

# PLANNING COMMISSION MEETING

## A G E N D A

TOWN OF CHINCOTEAGUE, VIRGINIA

April 14, 2015 - 7:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC PARTICIPATION

AGENDA REVIEW/DISCLOSURES

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1. Approval of the March 10, 2015 meeting minutes
2. Zoning Ordinance Review – Building Height
3. Zoning/Subdivision Ordinance Review – Sketch Plans, Site Plans, Sidewalks
4. Information/Discussion Items
  - a) Gateway property notice (Historic District)
  - b) Next Phase of Drainage Master Plan
  - c) Report on Development Activity
  - d) PC Work Plan for 2015
5. Commission Members Announcements or Comments

ADJOURN

**PLANNING COMMISSION MEETING**  
**10 March 2015**  
**MINUTES**

Members Present:

Mr. Ray Rosenberger, Chairman  
Mrs. Mollie Cherrix, Vice Chairperson  
Mr. Ben Ellis, Councilman  
Mr. Michael Dendler  
Mr. Steve Katsetos  
Mr. Jeff Potts  
Mr. Spiro Papadopoulos

Members Absent:

William Neville, Planning Director

CALL TO ORDER

Chairman Rosenberger called the meeting to order at 7:00 pm in the Council Chambers. The invocation was provided by Commissioner Potts, followed by the Pledge of Allegiance led by Chairman Rosenberger.

PUBLIC PARTICIPATION

One (1) member of the public was present.

AGENDA REVIEW/DISCLOSURES

Chairman Rosenberger asked for a review of the Agenda. Commissioner Papadopoulos requested that the status of Landmark Plaza be discussed under item 4(d) and moved approval of the agenda, seconded by Commissioner Potts. The agenda was unanimously approved.

**1. Approval of the February 10, 2015 meeting minutes**

Chairman Rosenberger requested that the minutes at the top of page 4 be revised based on a review of the meeting recording in order to clear up the meaning of his comments. Councilman Ellis motioned for approval of the minutes, seconded by Commissioner Potts. Unanimously approved.

**2. Zoning Ordinance Review – Wayside Stands**

Chairman Rosenberger opened discussion on the Commission's previous recommendation to establish minimum parking standards for wayside stands. Town Planner Neville reviewed the options that were considered and the final motion from April 2013 to require a minimum of 4 parking spaces for all commercial uses (Sec. 6.6.11). Parking for employees was discussed. Mr. Neville stated that this recommendation was never presented to Town Council for action and a fresh motion would be in order.

Chairman Rosenberger considered the comparison between food service uses regulated by the Health Department which usually have parking requirements based on seating areas. Commissioner Potts stated that most properties have areas for employee parking to the rear of the commercial use. Vice Chairperson Cherrix asked if there is any limitation on the number of wayside stands that can be set up. Commissioner Katsetos commented on the much greater regulations that an enclosed restaurant has to meet.

Commissioner Papadopoulos led a discussion on whether a temporary business such as a wayside stand should have to meet the same standards as a permanent commercial structure. He asked about how the proposed 4 spaces should be identified or marked and mentioned the Timothy Hill House which should be considered under this same ordinance section.

**Commissioner Papadopoulos motioned to recommend the same revision to Section 6.6.11 from April 2013 for consideration by the Town Council, seconded by Commissioner Katsetos. Unanimously approved.**

### **3. Zoning/Subdivision Ordinance Review – List of Potential Revisions**

Town Planner Neville reviewed the staff report which identified several possible ordinance changes that were identified during the recent comprehensive zoning map amendment, plus several new items:

- **Definition of Building Height** – a possible revision is needed if a freeboard requirement is adopted by Town Council in the Flood Ordinance. Methods of measurement were discussed.

Commissioner Papadopoulos commented on building codes and fire protection codes which typically measure from surrounding ground elevation. He suggested that there should still be an overall maximum height limit measured from the ground elevation. Staff was requested to provide a copy of the IBC definition of building height at the next meeting.

Mr. Neville added that the building height definition could also be modified to allow roof structures which exceed maximum height limits to encourage more architectural variety and residential character to new construction.

- **Zoning Permit** – this section (6.1) may need to be updated following the adoption of a floodplain zoning permit in 2014 to include a cross reference to Town Code Chapter 30 - Floods.
- **Wind Energy Systems** – Section 6.9 of the zoning ordinance may need to be modified to reference a 4 mile ‘stand-off zone’ for wind

energy systems from the north end of Wallops Island proposed in the draft JLUS document.

Chairman Rosenberger discussed the Route 175 Causeway right of way as a concern for Accomack County since it is not within the Town limits, and the old right of way crossing Marsh Island was considered.

Commissioners agreed to place the six items listed in the staff report on the PC Work Plan to be scheduled for review in future meetings with Item #1 (Floodplain Ordinance) to be considered at the next meeting.

Mr. Neville described Item #6 (Land Subdivision and Development Ordinance) and encouraged the Commission to complete an overall review of Town Code – Appendix B. He stated that there is currently no mention of minimum standards for the submission and review of site plans for non-residential structures. In addition, he recommended working on a set of design/development construction standards. Chairman Rosenberger pointed out the section on page CDB:11 which allows the Town Subdivision Ordinance to include standards for:

*“ (c) Site plans or plans of development which are required to be submitted and approved in accordance with Code of Virginia, § 15.2-2286(8) shall be subject to the provisions of Code of Virginia, §§ 15.2-2241-15.2-2245, mutatis mutandis. ”*

State Code Reference:

*§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.*

*A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:*

*8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.*

Chairman Rosenberger led a discussion of the benefit to the community that could be provided by having the Planning Commission provide some level of review for new development. Town Planner Neville raised the idea of modifying the optional sketch plan review process in Section 14.02 (a) to allow Planning Commission review of major development activity along with Zoning Administrator review.

Councilman Ellis commented that the Comprehensive Plan states the goal is to maintain the existing character of the Town. There was discussion about the role which the Planning Commission should play to review new development for conformance with the Plan.

Chairman Rosenberger raised the idea of sketch plan review of all subdivision including 3 lots or less in order to prevent problems with illegal lots and

private street agreements. Commissioner Potts stated that a division of property into 3 lots or less is the last thing a property owner can do without government restriction and he would like to protect that right.

Commissioner Katsetos requested that the PC work plan include the Plan recommendation for accessory rental homes on larger lots as affordable housing.

#### **4. Information/Discussion Items**

- **FEMA Flood Risk Maps/Freeboard**  
Town Planner Neville reported on the Town Council work session scheduled for March 19<sup>th</sup> to consider a freeboard standard in addition to adopting the new FEMA flood maps and study.
- **Hazard Mitigation Plan/HAZUS model**  
New map products are being prepared by FEMA and the USACE to evaluate flood risk, and provide a report of the number of structures that will be impacted. This information will be included in the 2016 HMP update. Mr. Neville also reported on the Nature Conservancy coastal resilience mapping tool that is under development.
- **Wetlands Mitigation**  
A proposal to create a ‘wetlands mitigation bank’ project for Accomack County was described. Commissioners suggested a site within the Island Nature Trail park which would not remove developable land from use.
- **Report on Development Activity**  
A report of all building permits issued in 2014 was provided for review. Chairman Rosenberger stated the Commission’s interest in development activity and proposed development before it shows up on the permit list. Commissioner Papadopoulos asked about the demolition permit for Landmark Plaza. Mr. Neville responded to questions about providing a monthly report on building activity similar to what is provided in Accomack County.

Discussion continued about the current pre-development/sketch plan review process. Commissioner Papadopoulos suggested that Town Council should request the Planning Commission to provide recommendations for what we should be doing to comply with the Comprehensive Plan. He added that there should be a written record of guidance that is provided to builders and developers even if it is ‘informal’ or ‘non-binding’.

Chairman Rosenberger referenced a letter from former Town Attorney Jon Poulson that confirmed the role of the Planning Commission in reviewing

and approving subdivisions, and the limited advisory position the Commission has for all other development activity. Mr. Neville added that the Zoning and Subdivision Ordinances clearly assign and delegate certain responsibilities to the Zoning Administrator. He stated that there would need to be an ordinance change to add any official Planning Commission review for conformance with the Comprehensive Plan.

