

2016 Zoning & Subdivision Ordinance Supplement
(current as of April 7, 2016)

- TA-15-03 Rear Yard Setback p. 2
- Adopted February 16, 2016

- TA-15-04 BZA State Code changes pp. 3-6
- Adopted February 16, 2016

- TA-15-05 FOC Development Regulations pp. 7-14
- Adopted February 16, 2016

- TA-16-01 Public Outdoor Recreation Facility Lighting pp. 15-18
- Adopted March 15, 2016

- TA-16-02 Streambank Protection Regulations pp. 19-25
- Adopted March 15, 2016

ZONING ORDINANCE TEXT AMENDMENT (TA-15-03)
Rear Yard Setback -- Rural Residential (RR) District
(Adopted by the Board of Supervisors on February 16, 2016)

Zoning Ordinance Amendment Text (proposed changes in bold italics with strikethroughs where necessary):

Zoning Ordinance Amendment Text (proposed changes in bold italics with strikethroughs where necessary):

3-A-3-c Minimum Yard Requirements

	Parcels with less than 15,000 sq. ft.	Parcels with 15,000 sq. ft or more
From the edge of a private access easement	15 feet*	25 feet
From the centerline of a secondary highway	40 feet*	50 feet
From the edge of a primary highway right of way -- With less than 5000 trips per day -- With 5000 or more trips per day * add 10 feet for entrance side of garages, carports, or other structures used to house vehicles	15 Feet* 40 feet*	25 feet 50 feet
From side property lines	5 feet	10 feet
From rear property lines (structures 200 sq. ft. or less)	25 feet 5 feet	35 feet 25 feet 10 feet
From intermittent streams	0 feet	25 feet
From perennial streams, springs, & sinkholes	100 feet	100 feet

**ZONING ORDINANCE TEXT AMENDMENT (TA-15-04)
Board of Zoning Appeals – Code of Virginia Amendments
(Adopted by the Board of Supervisors on February 16, 2016)**

Zoning Ordinance Amendment Text (proposed changes in bold italics with strikethroughs where necessary):

7 APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

(11/16/04) (7/15/08) (10/18/11)

7-A APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

7-A-1-n

Hearings – Procedures

1. The non-legal staff of the Board of Supervisors may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. The applicant, landowner, or their agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as a part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner, or their agent or attorney are all invited. For purposes of this section, “non-legal staff of the Board of Supervisors” shall mean any staff who is not in the office of the attorney for the County, or for the Board, or who is appointed by special law or pursuant to §15.2-1542. Nothing in this section shall preclude the Board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or protection of confidentiality.

2. Any materials relating to the case before the Board, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to an applicant, appellant, or other person aggrieved under §15.2-2314, as soon as practicable thereafter, but in no event less than three business days of providing such materials to a member of the Board. If the applicant, appellant, or other person aggrieved under §15.2-2314 requests additional documents or materials to be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to §2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to Subsection F of §2.2-3707.

3. At a hearing the board shall offer an equal amount of time to the applicant, appellant, any other person aggrieved under §15.2-2314, and the County staff.

7-A-2

Appeals of Administrative Determinations

7-A-2-a

The Board shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider ~~the purpose and intent of~~ any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, “determination” means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the Board shall be in compliance with this section,

notwithstanding any other provision of law, general or special.

7-A-3 Variances

7-A-3-d No variance shall be ~~authorized~~considered except after public notice and hearing as required by Virginia Code §15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

~~7-A-3-e~~ Action on Variance Application

1. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standards for a variance as defined in Va. Code §15.2-2201 and the criteria set out in this section.

2. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

(a) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

(b) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

(c) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

(d) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

(e) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of §15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of §15.2-2286 at the time of the filing of the variance application.

7-A-3-f ~~In order to consider granting a variance, the Board must find that the effect of the zoning ordinance on the property under consideration, as it stands, interferes with all reasonable beneficial uses of the property, taken as a whole.~~

7-A-3-g (12/15/09) ~~No variance shall be granted by the Board unless it finds that:~~
The property owner has shown that
the property was acquired in good faith, and
the strict application of the terms of the ordinance would effectively prohibit or
unreasonably restrict the utilization of the property because of (i) the exceptional

~~narrowness, shallowness, size, or shape of the property, or (ii) exceptional topographic condition or other extraordinary situation or condition of the piece of property, or (iii) the condition, situation, or development of property immediately adjacent thereto; or~~

~~The Board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant.~~

7-A-3-h

~~No variance shall be granted by the Board unless it further finds that: the strict application of the Zoning Ordinance would produce undue hardship relating to the property; and the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning Ordinance.~~

7-A-3-if

The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.

