

TOWN OF FINCASTLE, VIRGINIA

ZONING ORDINANCE

Effective September 13, 1977
Amended through March 10, 2022

ARTICLE 1

AUTHORITY, PURPOSE, DEFINITION, INTENT, NATURE AND APPLICATION OF ZONING ORDINANCE

(SECTION 101)

Authority and Enactment

This Article shall be liberally construed to the end that the health, safety, order, prosperity, conservation of nature resources and general welfare of the public shall be furthered.

(SECTION 102)

Purpose and Intent

This Ordinance shall be for the general purpose of promoting health, safety, or general welfare of the public and to the following ends this Ordinance is designed:

To provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;

To reduce or prevent congestion in the public streets;

To facilitate the creation of a convenient, attractive and harmonious community;

To expedite the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities and other public requirements;

To protect against destruction, or encroachment upon historic areas;

To protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation or loss of life, health, or property from fire, flood, panic, or other dangers;

To encourage economic development activities that provide desirable employment and enlarge the tax base; and

To promote the public necessity, health, safety, convenience and general welfare by equitably apportioning the cost of providing the additional public facilities necessitated or required by development.

(SECTION 103)

Nature and Application

This Ordinance classifies and regulates the use of land, buildings, and structures within the limits of the Town of Fincastle, Commonwealth of Virginia as hereinafter set forth. The regulations contained herein are necessary to promote the health, safety, convenience, and welfare of the inhabitants by dividing the Town into districts and regulating therein the use of the land and the use and size of buildings as to height and number of stories, the coverage of the land by buildings, the size of yards and open spaces, density of population and location of buildings.

(SECTION 104)

Establishment of Districts

The incorporated areas of the Town of Fincastle are hereby divided into zoning districts, as named and described in this Ordinance. The boundaries of said zoning districts are hereby established as shown on the Official Zoning Map.

(SECTION 105)

Official Zoning Map

The incorporated areas of the Town of Fincastle are hereby divided into districts, as indicated on a map entitled “Zoning Map of Fincastle, Virginia” which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

The Official Zoning Map shall be identified by the signature of the Town Council of Fincastle, signed by the Mayor and attested by its Clerk, together with the date of adoption of this Ordinance.

The Official Zoning Map shall be located in the office of the Clerk of the Town Council and shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the Town.

Amendment of Zoning Map

At such times as amendments are made to the zoning map by action of the Town Council such amendments shall be incorporated onto the Official Zoning Map at such time and in such manner as the Town Council may prescribe. Such changes shall be validated with reference to

correct notation by the Town Clerk, who shall affix his signature thereto, thereby certifying that approved amendments to the zoning map have been correctly incorporated. The date of official action and nature of the change shall be entered on the map. Any such change shall have the effect of law at 12:01 a.m., on the day following its legal adoption, or on its effective date, if officially established as other than on the day following its legal adoption, whether or not it has been shown on said zoning map.

Unauthorized Changes

No changes of any nature shall be made on said zoning map or any matter shown thereon except in conformity with the procedures and requirements of this Ordinance. It shall be unlawful for any person to make unauthorized changes on the zoning map. Violations of this provision shall be punishable as provided in Article 5.

(SECTION 106)

Interpretation of District Boundaries

In interpreting and construing the Official Zoning Map, the following rules shall apply:

Center Lines as Boundaries

Where district boundaries appear to follow mapped center lines of streets, alleys, easements, waterways and the like, they shall be construed as following such center lines as exist on the ground except where the variation of actual location would change the zoning status of a lot or parcel or portion thereof, in which case the boundary shall be interpreted in such a manner as to avoid changing the zoning of any lot or parcel or portion thereof. In case of closure of a street or alley, or vacation of an easement, the boundary shall be construed as remaining at its location unless ownership of the closure or vacation area is divided other than at the center, in which case the boundary shall be construed as moving to correspond with the ownership, but not beyond any previous right-of-way or easement line. In the case of movement of any waterway, the boundary shall be construed as remaining at its location.

Property or Other Edge Lines as Boundaries

Where district boundaries appear to follow street, lot, property or other edge lines, they shall be construed as following such lines.

Boundaries Other Than as Above

District boundaries which appear parallel or perpendicular to, or as extensions of or connecting, center lines, edge lines, or other features shown on the map shall be so construed and at such scaled distance therefrom as indicated on the Zoning Map.

Dimensions

Where dimensions are not otherwise indicated on the Zoning Map, the scale of the map shall govern.

Unclassified Areas

Where areas appear to be unclassified on the Zoning Map, and classification cannot be established by rules set forth herein, such areas shall be considered to be classified RL.

Interpretation in Cases of Uncertainty

Where application of the rules set forth above fails to establish the location of boundaries with sufficient accuracy for the purposes of this regulation, or in the instance of any question of zoning classification or boundary, the Board of Zoning Appeals shall make such determination in accordance with Section 503 of this ordinance and §15.2-2309 of State Code.

Boundary Changes with Changes in Jurisdictional Area

- a. In the event that the Town expands its jurisdictional boundaries in compliance with all sections of §15.2-3200 of State Code, the zoning classification for all parcels taken into the Town boundaries shall remain the same zoning classification as was designated by Botetourt County. This classification shall remain at least until after the next general election in which citizens of this area will have representation on the Fincastle Town Council.
- b. The Town shall not amend the zoning classification of any new parcels taken into the Town Limits without first holding public hearings with the Planning Commission and Town Council in compliance with Article 6 of the Zoning Ordinance and §15.2-2204 of State Code.

(Amended 8/10/17).

(SECTION 107)

Application of Regulations

The regulations set forth by this Ordinance within each district shall be minimum or maximum limitations as appropriate to the case and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

Use, Occupancy and Construction

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall be constructed except in conformity with all of the regulations herein specified by the district in which it is located. The owner, lessee, and occupant are all legally responsible for insuring compliance with the provisions of this Ordinance and are all subject to the penalties prescribed.

Height, Bulk, Density, Lot Coverage, Yards and Open Spaces

No building or other structure shall hereafter be erected or altered:

- a. To exceed the height of three (3) stories from any point above grade level; or thirty (30) feet to ceiling of top story;
- b. To accommodate or house a greater number of families or to have greater floor area;
- c. To occupy a greater percentage of lot area;
- d. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required; or in any other manner contrary to the provisions of this Ordinance.

Required Yard, Open Space, Area, Parking or Loading Space for One Structure, or Use, Not to be Used to Meet Requirements for Another

No part of a yard, or other open space, area, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, area, or off-street parking or loading space similarly required for any other building.

Reduction of Lots or Areas Below Minimum Prohibited

No lot or area existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein except for the purpose of meeting or exceeding standards set forth herein. Lots or areas created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance.

Reduction of Yards Below Minimum

No yard existing at the time of passage of this Ordinance shall be reduced in dimension below the minimum requirements set forth herein, unless such yard restrictions reduce the buildable area to unreasonable dimensions. In such cases, the Board of Zoning Appeals shall determine the minimum requirements consistent with provision of adequate light and air, prevention of loss of life, health, or property from fire or other dangers, and prevention of danger in travel. Yards created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance.

Reduction of Required Off-Street Parking or Loading Space

No existing off-street parking or loading space, and no off-street parking or loading space hereafter provided, which meets all or part of the requirements for off-street parking or loading space set forth in these regulations, shall be reduced or eliminated so that its reduction results in area not meeting requirements or standards contained herein. Reductions may be permitted where spaces are no longer required by these regulations or alternative spaces meeting the requirement of these regulations are provided.

(SECTION 108)

Definitions

General Usage

For the purpose of this Ordinance, certain words and terms are herein defined as follows:

Words used in the present tense include the future tense; words in the singular number include the plural number and words in the plural number include the singular number; unless the obvious construction of the wording indicates otherwise.

The word “shall” is mandatory.

Unless other wise specified, all distances shall be measured horizontally and at right angles to the line in relation to which the distance is specified.

The word “building” includes the word “structure”; the word “lot” includes the words “plot” and “parcel.”

The word “used” shall be deemed also to include “erected,” “reconstructed,” “altered,” “placed,” or “moved.”

The terms “land use” and “use of land” shall be deemed also to include “building use” and “use of building.”

The word “State” means the Commonwealth of Virginia.

The word “Town” means the Town of Fincastle, Commonwealth of Virginia, and the term “town boundary” means any exterior boundary of the Town.

The word “person” includes a firm, association, organization, partnership, Trust, company, or corporation as well as an individual.

The term “Code of Virginia” shall include “as amended.”

Interpretation by Zoning Administrator

In case of any dispute over the meaning of a word, phrase, or sentence, whether defined herein or not, the Zoning Administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes of and intent of this Ordinance as set forth in this and subsequent Articles, provided, however, that an appeal of that determination to the Board of Zoning Appeals may be taken from any such determination as provided in Section 503 of this Ordinance and §15.2-2308 through 15.2-2314 of State Code.

(Amended 8/10/2017).

Definitions

For the purpose of these regulations, certain terms and words are to be used and interpreted as defined hereinafter. Where definitions are not set forth herein, it is intended that the definitions contained in the BOCA Basic Building Code, 1970 (fifth edition) pertain.

ACCESSORY BUILDING OR STRUCTURE:

A building customarily incidental and appropriate and subordinate to the main building or use and located on the same lot with the main building.

AGRICULTURE:

The use of land for agricultural purposes, including farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities. The operation of commercial feed pens, slaughter houses, sales yards and auction yards for cattle or hogs shall be deemed an industrial and not an agricultural use.

ALTERATION:

Any material change in the total floor area, use, adaptability, or external appearance of an existing structure.

AMEND OR AMENDMENT:

Any repeal, modification, or addition to a regulation; any change in the number, shape, boundary, or area of a district, or any repeal or abolition of any map, part thereof, or addition thereto.

BED AND BREAKFAST

An owner-occupied single-family dwelling, or portion thereof, where short-term lodging is provided to transient guests only, licensed and subject to Health Department regulations. Breakfast may be provided to guests only. Up to five (5) rooms may be provided. Such establishments are also subject to applicable Town regulations for business licenses and meals and lodging taxes.

(Added 3/10/2016).

BOARDING HOUSE:

A building where, for compensation and by pre-arrangement for definite periods, meals or lodging and meals are provided for not less than three (3) nor more than twelve (12) persons.

BUILDING:

Any structure intended for shelter, housing, or enclosure of persons, animals or chattel. When separated by a fire wall each portion of such structure so separated shall be deemed a separate building.

BUILDING COVERAGE:

The percentage of the lot area covered by the building. The building area shall include all over hanging roofs.

BUILDING HEIGHTS:

The vertical distance from the average line of the highest and lowest points of that portion of the lot covered by the building to the highest point of coping of a flat roof, or the decline of a mansard roof, or to the highest gable of a pitch or hip roof.

BUILDING, MAIN:

A building in which is conducted the principal use of the lot on which it is situated.

BUILDING SITE:

A single parcel of land occupied or intended to be occupied by a building or structure.

CHURCH:

A building wherein persons regularly assemble for religious worship which is used only for such purpose and those accessory activities as are customarily associated therewith.

CLERK:

The appointed official of Fincastle Town who serves as the Clerk to the Town Council.

COMMISSION, THE

The Planning Commission of the Town of Fincastle, Virginia as established pursuant to Title 15.1, Chapter 11, Article 3 of the Code of Virginia, as amended.

COUNCIL:

The Town Council of Fincastle, Virginia; the governing body.

DISTRICT, ZONING:

Any section or sections of the Town of Fincastle for which regulations governing the use of buildings and premises or the height and area of buildings are uniform.

ERECTED:

Shall be taken to mean constructed, reconstructed, moved or structurally altered.

FLOOD PLAIN:

Continuous sections of land, adjacent to bodies of water, which are subject to periodic flooding and inundation.

FLOOR AREA, GROSS:

The sum of the gross horizontal areas of all of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the center line of walls separating two buildings, and including but not limited to, the following spaces:

- a. basements;
- b. elevator shafts and stairwells at each floor;
- c. floor space for mechanical equipment with structural head room of seven (7) feet;
- d. penthouses;
- e. attic space providing head room of seven (7) feet or more;
- f. interior balconies, mezzanines and enclosed covered porches and enclosed steps;
- g. accessory uses in enclosed covered space, but not including space used for off-street parking.

FLOOR AREA, NET:

The total floor area within a building devoted or intended to be devoted to a particular use, with structural headroom of seven (7) feet or more, whether above or below the finished lot grade, excluding (a) elevators, stairwells, hallways, walls and partitions, and (b) floor space permanently devoted to a parking space or parking spaces, mechanical equipment, closets, washrooms, or other items permanently preventing the floor space from being occupied by persons while engaged in the use.

