple parking classifications, the classification providing the greatest parking requirements shall apply. Nevertheless, the business may make application for each classification to be treated separately under the appropriate paragraph of § 9-184.2. If the enterprise can reasonably apportion its business (through the use of gross receipts or otherwise) the Administrator shall approve the request.
(b) If multiple enterprises are conducted on the same Lot, each shall be treated separately under § 9-184.2.
- (c) Floor space shall mean gross floor area. The term shall also include outdoor space devoted to the activity conducted on the property.
- (d) Where fractional space results, the parking spaces required shall be construed to be the next whole number.
- (e) For uses not identified in this chapter, the parking requirements shall be based on the most analogous use listed herein, as determined by the Town Superintendent.

(Added February 7, 2000.)

§ 9-184.4. Parking Standards.

- (a) All parking spaces required by this chapter shall be located on the same lot with the building or use served; provided that required parking may be located on another lot if (i) the parking spaces are not more than 500 feet from the building served (measured along lines of public access) and (ii) the parking spaces are dedicated to the use of the business served through a lease, license, or easement requiring that the Town be notified at least 30 days prior to termination. Upon the termination of any lease, license, or easement for required parking spaces, the entity served by the parking must either cease doing business or obtain alternative parking conforming to this chapter.
- (b) Unenclosed parking spaces may be located within the required yard around buildings as herein specified.
- (c) Parking spaces must be at least 9 feet wide and 18 feet in length. In addition, there shall be sufficient area for maneuvering.
- (d) All parking spaces shall be designed to prevent parked vehicles from extending beyond the limits of the parking area and to prevent damaging effects to adjoining or nearby properties from surface drainage from the parking facility. Lighting facilities shall be so arranged that light is reflected away from adjacent properties.
(Amended November 11, 2013.)
- (e) All loading spaces required under § 9-184.6 must be at least 12 feet wide by 25 feet in length. In addition, there shall be sufficient area for maneuvering.

(Added February 7, 2000.)

§ 9-184.5. Sharing of Parking Lots.

- (a) Multiple enterprises may share a single parking lot, but except as provided in paragraph (b) below, no parking space may be counted toward the requirements of more than one enterprise.
- (b) Upon application and approval by the Administrator, an assembly use (such as a church or theatre) may assign fifty percent of its parking spaces to another use, so long as there is substantially no overlap in the hours of significant parking demand for the assembly use and the other use.

(Added February 7, 2000.)

§ 9-184.6. Off-Street Loading and Unloading Space. In addition to the parking required by § 9-184.2, all property used for retail, wholesale, or industrial purposes shall provide space for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public alley or if there is no alley, to a public street. The space requirements are,

- (a) For retail businesses, one loading space for each 2,000 square feet of floor space.
- (b) For wholesale and industrial businesses, one loading space for each 10,000 square feet of floor space.

The parking standards of § 9-184.4 shall govern loading spaces required by this section. The rules of construction set forth in § 9-184.3 shall govern the interpretation of this section. (Added February 7, 2000.)

§ 9-184.7. Zoning Classifications.

- (a) Parking for a specific enterprise or structure is a use which is accessory to the enterprise or structure. Therefore such parking must be on property which would be properly zoned for the enterprise or structure. For example, parking for a B-1 use must be on property zoned B-1 or less restrictively.
- (b) Parking for a fee as a separate commercial enterprise is not an accessory use and must be located in a zone which allows it.

(Added February 7, 2000.)

CHAPTER 21
Signs, Billboards, and other Advertising Structures
(Repealed May 1, 1995)

CHAPTER 21.1
Signs
(Enacted May 1, 1995)

§ 9-194.1 Definitions. The following definitions apply throughout this chapter:

- (a) Ground Sign. A ground sign is any sign which (1) rests directly on the ground or (2) is supported by uprights or braces placed in or upon the ground. Two separate signs built on the same support structure shall be counted as one ground sign.
- (b) Wall Sign. A wall sign is any sign which is attached to the front, rear or side of any building or other structure.
- (c) Roof Sign. A roof sign is any sign built upon the roof of any building or other structure.
- (d) Height. The height of a sign is the vertical distance from the ground to the highest point on the sign or its support structure. A berm built beneath the sign shall not be counted as the “ground” for the purpose of calculating the height of a sign.
- (e) Temporary Signs. A temporary sign is either of the following:
 - (1) Any sign constructed of cloth, canvas, light fabric, cardboard, wallboard, plastic, or other light materials with or without frames, intended to be displayed for a short period of time, or
 - (2) Any sign which, through the use of wheels or otherwise, is designed to be transported from place to place.