7-A-3-jg

In ~~approving~~granting a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

7-A-3-~~kh~~

The Board will not consider substantially the same application within one year of previous Board action.

7-B

MODIFICATIONS

7-B-5

The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in 7-~~BA-2~~ of this Ordinance.

ZONING AND SUBDIVISION ORDINANCE TEXT AMENDMENT (TA-15-05)
Forestal-Open Space-Conservation District (FOC) Development Regulations
(Adopted by the Board of Supervisors on February 16, 2016)

Proposed Ordinance Amendment Text (New language appears in bold red italics with strikethroughs where applicable):

Subdivision Ordinance Text Amendment Language
(new language in bold italics with strikethroughs where necessary)

4N Applications for Subdivisions in the Forestal-Open Space-Conservation (FOC) District

- 1. Applicability. To assure compliance with the provisions of §3-A-2-f of the Zoning Ordinance, and to assure that development on subdivision lots in the FOC District result in the least practicable amount of tree and vegetation clearing and in the preservation of the integrity of sensitive slopes, applications for subdivisions in the FOC District, in addition to meeting other requirements of this Article 4, shall meet the requirements of §4N of this Article. Any amendments to approved major or minor subdivision plats after adoption of this Section 4N shall comply with the requirements of this section.***

- 2. Plat requirements. Preliminary and final plats for subdivisions in the FOC District shall include the following, in addition to the other requirements of this Article:***
 - a. Topography and elevation.***
 - b. Slippage soils which are identified as soil type 54C Udorthents in the “Soil Survey of Clarke County” (1982).***
 - c. Highly erodible soils which are defined as soil types 2C, 3D, 5C, 6C, 7D, 8D, 9D, 11B, 12D, 12E, 13D, 13E, 14C, 17B, 19D, 20D, 22C, 22D, 25B, 26B, 26C, 27B, 28C, 29C, 38C, 39C, 39D2, 41C, 42C, 43C, 47C, and 57D2, as identified in the “Soil Survey of Clarke County (1982)”.***
 - d. Slope categories of 7-15%, 15-25%, and greater than 25%.***
 - e. Existing woody vegetation.***
 - f. Location of intermittent and perennial streams and other similar features.***
 - g. For each proposed lot, the following shall be shown:***
 - (1) Clearing area dimensions for proposed building site(s)***
 - (2) Location and dimensions of proposed building envelope(s), drainfield site(s), and reserve area site(s)***
 - (3) Location and dimensions of proposed access and utility easements***
 - (4) Location and dimensions of no clear areas consisting of required vegetated perimeter buffers, tree preservation areas, critical root zones, and highly erodible soils/slippage soils***

- h. Required plat notes. The plat shall include the following required notes in addition to any notes required by the Zoning Administrator or Planning Commission:*
- (1) NOTICE OF DEVELOPMENT REGULATIONS. This subdivision is subject to the buffering and preservation requirements depicted herein. No land disturbance, construction, or clearing shall take place within the delineated buffering and preservation areas without prior inspection and authorization by the County of Clarke.*
 - (2) AGRICULTURAL AND FORESTAL ACTIVITIES. Clearing for agricultural activities shall not occur prior to the filing of a Farm Management Plan as required by §3-A-2-f-8 of the Zoning Ordinance. Clearing for conservation forestry activities shall not occur without the filing of a Pre-Harvest Plan as required by §3-C-2-k of the Zoning Ordinance.*
- 3. Development plan narrative. In addition to providing the Environmental Inventory and Impact Statement as required in subsection 5, a development plan narrative shall be provided that includes the following elements. The narrative shall be a binding part of the conservation plat approval and shall be recorded with the record plat.*
- a. Description of the type of existing woody vegetation on the subject property including native species to be protected and invasive species and/or dead vegetation to be removed.*
 - b. Methods to be used to protect no clear areas during site development and construction including a plan for field delineating the no clear areas to guard against future clearing.*
 - c. In the event that the applicant proposes clearing for agricultural activities, the narrative shall also include a copy of the proposed Conservation Farm Management Plan.*
- 4. Building site amendments. Building sites depicted on the record plat may be amended with approval by the Planning Commission. A plat of the lot showing the new proposed building site shall be submitted to the Planning Commission for review and shall meet all requirements set forth in subsection 2.*
- 5. Required meetings and inspections. The following meetings and inspections with the Zoning Administrator or their designee shall be conducted:*
- a. Pre-Application Site Visit. In addition to the Pre-Application Conference required in subsection 4-A, a site visit to the subject property shall be conducted. The purpose of the site visit is to ensure that the applicant, the*

applicant's engineer or surveyor, and County staff understand the subject property's vegetative and topographic characteristics. This site visit shall be conducted any time before or in conjunction with the Pre-Application Conference.

