

ATTACHMENT C

ARTICLE II. – Administration.

Division 1. Zoning Administrator and Subdivision Agent.

Section 2-1-1. Appointment; Powers; and Duties.¹

- (A) The Director of the Department of Community Development, who shall be appointed by the Board of Supervisors, shall serve as Zoning Administrator (Administrator). The Director of the Department of Community Development shall have the authority to designate an individual to serve as Zoning Administrator. Said Administrator shall have all authority empowered by this Ordinance in the administration and enforcement of all articles of this Ordinance except the Subdivision Article (Article X). The Administrator shall exercise their authority at the pleasure of the Director of the Department of Community Development.
- (B) The Administrator may designate a Deputy Administrator or other designee to assist in these duties.
- (C) The Administrator may also hold another office in the County.
- (D) The Administrator may act as Staff to the King George County Planning Commission.
- (E) The Administrator shall have such duties as are conferred by this Ordinance and the Code of Virginia § 15.2-2286 (4), as amended, including:
 - (1) Administer and enforce this Ordinance;
 - (2) Interpret zoning district boundaries;
 - (3) Where appropriate, issue zoning permits and certificates;
 - (4) Make necessary inspections; and
 - (5) When necessary, call for opinions or decisions, either verbal or written, from other departments, boards, or state agencies.
 - (6) In addition to the regulations contained herein, the Administrator may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this Ordinance.
- (F) A Subdivision Agent (Agent) shall be appointed by the governing body to administer and enforce the Subdivision Article (Article X) and shall serve at the pleasure of the Board of Supervisors. The Zoning Administrator may also serve as the Subdivision Agent.
- (G) The Agent shall have such duties as are conferred by this Ordinance, including:

¹ Editor's Note: Utilizes existing Sections 5.1 and 5.2 regarding the Administrator but expands to include the Subdivision Agent and other Code of Virginia text. Existing Subdivision Ordinance Section 2.1.2 items are simplified, and any items not included here will be covered in Article X.

- (1) Accept and process applications, including reviewing and certifying plats, for conformance with this Ordinance;
- (2) Forward plats for review, comment, and approval to the appropriate departments, boards, and state agencies;
- (3) Keep records of all applications; appeals; and submissions and subsequent actions; and
- (4) Conduct inspections of subdivision improvements for compliance with the approved subdivision and construction Plans.

Division 2. Planning Commission.²

Section 2-2-1. Appointment and Membership.

The Planning Commission shall be created, organized, and removed pursuant to the Code of Virginia, § 15.2-2210 and § 15.2-2212, as amended and as outlined in Chapter 2, Article III of the County Code.

Section 2-2-2. Powers and Duties³.

The Planning Commission shall perform the duties as provided in this Ordinance and pursuant to the Code of Virginia, § 15.2-2221 and § 15.2-2230, et seq, and § 15.2-2285, as amended. The Planning Commission shall also review subdivision plats submitted to them by the Agent.

Section 2-2-3. Meetings and Procedures.

- (A) The Planning Commission shall conduct meetings and public hearings pursuant to the Code of Virginia §15.2-2214-2217, as amended.
- (B) Pursuant to the Code of Virginia § 15.2-2287.1, as amended, members are required, prior to or at a hearing on a matter, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.⁴

² Editor's Note: Chapter 2, Article 3 of County Code supplies for the creation, appointment, terms, and removal of members for the Planning Commission. To prevent text conflicts, the proposed text references the Code of Virginia and the County Code instead of enumerating these items.

³ Editor's Note: Section 2.2 of the existing Subdivision Ordinance includes language that permits the Planning Commission to review appeals and exceptions; these duties belong to the BZA.

⁴ Editor's Note: This item is not currently provided in the County Code, but is required by the Code of Virginia, thus is being included here.

Division 3. Board of Zoning Appeals.⁵

Section 2-3-1. Appointment⁶; Terms; Membership; Compensation; Removal.

- (A) Pursuant to the Code of Virginia, § 15.2-2308, et seq., as amended, a Board of Zoning Appeals (BZA) shall be created and organized as follows:
- (1) A BZA consisting of seven members, who are residents of King George County, shall be appointed by the circuit court.
 - (2) The term of office shall be for five years; except, that of the first five members appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
 - (3) The secretary of the BZA shall notify the court at least 30 days in advance of the expiration or a term of office, or promptly if a vacancy occurs. A member whose term expires shall continue to serve until the successor is appointed and qualifies.
 - (4) Members of the BZA may be reappointed to succeed themselves but may hold no other public office in King George County; except that one member may be a member of the Planning Commission, any member may be appointed to serve as an officer of election as defined in Code of Virginia § 24.2-101, as amended, and any elected official of an incorporated town may serve on the board of the county in which the member also resides.
 - (5) Members of the BZA shall serve without compensation but shall be reimbursed as approved by the Board of Supervisors. Within the limits of funds appropriated by the Board of Supervisors, the BZA may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
 - (6) Any BZA member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the court which appointed them, after a hearing held after at least 15 days' notice.