FLOOR AREA RATIO:

A mathematical expression determined by dividing the gross floor area of a building by the area of the lot on which it is located as

$$\frac{\text{Floor Area}}{\text{Lot Area}} = \text{Floor Area Ratio}$$

FRONT LOT LINE:

A line dividing a lot from any public and private streets, or easement of access, except a limited or controlled access highway to which the lot has no access.

GOVERNING BODY:

The Town Council of Fincastle, Virginia.

GROSS FLOOR AREA:

See "FLOOR AREA, GROSS."

HEIGHT:

The vertical distance from the highest point on a structure, excepting any chimney or antenna on a building, to the average ground level of the grade where the walls or other structural elements intersect the ground.

HOME OCCUPATION:

Any occupation or profession carried on in a dwelling unit or on the premises thereof, provided that:

- a. No person other than members of the family residing on the premises shall be engaged in such occupation.
- b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit or twenty-five (25) percent of said floor area if conducted in an accessory building, shall be used in the conduct of the home occupation.
- c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, non-illuminated.
- d. There shall be no sales, other than items handcrafted on the premises, in connection with such home occupation.
- e. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
- f. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single family dwelling,

or outside the dwelling unit if conducted in other than a single family dwelling. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. Boarding and rooming houses, tourist homes and private educational institutions shall not be deemed home occupation; the conducting of a beauty or barber shop, tea room or restaurant, rest home, clinic, doctor or dentist office, child care center; real estate office, or cabinet, metal, or auto repair shop shall not be deemed a home occupation.

HOSPITAL:

An institution providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central service facilities and staff offices which are an integral part of the facilities.

HOTEL:

A building or group of buildings under one ownership containing six (6) or more sleeping rooms occupied, intended or designed to be occupied as the more or less temporary abiding place of persons who are lodged with or without meals for compensation.

LOT:

The contiguous land in the same ownership which is not divided by any public highway or alley, including any part thereof subject to any easement for any purpose other than a public highway or alley. The term "record lot" or "lot of record" means the land designated as a separate and distinct parcel of land on a legally recorded subdivision plat file among the land records of Botetourt County, but does not included land identified on any such plat as an outlot.

LOT AREA:

The area of land within the boundary of a lot, excluding any part under water, and any part within any right-of-way, whether public or private.

LOT, CORNER:

A lot of which at least two adjacent sides abut for their full lengths on a street, provided that the interior angle at the intersection of such two sides is less than one hundred thirty-five degrees (135°).

LOT DEPTH:

The average distance from the street line of the lot to its rear line, measured in the general direction of the side lines of the lot.

LOT, DOUBLE FRONTAGE:

A lot having a frontage on two (2) non-intersecting streets, as distinguished from a corner lot.

LOT, INTERIOR:

A lot other than a corner lot.

LOT LINES:

The lines bounding a lot as defined herein.

MOBILE HOME PARKS:

None allowed.

MOTEL:

Any building or buildings, combined or separated, used for the purpose of housing transient guests, each unit of which is provided with its own toilet, washroom, and off-street parking facility.

NONCONFORMANCE:

A lawful condition of a structure of land which does not conform to the regulations of the district in which it is situated. This may include but is not limited to failure to conform to use, height, area, coverage or off-street parking requirements.

NONCONFORMING USE:

A structure or land lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

PARKING, OFF-STREET:

Any space, not within a public right-of-way, specifically allotted to the parking of motor vehicles.

PARKING SPACE:

A permanently paved area, with an all weather surface, enclosed or unenclosed, sufficient to size to store one (1) automobile together with a permanently surfaced driveway connecting the parking space with a street or alley and permitting ingress or egress of an automobile.

PARKING SPACE, OFF-STREET:

A space suitable for parking one automobile and including adequate driveways, if necessary, to connect such space with a public right-of-way. Space within a building, or upon a roof, allocated for parking, shall be included and considered a part of the required spaces.

PLANNING COMMISSION:

The Planning Commission of the Town of Fincastle, Virginia established pursuant to Title 15.1, Chapter 11, Article 3 of the Code of Virginia, as amended.

PORTABLE STORAGE CONTAINER:

A transportable, fully-enclosed, box-like container that is (i) designed for temporary storage or shipment of items, including, but not limited to, personal property, building materials, equipment or merchandise, (ii) typically rented to owners or occupants of property or purchased for their temporary use, and (iii) delivered and removed by truck. Such containers are uniquely designed for their ease of loading to and from a transport vehicle. The term shall not include dumpsters.

(Added 6/8/2017).

PUBLIC FACILITIES:

Shall be considered for the purposes of this Ordinance to be any public works supplied generally by a governmental organization. Such public works shall include but not be limited to public roads, schools, water supply and sewer facilities, and police and fire protection facilities.

REAR LOT LINE:

That lot line parallel to and opposite the front lot line. In the case of an irregular shaped lot, the rear lot line shall be an imaginary line parallel to the front lot line not less than 10 (10) feet long farthest from the front lot line and wholly within the lot.

RESTAURANT:

A lot upon which food or beverages are cooked or prepared and offered for sale and where consumption is permitted on the premises whether or not entertainment is offered, and includes establishments commonly known as bars, grills, cafes, taverns, night clubs, drive-ins, and any fast food establishment permitting consumption on the premises.

RETAIL STORES AND SHOPS:

Buildings or lands used for sale of merchandise at retail or for the rendering of personal services, but specifically excluding coal, wood and lumber yards.

ROOMING HOUSE:

A building where lodging only is provided for compensation to not less than three (3) or more than twelve (12) persons.

SETBACK:

The distance between the lot line and the building line.

SHORT-TERM RENTAL:

A single-family dwelling not attached to any other dwelling by any means and located on an individual lot that may be rented for terms of less than thirty (30) days for overnight residence by tenants who are named in a written short-term rental lease. No person who is not named in the lease shall be authorized to occupy the premises except during the hours of an authorized social function as stated in the lease. All applicable lodging taxes shall be paid.

A short-term rental must be operated in strict compliance with the conditions of the Special Use Permit.

A copy of each short-term lease must be kept on the premises during the entire term of the lease as proof of the authority of each tenant to occupy the premises.

Before the commencement of a lease, a copy of each short-term rental lease shall be filed in the Town Office (after hours deliveries may be made by depositing the lease in the mail slot), or emailed to the Town Manager at or before the commencement of the lease.

If the number of tenants or the number of guests is greater than the maximum that is permitted under the Special Use Permit, then the lease must describe the special occasion, and the lease must be approved in advance by the Town Manager or his designee or the Mayor upon one week's notice.

The Special Use Permit shall require the owner to maintain fire suppression devices in compliance with the current applicable fire code regulations.

Each short-term rental lease shall contain the following information and following conditions:

- a. The names of all tenants who shall have the benefit of the lease;
- b. A statement of the type(s) of social function(s) and the hours of each function that the tenants are authorized to host upon the premises; and the maximum number of guests who are authorized to attend each function;
- c. The name(s) and telephone number(s) of the owners(s) or other party who will be responsible for the premises at all times during the term of the lease in the event of an emergency or disturbance;

- d. The tenants must agree in the lease to dispose of all waste in lawful closed containers which shall be provided by the owner.

(Added 3/10/2016).

SIDE LOT LINE:

Any lot line other than the front lot line or the rear lot line.

STREET, CENTER LINE OF

A line established as a center line of a street by any State, County, or other official agency or governing body having jurisdiction thereof and shown as such on an officially adopted or legally recorded way, or, if there be no official center line of a street the center line shall be a line lying midway between the street or right-of-way lines thereof. Where street lines are indeterminate and a pavement or a travelled way exists, the center line shall be established by the Planning Commission or in the absence of a determination by the Planning Commission, shall be assumed to be a line midway between the edges of such pavement or travelled way.

STRUCTURE:

Any constructed, erected or placed material or combination of materials in or upon the ground, including, but not by way of limitation, buildings, mobile homes, radio towers, sheds, signs, and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas and patio.

STRUCTURAL ALTERATIONS:

Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the roof or in the exterior walls.

TOURIST COURT:

An area containing one (1) or more structures designed or intended to be used as temporary sleeping facilities of one or more transient families and intended primarily for automobile transients.

TOURIST HOME:

A building in which sleeping accommodations in not more than four (4) rooms are provided or offered for transient guests for compensation.

TOWN:

Town of Fincastle, Virginia.

TRAILER, HAULING:

A vehicle to be pulled behind an automobile or truck which is designed for hauling animals, produce, goods or commodities, including boats.

TRAILER, TRAVEL OR CAMPING:

A portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants, and containing less than one hundred seventy-five (175) square feet of floor area.

WAYSIDE STAND:

Any structure of land used for the sale or offering for sale by the owner, or his family or tenant, on any farm, of agricultural or horticultural produce, livestock or merchandise coming from a home occupation and produced solely on said farm, and which is clearly a secondary use of the premises and does not change the character thereof.

YARD:

An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward except where otherwise specifically provided in this Ordinance that an accessory building may be located in a portion of a yard required for a main building. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the main building shall be used.

YARD, FRONT:

A yard located in front of the front elevation of a building and extending across a lot between the side yard lines and being the minimum horizontal distance between the front property line and the main building or any projection thereof, other than steps.

YARD, REAR:

A yard extending across the rear of a lot measured between lot lines and being the minimum horizontal distance between the rear lot line and the rear of the main building or any projections other than steps, unenclosed balconies or unenclosed porches. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

YARD, SIDE:

A yard between the building and the side line of the lot and extending from the front lot line to the rear lot line and being the minimum horizontal distance between a side lot line and the side of the main building or any projections other than steps.

ARTICLE 2
SPECIFIC DISTRICT REGULATIONS
(SECTION 201)

FH -- Flood Hazard District

Sec. 201. Authority and Purpose.

This ordinance is adopted pursuant to the authority granted to localities by Va. Code § 15.2-2280.

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

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

(Amended 12/14/2010).

Sec. 201 A. Applicability.

These provisions of the flood hazard overlay district shall apply to all lands within the jurisdiction of the Town of Fincastle and identified as being in the 100-year floodplain as delineated by the Federal Emergency Management Agency, Federal Insurance Administration Study, dated December 17, 2010 as amended.

(Amended 12/14/2010).

Sec. 201 B. Permitted Uses-

The following uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Flood Hazard District to the extent that they are not prohibited by

any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. But no use shall adversely affect the capacity of the channels of floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.

- Agricultural uses: general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild-crop harvesting.
- Industrial-commercial uses: loading areas, parking areas.
- Residential uses: lawns, gardens, parking areas, and play areas.

The flood hazard district is an overlay district, and thus the underlying provisions of each base district shall continue to apply except as otherwise provided for herein. The uses permitted in the underlying zoning district shall be permitted in the flood hazard overlay district, except as restricted or prohibited by the provisions of this section.

(Amended 2/20/1985; 12/14/2010).

Sec. 201 C. Conditional Uses Permissible by Special Exception.

The following uses which involve structures (temporary or permanent), fill, or storage of materials or equipment may be permitted only upon application to the Planning Commission and usage of a special permit by the Council as set forth in this Article. All these conditional uses are subject to the standards and conditions and provisions set forth below which apply to all special permit uses in the FH -- Flood Hazard District.

- Uses of structures accessory to open space or Special Permit Uses.
- New and used car lots, road-side stands.
- Storage yards for equipment, machinery, or materials.

The uses identified as being allowed by a special exception permit in the underlying zoning district, shall be allowed in the flood hazard overlay district, except as restricted or prohibited by the provisions of this section, and only by a special exception permit as provided herein.

(Amended 12/14/2010).

Sec. 201 D. Compliance and liability.

- 1) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this division and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this division.
- 2) The degree of flood protection sought by the provisions of this division is considered reasonable for regulatory purposes and is based on acceptable

engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This division does not imply that areas outside the floodplain districts, or that land uses permitted within such districts will be free from flooding or flood damages.

- 3) This division shall not create liability on the part of The Town of Fincastle or any officer or employee thereof for any flood damages that result from reliance on this division or any administrative decision lawfully made thereunder.

(Amended 12/14/2010).

Sec. 201 E. Abrogation and greater restrictions.

This division supersedes any ordinance regulations currently in effect in flood-prone areas. However, any underlying ordinance and all districts established in this chapter shall remain in full force and effect to the extent that its provisions are more restrictive than this division.

(Amended 12/14/2010).

Sec. 201 F. Severability.

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

(Amended 12/14/2010).

Sec. 201 G. Penalties.

- 1) Any person who fails to comply with any of the requirements or provisions of this division or directions of the Zoning Administrator or any other authorized employee of The Town of Fincastle shall be guilty of a misdemeanor of the first class and subject to the penalties therefore.
- 2) In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this division. The imposition of a fine or penalty for any violation of, or noncompliance with, this division shall not excuse the violation or noncompliance to permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this division may be declared by the Fincastle Town Council to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this division.