- b. Pre-Construction Site Inspection. Following approval of the plat by the Planning Commission, the Applicant shall be required to schedule a Pre-Construction Site Inspection involving the Zoning Administrator and the County's erosion and sediment control program administrator prior to commencing clearing or land disturbance activities. The purpose of this inspection is to ensure that the developer has marked the no clear areas in the field and has installed protection measures (e.g., safety fencing, permanent delineation markers) in accordance with the approved plat. No building permit or land disturbance permit shall be issued prior to conducting this inspection.*
- c. Post-Construction Final Inspection. A final inspection shall be conducted by the Zoning Administrator or designee prior to issuance of a certificate of occupancy to ensure that the site has been developed in accordance with the approved plat. In the event that the developer has encroached into no clear areas or otherwise violated the plat requirements, no temporary or permanent certificate of occupancy shall be issued until the violation is remediated according to Zoning Ordinance requirements.*

- 6. Field adjustments prohibited. The Zoning Administrator shall not be authorized to grant field adjustments or administrative variances to the approved plat during the construction process. Any request for adjustments shall be processed as an amendment to the previously approved plat for consideration by the Planning Commission.*

Zoning Ordinance Text Amendment Language
(new language in bold italics with strikethroughs where necessary)

§3-A-2-b, Lot Requirements (FOC)

- 3. (To be added following the open space parcel area table):**

The residual open space parcel shall not be reduced in size through boundary line adjustment by more than 10% of the total area and the dwelling unit right shall not be transferred to another property. The residual open space parcel may be increased in size through boundary line adjustment or merger without limitation; however no additional dwelling unit rights shall be transferred to the residual open space parcel.

4. *Provision of area with slopes less than 25%. No lot shall be created unless it contains at least one (1) acre of area with slopes less than 25%.*
5. *Subdivisions. All minor and major subdivisions in the FOC District shall comply with Section 4N of the Subdivision Ordinance.*

§3-A-2-f, Vegetated Property Buffer and Clearing Limits.

1. *Applicability. The requirements of this subsection shall apply to all parcels except for parcels with a dwelling constructed on or before February 18, 2003, unless a different effective date or minimum parcel size is specified.*
2. *Vegetated buffer required along property lines. Except for those clearing activities listed in section 3-A-2-f-98, existing woody vegetation shall be retained within 25 feet of all property lines on parcels of four acres or more. **Parcels** with a dwelling constructed ~~after 18 February 2003~~ on or before February 18, 2003 shall be exempt from this provision.*
3. *Vegetated buffer required from public rights of way and private access easements. Except for those clearing activities listed in section 3-A-2-f-98, existing woody vegetation shall be retained within 50 feet of the edge of public rights of way or 25 feet of the edge of private access easements on parcels of four acres or more. **Parcels** with a dwelling constructed ~~after 21 June 2005~~ on or before June 21, 2005 shall be exempt from this provision.*
4. *Retain existing vegetation on slopes. Except for those clearing activities listed in section 3-A-2-f-98, existing woody vegetation shall be retained on **all** parcels with:*
 - a. an average slope (within area to be cleared) from 7% up to 15 % and over the elevation of 800 feet above sea level, except for 2 acres for a house site **for dwellings constructed after June 21, 2005, and.**
 - b. an average slope (within area to be cleared) from 15% up to 25 % **and over the elevation of 800 feet above sea level**, except for 1 acre for a house site, or 1.5 acres if an erosion and sediment control plan is prepared by a professional engineer and approved by the Zoning Administrator for dwellings constructed after ~~21 June 2005~~ June 21, 2005.
 - c. ~~on~~ slopes of 25% or more, and
 - d. ~~on~~ slippage soils.
 - e. *For purposes of this section, “house site” is defined as the parcel’s buildable area as modified by the regulations enumerated in (a) and (b) above.*

- ~~4. Except for those clearing activities listed in section 3-A-2-f-9, clearing is allowed within 200 feet of the house site area described in the previous section provided:~~
- ~~a. there are no clear-cut openings,~~
 - ~~b. the thinning of trees of 2 inches or more in diameter (measured 4.5 feet above ground), is allowed, if randomly spaced with not more than 50% of the crown cover removed within any 10-year period,~~
 - ~~c. pruning of branches is limited to the bottom 1/3 of the tree, and~~
 - ~~d. this clearing within 200 feet of house site areas shall be done before issuance of final certificate of occupancy.~~

5. **Tree Protection during Construction.** ~~a. Critical Root Zone~~ Tree preservation areas shall be identified on the subdivision plat ~~or and~~ construction plans. ~~A~~ "Critical root zones" (CRZ) shall be delineated on the plans and clearly marked and protected in the field. *Field delineation of tree preservation areas and critical root zones shall be inspected by County staff* prior to any land disturbance. The CRZ is the area underneath the Tree Drip Line as defined in Section 9-B-180.