The category of “Temporary Signs” is not mutually exclusive with other categories. For example, a temporary sign may also be a ground sign. Therefore, a temporary sign must meet the requirements for temporary signs as well as other requirements which apply to the type of sign involved.

- (f) Area. The area of a sign is the area of the smallest rectangle which can fully enclose the sign. (Where multiple signs share the same support structure, their combined area is the sum of their individual areas.) The area of a sign designed to be viewed from two directions shall be the area of the largest side. Nevertheless, if the two faces of the sign are (i) more than two feet apart, or (ii) neither parallel nor at an angle of less than 45°, the area of the sign shall be the total area of both sides. The area of signs with more than two sides shall be the total area of all sides. A sign’s support structure is not considered when calculating the area of a sign.
- (g) Setback. The setback of a sign is the minimum distance between any portion of the sign and any public or private street.
- (h) Relate. A sign relates to a use if its principal feature is the identification or promotion of that use.
- (i) Sign. A sign is any two or three dimensional object containing letters, numbers, or graphics advertising a business, identifying a structure, or otherwise conveying information. Nevertheless, advertising displays which are inside a structure and visible externally only through windows are not signs.
- (j) Incidental Signs. Incidental signs are signs allowed under § 9-194.2(a). They shall not be treated as ground signs, wall signs, or roof signs.

§ 9-194.2 Incidental Signs.

- (a) In addition to signs permitted by other sections of this chapter, the following incidental signs are allowed in all zoning classifications:
 - (1) One temporary sign of not more than four feet in height and nine square feet in area identifying the structure as being for sale or rent.
 - (2) One temporary sign of not more than four feet in height and nine square feet in area relating to active construction or special events on the site.

- (3) Memorial signs or tablets, including names of buildings and dates of erection when written into masonry, bronze, or other materials. Such signs shall not be more than two square feet in area.
 - (4) Subdivision entrance signs identifying the subdivision. After development of the subdivision is complete, no such sign shall include sales-related information, such as the telephone number of the developer. Such signs shall be no more than five feet in height and forty square feet in area.
 - (5) Signs of not more than two square feet conveying legal notices, such as “No Trespassing.”
- (b) Incidental signs in any zone need only have a setback of ten feet. Except for subdivision entrance signs—which must be at the entrance to the subdivision—incidental signs must be located on the same lot as the use to which they relate.

§ 9-194.3 Allowed Signs. Subject to § 9-194.2 and any restrictions which follow, this section governs what signs are allowed in each zoning classification.

- (a) In R-1, R-2, and R-3 zones, the following signs shall be allowed:
- (1) One wall sign identifying the structure, its address, and/or the occupants. In R-1 zones, wall signs shall be no larger than six square feet. In R-2 and R-3 zones, wall signs shall be no larger than eight square feet.
 - (2) As an alternative to the sign permitted under paragraph (a)(1) of this section, one ground sign identifying the structure, its address, and/or the occupants. In R-1 zones, ground signs shall be no larger than three square feet in area and no more than four feet in height. In R-2 and R-3 zones ground signs shall be no larger than eight square feet in area and no more than five feet in height.
- (b) In all other zoning classifications, any combination of ground, wall, or roof signs is permitted, provided:
- (1) On any lot, ground signs within 25 feet of the street must be placed at least 100 feet apart, and
 - (2) The total area of ground signs on any lot shall not exceed 100 square feet in an HB-1 or B-1 zone; 150 square feet in a B-2, A-1, or A-2 zone; or 200 square feet in an M-1 zone. (Amended February 7, 2000.)

§ 9-194.4 Location of Signs. Except for subdivision entrance signs, which may be placed at the entrance to the subdivision, signs may be located anywhere on the lot to which they relate. Nevertheless, signs greater than 100 square feet in area must have a setback of at least 25 feet.

§ 9-194.5 Drop Down Regulations. Wherever the principal structure or use of a lot complies with a more restrictive zoning classification than the lot is actually zoned, the sign regulations for the more restrictive classification shall govern.

§ 9-194.6 Special Use Permits. Whenever property is used under a special use permit, the council may, in its discretion, relax the sign regulations of this chapter by special use permit. However, the sign regulations shall not be made less restrictive than those of the zoning classification in which the use is permitted as a matter of right.

§ 9-194.7 General Provisions.