Mr. Neville suggested that the Planning Commission could work on an informational brochure/checklist that clearly describes the plan and permit review process necessary for different development activities.

Commissioner Papadopoulos summarized his concerns that there is a separation of the Planning Commission from the development review process and that explains why there is no public participation at the meetings. He again requested the Town Council to take a look at how the Planning Commission can have an active role and used the new Fire Company site as an example of how there may be unintended drainage consequences to adjoining lots from filling the property which may not have been considered.

- PC Work Plan for 2015  
The work plan will be updated and included in the packet next month.

## **5. Commission Members Announcements or Comments**

Chairman Rosenberger notified members of the upcoming Ordinance Committee and Board of Zoning Appeals meetings.

A regular Planning Commission meeting will be held on April 14, 2015 at 7pm.

## **ADJOURN**

Commissioner Potts moved to adjourn the meeting, seconded by Vice Chairperson Cherrix. The motion was unanimously approved.

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Mr. Raymond R. Rosenberger Sr., Chairman



## STAFF REPORT

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To: Planning Commission  
From: Bill Neville, Director of Planning  
Date: April 14, 2015  
Subject: Zoning Ordinance Revision (Section 2.24 – Building Height)

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❖ **Consider possible revisions to the Town zoning ordinance as a result of adopting a local ‘freeboard’ standard**

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Amendments to the Town of Chincoteague floodplain management regulations recently approved by the Town Council will be included in Town Code Chapter 30-Floods. With adoption of a 2 foot freeboard standard, new construction or substantially improved structures will be required to raise the lowest floor above the Base Flood Elevation, this could affect permitted building height based on the current definition found in Town Code Appendix A – Zoning (Section 2.24).

***Article II. Definitions - Sec. 2.24. Building Height***

*The vertical distance measured from base flood elevation at the site of the structure to the highest point of any roof.*

In addition within each of the Town zoning districts (R1, R2, R3, R4, A, C1, C2, C3, C4, PSP, POS, RC) there is a maximum building height regulation as follows:

***Height Regulations***

- (1) Buildings may be erected up to 36 feet in height above base flood elevation. No structure shall exceed three stories in height. Exception: enclosures below the base flood elevation used for incidental storage, parking garages, and means of egress shall be exempt from being considered a story if such total space is less than 600 square feet in area, however the height restriction still applies.*
- (2) No accessory building shall be more than 25 feet in height.*
- (3) Chimneys and flues shall not be more than six feet above the height of the main buildings upon which they rest.*
- (4) Church spires, belfries, monuments, flagpoles, television antennae and radio aerials may be no higher than 70 feet above mean sea level (excluding public utilities).*

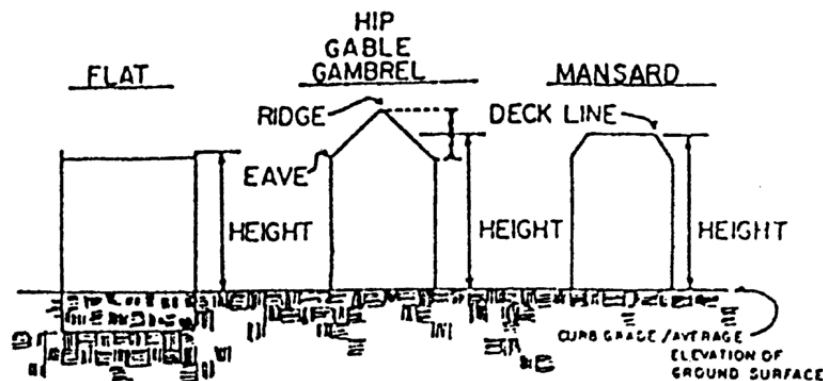
Based on the current zoning regulations which measure building height from ‘base flood elevation’, any freeboard requirement for new construction or substantial improvements would

cause a corresponding reduction in permitted height. Other communities have proposed to solve this limitation by either:

- Increasing the permitted height by the amount of freeboard required (Example – increase from 36 feet maximum height to 38 feet based on a 2 foot freeboard standard), or
- Revise the method of calculating height to be measured from ‘base flood elevation at the site of the structure’ to ‘base flood elevation **plus freeboard** at the site of the structure’ in the Definitions and in each zoning district.

During the Town Council workshop meeting on March 19<sup>th</sup> public comment regarding a proposed new commercial structure also raised a concern regarding the definition of ‘building height’ which currently limits a three story structure to having a flat roof. Council directed staff to provide alternative methods of measuring building height that would allow reasonable construction of various roofs and parapet walls that may exceed the current maximum height of 36 feet.

In general, most zoning ordinances in surrounding communities adopt a standard definition of building height based on the following method of measurement. Several other examples as shown from coastal areas where development occurs in special flood hazard areas and building height is calculated from flood elevation.



- **Height of building.** The vertical distance measured from the established grade to the highest point of the roof surface for low sloped roofs; to the deck line of mansard roofs; and to the average height between eaves and ridge for shed, gable, hip and gambrel roofs. (Source: Chesapeake, VA)
- **Building height** means the vertical distance between the base flood elevation, or ground level if the structure is not in a flood hazard area as defined by the Federal Emergency Management Agency (FEMA), and:
  - (1) The average height level between the eaves and ridge line of a gable, hip or gambrel roof;
  - (2) The highest point of a mansard roof; or
  - (3) The highest point of the coping of a flat roof.
 (Source: Kiawah Island SC)
- **Building height:** The vertical distance measured from the design flood elevation as indicated on the FIRM to the highest point of the roof.  
**Design flood elevation (DFE):** The regulatory flood elevation adopted by the Town of Pawleys Island which is three feet above the base flood elevation (BFE).  
 (Source: Pawleys Island, SC)



Other considerations in reviewing the definition of building height would be to allow an exception for parapet walls that do not extend above a flat roof by more than X feet to encourage screening of rooftop mechanical equipment, and to restrict the use or conversion of any area for human occupancy within a roof area extending above the maximum building height.

The State Building Code definitions regarding building height are attached for reference.

## Staff Recommendation

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Town Council requested on April 6<sup>th</sup> that the Planning Commission provide a recommendation regarding a possible change to the definition of building height in time for their May 4<sup>th</sup> regular meeting.

Town Staff recommends the consideration of a revised definition of building height, modified from the Kiawah Island, SC example, prior to the effective date of the new Flood Insurance Rate Maps on May 18, 2015.

### Definitions:

***Building height*** ~~means~~ the vertical distance measured at the site of the structure between the surrounding ground level if the structure is not in a special flood hazard area as defined by the Federal Emergency Management Agency (FEMA), the base flood elevation for existing structures, or the base flood elevation plus 2 feet of freeboard for new and substantially improved structures and

- (1) The average height level between the eaves and ridge line of a gable, hip or gambrel roof;
- (2) The highest point of a mansard roof; or
- (3) The highest point of the coping of a flat roof.

### All Zoning Districts

#### ***Height Regulations***

- (1) Buildings may be erected up to 36 feet in height ~~above base flood elevation~~. No structure shall exceed three stories in height. Exception: enclosures below the base flood elevation used for incidental storage, parking garages, and means of egress shall be exempt from being considered a story if such total space is less than 600 square feet in area, however the height restriction still applies.
- (2) No accessory building shall be more than 25 feet in height.
- (3) Chimneys and flues shall not be more than six feet above the height of the main buildings upon which they rest.
- (4) Church spires, belfries, monuments, flagpoles, television antennae and radio aerials may be no higher than 70 feet above mean sea level (excluding public utilities).
- (5) Parapet walls shall not extend more than six feet above the maximum building height for non-residential structures.
- (6) Roof area extending above the maximum three story building height shall not be used or converted for human occupancy.

## 2012 VA Construction Code

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Chapter Selector ↓

### CHAPTER 2 DEFINITIONS

#### SECTION 201 GENERAL

**HEIGHT, BUILDING.** The vertical distance from *grade plane* to the average height of the highest roof surface.

**GRADE PLANE.** A reference plane representing the average of finished ground level adjoining the building at *exterior walls*. Where the finished ground level slopes away from the *exterior walls*, the reference plane shall be established by the lowest points within the area between the building and the *lot line* or, where the *lot line* is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.