~~(1) General Requirements~~

- a. Before any land disturbance, suitable protective barriers, such as safety fencing, shall be erected outside of the CRZ of any tree or stand of trees to be preserved. Protective barriers shall remain so erected throughout all phases of construction. No grade changes or storage of equipment, materials, debris, or fill shall be allowed within the area protected by the barrier. No construction traffic, parking of vehicles, or disposal of liquids is permitted within the CRZ.
 - b. Trees likely to die as a result of site disturbance activities within 25 feet of the safety fence, as identified in the tree conservation plan, shall be removed.
6. **Remediation of excessive clearing activities.** Revegetation/tree replacement, in consultation with a Forestry Consultant or Certified Arborist and within the guidelines described below, shall be required for all areas where any clearing occurs in excess of the standards for maximum cleared area or in required vegetative buffer.
- a. *Violations. Any excessive clearing that occurs in violation of the requirements of this ordinance or in violation of any approved subdivision plat, site plan, or construction plan shall be remediated in accordance with this subsection. If a violation is discovered during the land clearing, land disturbance, or construction process, no certificate of occupancy (temporary or permanent) or surety release shall be granted until the violation is remediated and such remediation is inspected and approved by the Zoning Administrator. If a violation is discovered after completion of construction, it shall be remediated within thirty (30) days of the date of written notice by the Zoning Administrator. The Zoning Administrator may grant additional time to complete remediation*

activities if such timeframes will help ensure viability of replacement plantings due to weather or seasonal conditions.

b. Remediation plan. The property owner shall be responsible for providing a written remediation plan with the Zoning Administrator to correct instances of excessive clearing. The remediation plan shall be consistent with the replacement criteria in Subsection c below and with the approved conservation subdivision plat, land disturbance plan, or other approved plan. The property owner shall be responsible for ensuring the viability of all replacement plantings, shall request inspection by the Zoning Administrator or designated agent within two (2) years of planting to confirm viability, and shall replace any trees that may die. Additional fees may be imposed by the County to cover the cost of reviewing the remediation plan and conducting compliance inspections.

ac. Replacement criteria. Trees that are removed shall be replaced so that there is, at a minimum, no loss of tree canopy coverage upon maturity of the replacement trees. All trees to be used as replacement trees shall be:

- (1) a Virginia native tree species as identified in the Virginia Department of Forestry's Tree Seedling Brochure described by the Virginia Native Plant Society (<http://www.dcr.virginia.gov/dnh/native.htm>);
- (2) be of minimum quality as identified in the American Standard for Nursery Stock (ANSI Z60.1-2004) (as amended);
- (3) planted as described in the American Standard for Nursery Stock ANSI Z60.1-2004 (as amended); by a qualified landscape contractor to insure survival; and a minimum of 4 feet in height with caliper dependent on species.

7. ***Permitted clearing for agricultural uses.*** Clearing for agricultural uses shall require a Conservation Farm Management Plan approved by either the regional Soil and Water Conservation District or the federal Natural Resources Conservation Service and submitted to the ***County*** Zoning Administrator. ***Prior to conducting the clearing activity, an affidavit for agricultural clearing shall be completed by the property owner and filed with the Zoning Administrator stating the nature of the agricultural use(s) and affirmation that they will comply with the Conservation Farm Management Plan.***

8. ***Other permitted clearing activities.*** The following clearing activities shall be allowed in the no-clear areas:

- a. Dead trees and shrubs may be removed.
- b. Invasive alien species may be removed. Invasive alien species shall be those listed by the Virginia Department of Conservation and Recreation.
- c. Forestry activities as described in Section 3-C-2-k.

- d. Clearing for the following activities may occur in the vegetated property buffer, with the written approval of the Zoning Administrator ~~and a member of the Planning Commission (preferably a Commission member from the Election District where the subject property is located)~~, provided no more land, trees, or vegetation shall be disturbed than is necessary for construction, use, and maintenance of:
- (1) driveways and access easements of not more than 30 feet wide,
 - (2) electric, gas, and telephone utility easements,
 - (3) on-site water facilities and sewage disposal systems, if the Planning Commission determines that not allowing such facilities or systems in the buffer would prohibit the practical development of such facilities or systems
 - (4) public water and sewer lines (including water and sewer lines constructed by private interests for dedication to public agencies.
 - ~~(5) fences, or~~
 - ~~(6) Forestry activities as described in 3-C-2-k, or~~
 - ~~(7) noncommercial telecommunication antennae, structures less than 12 feet high subject to the sunset provisions in Section 3-C-2-x-8 (vegetation may be cut only within a six foot radius of the structure, but no vegetation removal shall result in land disturbance except as necessary for the structure itself).~~