- (a) Notwithstanding any other provision of this chapter, no sign shall be erected or maintained at any location where by reason of its location, size, shape, illumination, or other characteristic, there is a reasonable possibility that it will obstruct drivers’ or pedestrians’ view of a road, sidewalk, or traffic control device (or otherwise create a traffic hazard). The Town Superintendent shall have the authority to order the relocation of any sign he finds to be in violation of this paragraph.
- (b) No sign shall contain or make use of any word, phrase, symbol, shape, form, or character so as to interfere with, mislead, or confuse traffic.
- (c) No sign having flashing, intermittent, or animated illumination shall be permitted. However, this prohibition does not extend to electronic message boards in which the flashing, intermittent, or animated illumination itself conveys information.
- (d) No illuminated sign shall be permitted within fifty feet of any residential district unless the illumination is so designed that it does not shine or reflect light onto property in the residential district.
- (e) Where a lot has insufficient front yard to reasonably accommodate a sign, the Town Superintendent may authorize the location of a sign on or above public land. Such authorization shall be revocable and shall not import the approval of any other governmental agencies which might be interested.

- (f) No sign shall exceed the maximum height for structures in the relevant zoning classification. (Added February 7, 2000.)

§ 9-194.8 *Temporary Signs.* Temporary signs must meet the requirements of this section in addition to all other applicable requirements of this chapter.

- (a) Temporary signs are allowed for the following periods:
 - (1) For signs identifying a structure as being for sale or rent, only until the structure is sold or rented.
 - (2) For signs relating to active construction on a site, only until the construction is substantially complete (up to a maximum of 24 months).
 - (3) For signs identifying a new business, 30 days.
 - (4) For signs advertising an event, promotion, or sale a maximum of 30 days, ending on the day after the event, at which time the sign must be removed.
 - (5) For others signs, 21 days.
- (b) Temporary signs may be placed on public property only with written permission of the Town Superintendent. The superintendent shall grant such permission only (1) for non-commercial or non-profit groups advertising special events, (2) if the group agrees to remove the sign as provided in paragraph (b)(4) of this section, and (3) the sign, in his opinion, will comply with the provisions of § 9-194.6, is of a reasonable size and will be placed in a reasonable location.

§ 9-194.9 *Application.* Except for temporary signs and incidental signs, no sign shall be installed until a zoning permit is issued in accordance with § 9-11. The application for such a zoning permit must be in the form prescribed by § 9-12 and must include a sketch of the proposed sign, along with its support structure. The application shall specify the area and height of the sign.

CHAPTER 22 **Special Use Permits**

The following procedure is established to integrate properly the Uses Permitted on Review with other land uses located in the district. These uses shall be reviewed by and authorized or rejected by the Town Council under the following procedures:

§ 9-195. *Application.* An application shall be filed with the Council for review. Said application shall show the location and intended use of the site, the names of the property owners and existing land uses within two hundred (200) feet, and any other material pertinent to the request which the Council may require.

§ 9-196. *Public Hearing.* Upon application, the Council shall hold a public hearing as required by state law.

§ 9-196.1 *Standard of Review for Special Use Permits..*

- (a) Generally. In considering the issuance of a special use permit, the Council will engage in a highly fact-specific discernment of the proposed use or structure. Every property (and every application for a special use permit) presents unique facts, and the Council will consider each situation on its own merits. The Council will grant a special use permit only if it is well convinced that the proposed use or structure will further the Town's objectives as expressed in § 9-3 of this Title. This section shall not override any specific criteria expressed elsewhere in this Title.
- (b) Adult Businesses. Notwithstanding any other provision of this Title, unless the applicant consents to a longer period of review, an application for a special use permit for an Adult Business must be approved or denied within 90 days of the filing of a complete application. In considering the application, the Town may consider the following factors as well as other appropriate land-use considerations:
 - 1. The nature of the surrounding area and the extent to which the proposed use might significantly impair its present or future development;
 - 2. The proximity of dwellings, churches, schools, parks, or other places of public gathering.

3. The probable effect of the proposed use on the peace and enjoyment of people in their homes;
4. The preservation of cultural and historical landmarks and trees;
5. The probable effect of noise and glare upon the uses of surrounding properties;
6. The conservation of property values, and
7. The contribution, if any, such proposed use would make toward the deterioration of the area and neighborhoods.

Further, if an application for a special use permit for an Adult Business is denied and the applicant desires to appeal the denial, the Town will facilitate the applicant's obtaining prompt review of the decision from the Circuit Court of Rockingham County. Unless the applicant agrees to an extension, the Town will file a responsive pleading within 10 days of service upon the Town of an appeal, will file a responsive brief within 15 days of service of the applicant's brief and will agree to any reasonable expedited trial or hearing date.