(Amended 12/14/2010).

Sec. 201 H. Description of sub-districts.

- 1) The various floodplain sub-districts shall include areas subject to inundation by waters of the one hundred-year flood. The basis for the delineation of these districts shall be the Flood Insurance Study and the Flood Insurance Rate Map (FIRM) for Botetourt County and/or the Town of Fincastle prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated December 17, 2010, as amended.
- 2) Floodway sub-district is delineated, for purposes of this division, using the criterion that certain areas within the floodplain must be capable of carrying the waters of a one hundred-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this sub-district are specifically shown on the flood boundary and floodway map and/or flood insurance rate map.
- 3) The flood-fringe sub-district shall be that area of the one-hundred-year floodplain not included in the floodway sub-district. The basis for the outermost boundary of this district shall be the one hundred-year flood elevations contained in the flood profiles of the above-referenced flood insurance study and as shown on the accompanying flood boundary and floodway map and/or flood insurance rate map.
- 4) The approximated floodplain sub-district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one-hundred-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the flood insurance study. For these areas, the one-hundred-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available.
- 5) The floodplain sub-districts described above all shall be overlays to the existing underlying districts shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
- 6) Any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain district shall apply.
- 7) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Amended 12/14/2010).

Sec. 201 I. Official zoning map.

The boundaries of the floodplain district are established as shown of the flood boundary and floodway and/or flood insurance rate map which are declared to be a part of this division and which shall be kept on file at the Fincastle Town offices.

(Amended 12/14/2010).

Sec. 201 J. District boundary changes.

The delineation of any of the floodplain districts may be revised by Fincastle Town Council as it may deem appropriate and at its sole discretion, if natural or manmade changes have occurred and/or where more detailed studies have been conducted by the U.S. Army Corps of Engineers or other qualified agency, or if an individual documents the appropriateness of such change.

(Amended 12/14/2010).

Sec. 201 K. Submitting Technical Data.

A Community's base flood elevations may increase or decrease resulting from the physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the Federal Insurance Administration of the changes by submitting technical or scientific data. Such submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

(Amended 12/14/2010).

Sec. 201 L. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the Zoning Administrator. Appeals of the Zoning Administrator's determination may be made as provided for herein.

(Amended 12/14/2010).

Sec. 201 M. District Provisions

- 1) All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit by the Town. Such development shall be undertaken only in strict compliance with the provisions of this division and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code, and any subdivision regulations. Prior to the issuance of any such permit, the Zoning Administrator shall require all applications to include compliance with all applicable state and Federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity or the channels or floodways of any watercourse, drainage ditch, or any drainage facility or system.

- 2) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction, a permit from the U.S. Corps of Engineers, the Virginia Marine Resources Commission, and certification from the Department of Environmental Quality is necessary (a joint permit application is available from any one of these organizations). Further notification of the proposal shall be given to all affected adjacent jurisdictions, the Department of Conservation and Recreation, and the Federal Insurance Administration.
- 3) Application for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:
 - a. The elevation of the lowest floor (including basement).
 - b. For structures that have been floodproofed (nonresidential only), the elevation to which the structure has been floodproofed.
 - c. Topographic information showing existing and proposed ground elevations.
 - d. The elevation of the one-hundred-year flood.
 - e. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Zoning Administrator.
- 4) All manufactured homes to be placed or substantially improved within the floodplain district shall be placed on a permanent foundation and elevated and anchored in accordance with the Virginia Uniform Statewide Building Code.

(Amended 12/14/2010).

Sec. 201 N. Standard for the floodway district; Permitted use.

- 1) Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Zoning Administrator. Development activities which increase the water surface elevation of the base flood may be allowed, provided that the {developer or applicant} first applies -- with the Town of Fincastle's endorsement -- for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency.
- 2) The placement of any manufactured home (mobile home), except in an existing manufactured home (mobile home) park or subdivision, within the floodway sub-

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

- 3) In the floodway sub-district, the following uses and activities are permitted provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials and equipment:
 - a. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
 - b. 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.
 - c. Accessory residential uses (but not habitable structures), such as yard areas, gardens, play areas, and loading areas.
 - d. Accessory industrial and commercial uses, such as yard areas, pervious parking and loading areas and airport landing strips.
 - e. In the floodway sub-district, no use, structure, fill, deposit, obstruction or storage of materials or equipment will be permitted which, acting alone or in combination with existing or future uses, will result in affecting the capacity of the floodway or unduly increasing flood limits. Such limits will be those established by the federal insurance administration.

(Amended 12/14/2010).

Sec. 201 O. Flood fringe and approximated floodplain sub-districts.

- 1) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Insurance Rate Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Town.
- 2) Development activities in Zones A1-30 and AE, on the county's or Town's Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the {developer or applicant} first applies -- with the Town's endorsement -- for a conditional Flood Insurance

Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

- 3) In the flood-fringe and approximated floodplain districts, the development and/or use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances.
- 4) Within the approximated floodplain district, the applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the one-hundred-year flood elevation more than one (1) foot at any one point. The engineering principle “equal reduction of conveyance” shall be used to make the determination of increased flood heights and velocities. Within the floodway area delineated by the applicant, no development shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements which have been approved by all appropriate local and/or state authorities, as required above. Where the specific one hundred (100)-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corp of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., an applicant for a proposed use, development and/or activity greater than 50 lots or 5 acres, whichever is lesser, shall determine this elevation. For development proposed in the approximate floodplain, the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Zoning Administrator.
- 5) The Zoning Administrator reserves the right to require a hydrologic and hydraulic analyses for any development.
- 6) When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood elevation (recommend > one foot freeboard). During the permitting process, the Zoning Administrator shall obtain:
 - a. The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and
 - b. If the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

(Amended 12/14/2010).

Sec. 201 P. General Standards.

In all special hazard areas the following provisions shall apply:

- 1) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- 2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movements. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- 3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- 4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- 5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- 7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- 8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- 9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.
- 10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.
- 11) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- 12) All new or replacement utilities and facilities shall be designed and constructed in conformance with the County’s regulations for subdivision, stormwater management, erosion and sediment control and other such regulations.

- 13) All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. The Botetourt County Board of Supervisors may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage and facility plans shall be consistent with local and regional drainage plans and with all other applicable ordinances.
- 14) All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize the change of impairment during a flooding occurrence.
- 15) Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.
- 16) All new structures shall be constructed so that the lowest habitable elevation is at least one (1) foot above the base flood elevation.

(Amended 12/14/2010).

Sec. 201 Q. Specific Standards.

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according to Article III, Section 25-415, the following provisions shall apply:

- 1) Residential Construction -- New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than one (1) foot above the base flood elevation.
- 2) Non-Residential Construction -- New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than one (1) foot above the base flood elevation. Buildings located in all A and AE zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capacity of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.
- 3) Elevated Buildings -- Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

- a. not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage doors) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
 - b. be constructed entirely of flood resistant materials below the regulatory flood protection elevation.
 - c. include, in Zones A and AE measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry or exit of floodwater. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - 1. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - 2. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - 3. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - 4. The bottom of all required openings shall be no longer than one (1) foot above the adjacent grade.
 - 5. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow or floodwaters in both directions.
 - 6. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- 4) Manufactured Homes -- All manufactured homes placed or substantially improved on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood must meet all requirements for new construction in accordance with all codes and regulations.
- 5) Recreational Vehicles -- All recreational vehicles placed on sites must either be on the site for fewer than 180 consecutive days; 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, is attached to the site only by quick disconnect type utilities and has no permanently attached additions); or meets, all requirements for manufactured homes.

(Amended 12/14/2010).

Sec. 201 R. Information to be shown on plat of proposed subdivision.

The owner or developer of any proposed subdivision or any site plan, any part of which is located within a flood hazard district, shall include the following information on the subdivision plat or site plan required by this chapter and/or by other ordinances:

- 1) Name of engineer, surveyor or other qualified person responsible for providing the information required in this section.
- 2) The location of the proposed subdivision with respect to the Town's flood-prone areas, proposed lots and sites, fills, flood or erosion protection facilities and areas subject to special deed restrictions. In addition, all subdivisions shall show the limits of the floodplain and if construction or fills within the one hundred-year floodplain are required, shall include base flood elevations, and shall delineate the floodway area based on the requirement that the proposed development not increase the one hundred-year flood elevation more than one foot at any one point and no fill or construction will be placed in the floodway. The engineering principle of "equal reduction of conveyance" shall be used to make the determination of increased flood heights and velocities.
- 3) Where the subdivision and other new development lies partially or completely in the flood-prone areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours, at intervals of two (2), four (4), or five (5) feet, depending upon the slope of the land, and identify accurately the boundaries of the flood-prone areas.
- 4) Location of water and sewer systems (including on-site systems).

(Amended 12/14/2010).

Sec. 201 S. Notice to be given buyer prior to sale of real estate subject to floodplain regulations.

- 1) Any owner or partial owner of real estate or his agent, and any real estate broker or his agent, who sells or contracts to sell real estate subject to a floodplain regulation, without first notifying, in writing, the buyer or his agent that such real estate is subject to floodplain regulations, shall be subject to the penalties set forth in subsection (c) below.
- 2) Floodplain regulations referred to in subsection (a) of this section include this chapter, subdivision regulations and building codes which impose restrictions specifically related to flooding on the whole or a portion of the land.

- 3) The penalties for a violation of subsection (a) of this section may, at the discretion of the court, include:
 - a. Rescission of the contract at the option of the buyer;
 - b. Payment to the buyer of damages he may have suffered, whether the buyer rescinds the contract or not; or
 - c. A fine of not more than two thousand dollars (\$2,000.00).

(Amended 12/14/2010).

Sec. 201 T. Prohibited development and uses in floodway sub-district generally.

- 1) No development which increases flood heights and produces hazardous velocities shall be permitted in the floodway sub-district.
- 2) In the floodway sub-district, no use, structure, fill, deposit, obstruction or storage of materials or equipment will be permitted which, acting alone or in combination with existing or future uses, will result in affecting the capacity of the floodway or unduly increasing flood limits. Such limits will be those established by the Federal Insurance Administration.
- 3) No new residential or commercial uses shall be permitted in the floodway sub-district.

(Amended 12/14/2010).

Sec. 201 U. Flood protection provisions relating to variances, special exceptions, rezoning, etc.

- 1) Any agent, commission or board of the Town of Fincastle, in taking action on special exceptions, rezoning, special uses, variances and amendments to this chapter, shall consider, in addition to all pertinent provisions of other sections of this chapter, the following:
 - a. The danger of life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within the floodway district that will cause any increase in flood levels during the one-hundred-year flood.
 - b. The danger that materials may be swept on to other lands or downstream to the injury of others.
 - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

- e. The importance of the services provided by the proposed facility to the community.
 - f. The requirements of the facility for a waterfront location.
 - g. The availability of alternative locations not subject to flooding for the proposed use.
 - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - j. The safety of access of ordinance and emergency vehicles to the property in time of flood.
 - k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - l. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - m. Such other factors which are relevant to the purposes of this division.
- 2) The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluation of the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
 - 3) Variances shall be used only after the Board of Zoning Appeals has determined that the granting of such will not result in: a) increases in flood heights, b) additional unreasonable threats to public safety, c) extraordinary public expense, and will not d) create nuisances, e) cause fraud or victimization of the public, or f) conflict with local laws or ordinances.
 - 4) Variances shall be issued only upon a showing of good and sufficient cause after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from any hardship to the applicant.
 - 5) The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one-hundred-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

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

(Amended 12/14/2010).

Sec. 201 V. Existing structures in floodplain district.

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- 1) Existing structures and/or uses located in the floodway district shall not be expended or enlarged, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.
- 2) Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or floodproofed in full compliance with this ordinance and the Virginia Uniform Statewide Building Code.
- 3) The modification, alteration, repair, reconstruction, or improvement of any kind of a structure and/or use, regardless of its location in a floodplain district, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the Virginia Uniform Statewide Building Code.
- 4) Uses or adjuncts thereof which are, or become, nuisances shall not be permitted to continue.

(Amended 12/14/2010).

Sec. 201 W. Definitions.

For the purpose of this Flood Damage Prevention Overlay Ordinance, the following words and phrases shall have the meanings respectfully ascribed to them by this section. Any word, term or phrase used in this Overlay Ordinance not defined below shall have the meaning ascribed to the word in Section 25-601 of the Zoning Ordinance or if not defined there then in the most recent edition of Webster's Unabridged Dictionary, unless in the opinion of the Zoning Administrator established customs or practices of the County of Botetourt justify a different or additional meaning.

BASE FLOOD*:

The flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION*:

The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation.

BASEMENT*:

Any area of the building having its floor sub-grade (below ground level) on all sides.