**GRADE PLANE, STORY ABOVE.** See "Story above grade plane."

**STORY.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above (also see "*Basement*," "*Building height*," "*Grade plane*" and "*Mezzanine*"). It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**STORY ABOVE GRADE PLANE.** Any *story* having its finished floor surface entirely above *grade plane*, or in which the finished surface of the floor next above is:

1. More than 6 feet (1829 mm) above *grade plane*; or
2. More than 12 feet (3658 mm) above the finished ground level at any point.

**DESIGN FLOOD.** The *flood* associated with the greater of the following two areas:

1. Area with a flood plain subject to a 1-percent or greater chance of *flooding* in any year; or
2. Area designated as a *flood hazard area* on a community's flood hazard map, or otherwise legally designated.

**DESIGN FLOOD ELEVATION.** The elevation of the "*design flood*," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the *design flood elevation* shall be the elevation of the highest existing grade of the *building's* perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm).



## STAFF REPORT

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To: Planning Commission  
From: Bill Neville, Director of Planning  
Date: April 14, 2015  
Subject: Land Subdivision and Development Ordinance Review

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- ❖ **Sketch Plan Review**
  - ❖ **Site Plan Standards**
  - ❖ **Sidewalk Standards**
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**Sketch Plan Review** - Following the completion of a 5 year update to the Town of Chincoteague Comprehensive Plan, the Planning Commission discussed how and when development activity on the Island will be reviewed for conformance with the goals and policies contained in the Plan. One idea presented at the last regular meeting was to review the current 'sketch plan' provision in the Land Subdivision and Development Ordinance (Town Code Appendix B) to see if a Planning Commission review process could be added.

The following section of a Virginia planning reference manual provides some background information about implementing Comprehensive Plan goals, objectives and strategies:

***Tools for Managing the Form and Location of Growth - "2232" Review***

*As noted in Section II of this report, the comprehensive plan is considered advisory and it serves as a guide for the physical development of the territory within the locality's jurisdiction. However, according to § 15.2-2232 of the Code of Virginia, the comprehensive plan "shall control the general and approximate location, character, and extent of each feature shown." Thus, while the comprehensive plan itself does not directly regulate land use, the plan does have status as a fundamental instrument of land use control once it is adopted by the local governing body.*

*Section 15.2-2232 provides that unless a feature is already shown on the adopted plan, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation, whether publicly or privately owned, shall be constructed,*

*established or authorized until its location has been approved by the local planning commission as being substantially in accord with the adopted comprehensive plan. As of 2009 localities are required to show on the transportation plan map of the comprehensive plan transportation corridors of statewide significance upon notification by the Commonwealth Transportation Board that such a corridor has been designated in the Statewide Transportation Plan.*

#### **Authority**

*Provided by § 15.2-2232 of the Virginia Code.*

#### **Implementation**

*A “2232 review” is required whenever a project is proposed to construct, establish or authorize a public facility not shown on the comprehensive plan. The local planning commission, if it holds a public hearing, is required to communicate its findings to the governing body. The governing body is not required to follow the planning commission’s recommendation. However, if the proposed facility does not conform to the comprehensive plan, it may not be constructed. Many localities combine preliminary subdivision plan approval by planning commissions with the “2232” review with respect to street conformity. Similarly, CIP reviews often include “2232” language in the planning commission recommendation with respect to the projects contained within the CIP.*

#### **Limitations**

*A primary limitation associated with the 2232 review centers on what activities prompt or require a review. To date, Virginia case law has clearly identified privately constructed wireless facilities in VDOT rights-of-way, sanitary landfills, school sites, parks and water impoundment facilities as activities requiring a 2232 review. Another 2232 issue involves the lack of specific code procedures that localities are to follow when conducting and administering a review. Note that unless there is clearly contrary language or depiction in the adopted comprehensive plan, the plan does not have to be amended as part of the “2232” review.*

#### **Enhancements**

*Making sure all localities conduct the 2232 review is essential. Many do not consistently do so. In addition, strong consideration should be given to mandating that all local planning commissions, when needed, hold a public hearing when conducting a 2232 review. At present, a planning commission is not required to hold a hearing unless directed to do so by the governing body. Thus, some planning commissions hold hearings and some do not. This lack of consistency has produced some confusion on the part of localities and citizens alike. Finally, by not conducting a 2232 review, a locality is shortchanging the planning process by denying itself the opportunity to use the limited but specific legal status or power the code gives the plan. Sponsorship of a 2232 review means the locality, even if it is the applicant, is following the plan. This sends a strong message that the plan is a critical tool of public policy.*

*(Managing Growth and Development in Virginia, APA Virginia Chapter, October 2011)*

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**Selected Ordinance Section with possible revision (in red)**

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**TOWN CODE – Appendix B Land Subdivision and Development Ordinance**

**Section 13. Subdivision defined.**

13.01. The division of a parcel of land and the establishment of any condominium regime, into four or more lots or parcels less than three acres each for the purpose of transfer of ownership or building development, or if a new street or road is involved in such division, any division of a parcel of land. The term includes resubdivision and when appropriate to the context shall relate to the process of subdividing or to the land subdivided; except that the following division of land shall not be deemed a subdivision:

- (a) The sale and exchange of parcels between adjoining landowners where such separation does not create additional building sites.
- (b) The release of a portion of the security of any mortgage or deed of trust, provided that any sale of property presented to any mortgage or deed of trust which would otherwise constitute a subdivision of land shall be subject to the provisions of this ordinance.
- (c) The division of any parcel occasioned by an exercise of eminent domain by any public agency.
- (d) The division of land made solely for bona fide agricultural or natural resource conservation purposes.
- (e) The division of land for sale or gift to a member of the owner's immediate family.

13.02. *Major subdivision defined.* A "major subdivision" is a subdivision as defined in subsection 13.01 above which complies with the following:

- (a) Creates 11 or more lots from a parcel or parcels of land.

13.03. *Minor subdivision defined.* A "minor subdivision" is a subdivision as defined in subsection 13.01 above, which does not meet any of the conditions of a major subdivision as defined in subsection 13.02 above.

**Section 14. Major subdivision.**

14.01. *Purpose.* The purpose of the major subdivision review process is to ensure that larger scale developments are fully reviewed by the planning commission for compliance with the provisions of this ordinance and other applicable county and state regulations.

14.02. *Procedure for review of a subdivision.*

(a) Submittal of sketch plan (~~optional~~mandatory), zoning administrator and planning commission review.

(b) Submittal of preliminary (mandatory), zoning administrator approval.

(c) Submittal of final (mandatory), planning commission approval.

Before the preparation of a subdivision plat or plan, a subdivider shall confer with the zoning administrator for the town council, relative to the regulations contained in this ordinance, the comprehensive plan, the zoning ordinance, and other applicable ordinances. The purpose of such a conference is to assure that the applicant is made fully aware of all the requirements and interpretations of the existing ordinance, plus any amendments which are pending at the time of the plan or plat preparation. A sketch plan for discussion purposes ~~may~~shall be submitted at the conference, and presented at the next regular planning commission meeting, and shall be optional at the developer's discretion and shall not be a prerequisite for with the understanding that any information provided by the Town or subdivider shall be advisory and non-binding on any final approvals.

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**Site Plan Standards** - On a related note, it may be useful to review and recommend improvements to the Zoning and Subdivision Ordinances which provide clear standards for both subdivision and site plan review criteria. These ordinances are the tools that are used to implement the Comprehensive Plan.