(Added July 11, 2005.)

§ 9-197. *Restrictions.* In the exercise of its review, the Council may impose such conditions regarding the

- (i) location, character, or other features of the proposed use or buildings or
- (ii) the term or transferability of the permit itself

as it may deem advisable in the furtherance of the general purposes of this Code. (Amended December 10, 2007)

§ 9-198. *Issuance of Permit.* Upon completion of the necessary application, hearing, and approval of the Town Council, the Zoning Administrator shall issue the permit subject to all applicable rules, regulations and conditions.

§ 9-199. *Validity of Plans.* All approved plans, conditions, restrictions, and rules made a part of the approval of the Council, shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

CHAPTER 23
Nonconforming Uses
(Repealed June 6, 1994)

CHAPTER 23.1
Nonconforming Lots, Uses, and Structures
(Enacted June 6, 1994)

§ 9-210.1. *Definitions.* For purposes of this chapter, the following definitions shall apply:

- (a) "Event of Prohibition" means a change in regulations applicable to a structure, use, or lot which causes the structure, use, or lot to fail to comply with the provisions of this title. An event of prohibition can occur when property is reclassified under this title or when zoning regulations are adopted or amended.
- (a1) "Nonconforming Building" means a building which is lawfully in existence at the time of an event of prohibition. (Added December 10, 2007.)(b) "Nonconforming Use" means an activity which is ongoing and lawful at the time of an event of prohibition.
- (c) "Nonconforming Structure" means a structure which is lawfully in existence at the time of an event of prohibition.
- (d) "Nonconforming Lot" means a lot of record, created lawfully, in existence at the time of an event of prohibition.
- (e) "Zoning Regulations" means all of the applicable requirements of this title, other than the provisions of this Chapter. (Added December 10, 2007.)

§ 9-210.2. Continuation.

- (a) A nonconforming use may be continued, subject only to the provisions of this chapter. A nonconforming structure may continue to be occupied and used, subject only to the provisions of this chapter.
- (b) The rights granted in paragraph (a) of this section shall continue irrespective of any change in ownership of the property.
- (c) If any nonconforming use is discontinued for a period exceeding two years, the rights granted in paragraph (a) of this section shall be deemed abandoned and any subsequent activity must conform to the Town's Zoning Regulations. (Amended December 10, 2007.)
- (d) If any nonconforming structure is unused for a period exceeding two years, the rights granted in paragraph (a) of this section shall be deemed abandoned and the structure shall not thereafter be used unless it is made to comply with Town's Zoning Regulations. (Amended December 10, 2007.)

§ 9-210.3. Repairs and Maintenance. On any nonconforming structure or any structure containing a nonconforming use, work may be done in any of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non load bearing walls, fixtures, wiring or plumbing, to an extent not exceeding fifty percent of the current replacement value of the structure, provided that the volume of the structure (measured by exterior walls) shall not be increased.

If a nonconforming structure or a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and it is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt, or used except in conformity with the Town's Zoning Regulations. (Amended December 10, 2007.)

§ 9-210.4. Restoration.

- (a) If a structure containing a nonconforming use is destroyed or damaged to the extent that the cost of restoration to its condition before the occurrence exceeds fifty percent of the cost of reconstructing the entire structure, the rights granted by this chapter to carry on the nonconforming use shall terminate.
- (b) If a nonconforming structure is destroyed or damaged to the extent that the cost of restoration to its condition before the occurrence exceeds seventy-five percent of the cost of reconstructing the entire structure, the rights granted by this chapter shall terminate and any restoration shall comply with the Town's Zoning Regulations. (Amended December 10, 2007.)
- (c) Whenever a damaged structure may be restored under paragraphs (a) or (b) of this section, such restoration shall be commenced within twelve months and completed within eighteen months from the date of damage. If restoration is not commenced or completed within these respective periods, the rights granted by this chapter shall terminate.
- (d) Nothing in this section authorizes the maintenance of a destroyed or partially destroyed structure.
- (e) Notwithstanding the foregoing paragraphs of this section, if a residential or commercial Nonconforming Building is damaged or destroyed by a natural disaster or other act of God, it may be repaired, replaced, or rebuilt as provided in this paragraph (e).