BOARD OF ZONING APPEALS*:

The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

DEVELOPMENT*:

Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING*:

A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

ENCROACHMENT*:

The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION*:

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION*:

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FILL:

The placing, storage or dumping of any material, such as (by way of illustration, but not limitation) earth, clay, sand, concrete, rubble, or waste of any kind, upon the surface of the ground, which results in increasing the natural ground surface elevation.

FLOOD OR FLOODING*:

- 1) A general or temporary condition of partial or complete inundation of normally dry land areas from
 - a. the overflow of inland or tidal waters; or,
 - b. the unusual and rapid accumulation or runoff of surface waters from any source.
- 2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1(a) of this definition.
- 3) Mudflows which are proximately caused by flooding as defined in paragraph 1(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

FLOODPLAIN OR FLOOD-PRONE AREA*:

Any land susceptible to being inundated by water from any course.

FLOODPROOFING:

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY*:

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FLOOD INSURANCE RATE MAP (FIRM)*:

An official map of a community on which both the special hazard areas and the risk premium zones applicable to the community are delineated.

FLOOD INSURANCE STUDY (FIS):

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

FREEBOARD*:

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

HIGHEST ADJACENT GRADE:

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE*:

Any structure that is:

- 1) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- 4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
 - a. by an approved state program as determined by the Secretary of the Interior; or,
 - b. directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR*:

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR § 60.3.

MANUFACTURED HOME*:

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION*:

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MANUFACTURED HOME PARK OR SUBDIVISION, NEW*:

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

NEW CONSTRUCTION*:

For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map on or after June 15, 1978 whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

RECREATIONAL VEHICLE*:

A vehicle which is

- 1) build on a single chassis;
- 2) 400 square feet or less when measured at the largest horizontal projection;
- 3) designed to be self-propelled or permanently towable by a light duty truck; and,

- 4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

SHALLOW FLOODING AREA*:

A special flood hazard area with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

SPECIAL FLOOD HAZARD AREA*:

The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in 25-416 of this ordinance.

START OF CONSTRUCTION*:

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE*:

For floodplain management purposes a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. Structure for insurance coverage purposes means a walled and roofed building, other than a gas or liquid storage tank that is principally above and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBDISTRICT:

One of several defined areas of a flood hazard overlay district that have different probabilities for flooding.

SUBSTANTIAL DAMAGE*:

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT*:

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- 1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- 2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

VIOLATION*:

The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certificates, or other evidence of compliance required by this chapter is presumed to be in violation until such time as all documentation is provided and approved by the appropriate County official(s).

WATERCOURSE*.

A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

* Denotes definitions to be used only for the purpose of this Flood Damage Prevention Overlay Ordinance, the words and phrases shall have the meanings respectfully ascribed to them by this section.

(Amended 12/14/2010).

Sec. 201 X. Reserved.

(SECTION 202)

RL -- Low Density Residential District

A. Intent

To establish and preserve quiet one-Family dwelling neighborhoods as desired by large numbers of people, free from other uses except those which are both compatible with and convenient to the residents of such a district. To achieve a density of less than three (3) dwelling units per gross acre.

B. Uses Permitted

1. Detached one-family dwelling.
2. Home occupations.

The keeping or maintaining within this district of hogs or goats or the feeding, pasturing or sheltering of the same is declared to be a use incompatible with the intent of this section and is not a use permitted or an accessory use and is specifically declared a use not permitted within this district.

(Amended 2/20/1985).

C. Conditional Uses

1. The following uses are permitted in this district only on lots fronting on and with principal driveway access to a street with paving at least thirty (30) feet in width, and so located, site-planned and designed as to avoid undue noise and other nuisances and dangers: churches, unlighted golf courses, private parks, swimming pools and similar recreational facilities.
2. Individual mobile homes under the following conditions:
 - (a) The mobile home shall be connected with a suitable water supply and sewer system and shall be in conformance with the health and sanitation laws of the County and State.
 - (b) The land on which the mobile home is located shall be owned by the occupant thereof or the owners shall be related, in the first degree, to an occupant thereof.
 - (c) The mobile home shall meet all yard, lot, and other requirements as set forth for principal one-family dwelling.
 - (d) No mobile home shall be permitted within five hundred (500) feet, including streets and alleys, of an existing dwelling, or a mobile home.

D. Special Use Permit

The following uses are permitted by Special Use Permit only, in accordance with the rules and regulations set forth in Section 612 of the Zoning Ordinance:

- Bed and Breakfast
- Short-term rental

(Amended 1/14/2015).

E. Required Off-Street Parking

Two (2) parking spaces per dwelling unit.

(Amended 1/14/2015).

No construction or modification may be made to a residential property, located within the historic district, which would allow parking in the front yard area encompassing the area corresponding to the front lot line and the width of the primary dwelling.

If a property owner has a unique situation, the owner may apply to the Planning Commission for an exception in accordance with the process outlined in Section 208, the Enhancement Corridor Overlay District.

(Amended 3/10/2022).

(SECTION 203)

RH -- High Density Residential District

A. Intent

To establish and preserve quiet neighborhoods of one and two family homes, free from other uses except those which are compatible with and convenient to the residents of such a district. To achieve a use density ranging from three (3) to seven (7) dwelling units per gross acre.

B. Uses Permitted

The following uses are permitted but in no case shall more than seven (7) dwelling units per gross acre be permitted: one-family dwelling, two-family dwelling, multiple-family dwelling, boarding house, lodging, tourist house. The keeping or maintaining within this district of hogs or goats or the feeding, pasturing or sheltering of the same is declared to be a use incompatible with the intent of this section and is not a use permitted or an accessory use and is specifically declared a use not permitted within this district.

(Amended 2/20/1985).

C. Required Off-Street Parking

Two (2) parking spaces per dwelling unit.

(SECTION 204)

C -- Commercial District

A. Intent

To establish and preserve areas for employment activity and service to the public which do not materially detract from nearby residential uses.

B. Uses Permitted

Churches, banks, offices of business, professional or financial organizations, of individuals and of labor unions, civic, social, fraternal and other non-profit organizations, establishments selling goods and services at rental and conducted entirely within an enclosed building except that restaurants may have outside tables. Also laboratories and other research facilities, where all activities and equipment, including ventilators and other equipment on roofs, is housed in a fully enclosed building or screened so as not to be visible from off the premises, and where no noise or odors are created which are discernible beyond the boundaries of the lot. The keeping or maintaining within this district of hogs or goats or the feeding, pasturing or sheltering of the same is declared to be a use incompatible with the intent of this section and is not a use permitted or an accessory use and is specifically declared a use not permitted within this district.* Bed and Breakfast allowed by S.U.P., 10/9/14

(Amended 2/20/1985; 10/9/2014).

C. Required Off-Street Parking

One parking space for each two hundred (200) square feet of gross floor area or fraction thereof.

(SECTION 205)

TR -- Trade District

A. Intent

To establish and preserve a central business district convenient and attractive for a wide range of retail uses and business, government, and professional offices and places of amusement in a setting conducive to and safe for a high volume of pedestrian traffic.

B. Uses Permitted

Offices, hotels, establishments selling goods and services at retail and conducted entirely within an enclosed building except that restaurants may have outside tables; theatres conducted entirely in an enclosed building; provided, however, that meat and poultry shops where

slaughtering is done on the premises are excluded, as are uses which are found to detract from or interfere with pedestrian shopping activity. The Planning Commission shall have the responsibility and authority for making such determinations. Also permitted are hospitals, barber and beauty shops, banks and other financial institutions, dry cleaning and laundry pick-up stations, coin-operated laundry and dry cleaning establishments, and social and fraternal clubs. Residential occupancy is permitted above the ground floor. The keeping or maintaining within this district of hogs or goats or the feeding, pasturing or sheltering of the same is declared to be a use incompatible with the intent of this section and is not a use permitted or an accessory use and is specifically declared a use not permitted within this district.

(Amended 2/20/1985).

C. Conditional Uses

The following uses may be permitted by the Planning Commission only after it has conducted necessary investigations and determined that public health, safety, welfare, and the historical nature of the surrounding area is not endangered; motor vehicle sales and repairs, boat sales, motor cycle sales, and gasoline and automobile service stations.

(SECTION 206)

P -- Public District

A. Intent

To establish and preserve areas for certain public purposes.

B. Permitted Uses

Any governmental or proprietary function conducted by any governmental agency or publicly owned corporation which is authorized to conduct such functions, except such uses as constitute a nuisance in the place where conducted. The keeping or maintaining within this district of hogs or goats or the feeding, pasturing or sheltering of the same is declared to be a use incompatible with the intent of this section and is not a use permitted or an accessory use and is specifically declared a use not permitted within this district.

(Amended 2/10/1985).

(SECTION 207)

Height, Setback, Density, and Intensity Regulations

- (1) Except as other wise specifically provided in this Ordinance, no structure shall be erected or maintained between any lot line and the pertinent setback distance listed in the attached schedule; and no structure shall be erected or maintained which exceeds the height limit specified in the attached schedule; and no development, use or structure shall exceed the density and intensity limits specified in the attached schedule. Where there is no rear lot line as otherwise defined herein, the required rear setback distance shall be measured from

a line through the point on the lot most distant from any front lot line of the same lot, which line shall be perpendicular to a line from said point to the closest point on any front lot line. If there is more than one such line, the rear setback shall be maintained from any one of them at the option of the owner. Minimum lot width shall be measured at the front setback line.

(2) **SCHEDULE OF HEIGHT, PLACEMENT, LAND USE DENSITY AND INTENSITY REGULATIONS** (please see Section (3) for setbacks for accessory buildings or structures)

Principle Structure Setback Requirements

Zone	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Height Limit (Feet)	Minimum Lot Area (Ft. ²)	Minimum Lot Width (Feet)	Maximum Ground Cover Ratio (%)
F	--	--	--	--	--	--	--
RL	10	10	30	30	7,200	60	70
RH	40	15' or 30% of height of structure whichever is greater	35	30	2,500 per dwlg. unit plus 200 per bedroom	75	30
Trade	35	15	20	30	6,000	100	30
Commercial	10	10	30	30	5,000	None	90
Public	20	10	10	30	6,000	100	40

(Amended 6/8/2017).

(3) Accessory Buildings or Structures

(A) Regulations

1. The accessory structure shall not exceed the height or square footage of the principal (main) building on the lot which it is located.
2. If more than one accessory structure is located on a lot, the combined square footage of the structures may not exceed that of the principal (main) building.
3. Accessory structures must be located at least ten (10) feet from the side setback, ten (10) feet from the rear setback and ten (10) feet from the front setback in all residential zoning districts. All accessory structures must meet front setback requirements in all other zoning districts.

4. Portable storage containers may not be utilized as permanent accessory buildings or structures. This includes the use of semi-trailers or any other variety of trailers.
5. Only one (1) portable storage container may be permitted on site for a period of no longer than thirty (30) consecutive days within a six (6) month time period. Proof of duration shall be required upon request by the Zoning Administrator. The Zoning Administrator, upon written request, may give up to a ninety (90) day extension or may increase the number of containers for extenuating circumstances such as residential structure damage.
6. Temporary portable storage containers as permitted in this section must be set back at least ten (10) feet from all property lines, and shall not be placed as to obstruct pedestrian or vehicular traffic.
7. Portable storage containers shall not exceed a height of ten (10) feet.

(Amended 6/8/2017).

(4) Parking of Certain Vehicles

Overnight parking of tractor trailers, semi tractors, construction machinery, and other large commercial vehicles with three (3) or more axles shall be prohibited in all RL Low Density Residential and RH High Intensity Residential Zoning Districts. Construction vehicles may be permitted on any property with a valid building permit. Every night a vehicle is in violation constitutes an individual violation of the Fincastle Zoning Ordinance and penalties may be enforced per Section 504 of this Ordinance.

(Amended 6/8/2017).

(5) All fences, garden walls and other walls within the National Register of Historic Places Fincastle District, that are visible from any public right-of-way, require approval of a Certificate of Appropriateness issued by the Planning Commission in accordance with 208, the Enhancement Corridor Overlay District.

The design and construction of new fences and walls, and the repair of existing fences and walls, should blend with materials and designs found in the District. Wood, metal and stone are appropriate materials. Vinyl fences may be considered appropriate if they meet the other requirements outlines in this section. Stockade, unpainted redwood and rough cedar are not appropriate within the district. Materials such as chain link fence, prefabricated concrete block, and metal stockade fencing are not appropriate in the front yards or on corner lots along the sides of the lot adjoining a public right-of-way. Any fence that obstructs vision for pedestrian or vehicular traffic is not appropriate. The finished side of the fence must face adjoining properties.

Fences in the front yards must be at least 50% open and cannot exceed 4 feet or 48 inches in height. In rear yards, fencing should not exceed a height of 6 feet or 72 inches. Retaining walls over 4 feet in height must be designed by an engineer licensed in the Commonwealth or Virginia.