The following section of an online planning reference provides some background information about adopting standards for site plans:

***Site Plans and Subdivision Plats Distinguished***

*Site plans are creatures of the zoning act. Local governments are authorized to require site plans (also known as "plans of development") pursuant to §15.2-2286(A)(8) of the Code of Virginia. A local government may adopt a zoning ordinance. §15.2-2280. In order to engage in site plan review, a local government must have adopted a zoning ordinance. Va. Atty. Gen. Ops. No. 05-011 (2005)*

*The requirements for site plans have become more sophisticated as local governments have come to require greater detail to be disclosed on the site plan. Where once a crude drawing, which proved compliance with the setback requirements of the zoning ordinance satisfied local government's requirement for site plans; today, site plans are required to incorporate plans and profiles of water lines, sewer lines and storm drains, as well as storm water management ponds, parking lot detail, including the size of spaces and travel aisles, driveway apron detail, parking area profiles, curb detail, sidewalk specifications and landscaping plans, with individual plant species identified.*

*Frequently, the preparation of a site plan will include the preparation of a dedication or easement plat, which, when recorded, will transfer to the local government utility easements and the fee interest in widened right-of-ways. See §15.2-2270.*

*The Subdivision Act is set out in Title 15.2, Chapter 22, Article 6, §15.2-2240 through §15.2-2279 of the Virginia Code. Pursuant to §15.2-2251 of the Virginia Code, the planning commission shall prepare and recommend a subdivision ordinance to the governing body for adoption after a public hearing*

*for which notice has been given pursuant to §15.2-2204. The subdivision ordinance and any amendments thereto are to be recorded among the land records of the circuit court in which the local government is located. §15.2-2252.*

*Only the planning commission and the governing body may initiate amendments to its subdivision ordinance. §15.2-2253. When the governing body refers a proposed amendment, the planning commission is to adopt its recommendation regarding the proposed amendment within 60 days of the governing body's referral of the proposed amendment to the planning commission. §15.2-2253.*

*The end product of the subdivision process is the recordation of a plat among the land records of the circuit court, dividing a larger tract of land into smaller tracts of land, most typically house lots, and dedicating the streets and utility easements to the local government. Once the local government has adopted a subdivision ordinance, no plat subdividing land may be recorded among the land records without evidence that such plat of subdivision has been approved by the local government. §15.2- 2254(2). No person may subdivide land without the approval of the subdivision plat by the local government. §15.2-2254(1).*

*While subdivisions and site plans are creatures of separate portions of the Virginia Code and separate ordinances, site plans and subdivisions are subject to similar review and appellate procedure. §15.2-2246 and §15.2- 2258 both provide that site plans are to be treated as subdivision plats, mutatis mutandis.*

**(VIRGINIA SUBDIVISION AND SITE PLAN LAW John W. Farrell,  
McCandlish & Lillard, P.C., Fairfax, Virginia)**

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## Sample Ordinances

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Review of other rural community ordinances provides a good idea of the standard format and content of a site plan or site development ordinance. In most cases, the site plan review requirements are included as a section within the Zoning Ordinance, although site design/development standards are also included in the Subdivision Ordinance.

- ❖ Town of Orange, VA (included in packet)
- ❖ Town of Hamilton, VA
- ❖ Town of Onancock, VA
- ❖ Town of Cape Charles, VA
- ❖ Town of Berryville, VA



**Sidewalk Standards** - Sidewalk construction in the Town of Chincoteague is a required element of a major subdivision application; however the greatest need is to complete disconnected sections along existing roadways and to extend the sidewalk system into areas previously annexed from Accomack County.

The Planning Commission considered several aspects of sidewalk and trail construction standards at the October 8, 2013 meeting. At a minimum, a recommendation to incorporate the current sidewalk policy standards into the Subdivision Ordinance was proposed as follows:

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**Selected Ordinance Section with possible revision (in red)**

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*14.09. Improvements required to be provided in a major subdivision.*

*15.05. Improvements required to be provided in a minor subdivision.*

*The following improvements shall be provided by the developer in a major subdivision as a prerequisite for recordation of the final plat, as may be required:*

*(a) Public roads developed in accordance with the Virginia Department of Transportation 2005 Subdivision Street Requirements, as may be amended from time to time, and eligible for addition to the secondary system of state highways maintained by the Virginia department of Transportation and/or the town, if the developer intends for said roads to be public and not maintained by the developer and/or the owners of lots, parcels, or units within the subdivision; or alternatively, in the event that the developer does not intend such roads to be added to the secondary system, and with the expressed written agreement of the subdivision agent, private roads satisfying the following requirements or criteria..*

*5. Sidewalks, curbs, gutters and driveway aprons. Concrete structures shall be installed within the right-of-way and conform to the specifications of the Town of Chincoteague Drawing Number 35, "Miscellaneous Concrete Work." If curb ramps are utilized they shall conform to the requirements of the Americans with Disabilities Act.*

a. **Width.** *The width of the sidewalk and the drive apron shall be five feet (5').*

**Length.** *The standard length of the drive apron shall be fifteen feet (15'). If the owner desires a longer drive apron, then the difference in the total length and fifteen feet (15') shall be born entirely by the owner.*

b. **Right-of-way.** *The width of the road shall be maintained at a minimum of thirty feet. (30'). If the road right-of way is a minimum of forty feet (40'), the sidewalk and drive apron may be placed abutting the owner's property line. If the road right-of-way is less than forty feet (40'), an easement of five feet (5') of the owner's property along the*



*property line must be deeded to the Town upon which to install the sidewalk and drive apron.*

- c. Other. *Any manmade or natural structures within the area where the sidewalk and/or drive apron is to be located, shall be removed entirely at the owner's expense.*

Additional revisions to the Subdivision and Development Ordinance should be addressed when sidewalks are required to be constructed by a developer or landowner, where they should be built (trail in a rural section road), and what are the standards for construction.

# ARTICLE 12: Site Development

## 12-10 Intent

The purpose of these regulations is to ensure the appropriate development of land and control of land disturbing activities within the Town of Orange. In particular, it is the intent of these regulations to encourage the development of safe, healthy and attractive residential neighborhoods and non-residential developments; ensure adequate provision for drainage and appropriate street access between proposed developments and adjacent streets, highways, and properties; ensure the provision of appropriate arrangements of buildings and parking areas on the site and with nearby properties; obtain public right-of-way, easements and other public land dedications, consistent with the Comprehensive Plan; ensure public facilities and utilities are constructed in accordance with applicable Town standards; maintain appropriate buffers between potentially incompatible uses; discourage development on environmentally sensitive lands such as steep slopes and floodplains; and avoid disturbance of historical, archeological, and/or natural significant features and landmarks.

## 12-20 Site Development Plan

### 12-20.10 When Required

Except for activities specifically exempted under Section 12-20.20 below, a site development plan shall be required for the following types of development and/or redevelopment:

- a) New Development: On a vacant lot or parcel containing no buildings or structures, a site development plan shall be required for the following:
  - 1) Construction of a new building or structure;
  - 2) Subdivision or development of a lot, parcel or tract requiring or involving the dedication or construction of, or substantial upgrades to, public facilities, including but not limited to buildings and structures, public streets and bridges, rights-of-way or easements, sidewalks, major public utilities, lighting, parks or public areas;
  - 3) Construction of parking areas or other impervious areas greater than 10,000 square feet in total area, with the exception of vehicle or equipment display areas, and provided that this provision shall not apply to the construction of such an area on a lot used principally for a single-family or duplex dwelling; or
  - 4) Land disturbing activities 10,000 square feet or greater in area as defined in Erosion and Sediment Control Ordinance of Orange County or of the Town of Orange, as applicable.
- b) Redevelopment: On a lot or parcel upon which buildings, structures or impervious areas have been previously constructed, a site development plan shall be required for the following:
  - 1) Enlargement or expansion of the floor area of an existing permanent building by more than 10,000 square feet;
  - 2) Subdivision or redevelopment of a lot, parcel or tract requiring or involving the dedication or construction of, or substantial upgrades to, public facilities, including but

- not limited to buildings and structures, public streets and bridges, public rights-of-way or easements, sidewalks, major public utilities, lighting, parks or public areas;
- 3) Enlargement of a parking area or other impervious area by more than 10,000 square feet, with the exception of vehicle or equipment display areas.
  - 4) Change in use of an existing parcel or building to a more intensive use category (e.g. commercial to industrial); or
  - 5) Land disturbing activities 10,000 square feet or greater in area as defined in the Erosion and Sediment Control Ordinance of Orange County or of the Town of Orange, as applicable.

## **12-20.20 When Not Required**

A site development plan shall not be required for the following types of development or redevelopment:

- a) Construction, expansion, or enlargement of a single-family detached dwelling or duplex dwelling or a building, structure or parking area accessory thereto;
- b) Land disturbing activities, as defined in the Erosion and Sediment Control Ordinance of the Orange County or the Town of Orange, as applicable, for the purposes of constructing a single-family dwelling or duplex dwelling on a recorded lot;
- c) Agricultural activities as defined by Article 14 of this Ordinance;
- d) Fences and walls less than eight (8) feet in height;
- e) In-ground or above-ground swimming pools on a lot or parcel used principally for single-family dwelling or duplex dwelling use;
- f) Routine maintenance of public facilities and areas by any department of the Town in accordance with Section 4-40 of this chapter; or
- g) Any change or expansion of a use provided that:
  - 1) The change or expansion does not require additional off-street parking under the requirements of this chapter;
  - 2) No additional ingress/egress or alteration of existing ingress/egress is required or recommended by the Town based upon the change or intensification of the use;
  - 3) No additional ingress/egress or alteration of existing ingress/egress is proposed by the developer; and
  - 4) No new connection to or upgrade of public water or sewer facilities is proposed or required.