Section 2-3-2. Powers and Duties.⁷

- (A) Pursuant to the Code of Virginia § 15.2-2309, as amended, the BZA shall have the following powers and duties after required notice and hearing as provided in the Code of Virginia § 15.2-2204, as amended:

⁵ Editor's Note: This Division incorporates the text found in Sections 5.6.2 and 5.6.3 of the existing Ordinance. The membership of the BZA can be extended to include alternates that may stand in when regular members will be absent. The County should consider if they desire adding this measure.

⁶ Editor's Note: Text for BZA appointment could incorporate Code of Virginia § 15.2-2308 by reference, rather than expounding, if desired.

⁷ Editor's Note: Section 5.6.5 of the existing ordinance is simplified here by providing reference to Code of Virginia §15.2-2309 and §15.2-2201.

- (1) **Appeals.** To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Ordinance as outlined in Article III Division 9.
 - (2) **Variance.** To authorize upon appeal or original application a variance, as defined in the Code of Virginia § 15.2-2201, as amended, from the terms of this Ordinance when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done. Standards and procedures for determining variances are outlined in Article III Division 5.
 - (3) **Boundary Interpretations.** 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 the Code of Virginia § 15.2-2204, as amended, the BZA may interpret the map in such way as to carry out the intent and purpose of this Ordinance for the particular section or district in question.
- (B) The provisions of this section shall not be construed as granting the BZA the power to rezone property, substantially change the locations of district boundaries as established by this Ordinance, or to base decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

Section 2-3-3. Meetings and Procedures.⁸

- (A) The BZA shall adopt such rules and regulations as it may consider necessary.
- (B) Meetings of the BZA shall be held at the call of its Chairperson or at such time as a quorum of the BZA may determine.
- (C) A quorum shall be at least four members. A favorable vote of four members of the BZA shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter on which the BZA is required to pass.
- (D) The BZA shall choose annually its own chairperson and vice-chairperson. The vice-chairperson shall act in the absence of the chairperson and may administer oaths and compel the attendance of witnesses.
- (E) The BZA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the BZA and shall be public record.

⁸ Editor's Note: This section contains simplified and streamlined text from Sections 5.6.3 and 5.6.4 of the existing Ordinance.

- (F) All meetings of the BZA shall be open to the public.
- (G) A non-legal staff member of the County, applicant, landowner, or landowner's agent/attorney may have ex parte communications with a member of the BZA prior to a hearing but may not discuss the facts or law relative to a particular case. However, all ex parte communications must comply with the requirements of the Code of Virginia § 15.2-2308.1, as amended.
- (H) Pursuant to the Code of Virginia § 15.2-2287.1, as amended, members are required, prior to or at a hearing on a matter, to make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.⁹

Division 4. Enforcement.¹⁰

Section 2-4-1. Authority.

- (A) As provided in Article 1, conformity with the Ordinance is required. Failure to comply with the requirements of the Ordinance constitutes a violation thereof and is declared to be unlawful.
- (B) As authorized by the Code of Virginia § 15.2-2286(A)(4), as amended, the Administrator or designee shall be responsible for enforcing the provisions of this Ordinance.
- (C) Any person who knowingly makes any false statements, representations or certifications in any record, report, or other document, either filed or requested pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Administrator under this Ordinance in monitoring discharges, shall be guilty or liable of this Article.

Section 2-4-2. Complaints and Inspection.¹¹

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

⁹ Editor's Note: This item has been added to include language provided in the Code of Virginia.

¹⁰ Editor's Note: Article 6 of the existing Ordinance regarding violation of the Ordinance have been incorporated in this Division – and are rearranged for clarity and updated with current Code of Virginia standards and references.

¹¹ Editor's Note: Item (b) of this section is new content that includes a provision for entering land or structures that are suspect of violation, per Code of Virginia.

Section 2-4-3. Notice of Violation

- (A) Upon completion of investigation and becoming aware of any violation of the provisions of this Ordinance, the Administrator may issue written notice of such violation to the person committing or permitting the violations.
- (B) Notice of violation shall be mailed by registered or certified mail or hand delivered.
- (C) The notice of violation shall state:
 - (1) The nature of the violation;
 - (2) Date that the violation was observed;
 - (3) The remedy or remedies necessary to correct the violation;
 - (4) A reasonable time period for the correction of the violation;
 - (5) A statement informing the recipient that they may have a right to appeal the notice of zoning violation or written order within 30 days in accordance with the Code of Virginia § 15.2-2311, as amended;
 - (6) The applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal; and,
 - (7) That the decision shall be final and unappealable if not appealed within 30 days.
- (D) Appeals of notice of violation shall be heard by the Board of Zoning Appeals in accordance with the procedures set forth in Article III, Division 9.