It is recommended that fences be placed at least two (2) feet from the property line adjoining a private property for the purposes of maintenance, unless mutually agreed upon by both property owners. Materials that are the visual equivalent of appropriate materials may be allowed by special exception.

(Amended 4/8/2021)

(SECTION 208)

Enhancement Corridor Overlay District (EC)

A. Intent

The purpose of this district is to protect and enhance the Town of Fincastle's attractiveness; protect the Town's scenic, historic, architectural and cultural resources; support and stimulate development which is appropriate and complimentary to the numerous properties of historic, architectural and cultural significance throughout the Town; protect and enhance the architectural and scenic character of significant access routes to the Town's historic downtown; promote orderly and attractive development along these significant access routes; and ensure that development within this district is compatible with these resources through architectural control of development. The standards contained within this Section shall guide the consideration and approval of water and sewer services outside of the corporate limits of the Town of Fincastle.

(Added _____).

B. Area Created; Boundaries

In order to execute the intent of this article, the boundaries of the overlay district are as follows:

The boundary shall run parallel to Virginia State Route 220, and include all land area within one hundred (100) feet of Route 220. If any portion of a recorded individual parcel falls within this boundary, then the entire parcel is considered a part of the overlay district and therefore subject to the requirements herein.

(Added _____).

C. Permitted Uses

A building and/or land shall be used for the following purposes: uses which are permitted in the underlying district shall be permitted in the Enhancement Corridor (EC) District.

(Added _____).

D. Area and Bulk Regulations

Uses, buildings and structures shall be subject to regulations for lot area, lot width, street frontage, setback, height, yards, parking and signs applicable in the underlying district in which they are located.

(Added _____).

E. Certificate of Compatibility Required

A certificate of compatibility is required for the following:

1. No building permit shall be issued involving construction or exterior modifications to a building until a certificate of compatibility has been issued in accordance with Section 208 F of this Ordinance for improvements subject to such building permit.
2. No site plan shall be approved until a certificate of compatibility has been issued in accordance with Section 208 F for all buildings and improvements shown thereon.
3. No land disturbance over 5,000 square feet in area, including grading, landscaping, parking lot construction or other land alterations shall be approved until a certificate of compatibility has been issued in accordance with Section 208 F.
4. No changes shall be made to the exterior and/or exterior color or colors of a building or sign until a certificate of compatibility has been issued in accordance with Section 208 F for such color changes.
5. Improvements to existing residential structures shall be exempt from the requirements of this Section.

(Added _____).

F. Administration

1. The Town desires to assist all potential applicants for new development by educating them on applicable regulations and guiding them in the submittal of all appropriate application materials for the review and approval processes. The simplest way to do so is through an informal meeting with Town staff prior to the submittal of any application materials and certainly prior to any construction. A pre-application meeting with the Town Manager/Zoning Administrator or his designee **is mandatory**, and it is recommended that any applicant conduct this meeting prior to purchasing property within the overlay district boundaries, and prior to the expenditure of funds on building, site and other construction plans.
2. The Planning Commission shall be responsible for the issuance of certificates of compatibility required by this article. Application for a certificate of compatibility shall be filed with the Zoning Administrator. Materials submitted shall include a preliminary site plan, landscaping plan, elevations of all buildings facades visible

from public streets, samples of proposed building materials, lighting plan and details and scale drawings of proposed signage, to include materials, colors and proposed lighting. Architectural and landscaping plans should include elevations and renderings that depict colors, materials and designs. The Planning Commission shall review the application and, if approved, shall issue a certificate of compatibility, with or without conditions, together with any modifications deemed necessary to ensure compliance with this section. Failure of the Planning Commission to act within 60 days from the date of application shall constitute approval of the application.

3. In making its determinations, the Planning Commission may consider any architectural feature which influences appearance, such as, but not limited to, motif and style, color, texture and materials, configuration, orientation, mass, shape, height and location of buildings, location and configuration of parking areas, landscaping and buffering.

(Added _____).

G. Design Standards

All applications for certificates of compatibility must satisfy the design standards contained in this section.

1. Landscaping.
 - a) Landscaping shall be used to soften the visual impact of development and enhance the appearance of the area.
 - b) Landscaping shall be sufficient to soften the visual effects of parking lots, reduce the effective visual mass of large buildings and provide screening between development, the street and surrounding lots.
 - c) Landscape buffers shall be provided adjacent to public streets of sufficient size to permit street trees and plantings to be installed to reduce the visibility into parking lots. However, the landscaping must not create a visual traffic or pedestrian impediment.
 - d) Landscaping shall be applied to the interior parking areas, in order to break up the continuous area of paved or treated surfaces and to minimize dangerous heating of the parking area. At least ten percent (10%) of the overall landscaping must be within the parking area.
2. Signage.
 - a) Sign area shall be calculated by drawing a simple geometric shape (square, rectangle, circle or triangle) around the area of the sign containing the wording and/or symbol(s)/Logos depicting the business or advertising.

- b) Each parcel shall have an overall sign plan which reflects a consistent style and specifies the sign and color scheme for proposed signage.
- c) Materials used in signs and their support structures should reflect the building served by the sign.
- d) Sign colors should be harmonious with the building which they serve.
- e) Only one (1) freestanding sign shall be permitted. The sign shall be a monument-style sign, and materials surrounding the sign must consist of brick, stone or other masonry materials reflective of the building served by the sign. The maximum area of the sign shall be thirty-two (32) square feet.
- f) Building facade signage shall be permitted at a maximum total area of fifty (50) square feet. Facade signage may be permitted on multiple sides of a building, but must still meet the total square maximum of fifty square feet total for all facade signage.
- g) Lighting for freestanding and facade signs may be either back lit or illuminated by a separate light source. The lighting must not present a traffic or pedestrian visibility hazard. Neon, flashing signs or electronic message boards scrolling or changing words or characters shall not be permitted.

3. Architecture.

- a) Architectural styles, building and roofing materials, and colors shall be reflective of the traditional architecture of Fincastle (circa 1900). This may be accomplished through building scale, materials and forms, all of which may be embodied in architecture which is contemporary as well as traditional.
- b) Heating and air-conditioning units, ventilation units, and mechanical equipment shall be screened from view from public streets.
- c) Loading docks, trash containers and mechanical equipment shall be screened from view from public streets.
- d) The effective visual mass of large buildings should be reduced by variations in roofline, building angles, dimensional relief, color, architectural detailing and landscaping.
- e) Trademark buildings and related features shall be modified to meet these design standards.

4. Parking Lots and Access.

- a) Parking lot layouts shall respond to the topographic characteristics of the site.
- b) The number of access points to parking lots from a street will be minimized and shall relate to other existing curb cuts whenever possible.
- c) Parking lots will be interconnected on adjacent parcels whenever possible.
- d) Small, landscaped and interconnected parking lots, rather than large, central parking lots, shall be encouraged.
- e) Parking lots shall not dominate the image of a site.
- f) Pedestrian access from the sidewalk into individual project sites, as well as within sites and between sites, shall be provided.

5. Lighting.

- a) Lighting should be of uniform style for each project site.
- b) Lighting should be contained within the site and designed to limit spillover and minimize the amount of light that is directed to the sky. Lighting shall not present a significant amount of glare to drivers, pedestrians, or users of neighboring properties.
- c) Directional fixtures such as flood lights, spot lights and sign lights shall be installed or aimed so that they do not shine directly into the window of a neighboring residence, directed into a roadway, or skyward.
- d) All outdoor lighting fixtures, including display lighting, shall be turned off after close-of-business, unless needed for safety and security, in which case the lighting shall be reduced to the minimum level necessary for such purpose.
- e) Lighting fixtures shall not be mounted in excess of twenty-five (25) feet above grade.
- f) Electrical feeds to lighting standards shall run underground, not overhead.
- g) Lighting standards in public parking areas shall be placed outside the paved area, or behind tire stops, or on reinforced concrete pedestals at least thirty (30) inches high above the pavement, or by other acceptable protective means.
- h) Wallpacks shall be shielded.

- i) If the output of a lamp is greater than two thousand (2,000) lumens, it shall be fully shielded. If the output is less than two thousand (2,000) lumens, the lamp shall be aimed at no greater than 45-degree downward angle.
- l) All lights in open areas such as parking lots are required to have full cut-off fixtures.
- m) No lighting shall be permitted which shines directly into neighboring residential units or buildings on adjacent properties or on the public right-of-way.
- n) Illuminated signs shall have an indirect lighting source or shielded course. Fixtures used for architectural lighting, such as facade, feature and landscape lighting, shall be aimed or directed so as to preclude light projection beyond the immediate objects intended to be illuminated.
- o) The Zoning Administrator may require that lighting be controlled by automatic timing devices to extinguish light sources during specific periods to mitigate the adverse impacts on adjacent properties.

H. Appeals

Appeals may be taken from any action or decision of the Town Manager/Zoning Administrator and Planning Commission by granting or refusing to grant a certificate of compatibility pursuant to the provisions of this article. Appeals shall be submitted to the Fincastle Council within 30 days of the action taken by the Planning Commission. Appeals shall be made by letter addressed to the Town Manager/Zoning Administrator noting the particular action being appealed. Any owner or other party aggrieved by the decision of the Fincastle Town Council shall have the right to appeal to the Circuit Court within 30 days of the action taken by the Fincastle Town Council.

ARTICLE 3

SIGN REGULATIONS

A. No signs, emblems, logos, flags, banners, or structures used for advertising purposes of any kind or nature shall be erected on any premises or affixed to the outside of any structure, except:

- (1) RL, RH Districts--signs pertaining to the lease, sale, or use of a lot or buildings on which they are placed, and none exceeding a total area of six (6) square feet, and providing further that on a lot occupied by a dwelling there may not be more than two (2) signs of not more than two (2) square feet, each pertaining to the use to which the same is put, or bearing a name and the designation of any authorized occupation, and being such signs as are customary on any building used for the purposes permitted in these RL, RH districts. Signs shall not be placed on or over public property except by permit from the Planning Commission.

- (2) C, TR Districts--not more than one sign at each place of business or lot advertising the type of business, occupation, or trade carried on at the premises or within a structure thereon, or the principal product or service sold thereat; for the purposes of this Section, two (2) similar signs, back to back, so as to face in opposite directions, shall be considered one sign.
- B. In the interests of public safety, and historic appeal, the following are not permissible:
- (1) Any sign extending or protruding more than six (6) inches over public property.
 - (2) Blinking illuminated signs, whether attached or mobile attached.
 - (3) Any signs with moving parts.
 - (4) Signs hung from, or in any way affixed to, any other sign.
 - (5) Any noise making signs.
 - (6) Any spotlight illuminating a sign shall be controlled so as not to have the beams therefrom cast into the eyes of oncoming motorists.
 - (7) Signs having an area in excess of twenty-five (25) square feet.
- C. No sign shall be erected on any property, or affixed to the outside of any structure, without the person erecting the same first having obtained therefor a permit from the Planning Commission.
- D. Any sign legally in existence at the time of the effective date of this by-law may be continued in use despite any non-conformity with existing by-laws; if such non-conforming sign is removed or altered by act of God, vandalism or accident, it may be restored to its former condition; if such non-conforming sign needs to be changed, painted or re-lettered by reason of change of business, the same may be done; if such sign needs to be repaired to prevent its falling into disrepair so far as safety is concerned, the same may be done. Under no other circumstances may any nonconforming sign be restored, replaced or re-erected.

ARTICLE 4

NONCOMFORMANCE

A. Continuation of Nonconformance

Any lawful building or use of a building or premises or part thereof existing at the time of adoption of this Zoning Ordinance, may be continued although such building or use does not conform to the provisions thereof, provided such use has not been discontinued for a period of two (2) years.

ARTICLE 5

ADMINISTRATION AND ENFORCEMENT

(SECTION 501)

Zoning Permits

No permitted principal or accessory building, structure or use, or building, structure or use permissible by special exception shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a permit therefore issued by the building official and approved by the Zoning Administrator.

A zoning permit may be required if a building permit is required. It is the responsibility of the applicant for the building permit to verify with the Zoning Administrator if a zoning permit is required or not.

Failure to obtain a zoning permit shall be a violation of this chapter and punishable under Section 505 of this Ordinance.

The Planning Commission may request a review of the zoning permit approved by the administrator, in order to determine if the contemplated use is in accordance with the district in which the construction lies. Similarly, upon request by the Zoning Administrator, the planning commission shall provide guidance regarding the appropriate zoning district for a proposed structure or parcel of land.

The Zoning Administrator shall maintain a record of all zoning permits and a copy shall be furnished, upon request, to any person.

(Amended 8/10/2017).