## **12-20.30 Pre-Application Meeting**

A pre-application conference with the Zoning Administrator and other Town staff is recommended prior to submission of a site development plan. The intent of the conference is to clarify the requirements of this Ordinance, and other ordinances of the Town that may be applicable, in order that the site development plan can be prepared in an efficient manner, and to facilitate plan review by the Zoning Administrator. Any conceptual plans discussed and/or requirements communicated during the conference shall not be considered binding on the Town or applicant.

## 12-20.40 Required Information

Every site development plan required by Section 12-20 shall contain the following minimum information:

a) General Information:

- 1) Name of the proposed development.
- 2) Existing and proposed uses of the property.
- 3) Name and addresses of the owner of record and of the applicant.
- 4) Names of any holders of easements affecting the property.
- 5) Deed reference, instrument number, and tax map and parcel number and/or parcel identification number (PIN).
- 6) Names, addresses, signatures, and registrations of professionals preparing the site plan.
- 7) Date plan was drawn and date of any revision(s).
- 8) Vicinity map at a scale not less than one inch equals 2,000 feet, indicating thereon roads and their names and numbers, Town Corporate Limits, subdivisions and other landmarks.
- 9) Boundary survey, with an error of closure within the limit of one in ten thousand, certified by a licensed land surveyor and indicating the date completed. The survey must show the location and type of boundary evidence, except where a tract or site is a part of a subdivision of record. If only a portion of a parcel is proposed for development, the limits of development shall be shown.
- 10) Existing zoning and all required building setback lines and/or build-to lines.
- 11) Owner(s), zoning, tax map and parcel number and/or parcel identification number (PIN), and present use of each adjoining parcel.
- 12) North arrow, date, and scale of drawing and number of sheets.
- 13) A blank space four (4) inches by (4) inches in size on the plan face for the use of the approving authority.

b) Project Tabulations:

- 1) Gross acreage of the total lot area to the nearest one-hundredth of an acre.
- 2) Number of lots.
- 3) Number of parking spaces required and provided based on the proposed use.
- 4) Proposed permitted uses by square footage.
- 5) Total square footage of all proposed buildings by floor area.
- 6) Proposed floor area ratio (FAR) for non-residential buildings and uses.
- 7) Gross residential density for each type of residential use.
- 8) Total area of all open spaces areas, common areas and recreation areas by square footage and as a percentage of the lot.
- 9) Total impervious area by square footage.
- 10) Average lot or parcel size for residential subdivisions.

c) Existing & Proposed Site Conditions:

- 1) Number of floors, floor area, height, general use, and location of each building.
- 2) Location, type, size, and height of all fencing, walls and screening proposed and/or required under the provisions of this Ordinance.

- 3) Location, name, route number and full width, if applicable, of existing and proposed streets and travelways, access easements, alleys and right-of-ways.
  - 4) Existing and proposed property lines.
  - 5) Existing and proposed topography with maximum two-foot contours for the entire site.
  - 6) All existing and proposed utilities of all types, including locations, sizes, dimensions, materials, profiles and grades of all public water, sanitary sewer, and storm drainage facilities and proposed connections to existing water lines, sanitary sewer lines, drainage channels and storm drainage structures. Meter sizes for all buildings and estimated water consumption must be indicated.
  - 7) Location of proposed fire hydrants and/or distance to nearest existing fire hydrant.
  - 8) Water courses, wetlands, and their names.
  - 9) One-hundred (100) year flood plain limits.
  - 10) Location, width, and pavement type of existing driveways, sidewalks, and access points on the property.
  - 11) Location, width and typical pavement section of all proposed entrances, parking lots, sidewalks, and trails.
  - 12) Projected average number of vehicle trips generated by the proposed use per day and per AM and PM peak hour based upon the latest edition of the ITE Trip Generation Manual.
  - 13) Boundaries, purposes, and widths of all easements.
  - 14) Archeological, natural and historic features and landmarks. The plan shall be revised to delineate such as discovered during the review process.
  - 15) Identification and location of areas of contamination, remediation, and other adverse environmental conditions of the property.
  - 16) Identification and location of any grave, object, or structure marking a place of burial.
  - 17) Location and type of all outdoor trash receptacles and dumpsters and proposed screening methods.
  - 18) Location and size of areas intended to be dedicated or reserved for public use, open space, or common areas, including location and design of facilities proposed within such areas.
  - 19) Locations, heights, and specifications of all outdoor lighting for parking lots, sidewalks and pedestrian walkways, public spaces and common areas, and all other areas designed or intended for use during evening hours, including a diagram of each type of outdoor luminaire and photometric plan indicating lighting patterns and footcandles.
  - 20) An indication of phases or sections within the proposed development and the order of development.
  - 21) The location, character, size, height and orientation of proposed signs.
- d) Supplemental Information:
- 1) Landscape Plan in conformance with Section 9-30.
  - 2) Erosion and Sediment Control Plan in conformance with the requirements of the Erosion and Sediment Control Ordinance of Orange County and/or the Town of Orange, as applicable.
  - 3) For sites with the presence of potential wetlands and jurisdictional streams, a Joint Permit and Virginia Water Protection Permit, approved by the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality, as applicable.

- 4) A traffic impact statement or supplemental traffic analysis in conformance with Section 2-30.30, if applicable.
- 5) A Virginia Stormwater Management Permit, approved by the Department of Conservation and Recreation, if the site disturbs more than one (1) acre.
- 6) A deed of dedication with plat and/or deed of easement with plat for all rights-of-way, easements, or other properties which will be conveyed to the Town of Orange as a result of the development, in a form approved by the Town Attorney.
- 7) Front elevations shall be shown on all commercial, industrial, townhouse, and multi-family developments, regardless of height.
- 8) If the development is not to be served by public water and/or sanitary sewer facilities, written approval of the proposed location of wells and sewage disposal systems shall be obtained from the Orange County Health Director or his designee.
- 9) A bond estimate of public improvements as set forth in Section 12-50 of this Article.

## **12-20.50 Additional Requirements**

All site development plans required by the provisions of this Article shall meet the following additional requirements:

- a) Site development plans, or any portion thereof, involving engineering, architecture, city planning, urban design, landscape architecture, or land surveying, will be prepared by persons qualified to do such work. Final site plans shall be certified by an architect, professional engineer, land surveyor, or certified landscape architect within the limits of their respective licenses authorized to practice by the Commonwealth of Virginia.
- b) Site development plans shall be prepared to the scale of one (1) inch equals fifty (50) feet or larger; sheets shall measure eighteen by twenty-four (18" X 24") at a minimum and no larger than thirty-six by twenty-four inches (36" X 24").
- c) The site development plan may be prepared on one (1) or more sheets. If prepared on more than one sheet, match lines shall clearly indicate where the several sheets join.
- d) A minimum of two (2) datum references for elevations used on plans and profiles and correlated, where practical, to a U.S. Geological Survey datum. At least one (1) datum reference shall be on-site.

## **12-30 Administration and Review Procedures**

- a) A minimum of twelve (12) clearly legible blue or black line copies of a site development plan shall be submitted to the Zoning Administrator. Submitted plans shall include a completed application, checklist and payment of review fees, as established by the Town.
- b) The Zoning Administrator shall be responsible for the receipt, review, processing, and approval of site development plans, including any modifications which conform to the standards and requirements in this Article or Ordinance. The Zoning Administrator may from time to time establish reasonable procedures and forms for the administration of this section. The Zoning Administrator may request opinions and/or decisions from other departments, divisions, agencies, or authorities of the Town and County government; from officials, departments, or agencies of the Commonwealth of Virginia; or from other qualified persons as may from time to time be retained. The reviewing departments, agencies and officials may include, but need not be limited to the Town

Attorney, the Director of Public Works, the Town Engineer or consulting engineer, the Chief of Police, and the Fire Chief.

