Table of Contents

Article Section 8 - Page

8 AMENDMENTS....1
8-A GENERAL....1
8-B METHOD OF INITIATING AMENDMENTS....1
8-C AMENDMENTS WITH PROFFERED CONDITIONS....3
8-D ACTION BY PLANNING COMMISSION....5
8-E ACTION BY BOARD OF SUPERVISORS....6
8-F PROCEDURES BEFORE PLANNING COMMISSION AND BOARD OF SUPERVISORS....8
8-G WITHDRAWAL OF PETITIONS....8
8-H LIMITATION ON FILING NEW PETITION AFTER DENIAL....8

8 AMENDMENTS

8-A GENERAL

Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Board of Supervisors may amend, supplement, or change this Zoning Ordinance, including the Schedule of District Regulations and the official Zoning Map (Rezoning).

8-B METHOD OF INITIATING AMENDMENTS

Amendments to the Ordinance may be initiated by one of the following methods:

8-B-1 Petition of Property Owner

8-B-1-a Zoning Map Amendment (Rezoning)

(8/19/03)
(11/18/14)

1. A property owner may initiate a request for an amendment to the official Zoning Map (Rezoning) by filing a petition with the Board of Supervisors with the Zoning Administrator, on forms provided by the Zoning Administrator, and paying the applicable fee.

2. Pre-Application Conference Requirement
No less than seven (7) days prior to filing an application for an amendment to the official Zoning Map (Rezoning), a pre-application conference shall be held between the Applicant and the Zoning Administrator. The Applicant shall provide the following items for review which shall be retained by the Zoning Administrator as the initial public record for the application:

a. A survey plat showing the subject property and the area(s) to be rezoned.

b. A conceptual or draft site plan showing the subject property, general site layout, and main elements to be proposed as part of the application.

c. A written description of any proposed development and use(s) including operational details such as the nature of the use, proposed physical improvements, and measures to mitigate impacts on surrounding properties.

d. A draft list of proffered conditions, if applicable.

3. The Zoning Administrator may require such other information to be submitted, as the Zoning Administrator deems necessary for a proper and intelligent consideration of the application. The Zoning Administrator may also establish regular filing deadlines to ensure That there is sufficient time to evaluate the application prior to the Planning Commission's initial review.

4. The Zoning Administrator shall determine when the petition is complete. After receipt of a complete petition, the Zoning Administrator, on behalf of the Board of Supervisors, shall refer the petition to the Planning Commission at their next regular monthly meeting for initial review.

8-B-1-b Text Amendment.

(8/19/03) (11/18/14) A property owner may request the Board of Supervisors or Planning Commission approve a resolution initiating a proposal to amend the text of the Zoning Ordinance (as described in sections 8-B-2 or 8-B-3, below). If the Board or Commission approves such resolution, the property owners shall pay the applicable fee.

8-B-2 Board of Supervisors Resolution

(9/19/89) The Board of Supervisors may initiate a proposal of an amendment to the Ordinance by the adoption of a resolution proposing the amendment. Such resolution, upon adoption, shall be referred to the Planning Commission at their next regular monthly meeting for consideration. A recommendation shall be reported to the Board of Supervisors within 100 days after the first meeting of the Planning Commission after the resolution is referred to it.

8-B-3 Planning Commission Resolution

The Planning Commission may initiate a proposal of an amendment to the Ordinance by the adoption of a resolution proposing the amendment.

8-B-4 Berryville Area Development Authority Resolution

(3/17/92) The Berryville Area Development Authority (BADA) may initiate a proposal of an amendment to the Ordinance by the adoption of a resolution proposing the amendment, for those portions of the Zoning Ordinance which regulate properties in Annexation Area "B" as indicated in the County/Town Annexation Agreement, December 1988.

8-C AMENDMENTS WITH PROFFERED CONDITIONS

(12/21/99)

8-C-1 Proffer of Conditions

Prior to any public hearing before the Planning Commission and/or the Board of Supervisors, any applicant for rezoning under Section 8-B-1 above may voluntarily proffer, in writing, reasonable conditions to be applied to such rezoning as part thereof. Such conditions shall comply with the provisions of Section 15.2-2298 of the Code of Virginia.