A. Application for zoning permit

An application for a zoning permit shall be made to the Zoning Administrator, who shall require and be furnished with all such plans and documents as may be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this chapter. Each such application for a zoning permit shall be accompanied by the following items, or as much thereof as the Zoning Administrator deems pertinent, and such additional information as the Zoning Administrator may require as being pertinent:

- (1) A certificate from the health officer that the proposed location meets the requirements of the health department from the standpoint of water supply and sewage disposal, or where a public water or sewerage system is involved, a statement from the Town public works department that all applicable regulations and requirements have been complied with.
- (2) A grading permit, as required.

- (3) The intended use.
- (4) If a dwelling, the number of families or housekeeping units.
- (5) A plot plan (required) signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways; provided, no part of which is to be located less than the setback distance from any property line or right-of-way of any public highway.
- (6) Number, size, location and lighting of signs, if any.
- (7) Off-street parking and other facilities.
- (8) Proposed utilities and their location.
- (9) Drainage scheme.
- (10) Topographic map, if determined to be necessary.

(Amended 3/10/2016; 8/10/2017).

B. Standards for issuance

Building permits or zoning permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 504 of this Ordinance.

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this chapter or any other applicable law, ordinance or regulation. The issuance of a zoning permit, however, shall not afford protection to any owner who is found to be violating this chapter or any other applicable law, ordinance or regulation. If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this chapter, a zoning permit shall be issued to the applicant by the Zoning Administrator. If an intended use is found to be in compliance with this chapter, before proceeding, the applicant is required to consult the building official to ensure compliance with the Virginia Uniform Statewide Building Code.

(Amended 8/10/2017).

C. Duration of valid zoning permit

Any zoning permit issued shall conform to the time limits set forth by the building official in the building permit.

(Amended 8/10/2017).

D. Temporary use permit

A letter of temporary use permit may be issued upon application to the Zoning Administrator for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion. Such temporary permit may include such conditions and safeguards as will protect the safety of the occupants and the public. Any violations of these conditions shall be remedied under the provisions of Section 505 of this ordinance.

(Amended 8/10/2017).

(SECTION 502)

Commission Permits

No street, park or other public area, or public structure, or public utility, public building or public service corporation, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted Comprehensive Plan or part thereof. In connection with any such determination the Commission may, and at the direction of the Council, shall hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

(Amended 8/10/2017).

(SECTION 503)

Board of Zoning Appeals

A. Jurisdiction and purpose

The Board of Zoning Appeals shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. 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 his 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 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.
- (2) Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a

variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) 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 for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2 2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § 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.

In granting a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

- (3) To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by § 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.

- (4) 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 the question, and after public hearing with notice as required by § 15.2-2204, the Board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. 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. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (5) No provision of this section shall be construed as granting any Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

(Amended 8/10/2017).

B. Authority and establishment

The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary for the orderly conduct of its business.

(Amended 8/10/2017).

C. Membership

The Board of Zoning Appeals shall consist of five residents of the Town appointed by the circuit court.

The term of office of members of the Board of Zoning Appeals shall be five years, except that original appointments shall be made for such terms that the term of one member shall expire each year. Members of the Board of Zoning Appeals shall hold no other public office in the Town, except that one of the appointed members may be a member of the planning commission.

Appointments to fill vacancies occurring on the Board of Zoning Appeals otherwise than by expiration of term shall, in all cases, be for the remainder of the unexpired term.

Any member of the Board of Zoning Appeals may be removed, for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court, after a hearing held after at least 15 days' notice.

Any member of the Board of Zoning Appeals shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest, in accordance with § 2.2-3112 of the Code.

(Amended 8/10/2017).

D. Officers

The Board of Zoning Appeals shall choose annually from among its members a chairman and, and in his absence, an acting chairman.

The Board of Zoning Appeals shall choose annually a secretary who is either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. The secretary shall prepare minutes of meetings, keep all records and conduct official correspondence of the board.

(Amended 8/10/2017).

E. Meetings and hearings

Meetings and hearings of the Board of Zoning Appeals shall be held at the call of the chairman or, in the event of his absence or disqualification, the acting chairman, or at the request of any two (2) members, provided notice thereof has been mailed to each member of the Board of Zoning Appeals at least seven (7) days before the time set or that a waiver of notice is obtained from each member. Three (3) members shall constitute a quorum for the transaction of any official business.

The chairman, or in the event of his absence or disqualification, the acting chairman may administer oaths and compel the attendance of witnesses at meetings of the Board of Zoning Appeals.

(Amended 8/10/2017).

F. Records

The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep full records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

(Amended 8/10/2017).

G. Periodic reports

The board shall submit a report of its activities to the Town Council at least once each year.

(Amended 8/10/2017).

H. Limitation

All provisions of this chapter relating to the BZA shall be strictly construed. The BZA, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this chapter and the Code of Virginia and in strict compliance with all limitations contained therein.

(Amended 8/10/2017).

I. Procedures before the Board of Zoning Appeals

1. Variance procedure.

- a) Who may apply; procedure. Any property owner, tenant, government official, department, board, or bureau may apply for a variance. Such application shall be made to the Zoning Administrator in accordance with rules adopted by the Board of Zoning Appeals, including therewith satisfactory evidence that any delinquent real estate taxes owed to the Town which have been properly assessed against the subject property have been paid. The application shall be transmitted promptly to the secretary of the Board of Zoning Appeals, who shall place the matter on the docket to be acted upon by the board.
- b) Burden of proof. The burden of proof shall be upon the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance set forth in this section.
- c) Criteria to be considered. A variance shall be granted if the evidence shows that the strict application of the terms of this chapter 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:
 - (1) 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;
 - (2) The granting of the variance would not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - (3) 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;
 - (4) 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
 - (5) The relief or remedy sought by the variance application is not available through a special exception permit.

- d) Conditions and restrictions. In authorizing a variance, the Board of Zoning Appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- e) Withdrawal of application. An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in Va. Code § 15.2-2204. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits, by the Board of Zoning Appeals, either in whole or in part.
- f) Reapplication. If any application is denied by the Board of Zoning Appeals on the merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the board within 12 months after the date of such denial.

(Amended 8/10/2017).

J. Appeals of administrative officers

1. Applications. Applications to the Board of Zoning Appeals may be made by any person aggrieved, or any officer, department or agency of the Town affected, by an order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the provisions of this chapter.
2. Appeals from administrative ruling. The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter. In case of an appeal from decisions by the Zoning Administrator to the Board of Zoning Appeals, procedures to be followed shall be in strict accordance with § 15.2-2310, *et seq.* of the Code of Virginia.
3. When appeals may be taken. Appeals to the BZA may be taken by any person aggrieved by an officer, department, board or agency of the Town or affected by a decision of the Zoning Administrator. Appeals shall be taken within thirty (30) days after the decision has been rendered by filing with the Zoning Administrator from whom the appeal is taken and with the chair of the BZA a notice of appeal specifying the grounds of the appeal. The Zoning Administrator shall forthwith forward to the chair of the BZA all the papers constituting the record upon which the action appealed from was taken.
4. When appeals to stay proceedings. A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the BZA that by reason of facts

stated in the certificate a stay would, in the Zoning Administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by the BZA or by a proper court order on notice to the Zoning Administrator and for good cause shown.

5. Decision on appeals. Upon receipt of an application or appeal, the Board of Zoning Appeals shall fix a reasonable time for a hearing of such application or appeal in conformance with §§ 15.2-2204 and 15.2-2205 of the Code of Virginia. The Board of Zoning Appeals shall render a decision on any application submitted to it within sixty (60) days after the date of the hearing thereon.
6. Withdrawal of application. An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in this article. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits, by the Board of Zoning Appeals, either in whole or in part.
7. Proceedings to prevent construction of a building. Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within 15 days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Zoning Administrator to the Board of Zoning Appeals.

(Amended 8/10/2017).

K. Ex parte communications and proceedings

1. The non-legal staff of the governing body 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 a particular case. The applicant, landowner, or his 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 a particular case. 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 the purposes of this section, regardless of whether all parties participate, *ex parte* communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent are all invited.
2. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost

to the applicant, appellant or other person aggrieved, as soon as practicable thereafter, but in no event more than three business days after providing such materials to a member of the board. If the applicant, appellant, or other person aggrieved requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to the provisions of § 2.2-3704 of the Code of Virginia, as amended. 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 of the Code of Virginia, as amended.

3. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542 of the Code of Virginia, as amended. Nothing in this section shall preclude the board from having *ex parte* communications with any attorney or the staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

(Amended 8/10/2017).

L. Judicial review; writ of certiorari

1. Appeal to circuit court. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the Clerk of the Circuit Court for Botetourt County a petition that shall be styled "In re: [date] Decision of the Board of Zoning Appeals of Town of Fincastle" specifying the grounds on which aggrieved within thirty (30) days after the final decision of the board.
2. Circuit court to allow writ of certiorari. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the Board of Zoning Appeals, or if no secretary exists, the chair of the Board of Zoning Appeals, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
3. Parties to proceedings. Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The Town Council of Town of Fincastle, the landowner, and the applicant before the Board of Zoning Appeals shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any

other person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals.

4. Return of record. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ of certiorari. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
5. Review of decision on appeal of administrative order. In the case of an appeal from the Board of Zoning Appeals to the circuit court of an order, requirement, decision, or determination of a Zoning Administrator or other administrative officer in the administration or enforcement of this chapter, the findings and conclusions of the Board of Zoning Appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the Board of Zoning Appeals, that the Board of Zoning Appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.
6. Review of grant or denial of a variance. In case of an appeal by a person of any decision of the Board of Zoning Appeals that denied or granted an application for a variance, the decision of the Board of Zoning Appeals shall be presumed to be correct. The petitioner may rebut the presumption by proving by a preponderance of the evidence, including the record before the Board of Zoning Appeals, that the Board of Zoning Appeals erred in its decision.
7. Evidence to be admitted. In the case of an appeal from the Board of Zoning Appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.
8. Powers of the court. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
9. Costs to be allowed. Costs shall not be allowed against Town of Fincastle or its Town Council, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the Board of Zoning Appeals is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, Town of Fincastle or its Town Council may request that the court hear the matter on the question of whether the appeal was frivolous.

(Amended 8/10/2017).

(SECTION 504)

Administration

A. Zoning Administrator

This chapter shall be administered and enforced by an officer to be known as the Zoning Administrator, who shall be appointed by the Town Council. The Zoning Administrator shall have all necessary authority, on behalf of the board, to administer and enforce this chapter, including the ordering, in writing, of the remedying of any condition found in violation of this chapter, and the bringing of legal action to ensure compliance with this chapter, including injunction, abatement or other appropriate action or proceeding. The Zoning Administrator shall be guided in all of his actions pursuant to this chapter by the purposes, intent and spirit of this chapter and the standards set forth in article I of this chapter. The Zoning Administrator shall be assisted in the enforcement of this chapter as necessary. Specifically, the duties and powers shall include:

1. To receive and/or review:
 - a) Applications for variances.
 - b) Notices of appeal to the BZA.
 - c) Applications for zoning permits.
 - d) Applications for special use permits as allowed in this Ordinance.
2. To issue zoning permits where the requirements of this chapter have been met.
3. To issue interpretations of this chapter upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty (30) day appeal period. In administering this chapter and rendering determinations as to the uses permitted or allowed by special exception permit in the various zoning districts, the Zoning Administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special exception permit, is so substantially similar in substance and effect to a permitted use or a use allowed by special exception permit, that it should be allowed as if expressly permitted or allowed by special exception permit. Such interpretations shall include notification of appeal procedures and timelines.
4. To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter.
5. To maintain accurate records of proffered conditions as required by subsection 611 of this Ordinance.

6. To enforce the provisions of this chapter, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, planning commission and Town Council were made.
7. To perform such other duties and functions as may be required by this chapter and the Town Council.
8. To maintain and make available for public inspection and copying the official zoning map, the zoning ordinance, and the minimum submission requirements adopted by Town Council resolution.
9. To maintain a compilation of the interpretations and opinions of the Zoning Administrator for public review.

The Zoning Administrator shall have the authority to make conclusions of law and findings of fact, with concurrence of the attorney for the governing body, in connection with the administration, application and enforcement of the chapter in specific cases, including determinations of rights accruing under § 15.2-2307 of the Code of Virginia.

In case of any dispute over the meaning of a word, phrase or sentence, whether defined in this chapter or not, the Zoning Administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this chapter, provided, that an appeal may be taken from any such determination as provided in Section 503.

(Amended 8/10/2017).

B. Fees

Fees, as allowed by the Code of Virginia, §b 15.2-2286 (6), for administrative review and processing of zoning permits, certificates of occupancy, site plans, rezoning requests, special exceptions, amendments, public hearings, advertising, variances and nonconforming uses shall be published under a separate fee schedule and reviewed annually by the Zoning Administrator prior to approval by the Town Council.