§3-A-1-f, Vegetated Property Buffer (AOC)

3. The following types of development may be located in the vegetated property buffer, with the written approval of the Zoning Administrator ~~and a member of the Planning Commission (preferably a Commission member from the Election District where the subject property is located)~~, provided no more land, trees, or vegetation shall be disturbed than is necessary for the construction, use, and maintenance of:

§3-C-2-k, Forestry Uses and Structures

- ~~4. No subdivision application accepted for three years before or after a timber harvest operation.~~
- ~~5. No Pre-Harvest Plan would be accepted for a property within three years of approved subdivision.~~

Definitions to be Added to Zoning Ordinance Section 9

~~*Clear cut -- A harvesting technique which removes all the trees (regardless of size) in an area in one operation but does not involve land disturbance or removal of stumps.*~~

~~*No-clear areas – Areas designated for the preservation and protection of existing trees and vegetation including but not limited to vegetated buffers, tree preservation areas and critical*~~

root zones. Such areas may be depicted on an approved site plan or subdivision plat, or may be generally designated by regulations set forth in this Ordinance.

Other Proposed Changes

3-C-2-y *Siting of* Propane Tanks

Propane tanks of 500 gallons or larger shall be placed underground *or shall be completely screened from view of adjoining properties through siting, vegetated screening, fencing, or other methods deemed acceptable by the Zoning Administrator. Screening methods, whether natural or manmade, shall be maintained throughout the life of the propane tank.*

ZONING ORDINANCE TEXT AMENDMENT (TA-16-01)
Public Outdoor Recreation Facility Lighting
(Adopted by the Board of Supervisors on March 15, 2016)

Description:

Proposed text amendment to amend §6-H-11, Outdoor Lighting Standards, of the Zoning Ordinance. The purpose of the amendment is to establish a new category for public outdoor recreation facility lighting including new lighting plan submission and design criteria requirements.

Zoning Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

6-H-11 Outdoor Lighting Standards

The purpose and intent of this section is to establish outdoor lighting standards that reduce the impacts of glare, light trespass, and over-lighting, promote safety and security and encourage energy conservation.

6-H-11-a General Outdoor Lighting Standards

1. ***Requirements for lighting fixtures; maximum installation height.***

- a.*** All exterior light fixtures shall be a full cut-off type. Such light fixtures shall have flat cut-off lenses. The lenses of lights mounted into eaves or canopies shall be mounted so as to be flush or recessed. The direct light from exterior light fixture elements shall not be visible off the subject property.
- b.*** No exterior light fixture shall be installed at a height greater than 25 feet above finished grade as measured from the bottom of the fixture.
- c.*** ***This section shall not apply to the installation of public outdoor recreational lighting as set forth in Subsection 6 below.***

2. Flashing, revolving, intermittent, or high intensity beams used for exterior lighting shall be prohibited.

3. Up-cast lighting used to illuminate flags, signs, landscaping, buildings, or other objects and structures shall have directional control shields to prevent stray lighting and to ensure that no light source is visible from or causes glare on public right-of-ways or adjacent properties and shall be limited to 150 watts or less standard incandescent light elements or equivalent brightness (defined as 2500 lumens).

4. All exterior lighting shall be oriented not to direct glare or excessive illumination on streets in a manner that may distract or interfere with the vision of drivers on such roads and streets.
5. All canopy lighting shall be recessed and flush mounted. That portion of the canopy façade not included in the sign area shall not be illuminated.
6. ***Public outdoor recreational facility lighting.***
 - a. ***In addition to the general requirements of Subsection 7 below, photometric plans for public outdoor recreational facility lighting shall conform to the requirements set forth in the most current edition of the Illuminating Engineering Society of North America (IESNA) RP-6 Recommended Practice for Sports and Recreational Area Lighting and the IESNA Lighting Handbook. Appropriate lighting criteria shall be selected based on the class of play of the facility and participants as defined by the IESNA.***
 - b. ***For the purposes of this subsection, poles for the mounting of lighting fixtures shall be exempt from minimum setback requirements.***
 - c. ***Event hours – All events shall be scheduled so as to complete all activity before or as near to 11:00 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude an event that was reasonably scheduled to conclude prior to 11:00 p.m.***
 - d. ***Lighting fixtures shall be installed to meet the criteria of a full cutoff fixture and shall include internal and/or external glare-control louvers.***
 - e. ***Initial lighting levels shall not exceed the target levels specified by the IESNA by more than 30% to account for light loss factors such as lamp lumen depreciation and luminaire dirt depreciation.***
7. Photometric Plan Requirements
 - a. A photometric lighting plan shall be submitted and approved in conjunction with any required site plan. The photometric lighting plan shall be certified by the National Council on Qualifications for the Lighting Professions (NCQLP), or a ***Virginia*** licensed professional engineer, or architect.
 - b. All such plans shall include the following:
 - (1) Plans indicating the location on the premises of all lighting fixtures, both proposed and existing on the site, including a schematic layout of proposed outdoor lighting fixture locations that demonstrate adequate intensities and uniformity, and light coverage resulting from the proposed light layout.