8-C-2 Effects of Conditions

Upon the approval of any such rezoning, all conditions so proffered and accepted by the Board of Supervisors shall be deemed a part thereof and nonseverable there from and shall remain in force until amended or varied by the Board of Supervisors in accordance with Section 15.2-2302 of the Code. All such conditions shall be in addition to the regulations provided for the district by the Ordinance. If the property should be annexed by a town and placed in the same or similar zoning district of the town upon annexation, the proffered conditions shall remain a part of the zoning regulations applicable to the property, with the town to administer the proffers.

8-C-3 Zoning Map Notation

Each rezoning shall be designated on the Zoning Map by an appropriate symbol designed by the Zoning Administrator. In addition, the Zoning Administrator shall keep and maintain the conditional zoning index which shall be available for public inspection and which shall provide ready access to the ordinance creating such conditions.

8-C-4 Authority of Zoning Administrator

The Zoning Administrator shall be vested with all necessary authority on behalf of the Board of Supervisors to administer and enforce conditions attached to a rezoning, including the ordering in writing the remedy of any noncompliance with such conditions; the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee in like amount and so conditioned, which guarantee may be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of said improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

8-C-5 Petition for Review of Decision

Any zoning applicant who is aggrieved by the decision of the Zoning Administrator pursuant to the provisions of Section 8-C-4 above may petition the governing body for a review of the decision of the Zoning Administrator.

8-C-6 Site Development Plan

(3/20/90) Every petition for zoning amendment which proposes conditions to be applied to the rezoning shall be accompanied by 15 copies of a site development plan prepared in accordance with the requirements of Article 6 of this Ordinance. In addition to the application forms and site development plan, each application for conditional rezoning shall include:

8-C-6-a A statement explaining the relationship of the development to the adopted Comprehensive Plan of the County.

8-C-6-b A statement or presentation setting forth the maximum number of dwelling units proposed for any residential development, and the density and open space calculations when required by this Ordinance.

8-C-6-c A statement certifying that the proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards. Any waiver, exception or variance sought by the applicant from such ordinances, regulations and standards shall be specifically noted on the development plan.

8-C-6-d A statement of those special amenities that are proposed within the development.

8-C-6-e A statement of the public improvements, both on and off-site, that are proposed for dedication and/or construction, and an estimate of the timing of providing such improvements.

8-C-6-f A statement setting forth the proposed approximate development schedule.

8-C-6-g Any additional information that the applicant may desire to proffer in the consideration of the application.

8-C-7 Statement Regarding Conditions

All petitions, statements, plans, and other materials submitted with an application for conditional zoning shall be annotated with the following statement signed by the applicant and the owner. The signed statement shall be made available prior to the public hearing before the Board.

"I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission."

8-C-8 Proffered Condition Regulations

Proffered conditions shall include written statements, development plans, and/or other materials proffered in accordance with the provisions of Section 8-C-1 above and approved by the Board in conjunction with the approval of an amendment to the Zoning Map. Proffered conditions shall be subject to the following procedures and regulations:

8-C-8-a Once conditions to be proffered are signed and made available, and the public hearing before the Board has commenced, no change or modification to any condition shall be made and no additional conditions shall be proffered at that public hearing.

8-C-8-b If the amendment to the Zoning Map is adopted subject to the conditions proffered by the applicant as set forth above, then the property in question shall be appropriately annotated on the Zoning Map and all other land records referencing the conditions as adopted.

8-C-8-c Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

8-C-8-d Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformance with all proffered conditions and no development shall be approved by any County official in the absence of said substantial conformance.

8-C-8-e For the purposes of this Section, substantial conformance shall mean that conformance which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, and other material presented by the applicant.

8-C-8-f Once conditions have been approved, and there is cause of an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 8-C-6 above, except the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the generalized development plan amendment application. Such amendment shall be the subject of public hearing in accordance with the provisions of Section 8-E-1 below.