- c) The Zoning Administrator shall check the plan for completeness within twenty-one (21) days of receipt. If the plan does not contain all information required by this Article or by other provisions of this Ordinance, the Zoning Administrator may return the plans as incomplete, provided that he shall identify the deficiencies or omissions in the submitted plan in writing to the applicant and stamp the plan "Incomplete". If the Zoning Administrator determines that the omissions or deficiencies are minor in nature and will not affect the ability of the Town to adequately review the plan, he may accept the plans as substantially complete, provided that he shall identify the deficiencies or omissions in writing to the applicant and require that the applicant address the omissions or deficiencies prior to final approval.
- d) The applicant shall mail a written notice, on a form provided by the Zoning Administrator, to all abutting property owners, and owners of property directly across the street from the site, indicating the general nature and intent of the proposed activities indicated on the site development plan as submitted. Notices sent by registered or certified mail to the last known address of such owner shown on the real estate tax assessment records of the Town shall be deemed adequate compliance with this requirement. The applicant shall provide copies of all such notices and receipts to the Zoning Administrator. No site development plan shall be preliminarily approved within five (5) calendar days of any such notice.
- e) Once the plan is deemed complete or substantially complete, the site plan together with the comments received from Town staff shall be forwarded to the Planning Commission prior to the next regular meeting. The Zoning Administrator shall make a report on the site development plan to the Planning Commission and identify any required modifications. The Planning Commission shall consider the site development plan, staff comments, and the Zoning Administrator's report and make a non-binding recommendation to the Zoning Administrator as to whether the plan should be approved, approved with modifications, or disapproved.
- f) Approval, approval with modifications, or disapproval of a site development plan by the Zoning Administrator shall occur within sixty (60) days of official acceptance of the plan as complete or substantially complete. Approval with modifications shall be deemed preliminary approval of the site development plan, provided that the Zoning Administrator shall indicate final approval or disapproval of the plan with thirty (30) days of official acceptance of the revised plan containing the required modifications. If the plan is disapproved, written notification shall be provided to the applicant or the applicant's designated agent stating the deficiencies in the plan that caused the disapproval by reference to specific adopted ordinances, regulations, or policies and identifying the modifications or corrections that would permit approval of the plan.
- g) No public easement, right-of-way, or public dedication shown on any site development plan shall be accepted for dedication for public use until such proposed dedication shall first be approved by the Town Council and evidence of such approval is shown on the instrument to be recorded.
- h) No permit shall be issued for the construction of any building or improvement requiring a permit in any area covered by the site development plan unless it is in compliance with the provisions of this Article and the duly approved site development plan.
- i) Any approved site development plan may be revised, provided request for revision shall be filed with the Zoning Administrator and processed in the same manner as the original site development plan, except that Planning Commission review and recommendation shall not be required if the proposed revisions do not substantially affect the overall plan. Approval, approval subject to

modifications, or disapproval of revisions to a site development plan shall occur within sixty (60) days of official acceptance of the request by the Zoning Administrator.

- j) The Town, County, and State agencies responsible for the supervision and enforcement of this Article or Ordinance shall retain the right to periodically inspect the site during the period of construction.
- k) Approval of a site development plan pursuant to this Article shall expire five (5) years after the date of approval unless a building permit has been obtained for construction in accordance with Section 15.2-2261 of the Code of Virginia. The site plan shall be deemed final once it has been reviewed and approved by the Town if the only requirement remaining to be satisfied in order to obtain a building permit is the posting of any bonds and escrows. Extensions may be granted upon request by the applicant to the Zoning Administrator, sixty (60) days prior to lapse of approval, and may include a request to extend all bond and surety agreements. A six (6) month extension may be granted one time at the discretion of the Zoning Administrator taking into consideration the size and phasing of the proposed development. Further extension may be authorized only by Planning Commission approval upon demonstration of a good cause by the applicant and taking into consideration the time and phasing of the proposed development.
- l) One (1) set of approved plans shall be at the job site at all times when work is being performed.
- m) Upon compliance with the terms of this Ordinance and satisfactory completion of construction, as determined by an on-site inspection by Town staff, the Zoning Administrator shall furnish a Certificate of Zoning Compliance in accordance with Section 3-10 which shall release any bonds which may have been furnished as required by this Article and permit issuance of a Certificate of Occupancy by the Orange County Building Official for any building(s) on site.

## **12-40 Minimum Design Standards and Improvements**

### **12-40.10 Applicability**

The standards prescribed in this section shall apply to all developments or subdivisions requiring submittal of a site development plan in accordance with Section 12-20.

### **12-40.20 Compliance with Public Facilities Standards**

All public facilities included but not limited to streets, bridges, culverts, sidewalks, drainage channels, pipes, and structures, and water and sewer facilities required or proposed to service the development, shall be constructed in conformance with the Town of Orange Public Facilities Manual, latest edition, and with any other standards of any state, local or federal government agency having regulatory authority or jurisdiction over the subject improvements, including Orange County, if applicable.

### **12-40.30 Cost Sharing**

Unless otherwise agreed to by the owner or applicant and the Town, all improvements required by this Article shall be installed at the cost of the owner or applicant. Where cost sharing or reimbursement agreements between the Town and the owner or applicant are requested and deemed appropriate by the Town, the same shall be entered into by formal agreement prior to



final site development plan approval. Where specifications and standards have been established by the zoning or subdivision ordinances or by the Town generally, or by any other state, local, or federal government agency for any such improvement, such specifications shall be followed. The owner or applicant's performance bond shall not be released until construction has been inspected and accepted by the Town after consulting with all applicable regulatory authorities.

## **12-40.40 Streets**

- a) Proposed streets shall be coordinated so as to provide adequate circulation. Where a street connection is necessary for the appropriate development of adjoining land, the arrangement or extension of streets shall include the extension of the street to the edge of the subject property. The street layout shall provide access to all lots within the development. Streets shall be laid out to intersect as nearly at right angles as possible.
- b) Proposed streets shall be graded and improved with pavement, street signs, sidewalks, driveway approaches, curbs, gutters, stormwater structures and conveyances, landscaping, water mains, sanitary sewers, fire hydrants and appurtenances, street lights, and other public improvements required by the Town of Orange Public Facilities Manual, latest edition, and the zoning and subdivision ordinances of the Town, or by any other duly adopted plans, maps and ordinances; and all new streets must be platted and constructed to meet the full width required therein.
- c) Wherever there exists a public street within or adjacent to the proposed subdivision or development, the street shall be dedicated within the proposed subdivision or development to the width prescribed in the Public Facilities Manual and the zoning and subdivision ordinances of the Town, or in any other duly adopted plans, maps and ordinances; and all subdivisions and developments that adjoin or include existing streets shall provide such improvements as are necessary to bring said streets up to the standards specified therein.
- d) At a minimum, streets shall have the widths of right-of-way specified for the appropriate functional street classification in conformance with the geometric design standards of the Virginia Department of Transportation, unless the Town has adopted an alternative standard for a proposed or existing street, or segment thereof, as part of a duly adopted plan, map or ordinance.
- e) All streets shall be named and names shall be approved by the Planning Commission. Names shall be sufficiently different in sound and in spelling from other street names in the Town so as not cause confusion.

## **12-40.50 Access and Circulation for Vehicles and Pedestrians**

- a) Each development shall be provided with safe and convenient ingress from and egress to one (1) or more public streets designed to: reduce or prevent congestion in the public streets; minimize conflict and friction with vehicular traffic on the public street and on-site; minimize conflict with pedestrian traffic; and provide continuous and unobstructed access for emergency purposes such as police, fire and rescue vehicles. To these ends, the Planning Commission may recommend and the Zoning Administrator may specify the number, type, location and design of access points to a public street together with such

measures as may be deemed appropriate to insure adequate functioning of such access points, including but not limited to sight line easements.