- (2) Description of all lighting fixtures, both proposed and existing, which shall include but are not limited to catalog cuts and illustrations by manufactures that describes the equipment, including lamp types, wattage and initial lumen outputs, glare control devices, lamps, proposed placement of all fixtures, including engineering detail of fixtures, manufacturer, model and installation of same.
- (3) Photometric data, such as that furnished by manufacturers, or similar, showing the angle cut-off light emissions and glare control devices.
- (4) Lighting levels for exterior lighting, ***except for public outdoor recreational facility lighting described in Subsection 6***, shall not exceed the following standards:
 - (a) 2.5 foot-candles for parking lots;
 - (b) 5 foot-candles at entrances from local rural/urban road entrances;
 - (c) 10 foot-candles along fronts of buildings, at loading docks, and at entrances from primary highways and rural/urban arterials and collectors;
 - (d) A uniformity ratio of 4:1 shall be provided across all parking lots, travelways, and private/public streets and roads. The project site shall be modeled with all lighting (building, canopy, parking, etc.) in operation.
 - (e) Lighting levels shall not exceed 0.2 foot-candles at any common property line.
 - (f) The first three measurements shall be made at the ground surface. The fourth measurement shall be made on a vertical face with the property line at five feet above the ground.

c. Field verification of installation required. Upon completion of lighting installation, the applicant shall provide written certification that the lighting is installed and operates in conformance with the approved photometric plan and the provisions of this ordinance.

8. Lighting Definitions

- a. Candela – The system of luminous intensity. One candela is one lumen per candle (steradian).
- b. Foot-Candle – A measure of light falling on a surface. One foot-candle is equal to the amount of light generated by one candle shining on one square foot surface located one foot away. Foot-candle measurements shall be made with a photometric light meter with a specified horizontal orientation.
- c. Foot-Candle (Average Maintained) – The average of a number of points of foot-candle calculations or foot-candle readings in a given area which have been

adjusted to account for maintenance which includes luminaire dirt depreciation and lamp lumen depreciation.

- d. Glare – The sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source, and on the brightness level to which the eyes are adapted.
- e. Lighting Fixture – A complete lighting unit consisting of the lamp, lens, optical reflector, housing and electrical components necessary for ignition and control of the lamp, which may include ballast started and/or photo control.
- f. Lighting fixture, full cut-off – A lighting fixture from which a luminaire has zero candela intensity occurring at or above an angle of 90° above nadir.
- g. Light fixture, recessed canopy – An outdoor lighting fixture recessed into a canopy ceiling so that the light source is either completely flush or recessed within the underside of the canopy.
- h. Light Trespass – Unwanted light going beyond the property line and spilling over onto the adjacent or neighboring property. It can also represent the direct light (glare) that reduces a person's vision or ability to see.
- i. Luminaire – A complete lighting unit consisting of a lamp or lamps and the parts designed to distribute the light, to position and protect the lamp(s), and to connect the lamp(s) to the power supply.
- j. Nadir – The angle pointing directly downward from the luminaire.
- k. Public outdoor recreational facility lighting – Lighting fixtures and mounting structures designed to provide permanent outdoor lighting for public recreational and athletic fields and facilities, owned and/or operated by a unit of Federal, State, or local government or by the Clarke County Public Schools.***

ZONING ORDINANCE TEXT AMENDMENT (TA-16-02)
Streambank Protection Regulations
(Adopted by the Board of Supervisors on March 15, 2016)

Description:

Proposed text amendment to §3-E-1, Flood Plain District (FP), and §3-E-5, Stream Protection Overlay District, of the Zoning Ordinance. The purpose of the amendment is to establish construction standards and regulations for the siting of boat landings, boat ramps, docks, decks, stairs, and similar structures along perennial streams including the Shenandoah River. The amendment also clarifies current ordinance language including referencing County Septic Ordinance regulations for the siting of portable privies and linking of complementary provisions in both sections.