8-D ACTION BY PLANNING COMMISSION

8-D-1 Public Hearing

(11/16/93) Upon a property owner petition or Board of Supervisors resolution being referred to it, or upon passage of a resolution by the Planning Commission, the Planning Commission shall hold a public hearing on the petition or resolution as provided by Section 15.2-2285, Code of Virginia, 1950, as amended, after publishing notice as required by Section 15.2-2204, Code of Virginia, 1950, as amended, and in accordance with the requirements of Section 10-E of this ordinance.

8-D-2 Recommendation by Commission

8-D-2-a Following the public hearing, the Planning Commission shall report to the Board of Supervisors its recommendation with respect to the proposed amendment.

8-D-2-b (9/19/89) Failure of the Planning Commission to report to the Board of Supervisors within 100 days after the first meeting of the Commission following the referral of the petition or resolution to it, shall be deemed a recommendation of approval by the Commission of the proposed amendment.

8-D-2-c (11/16/93) The Planning Commission, in making recommendations on the proposed amendment, may recommend appropriate changes in the proposed amendment; provided, however, that before recommending that land which was not included in the proposed amendment be rezoned or that land included in the proposed amendment be rezoned to a different use classification than proposed, the Commission shall hold a further public hearing after giving notice as required by Section 15.2-2204, Code of Virginia, 1950, as amended, and in accordance with the requirements of Section 10-E of this ordinance.

8-D-2-d (6/13/89) Before making a recommendation, the Commission may require the applicant to furnish such information as it may deem necessary in order to determine whether the proposed amendment is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the specific findings listed in 8-E-2-c. The Commission may make any additional findings it may deem appropriate.

8-D-2-e (6/13/89) Burden of Proof
The burden of proof shall be on the applicant to show the reasonableness of the proposed amendment, the lack of adverse effect, and compliance with the elements of public health, safety, and general welfare as set forth in Section 8-E-3.

8-D-3 Recommendation by Berryville Area Development Authority
(3/17/92) The Berryville Area Development Authority (BADA) shall assume the responsibilities of the Planning Commission regarding recommendation to the Board of Supervisors, as detailed above, for proposed amendments to the official Zoning Map involving only properties within Annexation Area "B" as indicated in the County/Town Annexation Agreement, December 1988.

8-E ACTION BY BOARD OF SUPERVISORS
(1/21/97)

8-E-1 Public Hearing
(11/16/93) After receiving the recommendation of the Planning Commission, and before acting on a proposed amendment, the Board of Supervisors shall hold a public hearing, as provided in Section 15.2-2285, Code of Virginia, 1950, as amended, after giving public notice as required by Section 15.2-2204, Code of Virginia, 1950, as amended, and in accordance with the requirements of Section 10-E of this ordinance.

8-E-2 Action by Board

8-E-2-a After holding the public hearing, the Board of Supervisors shall act upon the proposed amendment. The Board may make appropriate changes or corrections in the proposed amendment; provided, however, that no land may be zoned to a different use classification than was contained in the public notice of the public hearing, without an additional public hearing after notice required by Section 15.2-2204, Code of Virginia, as amended.

8-E-2-b Amendments to this ordinance shall be enacted in the same manner by the Board as all other ordinances.

8-E-2-c (6/13/89) Burden of Proof
The burden of proof shall be on the applicant to show the reasonableness of the proposed amendment, the lack of adverse effect, and compliance with the elements of public health, safety, and general welfare as set forth in Section 8-E-3.

8-E-3 Criteria for Action on Proposed Amendment
(1/21/97) Before taking action, the Board may require the applicant to furnish such information, as it may deem necessary in order to determine whether the proposed amendment is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the following specific findings.

8-E-3-a Will be consistent with the Comprehensive Plan of the County.

8-E-3-b Will be consistent with the Purposes and Intent of this Ordinance.