- b) Each entrance onto any public street for vehicular traffic to and from each development shall be subject to the approval of the Zoning Administrator upon the advice of the Director of Public Works, Town Engineer or consulting engineer, and/or the Virginia Department of Transportation, and shall be constructed in accordance with the design standards of the Town or, in the absence of such standards, the Virginia Department of Transportation.
- c) The Planning Commission may recommend and the Zoning Administrator may require provision for and/or construction of travel lanes or driveways to serve adjoining properties. The pavement of vehicular travel lanes or driveways designed to permit vehicular travel from adjacent property and parking areas shall be not less than twenty (20) feet in width, except for alleyways.
- d) On any site bordering a four-lane divided highway, the developer, in lieu of providing travel lanes or driveways that provide vehicular access to and from adjacent parking areas and adjacent property, may dedicate and construct a service road in accordance with existing standards of the Town or Virginia Department of Transportation for such roads, subject to approval by the Zoning Administrator upon the advice of the Planning Commission, Director of Public Works, the Town Engineer or consulting engineer, and/or the Virginia Department of Transportation. Upon satisfactory completion and dedication of the road by the developer, and inspection by the Town for conformance with applicable standards, the Town shall accept the service road into the Town's system of public streets.
- e) On-site parking and circulation shall be designed and constructed in accordance with Article 8 and sound engineering practices, including but not limited to grade, drainage and paving specifications, and shall be subject to Zoning Administrator approval of safe and convenient vehicular circulation patterns.
- f) Provision shall be made for sidewalks and pedestrian walkways which will enable pedestrians to walk safely and conveniently between buildings on the site and from the site to adjacent property. Sidewalks built adjacent to existing and proposed streets shall conform to the minimum width prescribed in the underlying zoning district in accordance with the applicable civic space standards in Article 5 of the Ordinance. Wherever a public street is located adjacent to or within a proposed subdivision or development, the owner, applicant or developer shall be responsible for constructing the sidewalk along the entire length and on each side of the public street where the owner's property adjoins said street.
- g) Provision shall be made where appropriate for pedestrian walkways in relation to private and public areas of recreation and open space such as schools, parks, gardens and similar areas. Connection shall be made wherever feasible of walkways and bicycle ways with similar features in adjacent developments. All sidewalks and related facilities proposed to be accepted for maintenance by the Town shall be designed and built in accordance with the standards of the Town and Virginia Department of Transportation, and shall conform to Section 15.2-2021 of the Code of Virginia. All other sidewalks and walkways shall conform to Section 15.2-2021 of the Code of Virginia and shall be of materials, specifications and design approved by the Zoning Administrator upon consulting with the Director of Public Works.

## 12-40.60 Drainage and Stormwater Management

- a) Provisions shall be made for the disposition of surface water runoff from the site including such on-site and off-site drainage facilities and drainage easements as the Zoning Administrator may deem adequate, provided that the minimum width of a drainage easement shall be fifteen (15) feet. The extent and character of both on-site and off-site stormwater management and treatment shall be in accordance with all local, state and federal requirements and standards, and shall meet the following additional requirements of the Town:
  - 1) On-site and off-site improvements shall be made if deemed necessary by the Zoning Administrator so that downstream properties are not harmed by pollution, flooding, erosion or sedimentation resulting from the subdivision or development.
  - 2) Culverts and/or bridges shall be required where overland streams intersect any street right-of-way.
  - 3) Existing watercourses entering the subdivision or development shall be received and discharged as nearly as feasible in the manner as existed prior to the subdivision or development. Means for the retention of storm waters within subdivisions and developments and the controlled release of storm waters there from shall be completed in instances where downstream floodwaters increased by the subdivision or development cannot be accommodated without damage to downstream properties.
  - 4) The design and construction of drainage facilities shall be such that all water courses traversing the subdivision or development and water emanating from outside or within the subdivision or development will be carried through and off the subdivision or development without creating an adverse drainage condition to roadway or residential sites within the tract and without injury to roadways, residential sites, or other lands abutting or in the vicinity of the tract.
- b) A Stormwater Management Facility Maintenance Agreement, in a form acceptable to the Zoning Administrator, shall be executed by and between the owner and the Town for any such stormwater management facility constructed on the owner's property. Such agreement shall ensure that stormwater management facilities are maintained in a satisfactory manner by the owner without expense to the Town.
- c) Provision for temporary and permanent control of erosion and sedimentation during all phases of clearing, grading and construction shall be made in accordance with the Erosion and Sediment Control Ordinance of the Town or County, as applicable.
- d) In addition to the provisions of this section and other applicable law, provisions shall be made for the minimization of pollution of downstream watercourses and groundwater where such measures are deemed warranted by the Zoning Administrator due to the unusual character of particular use. In determining what measures, if any, are warranted, the commission or the agent shall consider the recommendation of the Town Engineer or consulting engineer in light of the character of the proposed use including but not limited to: storage of petroleum products, pesticides, poisons, synthetic organic compounds or other substances which, if improperly stored or inadvertently discharged, may reasonably be anticipated to pollute such surface or ground waters.

## **12-40.70 Water, Sewer and Other Utilities**

- a) Subdivisions and developments subject to the requirements of this article shall connect to central water and/or sewer systems whenever required by the provisions of this chapter and the Code of the Town of Orange, provided such systems have sufficient capacity to accommodate the proposed development. In all such instances, public water and sanitary sewer systems shall be installed to serve all lots, including lateral connections between the trunk sewer and property lines.
- b) For buildings and parcels not required to connect to a central public sewer system, on-site septic systems shall be subject to review and approval by the Health Department. Percolation tests and/or other methods of soil evaluation deemed necessary by the Health Department shall be the responsibility of the applicant.
- c) Adequate provision shall be made by the owner or applicant to construct all utilities required to service the development, both on-site and off-site. Design requirements shall follow the provisions of the Town of Orange Public Facilities Manual, as applicable.
- d) Adequate easements shall be provided for all utilities. Minimum easement width shall be fifteen (15) feet. If two (2) utilities are located within one (1) easement area, the minimum easement width shall be twenty (20) feet. If more than two (2) utilities are located within an easement area, the easement width shall be established by Zoning Administrator upon the advice of the Director of Public Works.
- e) New electric, telephone, communication, and cable television service utility facilities shall be installed underground in accordance with the provisions of this chapter and the Code of the Town of Orange.

## **12-40.80 Signs and Lighting**

- a) Signage shall be approved by the Zoning Administrator in accordance with Article 11 of this chapter. Approval of a site plan shall not be deemed approval of any signage except such signs as may be specifically required by the Town to regulate traffic, prohibit parking or to serve some other purpose of this chapter.
- b) Lighting facilities of a type approved by the Zoning Administrator shall be installed by and maintained at the developer's expense where required by the provisions of the zoning and subdivision ordinances, or by the Zoning Administrator, including along private and public streets and within public access parking areas, including parking areas for multifamily and townhouse developments. Such lighting shall be appropriate in scale and intensity for its designed purpose of illuminating roadways or pedestrian areas during evening and nighttime hours. Lights installed along streets to be accepted by the Town into its maintenance system shall be built and installed according to Town standards. These standards may be modified for areas where streetscape design plans have been approved by the Town Council.

## **12-40.90 Trees and Landscaping**

- a) Street trees and other plant materials shall be installed at the developer's expense along any public thoroughfare located within or adjacent to the subject property. All such trees and plantings shall meet the minimum requirements and standards of this Chapter, and shall be

represented on the Landscape Plan submitted to the Zoning Administrator in accordance with Article 9 of this Chapter. Where such landscaping is located entirely on the subject property outside of the public right-of-way, the developer shall be responsible for maintenance of the same.

- b) Trees and plant materials shall be installed by and maintained at the developer's expense on the subject parcel wherever required by the provisions of Article 9 or any other provision of this chapter in accordance with all applicable minimum requirements and standards.
- c) Required specifications for landscaping, street trees and street tree plantings shall designate the number, location, size, variety and condition of trees and other plant materials to be planted and planting methods. Such specifications shall take into account the relative hardiness, shape, root growth pattern, beauty and undesirable features of plant materials and shall provide restrictions on plantings in locations likely to damage underground or aerial utility facilities; restrict motorists or pedestrian sight distances, conflict with driveways, sidewalks, bikeways or streets; or damage street, sidewalk, storm sewer, sanitary sewers, curb and gutter or other public facility structures.