Application fees are hereby waived for the following:

1. Applications for amendment, special exception permit, or commission permit sought by the following governmental agencies:
 - a) The Town of Fincastle
 - b) Botetourt County School Board.
 - c) Fire and rescue companies serving Botetourt County.
 - d) Any agency, board or division acting in the name of the Board of Supervisors of Botetourt County.

(Amended 8/10/2017).

C. Submission requirements

The Town Council shall adopt by resolution regulations enumerating those materials required to be included with each application provided for in this chapter, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this chapter. Such submission requirements shall include a letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the Zoning Administrator, law enforcement agents, and county inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued. Such submission requirements shall also include, in the case of any application for a zoning map amendment, zoning ordinance modification, zoning concept development plan amendment, special exception permit, variance, site plan or zoning permit, the provision of satisfactory evidence from the treasurer's office that any real estate taxes due and owed to the county or Town which have been properly assessed against the property have been paid. Revisions to the list of those materials required necessitated by an amendment to this chapter shall be attached to such amendment for concurrent consideration and adoption by resolution of the Town Council. If the application is a reclassification to a non-planned unit development district, a rezoning plat shall be required.

(Amended 8/10/2017).

D. Inactive applications

Any zoning map amendment application, zoning modification application, or concept development plan amendment application officially accepted by the Town for processing but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any special exception permit application officially accepted by the town for processing but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months shall be deemed inactive. An application may remain inactive for up to three (3) years at the end of which period it will be processed to a final decision. If an applicant wishes to reactivate their application prior to the end of this three (3) year period, the applicant must notify the Town in writing of intent to proceed with the application, grant the Town an appropriate timeline extension and pay a reactivation fee as established by the Town Council.

(Amended 8/10/2017).

(SECTION 505)

Enforcement and Penalties

A. Zoning Administrator

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the cause and the basis thereof and shall be filed with the Zoning Administrator. The administrator shall properly record such complaint, immediately investigate and take action thereon as provided by this chapter.

Upon his becoming aware of any violation of any provision of this chapter, the Zoning Administrator shall serve notice of such violation on the person committing or permitting such violation. If such violation has not ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.

The Zoning Administrator shall order the discontinuance of illegal use of land, buildings or structures, removal of illegal building or structures or of illegal additions, alterations or structural changes and discontinuance of any illegal work being done, or shall take any other action authorized by this chapter to ensure compliance with, or to prevent violation of, its provisions.

Notice of a zoning violation or a written order of the Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days, and that the decision shall be final and unappealable if not appealed within thirty (30) days.

The Zoning Administrator may initiate injunction, mandamus, abatement, or any other appropriate action, to prevent, enjoin, abate or remove such erection or use in violation of any provision of this chapter.

(Amended 8/10/2017).

B. Violations

The following are violations of this chapter and are declared to be unlawful:

1. Uses. Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this chapter, approved, site plan, building and zoning permit, or condition accepted or imposed in conjunction with any Town Council approval under this chapter, or without any required permit, certificate or other required approval under this chapter.
2. Structures without building permits. Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

3. Use of structure or site without certificate of occupancy. Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.
4. Requirements and standards. The failure to comply with any other requirement or standard of this chapter.

(Amended 8/10/2017).

C. Penalties

The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

1. Civil penalties. Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided herein, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the Zoning Administrator that the act violates this chapter as provided herein, shall be subject to the following:
 - a) Procedure. Proceedings seeking civil penalties for all violations of this chapter under this section shall commence either by filing a civil summons in the general district court or by the Zoning Administrator or his deputy issuing a ticket.
 - b) Minimum elements of a civil summons or ticket. A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the Town ; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
 - c) Amount of civil penalty. Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.
 - d) Maximum aggregate civil penalty. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under this section.

- e) Each day a separate offense; single offense in ten (10) day period; stay. Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
 - f) Option to prepay civil penalty and waive trial. Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, an admission shall not be deemed a criminal conviction for any purpose. 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. A finding of liability shall not be deemed a criminal conviction for any purpose.
 - g) Civil penalties are in lieu of criminal penalties. A violation enforced under this section (1), shall be in lieu of any criminal penalty except as provided herein, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.
 - h) Violations excluded. This section shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term "land development" means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project's compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.
 - i) Assessment of civil penalties during appeal period. No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided herein.
- 2) Criminal Penalties. Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter that results in injury to any person, or to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty has been reached and who continues to violate any provision of this chapter, or permits either by granting permission

to another to engage in the violating act or by not prohibiting the violating act after being informed by the Zoning Administrator that the act continues to violate this chapter, shall be subject to the following:

- a) The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).
- b) If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).

(Amended 8/10/2017).

D. Revocation of Administrative Permits

This section shall apply to any situation where the applicant has supplied materially misleading information relating to the approval of a permit issued by the Zoning Administrator or the change of a use that increases in intensity or invalidates the requirements of the permit.

If the Zoning Administrator determines that there are reasonable grounds for revocation of a zoning permit, home occupation permit, mobile home permit or a short-term rental permit, or approval, the Zoning Administrator shall notify the permit holder in writing. Such notice shall inform the permit holder of the alleged grounds for the revocation and shall include specific reasons or finding of fact that support the revocation. Revocation of a permit by the Zoning Administrator may be appealable to the Board of Zoning Appeals.

A decision to revoke aforementioned permit shall become final thirty (30) calendar days after the date the decision is rendered, unless appealed. After such effective date of revocation, any activities continuing pursuant to such permit shall be deemed to be in violation of this chapter and subject to the penalties detailed herein.

The right to revoke a development permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

(Amended 8/10/2017).

ARTICLE 6

AMENDMENTS

Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the Council may amend, supplement, or change the regulations in this Zoning Ordinance, or the zoning boundaries or classification of property on the zoning map, in conformity with the Comprehensive Plan and the Provisions of Title 15.1, Article 8, Chapter 11 of the Code of Virginia (1950), as amended, and the provisions and purposes of this Article.

(SECTION 601)

Initiation of Amendments

The Council may amend this Ordinance by amending the text thereof, including the text of the schedules contained in Article 2, or by changing any district boundary shown on the adopted zoning map, provided that proceedings for any amendment shall be initiated only in the following manner:

A. **Property Owner Petition**

By filing with the Council of a petition of any owner or owners of land proposed to be rezoned, which petition shall be addressed to the Council and shall be on a standard form and accompanied by a reasonable fee to be determined in accordance with a fee schedule separately adopted by the Council.

B. **Council Resolution**

By the adoption by the Council of a resolution of intention to amend, which resolution, upon adoption, shall be referred to the Planning Commission for consideration pursuant to § 15.1-493 of the Code of Virginia (1950), as amended.

C. **Planning Commission Resolution**

By the adoption by the Planning Commission of a resolution of intention to propose an amendment.

(SECTION 602)

Use Plan Required

If the initiation of an amendment to this Ordinance is by property owner petition, then such property owner shall submit to the Planning Commission, at least forty-five (45) working days prior to the public hearing of the Planning Commission, a plan, including narrative statements and map, of proposed development and use for the property and adjacent properties (if appropriate). The use plan shall be at such scale, and in such form, and contain such information as determined by the Planning Commission to be necessary to serve as sufficient information for an evaluation as specified in Section 609.

(SECTION 603)

Public Hearing--Notice

Notice required for public hearings. Each public hearing involving planning and zoning matters before the Planning Commission, the Town Council and the Board of Zoning Appeals, requires notice as set forth in § 15.2-2204 of the Code of Virginia and below.

(Amended 8/10/2017).

A. Written Notice

1. Contents of written notice. All required written notices shall contain:
 - a) The time, date and place of hearing;
 - b) A brief description of the matter being heard;
 - c) Identification of the land subject of the application including the tax map number of the property and complete street address of the property.
2. Second notice remailed if hearing continued. If a public hearing is continued, then the second notice required in such case shall be remailed.
3. Notice by the Town. Notwithstanding any other provisions of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the Town, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
4. Certification. At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the Zoning Administrator certifying that first and second notices have been sent and such affidavit shall include a list of names of those to whom notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application.
5. Failure to receive notice. Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.
6. Condominium ownership. In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

(Amended 8/10/2017).

B. Newspaper Notice

The Town shall give newspaper notice prior to each public hearing in accord with § 15.2-2204 of the State Code.

Contents of newspaper notice. The notice shall contain:

1. The time, date and place of the hearing;
2. A brief description of the matter being heard;
3. Identification of the land that is the subject of the application including the tax map number and complete address of the property; and
4. In the case of a zoning map amendment, including an amendment to an approved concept development plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the comprehensive plan shall be included within the notice.

(Amended 8/10/2017).

C. Notice requirements for particular hearings

The following particular hearings require the following form of notice:

1. Appeals to Town Council. Public hearings on appeals to the Town Council require that the Town provide newspaper notice of the hearing.
2. Appeals to Board of Zoning Appeals. Public hearings on appeals to the BZA require that the Town provide newspaper notice of the hearing.

(Amended 8/10/2017).

D. Additional Notice Required

1. Tabling indefinitely. If a public hearing is not heard at the time for which it was advertised but is tabled indefinitely without the opening of the public hearing, all notice required by this section shall be given of the deferred public hearing.
2. Tabling to a date and time certain. If a public hearing is not heard at the time for which it was advertised, but is tabled to a date, time, and place certain without the opening of the public hearing, no further notice shall be required, but may be given at the discretion of the Town Council.
3. Recessed public hearings. If a public hearing is begun but not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the public hearing is recessed to a date, time, and place certain, but further notice

may be given at the discretion of the planning commission or Town Council, whichever body has recessed the public hearing.

(Amended 8/10/2017).

E. Speakers at Public Hearings

All witnesses and speakers presenting facts and evidence at any public hearing shall provide their name, address and affiliation, if any, for the record.

(Amended 8/10/2017).

(SECTION 604)

Report by Planning Commission to Council After Hearing

After the conclusion of the hearing provided for in this Article, unless the proceedings are terminated as provided herein, the Planning Commission shall report to the Council its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the Council within ninety (90) days after the first meeting of the Commission following the date the proposed amendment has been referred to the Commission shall be deemed approval by the Commission. In acting favorably with respect to a proposed amendment initiated by the petition of a property owner or owners, the Planning Commission need not confine its recommendation to the proposed amendment as set forth in the petition, but may reduce or enlarge the extent of land that it recommends to be rezoned or may recommend that land be rezoned to a different zoning classification than that petitioned for, if the Commission is of the opinion that such revision is in accord with public necessity, convenience, general welfare and good zoning practice and is in furtherance of the purposes of this Ordinance and Article; provided that before recommending an enlargement of the extent of land or a rezoning to a less restricted classification than was set forth in the petition, the Commission shall hold a further hearing on the matter, pursuant to requirements of § 15.1-493 of the Code of Virginia (1950), as amended. No amendment to the zoning map shall be approved for a change in zoning classification different from that applied for and contained in the public notice of hearing or for any land not included therein without referring said change to the Planning Commission for its review and recommendations and proceedings pursuant to this Section.

(SECTION 605)

Limitation of Filing New Petition After Original Denial

Upon the denial by the Council of any petition filed pursuant to Section 601 above, no new petition concerning any or all of the same property shall be filed within four (4) months of the date of the denial.

(SECTION 606)

Withdrawal of Petitions

Any petition filed pursuant to Section 601 above, may be withdrawn upon written request by the applicant any time prior to the submission of any public hearing notice for advertisement; provided that if the request for withdrawal is made after publication of the notice of hearing, such withdrawal shall be only with the consent of either the Planning Commission or the Council, whichever body had advertised the hearing, and no new petition concerning any or all of the same property shall be filed within four (4) months of the date of action, unless the respective body approving withdrawal specifies that the time limitation shall not apply.

(SECTION 607)

Public Hearing by Council; Notice to Landowners in Certain Cases; Joint Public Hearings

- A. In addition to the public hearing required by the Planning Commission under Section 603, Council shall hold at least one public hearing on any amendment to this ordinance before approving and adopting such amendment. Such public hearing shall be held as provided in § 15.1-493 of the Code of Virginia (1950), as amended, pursuant to such public notice as may be required by § 15.1-431 of said Code.

(Amended 11/9/1981).

- B. In lieu of separate public hearings by the Planning Commission and council, the Planning Commission and Council may hold a joint public hearing as provided in § 15.1-431 of the Code of Virginia (1950), as amended, after giving the notice required by § 15.1-431 of said Code.

(Amended 11/9/1981).

- C. When a proposed amendment of this ordinance involves changes in the zoning classification of twenty-five or less parcels of land, then, in addition to the advertising required under § 15.1-431 of the Code of Virginia (1950), as amended, written notice by registered or certified mail shall be given by the Planning Commission at least fourteen (14) days before any hearing required under this article to the owner or owners, their agent or the occupant of each parcel involved, and to the owners, their agent or the occupant of all abutting property and property immediately across the street or road from the property affected. Notice shall also be given to the owners, their agent or the occupant of all abutting property and property immediately across the street from the property affected which lies in an adjoining county or municipality of the state. Such notices shall be given in accordance with and conform to the provisions of § 15.1-431 of the Code of Virginia (1950), as amended.