8-E-3-c Will not have an undue adverse impact on the short-term and long-term fiscal resources of the County for education, water, sewage, fire, police, rescue, solid waste disposal or other services, and will be consistent with the capital improvement goals and objectives of the Comprehensive Plan, to the end that growth of the community will be consonant with the efficient and economic use of public funds.

8-E-3-d Will not cause an undue adverse effect on neighboring property values without furthering the goals of the Comprehensive Plan to the benefit of the County.

8-E-3-e Will not cause an undue adverse effect on the preservation of agricultural or forestal land.

8-E-3-f Will not cause unreasonable traffic congestion or unsafe conditions on existing or proposed public roads and has adequate road access.

8-E-3-g Will not cause destruction of or encroachment upon historic or archeological sites, particularly properties under historic easement.

8-E-3-h Will not cause an undue adverse effect on rare and irreplaceable natural areas, areas of outstanding natural beauty, state-designated scenic byways or scenic rivers or properties under open space easement.

8-E-3-i Will not cause an undue adverse effect on wildlife and plant habitats.

8-E-3-j Will have sufficient water available for its foreseeable needs.

8-E-3-k Will not cause unreasonable depletion of or other undue adverse effect on the water source(s) serving existing development(s) in adjacent areas.

8-E-3-l Will not cause undue surface or subsurface water pollution.

8-E-3-m Will not cause an undue adverse effect on existing or proposed septic systems in adjacent areas.

8-E-3-n Will not cause unreasonable soil erosion.

8-E-3-o Will have adequate facilities to provide safety from flooding, both with respect to proposed structures and to downhill/downstream properties.

8-E-3-p Will not cause undue air pollution.

8-E-3-q Will not cause undue noise, light or glare, dust, odor, fumes, or vibration.

8-F PROCEDURES BEFORE PLANNING COMMISSION AND BOARD OF SUPERVISORS

8-F-1 Deadlines for Applicant Submission of Materials Prior to Public Hearing

Following the filing of a complete application, the Applicant shall provide any new or revised materials demonstrating compliance with required technical elements no less than 14 days prior to the first public hearing and not less than 10 days prior to any continued public hearing. Any new or revised materials provided after the deadlines referenced above shall not be considered by the Planning Commission or Board of Supervisors at the scheduled meeting.

8-F-2 Deferral of Application

An applicant may request that consideration of a rezoning application at a public hearing be deferred by submitting a written request for deferral to the Zoning Administrator.

1. If the deferral request is provided to the Zoning Administrator prior to finalizing the public hearing advertisement for consideration by the Planning Commission or Board of Supervisors, the Zoning Administrator shall determine whether to grant the deferral request. A request for deferral shall be approved only for good cause. If such request is approved by the Zoning Administrator, consideration of the application shall be deferred to the next regularly scheduled meeting of the Planning Commission or Board of Supervisors.

2. If the deferral request is provided after finalizing the public hearing advertisement, the request for deferral shall be placed on the public hearing agenda on the date the application is to be considered. The Planning Commission or Board of Supervisors, as applicable, may approve the request for deferral for good cause. The applicant shall be responsible for a re-advertising fee which shall be paid in full prior to the application being placed on an upcoming public hearing agenda.

8-G WITHDRAWAL OF PETITIONS

A petition by a property owner proposing an amendment may be withdrawn at any time; provided, however, that if the petition is withdrawn at any time after the Planning Commission has commenced its public hearing on the petition, no new petition concerning any of the same land shall be filed by a property owner within 12 months of the withdrawal, unless the body before whom the petition is pending at the time specifies by resolution or motion that the time limit shall not apply or that a shorter time limit applies.

8-H LIMITATION ON FILING NEW PETITION AFTER DENIAL

8-H-1 Upon denial by the Board of Supervisors of any petition for amendment filed by a property owner, no new petition shall be filed within 12 months of the date of denial. This limitation shall not apply to applications for conditional zoning.

8-H-2 Nothing in this Section or in Section 8-F above, shall be held to impair the right of the Planning Commission or the Board of Supervisors by resolution to propose any amendment at any time.