Section 2-4-4. Remedies and Penalties for Violation.¹²

- (A) Upon becoming aware of any violation and making a determination of validity of any of the provisions of this Ordinance, the Administrator may institute appropriate action or proceedings, as permitted by law, including injunction, abatement to restrain, correction, or abatement.
- (B) The remedies provided in the penalties sections below are cumulative and not exclusive except to the extent expressly provided therein.
 - (1) **Criminal Penalties.**
 - (i) With the exception of the subdivision code in Article X, any violation of the requirements of this chapter resulting in injury to a person or persons or where such civil penalties exceed \$5,000, shall be a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not less than \$10 and not more than \$1,000.
 - (ii) If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with this Ordinance, within a time period established by the court. Failure to remove or abate such violation within the time period

¹² Editor's Note: The existing Ordinance only provides for civil penalties – and the provided fines are lower than the threshold provided in the Code of Virginia. This Section now includes criminal penalties (misdemeanors) and increased civil penalty amounts, as well as updated text to reflect the Code of Virginia.

established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period, punishable by a fine of not less than \$100 nor more than \$1,500.

- (2) **Civil Penalties.** Any violation other than as provided in section (1) above for criminal penalties shall be subject to the following civil penalties, as provided in Virginia Code § 15.2-2209, as amended, and subject to the following:
- (i) **Procedure.** Proceedings seeking civil penalties for violations of this Ordinance shall commence either by filing a civil summons in the general district court or by the Administrator or Agent issuing a ticket.
 - (ii) **Civil summons or ticket.** A civil summons or ticket shall contain, at a minimum, the following information:
 - (a) Name and address of the person charged;
 - (b) Nature of the violation and the Ordinance provisions being allegedly violated;
 - (c) Location, date and time violation occurred or was observed;
 - (d) Amount of the civil penalty for the violation; and
 - (e) Right of the recipient to elect to either pay the penalty or stand trial for the violation and the date of such trial. The summons shall state that if the person elects to pay the penalty, the person must do so by making an appearance in person or in writing by mail to the County Treasurer at least 72 hours prior to the time and date fixed for trial and, by such appearance, enters a waiver of trial and admits liability for the offence charged. The summons shall provide that a signature is an admission of liability that shall have the same force and effect as a judgement of the court. However, such admission shall not be deemed a criminal conviction for any purpose.
 - (iii) **Failure to Enter Waiver.** If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law or equity and it shall be the County's burden to provide the violator's liability by a preponderance of the evidence. A finding of liability shall not be deemed a criminal conviction for any purpose.
 - (iv) **Fines.**
 - (a) **Amount of Civil Penalty.** A civil violation shall be subject to a civil penalty of \$200 for the initial summons, and a civil penalty of \$500 for each additional summons arising from the same set of operative facts.
 - (b) **Daily Offense.** Each day during which a violation exists shall constitute a separate violation. However, in no event shall a violation arising from the same set of operative facts be charged more frequently than once in any 10-day period.

- (c) **Maximum Aggregate Penalty.** The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed \$5,000. If the violations exceed the \$5,000 limit, the violation may be prosecuted as a criminal misdemeanor as outlined above.

Division 5. Fees.

Section 2-5-1. Fees and Charges.¹³

- (A) The Board of Supervisors shall establish, by ordinance, a schedule of fees, charges and expenses, and collection procedures for zoning permits, special exceptions, variances, appeals, amendments, site plan reviews, and other matters pertaining to this Ordinance.
- (B) The schedule of fees shall be available for inspection in the office of the Administrator and may be altered or amended by the Board of Supervisors by ordinance amendment.

Division 6. Taxes and Expenses Paid.

Section 2-6-1. Delinquent Taxes and Charges.¹⁴

Pursuant to the Code of Virginia § 15.2-2286 (B), as amended, prior to the initiation of an application or appeal, the applicant shall produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the County have been paid in full, unless otherwise authorized by the treasurer.

¹³ Editor's Note: The existing Ordinance includes several mentions of "fees" and/or that fees are subject to change at the discretion of the governing body. These, as well as all fees associated with the Ordinance, should be adopted by ordinance as outlined here.

¹⁴ Editor's Note: This is a new item provided according to the Code of Virginia.