## **12-50 Required Bonds and Surety**

### **12-50.10 Bonding Policy**

A performance agreement between the applicant and the Town Council, supported by an acceptable form of guarantee, shall be required ensuring the timely and proper installation of required improvements. Such agreements with the Town Council shall be posted to guarantee the installation of all improvements described below:

- a) All improvements described in §15.2-2241(5.), Code of Virginia, 1950, as amended, that will be accepted for public use and public maintenance by the Town of Orange;
- b) All other improvements required by the Town of Orange and/or the provisions of this chapter for special use permits, zoning ordinance amendments and site development plans as determined by applicable approving authority;
- c) Improvements proffered as part of any zoning map amendment, as required by the Zoning Administrator in accordance with §15.2.2299, Code of Virginia, 1950, as amended.

### **12-50.20 Performance Bond Agreements**

Prior to site plan approval, a Performance Bond Agreement, provided in a format acceptable to the Town, for installation of on-site and off-site improvements to be dedicated for public use, shall be submitted to the Town. The Agreement shall contain the following:

- a) Identification of improvements to be dedicated for public use or access;
- b) Unit cost estimate with escalation clause;
- c) The date by which the improvements shall be completed;
- d) Construction supervision standards;

- e) Insurance standards;
- f) Materials and workmanship guarantee; and
- g) Improvement dedication requirements.

The Agreement may also include other items not listed above as may be mutually agreed to by the landowner/developer and the Town. Upon Town approval of the Performance Bond Agreement, the owner or developer shall submit to the Town surety prior to final site plan approval or issuance of the Zoning Permit.

## 12-50.30 Acceptable Bond Guarantees

The following bond guarantees are acceptable, provided they are consistent with the regulations below:

- a) Cash escrow: The face amount of the bond shall be submitted to the Town and shall be deposited in an interest-bearing escrow account in an institution selected by the town and approved by the state for investment by state or local government entities. Such face amount and interest shall be available to the Town in the case of default or breach of the performance agreement.
- b) Letter of credit: Irrevocable letters of credit from financial institutions are acceptable, provided they are in a form acceptable to the Town and they extend at least six months beyond the expiration date of the performance agreement. The letter of credit must contain conditions for automatic renewal for additional six month periods, unless the financial institution notifies the administrator in writing by certified mail at least 60 days in advance of any cancellation, including normal expiration of term. The financial institution issuing the letter of credit shall be chartered in the Commonwealth of Virginia or be authorized to conduct business in Virginia and insured by the Federal Depository Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) Corporate bond. Corporate surety bonds are acceptable, provided the bonds are in a form acceptable to the Town, are furnished by an insurance company licensed to transact fidelity and surety insurance in Virginia, and the surety holds a certificate of authority from the Federal Government to act as surety on Federal projects or has a rating of B+ or better by Best's Key Rating.

## 12-50.40 Bond Defaults/Extensions

- a) For projects bonded with the Town, if the applicant fails to complete all of the bonded improvements within the time period specified by the performance agreement and no extension has been obtained, or a replacement agreement and bond have not been approved with a new expiration date, the agreement is deemed in default.
- b) Performance agreements with the Town may be extended for periods of one year or less. Any request for extension shall be in writing and shall be accompanied by an estimate of the remaining work and a timetable for completion of the improvements, as well as the

conditions which have prevented the applicant from completing the required improvements.

## **12-50.50 Bond Reductions**

Periodic partial releases of bonds held by the Town may be approved in accordance with §15.2-2241(11.), Code of Virginia, 1950 (as amended). The Town shall act within sixty (60) days of the receipt of any written request for a bond reduction, unless the Town notifies the applicant in writing of non-receipt of approval by applicable state agencies or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the 60-day period.

The following standards shall apply to any request for a bond reduction:

- a) No more than three reductions shall be permitted within any 12-month period.
- b) No bond shall be reduced beyond 75 percent of the original bond amount. Periodic partial releases shall not occur before completion of at least 30 percent of the improvements covered by the bond.
- c) The applicant is responsible for all engineering costs incurred by the Town in the process of inspecting the required improvements.

## **12-50.60 Bond Release Procedures**

Upon completion of all required improvements, the developer shall notify the Zoning Administrator in writing of such completion and shall submit as-built plans in accordance with Sec. 12.50.90. The Zoning Administrator shall have all such improvements inspected and shall file a written report to the owner-applicant indicating approval, partial approval or rejection of such improvements, setting forth the cost of improvements as approved or rejected and reasons for any rejections. Upon acceptance of said improvements, the Zoning Administrator shall release any remaining bond, such release to occur within 30 days after receipt of written notice by the owner-applicant of completion of said improvements, unless the Zoning Administrator finds and notifies the owner-applicant in writing (1) of non-receipt of applicable departmental or state agency approval; or (2) of any specified defects or deficiencies in construction and suggested corrective measures prior to expiration of the 30-day period, in which case the 30-day period shall reset until such department or state agency approval has been obtained or specified defects or deficiencies have been corrected to the satisfaction of the Zoning Administrator. For the purpose of final release, the term "acceptance" is deemed to mean when said improvements are accepted by and taken over for operation and maintenance by the Town.

If no notice is given to the owner or developer within the time specified above for final release, and an additional request in writing is sent by the owner or developer by certified mail, return receipt requested, to the Zoning Administrator, and the Town has not acted within ten (10) calendar days of receipt of the additional request, it shall be deemed approved and final release granted.

## **12-50.70 Conditions for Acceptance of Public Improvements**

The Town shall accept public improvements installed by a subdivider or developer which meet the following conditions:

- a) The completed improvements comply with zoning and subdivision and most recent Public Facilities Manual standards and have been installed in accordance with the approved site plan;
- b) All final inspections required by this article have been completed and the bonded improvements were found to be acceptable;
- c) The developer has prepared and submitted four (4) sets of prints of plans that accurately depict the bonded improvements as actually built (as-built plans) or building location plat certified by an engineer, architect, landscape architect, or surveyor, as agreed to by the Town. The as-built plans shall be submitted prior to approval of the as-built approval letter provided to the Orange County Building Department, required prior to release of the Certificate of Occupancy (CO).
- d) The developer, through use of Deed of Dedication and Easement, as determined by the Town, has conveyed to the appropriate governmental entity good title, free of all liens, to all public improvements for which such governmental entity is to be responsible for operation and maintenance. Any required easement shall be deeded to the appropriate governmental entity by instrument approved in form by the Town and bearing acceptance on behalf of the appropriate entity. The developer shall have furnished a copy of the recording receipt to the Town prior to bond release.

The Town Council shall approve Deeds of Dedication and Easements unless otherwise delegated by Town Council. Final completion and acceptance of improvements will result in the release of any remaining bond, escrow, letter of credit, or other performance guarantee by the Town, except that the Town may retain fifteen percent (15%) for one (1) year after final acceptance as a maintenance bond to ensure all facilities were constructed and are operating properly and all landscaping required in accordance with Article 13 is alive in good growing condition. "Final acceptance" is deemed to mean when said public facility is accepted and taken over for operation and maintenance by the Town.

## **12-50.80 Street Maintenance Bond**

In the event the Town has accepted the dedication of a street for public use and such street, due to factors other than its quality of construction, is not acceptable into the secondary system of state highways, the developer may be required to post a maintenance and indemnifying bond, with acceptable surety, in an amount sufficient for and conditioned upon the maintenance of such street until such time as it is accepted into the secondary system. In lieu of a bond, the Town may accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such street until such time as it is accepted into the secondary system and, in this event, assume the developer's liability for maintenance of such street. "Maintenance of



such street" shall mean maintenance of the pavement, curb, gutter, drainage facilities, utilities or other improvements, including the correction of defects or damages and the removal of snow or debris, to keep such street reasonably open for public usage.

## **12-50.90 As-Built Site Plans**

Upon completion of all required improvements shown on the approved site development plan, the applicant shall submit to the Zoning Administrator two (2) copies of the completed as-built site plan, or building location plat certified by an engineer, architect, or surveyor. Submission of a marked-up or "red-line" version of the approved site plan by the contractor shall be deemed adequate compliance with this requirement, provided that all deviations from the approved plan have been approved by the engineer or other professional responsible for preparing the original plan by indicating his signature on the as-built plan . The as-built site plan shall be submitted within a year of issuance of occupancy permits for the review and approval by the Zoning Administrator and Director of Public Works for conformity with the approved site plan and the ordinances and regulations of the Town and state agencies. Final approval of as-built plans shall be required before final release of applicable bonds.