Zoning Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

3-E SCHEDULE OF OVERLAY DISTRICT REGULATIONS
(7/17/07)

3-E-1 Flood Plain District (FP)

3-E-1-b Permit and Application Requirements

- (5/19/87) 1. All uses, activities, and development occurring within any Flood Plain District shall be undertaken only upon the issuance of property zoning and building permits. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, as amended and the Clarke County Subdivision Regulations. Prior to the issuance of any such permit, the Zoning ~~Officer~~ **Administrator** shall require all applications to include compliance with all applicable state and federal laws.
- (4/20/93)
- (10/18/94)
- (6/20/00)
2. All zoning and building permit application for development within the Flood Plain District shall incorporate the following information:
- a. For structures to be elevated, the elevation of the lowest floor (including basement).
 - b. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.
 - c. Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) that exceed five acres or fifty lots, whichever is the lesser.
 - d. Any other requirements as set forth in this section or in §3-E-5, Stream Protection Overlay District (SP).**
3. Any encroachments, including fill, new construction, substantial improvements and other developments is prohibited unless certification

(with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

4. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

3-E-1-c Permitted Uses (Exceptions) in the Floodway District

(5/19/87) The following uses and activities are permitted provided that they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials and equipment:

1. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
2. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, **boat launching and swimming areas**, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.
3. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.
4. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas, **airport landing strips**, etc.

3-E-1-d Use Regulations in the Flood Plain District

(5/19/87) In the flood plain district the following provisions shall apply:

- (4/20/93) 1. Under no circumstances shall any proposed use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (10/18/94) 2. In riverine situations, adjacent communities and the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) shall be notified prior to any alteration or relocation of a watercourse, and copies of such notifications shall be submitted to FEMA.
- (6/20/00)
- (10/18/11) 3. Uses and Structures Prohibited in the Flood Plain District:
 - a. Structures used for residential or non-residential use, either temporary or permanent, shall not be permitted in the Flood Plain District **except as set forth in subsection 4 below**.

- b. Recreational vehicles shall not be located, within 100 feet of the Shenandoah River, from January 1 through March 31 of any year. ~~A truck camper or cap shall not be removed from its transporting vehicle nor shall wheels be removed from a trailer, within 100 feet of the Shenandoah River, at any time of the year.~~ **A truck camper or cap, located within 100 feet of the Shenandoah River, shall not be removed from its transporting vehicle nor shall wheels be removed from a trailer or recreational vehicle at any time of the year.**
 - c. There shall be no **land** disturbance of any kind within 100 feet of the Shenandoah River except as provided in Section 3-E-5, Stream Protection Overlay District.
4. The following uses may be permitted, with issuance of a Zoning and/or Building Permit, in the Flood Plain District limited by the regulations imposed by this section, the underlying zoning district, and the Uniform Statewide Building Code:
- a. Recreational Vehicles located in the Flood Plain District between shall meet the following minimum requirements:
 - (1) be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions; or
 - (2) meet all the requirements for manufactured homes in this ordinance and the Uniform Statewide Building Code.
 - b. Agricultural uses which do not include utilization of structures with an aggregate floor area of more than 500 square feet. However, no structure for such uses shall be allowed within 100 feet of the Shenandoah River.
 - c. Recreational uses limited to parks, playgrounds, golf courses, driving ranges, ~~boat landings, docks,~~ picnic grounds, and transient amusement enterprises, provided such facilities are not usable for human habitation.
 - (1) Structures with walls related to such uses shall not exceed an aggregate floor area of five hundred (500) square feet per parcel or have less than one hundred and two hundred (200) square feet. Such structures shall be set back at least 100 feet from the Shenandoah River.
 - (2) Structures without walls related to such uses shall not exceed an aggregated floor area of 1500 square feet per parcel or have less than 200 square feet. Such structures' roof framing shall be at least one foot above the 100-year flood elevation; however, the structures' height shall not be more than 15 feet above grade. Such structures shall be set back at least 500 feet from the Shenandoah River.
 - d. Accessory structures not more than 500 square feet or less than 200

square feet in floor area ~~to include~~ **limited to** roadside and park stands for the sale of food, fruit and vegetables, fishing bait, and boat rental, provided such facilities are not usable for human habitation. However, no structure for such uses shall be allowed within 100 feet of the Shenandoah River.

- e. Construction of boat ramps, boat landings, docks (permanent or floating), and similar structures shall meet the requirements set forth in §3-E-5, Stream Protection Overlay District.**
- f. Siting of portable privies shall meet the requirements of the Clarke County Septic Ordinance (Chapter 143) and §3-E-5, Stream Protection Overlay District.**

3-E-5

Stream Protection Overlay District (SP)

3-E-5-d

The following types of development shall be allowed in a stream buffer if allowed by the Zoning Ordinance and provided that the requirements of this section are satisfied:

1. A building or structure that existed as of 1 January 2000 may continue at such location.
2. However, any expansion or enlargement of such structure may not encroach upon the stream buffer more than the encroachment of the existing structure.
3. On-site or regional stormwater management facilities and temporary erosion and sediment control measures, provided that:
 - a. To the extent practical, as determined by the Natural Resource Planner, the location of such facilities shall be outside of the stream buffer;
 - b. No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility, as determined by the Natural Resource Planner;
 - c. The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
4. ~~Water-dependent facilities;~~ water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archeological activities; provided that all applicable federal, state and local permits are obtained.
- 5. Temporary siting of portable privies is allowed provided that they meet all requirements of the Clarke County Septic Ordinance and §3-E-1, Flood Plain District.**

3-E-5-e

Types of development in a stream buffer that may be authorized by the Natural Resource Planner in the circumstances described below, provided that a mitigation plan is submitted and approved pursuant to section 3-E-5-f:

1. a lake, pond, or ecological/wetland restoration project;

2. construction and maintenance of a driveway or roadway, if the Natural Resource Planner determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary in order for the owner to have a reasonable use of the lot;
3. construction, installation and maintenance of water and sewer facilities or sewage disposal systems, on parcels recorded before 1 January 2000 if the Natural Resource Planner determines that the stream buffer would prohibit the practical development of such facilities or systems;
4. construction of a structure, on parcels recorded before 1 January 2000, if the Natural Resource Planner determines that the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the parcel.
- 5. construction of boat ramps, boat landings, docks (permanent or floating) or similar structures provided that:**
 - a. The property owner obtains any required State or Federal permits and provides copies of approved permits to the Natural Resources Planner prior to construction, if applicable;**
 - b. Land disturbance and construction plans satisfy all requirements of 3-E-1, Flood Plain District; and**
 - c. Land disturbance and construction plans are consistent with criteria for streambank construction listed in Subsections 6 and 7 below.**
- 6. Decks, docks and stairs; site and construction criteria. In the Stream Protection Overlay District, no stairways, decks, docks or other structures shall be constructed until a permit is obtained from the Natural Resource Planner. Stairways and decks shall meet the following design requirements:**
 - a. Stairways shall not exceed four feet in width. Wider stairs may be used for public open-space recreational properties.**
 - b. Landings for stairs or decks shall not exceed 32 square feet in area.**
 - c. Permanent canopies or roofs are not allowed on stairways, decks, or docks.**
 - d. Stairways, docks, or decks may be either constructed above the ground on posts or pilings or placed into the ground provided they are designed and built in a manner that ensures control of soil erosion.**
 - e. Stairways, docks or decks shall be located in the most visually inconspicuous portion of lots, as viewed from the river assuming summer leaf-on conditions, whenever practical.**
- 7. Private ramps: site and construction criteria. In the Stream Protection Overlay District, no private ramps shall be constructed until a permit is obtained from the Natural Resources Planner. Private ramps shall meet the following design requirements:**

- a. **The site can support a ramp without pilings, dredging, or other special site preparations.**
- b. **Boat ramps with vehicular access shall have slopes no greater than 15% and no less than 12%.**
- c. **Ramps shall be constructed of gravel, natural rock, steel matting, or other durable inorganic material not exceeding 7 inches in thickness.**
- d. **Ramps shall be no more than 12 feet wide along the shore and 10 feet waterward of the shoreline or into a water depth of 4 feet, whichever is less.**
- e. **Excavation of no more than 5 cubic yards (to create a suitable slope and launching area) and placement of no more than 5 cubic yards of crushed rock, gravel, clean sand, or small stone are allowed to provide a stable base or maintain use of the ramp.**
- f. **Boat ramp construction requires erosion-control measures such as a floating silt fence to limit the spread of sediment stirred up by construction.**

3-E-5-f

An owner who seeks to develop in a stream buffer pursuant to section 3-E-5-e shall submit to the Natural Resource Planner for review and approval a mitigation plan as provided herein:

1. The owner shall submit a mitigation plan that satisfies the applicable requirements of this section, **a required** processing fees ~~of \$100~~ and a certification stating that all requirements of the approved plan will be complied with.
2. The mitigation plan shall be reviewed by the Natural Resource Planner to determine whether it complies with the requirements of this section and all other requirements of this article. The Natural Resource Planner shall approve or disapprove a mitigation plan within thirty days that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.
3. Each mitigation plan shall:
 - a. identify the impacts of proposed development on water quality and lands within the stream buffer;
 - b. ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
 - c. demonstrate and assure that development will be conducted using best management practices; specify mitigation that will address water quality and stream buffer impacts; and;
 - d. contain all other information requested by the Natural Resource Planner.

4. Each mitigation plan shall be evaluated by the Natural Resource Planner based on the following criteria:
 - a. whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
 - b. whether the development in the stream buffer is the minimum necessary and is conducted in a manner that will be least disruptive to the natural functions of the stream buffer; and
 - c. whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.