To the extent possible, the nonconforming features of the building shall be eliminated upon repair, replacement or reconstruction. However, if it is not possible to reduce or eliminate the nonconforming features of the building, it may be repaired, replaced, or rebuilt to its original nonconforming condition. Nevertheless, the repair, replacement, or reconstruction shall comply with the Uniform Statewide Building Code and Chapter 13.1 of this Title.

Unless such building is repaired, replaced, or rebuilt within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt, or replaced in accordance with the Town's Zoning Regulations. This two-year period shall be extended to four years if the Nonconforming Building is in an area under a federal disaster declaration and the building was damaged or destroyed as a direct result of conditions that gave rise to the declaration.

(Paragraph (e) added December 10, 2007.)

(Code of Virginia, § 15.2-2307.)

§ 9-210.5. Expansion and Enlargement.

- (a) Nonconforming structures shall not be extended or enlarged, except as provided in this section.

- (b) A nonconforming use may be extended throughout any structure which was arranged or designed for such activity at the time of the event of prohibition, but no such use shall be extended to occupy any land outside such structures.
- (c) Notwithstanding any other provision of this chapter, a nonconforming structure may be enlarged or extended if (i) the enlargement or extension does not worsen the structure's nonconformity (either by increasing the amount of the structure which is not in conformity or by increasing the severity of any nonconformity) and (ii) the structure—after enlargement or extension—meets all provisions of this title which it met prior to enlargement or extension. (Paragraph (c) added May 1, 1995.)

§ 9-210.6. *Changes in use.*

- (a) Any nonconforming use may be changed to a different use, provided (i) that no structural alterations are made and (ii) that the Board of Zoning Appeals finds that the proposed use is equally appropriate or more appropriate to the district and the neighborhood than the existing use. In taking such action, the Board of Zoning Appeals shall be granting a special exception. Nothing in this section shall authorize the board to grant special exceptions in any other context.
- (b) When any nonconforming use is changed in accordance with paragraph (a) of this section, it may not be changed back to the prior use without again following the procedure in paragraph (a).

§ 9-210.7. *Nonconforming Lots.* The Board of Zoning Appeals shall determine appropriate setbacks and other dimensional regulations for nonconforming lots on a case by case basis.

§ 9-210.8. *Moving Uses and Structures.* No nonconforming use or structure shall be moved to any other lot or to any other portion of the lot than that already occupied by such use or structure; provided, however that a nonconforming structure may be moved to conform with the provisions of this title or reduce the degree of nonconformity.

§ 9-210.9. *Interpretation.* This chapter shall be interpreted so as to be consistent with § 15.2-2307 of the Code of Virginia.

CHAPTER 24
Board of Zoning Appeals

§ 9-211. *Appointment.* A Board consisting of five (5) members shall be appointed by the Circuit Court of Rockingham County. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

§ 9-212. *Terms of Office.* The term of office shall be for five (5) years except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year.

§ 9-213. *Disqualification.* 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.

§ 9-214. *Election of Officers.* The board shall choose annually its own chairman and the vice chairman who shall act in the absence of the chairman.

§ 9-215. *Powers of the Board of Zoning Appeals.* Boards of Zoning Appeals shall have the following powers and duties:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
- (b) Variances. To authorize upon appeal in specific cases such a variance from the terms of the 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 hardships; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

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 a specific piece of property at the time of the 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 of the use, condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization 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 variances shall be in harmony with the intended spirit and purpose of the ordinance. No such variance shall be authorized by the board unless it finds:

- (i) That the strict application of the ordinance would produce undue hardship relating to the property;
- (ii) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (iii) 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.

No such variance shall be authorized except after notice and hearing as required by the Code of Virginia.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance. However, the use or the structure permitted by the variance may not be expanded unless the expansion itself is fully compliant with the requirements of this title.

(Paragraph (b) amended December 10, 2007.)

- (c) To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice and hearing as provided by state law.
- (d) To hear and decide applications for interpretation of the District Map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by state law, the board may 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 substantially the locations of district boundaries as established by ordinance.
- (e) None of the provisions in this ordinance shall be construed as granting the board any power to rezone property.

§ 9-216. Rules and Regulations. The Board of Zoning appeals shall adopt such rules and regulations as it may consider necessary not inconsistent with this ordinance.

§ 9-217. Time and Meeting. The meeting of the board shall be held at the call of its chairman or at such time as a quorum of the board may determine.

§ 9-218. Administering of Oath. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

§ 9-219. Keeping of Minutes. 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.

§ 9-220. Public Meetings Required. All meetings of the board shall be open to the public.