(Amended 11/9/1981).

(SECTION 608)

Additional Procedures

The Clerk may authorize the preparation of required legal notices of the Council public hearing after he has received the Planning Commission report required in Section 604 and containing the signature of the secretary to the Planning Commission. At least seven (7) working days prior to the Council public hearing, the applicant shall submit to the Town Attorney the proposed Final Order which shall require the signature of the County Attorney verifying the accuracy of form and substance.

(SECTION 609)

Matters to be Considered in Reviewing Proposed Amendments

Proposed amendments shall be reviewed with reasonable consideration for the existing use and character of the property, the suitability of the property for various uses, the trends of growth or change, the current and future requirements of the Town as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the County, and the requirements for schools, parks, playgrounds, recreation areas, and other public services; for the conservation of natural resources; and the preservation of flood plains and for the conservation of properties and their value and the encouragement of the most appropriate use of land throughout the Town. These considerations shall include, but shall not be limited to, timing of development, relation of development to major roads, relation of development to utilities and public facilities, and the net public costs of the development.

A. Timing of Development

The Council, in promoting the general welfare and good zoning practice and the purposes of this Article and Ordinance, as part of an amending action, may specify a date certain for the future consideration of possible changes to the zoning classification of the particular parcel of land which is a subject of an amending action. Said future consideration shall be for the purpose of determining whether subdivision or site development plans have been submitted, whether development has in fact begun on the affected parcel, and whether there have been changes in the matters considered by the Council under this Section or any other Section, which may necessitate changes in the zoning classification. In no case shall the date set be less than six (6) months from the date of the original amending action.

B. Conditions

In the processing of requests for amendments to this Zoning Ordinance, the Planning Commission may recommend, and the Council may impose, such special conditions as it may deem desirable when it finds the following conditions to prevail:

- The rezoning condition does not restrict the use of the property any more than does the Ordinance for the classification to which the property is rezoned.

- The conditions imposed are for the protection of other properties in the area.
- The rezoning action is not arbitrary, but is with due regard to public health, safety, welfare, and is in accordance with the Comprehensive Plan for the Town of Fincastle.

(SECTION 610)

Change in Comprehensive Plan – Adopted

At such time as the Comprehensive Plan may be amended and officially adopted, either as part of the five (5) year review period or during interim periods, the Planning Commission shall prepare recommendations for corresponding amendments to the Zoning Ordinance, if such amendments are made necessary by the character of amendments or changes in the Comprehensive Plan.

(SECTION 611)

Conditional Zoning

In order to provide for the orderly development of land in special situations where existing zoning district regulations are inadequate to protect the community, rezonings or amendments to the zoning map may be allowed subject to conditions voluntarily proffered by the zoning applicant that are not generally applicable to land similarly zoned.

- A. The governing body may approve reasonable conditions in addition to existing zoning district regulations as part of a rezoning or amendment of the zoning map, provided that the conditions meet the following criteria:
1. The rezoning itself must give rise to the need for conditions;
 2. All conditions shall have a reasonable relation to the rezoning;
 3. No condition shall include a cash contribution to the Town;
 4. No condition shall include a mandatory dedication of real or personal property for open space, parks, schools, fire stations or other public facilities except those provided for by law;
 5. No condition shall include payment for, or construction of, offsite improvements except those otherwise provided for by law;
 6. All conditions shall relate to the physical development of or physical operation of the property;
 7. All conditions shall be in conformity with the Town’s comprehensive plan; and
 8. No condition shall be used for the purpose of discrimination in housing.

- B. The owner or owners of the property which is the subject of a conditional rezoning request shall voluntarily proffer in writing such conditions as he deems appropriate at the time of filing an application to rezone the property or by such later date as the Planning Commission shall establish in its rules and regulations, but in any event, before the Commission makes its recommendation to the governing body.
- C. The governing body may consider additional proffers, deletions, and/or amendments to all such conditions provided same have been voluntarily proffered in writing by the owner of the property which is the subject of the rezoning request prior to the public hearing before the governing body.
- D. Should additional conditions be proffered by the applicant at the time of the public hearing before the governing body, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before the Planning Commission and governing body.
- E. 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.
- F. Such 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.
- G. Upon approval, any site plan, subdivision plat, or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity.
- H. For the purposes of this Section, substantial conformity shall mean that conformity 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, profiles, elevations, and other demonstrative materials presented by the applicant.
- I. Once conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with the proffered conditions, then an application shall be filed for an amendment. Such amendment shall be the subject of public hearing in accordance with the provisions of this ordinance.
- J. Proffered conditions shall be interpreted to include written statements, development plans, profiles, elevations, photographs or models, and/or other demonstrative materials.

- K. All such materials shall be annotated with the following statement signed by the owner or owners of subject property:

“I (we) hereby certify that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission.”

- L. The zoning map shall show by an appropriate symbol the existence of conditions attaching to the zoning on the map.
- M. The Zoning Administrator shall maintain a conditional zoning index, which shall be available in his office for public inspection during regular office hours. The index shall provide ready access to the ordinance creating such conditions, in addition to the regulations provided for in a particular zoning district.

(Amended 1/14/2015).

(SECTION 612)

Special Use Permits – Applicability and Purpose

Where permitted by this ordinance, Special Use Permits (SUP) may be authorized by the governing body. Applications for Special Use Permits shall be referred to the Planning Commission for its recommendation.

- A. The applicant, who shall be a record owner, or contract owner with written approval of the owner, of land involved (if a contract owner, copy of said contract shall be filed with and made a part of the application), shall make application for the use permit to the Zoning Administrator on the form provided for that purpose, giving all information required by such form, including such other information which the Zoning Administrator may deem necessary for an intelligent consideration of the project for which a permit is desired.
- B. The application shall be accompanied by such information which the Zoning Administrator may reasonably deem necessary.
- C. No application for such Special Use Permit (SUP) may be heard except after notice and hearing as provided for in § 15.2-2204 of the 1950 Code of Virginia, as amended.
- D. The Town Council may grant or deny the application, either in part or in full, and may impose such modifications, regulations, or restrictions, including a limitation of time for which the permit shall be valid, which the Council in its discretion may determine necessary or requisite in order that the general objectives and purposes of this ordinance shall be complied with.
- E. In the Council’s consideration to grant, deny, or grant conditionally a Special Use Permit (SUP), the Council shall consider the following guidelines and standards:

1. The use shall not tend to change the character and established patter of development of the area or community in which it proposed to locate;
2. The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of the neighboring property.
- 3.a) Special Use Permits for short-term rentals shall state the maximum number of overnight tenants and the maximum number of social guests that will be authorized to occupy the premises under a short-term lease. The number of tenants and the number of guests shall be determined as appropriate for the premises and the neighborhood. Upon one week's notice, the Town Manager, his designee or the Mayor are severally authorized at their discretion to approve short-term leases for specific numbers of tenants or social guests in excess of the permitted numbers for special occasions as stated in the lease.
- 3.b) A Special Use Permit for short-term rentals shall expire after twenty four (24) months unless renewed as provided below. The Town Manager or his designee or the Mayor may, in their sole discretion approve an application for renewal of a Special Use Permit for short-term rental for an additional twenty four (24) month term; provided that there is no record of any violation of the original permit, and provided that no Town resident has consistently complained of excessive noise or any other nuisance or public annoyance conducted on the property. If all the foregoing conditions are not met, then the Special Use Permit shall expire after twenty four (24) months. The owner may apply for a new permit, with a supplemental application fee of \$50.

(Amended 3/10/2016).

- F. Upon granting of a Special Use Permit (SUP), one copy of the permit application upon which has been indicated the changes or restrictions, if any, required by the Town Council, and which has been certified by the Zoning Administrator, shall be returned to the applicant, who may thereafter conduct the operation for which the permit has been granted only in such manner, and for such a time as the permit and the certified drawing shall specify. A Special Use Permit shall be valid for only the specified use it covers in the specific location designated.
- G. Each application for a Special Use Permit (SUP) shall be accompanied by a fee of one hundred fifty dollars (\$150.00), payable to the Town of Fincastle for deposit in the General Fund. This fee is exclusive of the costs for public notification and adjoining property owner mailings as required by § 15.2-2204 of State Code and Section 607 of the Zoning Ordinance.
- H. It shall be the duty of the Zoning Administrator to see that the decisions of the Town Council are complied with.
- I. In enforcing the requirements of the Special Use Permit, the Zoning Administrator shall notify, by registered mail, any person responsible for an alleged violation, stating the reason why it is believed that a violation exists. The person responsible shall be allowed a

period of thirty (30) days to correct the violations or to respond to the Zoning Administrator, seeking relief. Should the person responsible seek relief, or should the Zoning Administrator receive no response, or if the person does not correct the violations(s) within thirty (30) days of receipt of the registered letter, the Planning Commission shall make a recommendation to the Town Council which shall be considered by the Town Council at their next regularly scheduled meeting. At the time of the meeting, the Council shall consider modifying the Special Use Permit requested to do so by the person responsible, granting an additional period of time in which to comply, or directing the Zoning Administrator to initiate legal action.

- J. A Special Use Permit become void if the permit is not utilized within twelve (12) months after approval, or in the event the use has been discontinued for a consecutive twelve (12) month period.
- K. Special uses which are approved by the Town Council shall run with the land, except that:
 - 1. Activities or uses approved by a Special Use Permit which are discontinued for a period of more than two (2) consecutive years shall not be reestablished on the same property unless a new Special Use Permit is issued in accord with this ordinance.
 - 2. A Special Use Permit shall be void, if at the time of the commencement of the authorized use, activity, or structure, the site for which the permit has been granted contains other uses or activities not in place at the time of the issuance of the Special Use Permit.
- L. If any Special Use Permit applicant is withdrawn at the request of the applicant subsequent to the Planning Commission's recommendation on the permit, or if the Town Council denies any application submitted for its review, the Town shall not consider any application for the same special use, on the same property, within one year of the permit withdrawal or the Council's action.

(Amended 1/14/2016; 3/10/2016).

ARTICLE 7

VALIDITY

If any section, subsection, sentence, clause, phrase or work of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

ARTICLE 8

EFFECTIVE DATE, REPEAL OF CONFLICTING ORDINANCES

This Zoning Ordinance of Fincastle, Virginia, shall be effective at and after 12:01 a.m., the 13th day of September, 1977 and at the same time all ordinances or portions of ordinances in conflict with this Ordinance are hereby repealed to the extent of their conflict.

NUISANCE ABATEMENT -- TOWN OF FINCASTLE

1. It shall be unlawful for the owner of any property within the Town of Fincastle to permit the accumulation thereon of any trash, garbage, refuse, litter, debris, materials or inoperable machinery, machinery parts, equipment, appliances, motor vehicle tires (four tires or more), or any other substances which might restrict the ingress or egress from any exit door of a structure, attract or harbor varmints (snakes, skunks, rats), and/or mosquitoes, and might endanger the health or safety of other residents of the Town.
2. It shall be unlawful for the owner of any property within the Town of Fincastle to permit the growth of any grass, weeds, or other foreign growth to a height of 12 inches or more visible from any street.
3. The Town Manager, or his authorized agent, shall give the owner of any property violating this section a written notice directing the owner to remove from such property the offensive condition within twenty-one (21) days from the date of the notice. Failure to comply with such notice shall constitute a class 4 misdemeanor.
4. If the owner of any property fails to comply with a notice given pursuant to subsection (3) above, the Town Manager or his authorized agent may have the trash, garbage, refuse, litter, inoperable machinery, equipment and appliances, motor vehicle tires, or machinery parts, debris or other dangerous, harmful substances removed, or the grass, weeds or foreign growth cut by agents or employees of the Town. The cost of removal or cutting shall be chargeable to and paid by the owners of the property and may be collected by the locality as taxes are collected.
5. Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in articles 3 (§ 58.1-3965, *et seq.*) and 4 (§ 58.3965, *et seq.*), of chapter 39 of title 58.1 of the Code of Virginia (1950), as amended. The Town may waive any such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner at the time liens were imposed.
6. Nothing in this section shall be construed to apply towards a legitimate personal or commercial farming or other type of agricultural operation. Additionally, any parcel

greater than one (1) acre with natural vegetation brown more than 25 feet from every property line where an adjacent developed, non-agricultural lot exists shall also be exempt.

FEES RELATED TO ZONING REQUESTS

Rezoning requests - \$300.00

Special Exceptions Permits - \$200.00

Variance request (BZA) \$150.00

**Zoning classification review, if site visit and/or additional research are
required \$25.00**