§ 9-221. Quorum Requirement. A quorum shall be at least three (3) members.

§ 9-222. Vote Required. A favorable vote of three (3) member 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.

§ 9-223. Appeal to the Board. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision is appealed 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 for unless the Zoning Administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril of life or property, in which case proceedings shall not be stayed otherwise than by a restraining

order granted by the board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

§ 9-224. **Appeal Procedure.** Appeals shall be mailed to the board of Zoning Appeals, c/o the Zoning Administrator.

§ 9-225. **Costs Required.** Appeals requiring an advertised public hearing shall be accompanied by such fee as is established by the Town Council from time to time.

§ 9-226. **Appeal from Decision of Board.** An appeal from the decision of the Board of Zoning Appeals shall be handled as provided by state law.

CHAPTER 25
Telecommunications Towers
(Added November 6, 2000.)

§ 9-227. **Purposes.** It is the purpose of this Chapter (i) to facilitate the orderly development of structures which are needed to provide wireless telecommunications services, (ii) to encourage the location of such structures in areas whose character would not be affected by the structures, (iii) to encourage the joint use of new and existing towers and minimize the total number of towers throughout Town, and (iv) to encourage the configuration of such structures in a way that minimizes the burdens created by them. Furthermore, it is the purpose of this Chapter to treat providers of functionally equivalent services in a reasonably like manner and to provide adequate sites for the provision of telecommunications services throughout the Town. In enacting this Chapter, no attempt has been made to address the environmental effects of radio frequency emissions.

§ 9-228. **Definitions.** For purposes of this Chapter, the following terms shall carry the meanings assigned in this section:

- (a) **Antenna.** A structure or device used to collect or radiate electromagnetic waves.
- (b) **Telecommunications Antenna.** An Antenna used to provide “telecommunications service,” as that term is defined in 47 U.S.C. § 153. The term Telecommunications Antenna does not include any Antenna which solely services a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.
- (c) **Telecommunications Tower.** A structure used primarily for the purpose of supporting one or more Telecommunications Antennas.
- (d) **Height of Telecommunications Tower or Telecommunications Antenna. Height Calculation.** For purposes of this Chapter, the height of an Antenna is the distance between (i) the finished grade of the ground nearest the Antenna and (ii) the tallest point of the Antenna. For purposes of this Article, the height of a Telecommunications Tower is the distance between (i) the finished grade of the ground nearest the Telecommunications Tower and (ii) the tallest point of the Telecommunications Tower or any Antenna mounted on the tower, whichever is higher.

§ 9-229. **Special Use Permit Consideration.** In ruling on special use permits for Telecommunications Towers or Antennas under Chapter 22, the council will not consider the effects of radio frequency emissions, if there be any. The council will consider the character of the neighborhood, conformity with the comprehensive plan, the guidelines of this section, the purposes of this Chapter, the public’s need for the facility, and any other issues bearing on the propriety of the application.

- (a) **Separation from Adjacent Properties.**
 - (1) Subject to paragraph (b)(2) below, Telecommunications Antennas should be separated from other parcels zoned R-1, R-2, or R-3 by a distance not less than three times the Antenna Height, from other parcels zoned B-1 or B-2 by a distance not less than twice the Antenna Height, and from other parcels carrying any other zoning classification by a distance not less than the Antenna Height.
 - (2) If the Antenna is mounted on a structure other than a Telecommunications Tower, it need not comply with paragraph (b)(1) if its height is no more than 110% of the height of the structure on which it is mounted.
- (b) **Co-location.** All Telecommunications Towers over 75 feet in height should be designed and built to accommodate a minimum of three or more Telecommunications Antennas. The owner of the tower must certify to the Town that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis.
- (c) **Height.** All Telecommunications Towers should be designed and built so that they are as short as possible.

§ 9-230. *Signs.* No signs, lettering, symbols, images, or trademarks shall be placed on or affixed to any part of any Telecommunications Antenna or Telecommunications Tower, other than as required by FCC regulations or other applicable law.

§ 9-231. *Inventory of Existing Towers Required.* All Telecommunications Tower applications shall include a complete and accurate inventory and map of the applicant's and other known existing and proposed Telecommunications Towers and other structures on which a Telecommunications Antenna could be located or co-located within five (2) miles of the proposed Telecommunications Tower

§ 9-232. *Removal of Towers.* Any Telecommunications Antenna or Telecommunications Tower that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned, and its owner shall remove it within sixty (60) days notice from the Town, at the owner's expense.