



**AGENDA  
PLANNING COMMISSION  
TOWN OF WARRENTON**

**July 26, 2016  
7:00 PM**

1. Call to order and establishment of a quorum.
2. Approval of Minutes – June 21, 2016.
3. Public Hearing
  - A. Special Use Permit 2016-01 – Detached Garage with Studio Apartment in R-6 District.** The request, per Article 3-4.3.3 of the Zoning Ordinance, is to build a detached garage with an accessory dwelling unit on the second floor at 23 N Chestnut Street. The parcel is zoned Residential – R-6, and the Comprehensive Plan identifies the property as medium density residential on the future land use plan. The owners are Richard D. Wright and Susan G. Wright.
4. Regular Meeting
  - A. Town Code Amendment – Mobile Food Vendors** – Discussion of proposed amendments to Section 9-69 (d) of the Itinerant Merchant regulations that would allow mobile food vendors to locate on specified properties within certain areas per the Mobile Food Vendor Policy and Procedures document through the Town Manager’s office. The applicant is the Town of Warrenton.
  - B. ZTA 16-01 – Mobile Food Vendors** – Discussion of proposed amendments to the Public Semi-Public and Industrial District in Articles 3-4.9.2 (PSP), 3-4.12.2 (I) and Article 12 - Definitions of the Zoning Ordinance to add mobile food vendor as a use with the condition that the site must meet the requirements of the Mobile Food Vendor Policy and Procedures document through the Town Manager’s office. The applicant is the Town of Warrenton.
5. New Business
  - A. Article 11** – Discussion on process and structure. Town Attorney to give a presentation on new State Code section 15.2-2303.4.
  - B. Planning Commission By-Laws** – Discussion on potentially updating the By-Laws.
6. Comments from the Commission
7. Comments from the Staff
8. Adjourn



MINUTES  
PLANNING COMMISSION  
TOWN OF WARRENTON  
June 21, 2016 – 7:00 P.M.

The regular meeting of the Town of Warrenton Planning Commission (PC) convened on Tuesday, June 21, 2016 at 7:00 PM in the Municipal Building.

The following members were present: Dr. John Harre, Chair; Ms. Brandie Schaeffer, Vice-Chair; Mr. White Robinson, Town Attorney; Mr. Ali Zarabi, Mr. Lowell Nevill, Ms. Susan Helander, and Mr. Brett Hamby. Ms. Sarah Sitterle, Director of Planning and Community Development represented staff. Mr. John Kip and Mr. Yakir Lubowsky, Ex-Officio member, were absent.

A Quorum was present.

### Approval of Minutes

Dr. Harre asked if anyone had changes for the May 17, 2016 minutes. Mr. Lowell Nevill made motion to approve May 17, 2016 minutes as submitted. Ms. Susan Helander seconded the motion. All were in favor and the motion passed unanimously (7-0).

### Work Session

Dr. Harre stated the first two work session agenda items would be presented together as they both deal with Mobile Food Vendors. He went on to state it was a work session to review changes resulting from a work session to resolve various issues from the May 17, 2016 PC meeting.

- **Town Code Amendment – Mobile Food Vendors** – Discussion of proposed amendments to Section 9-69 (d) of the Itinerant Merchant regulations that would allow Mobile Food Vendors to locate on specified properties within certain areas per the Mobile Food Vendor Policy and Procedures document through the Town Manager’s office. The applicant is the Town of Warrenton.
- **ZTA 16-01 – Mobile Food Vendors** – Discussion of proposed amendments to the Public Semi-Public and Industrial District in Articles 3-4.9.2 (PSP), 3-4.12.2 (I) and Article 12 - Definitions of the Zoning Ordinance to add Mobile Food Vendor as a use with the condition that the site must meet the requirements of the Mobile Food Vendor Policy and Procedures document through the Town Manager’s office. The applicant is the Town of Warrenton.

Ms. Sitterle presented the proposed changes to the Town Code and Zoning Amendments resulting from the meeting held May 31, 2016 with stakeholders to address PC requested updates to the Mobile Food Vendor Policy documents and Text Amendment. She reported no changes were made to the Town Code. However, staff did adjust the Text Amendment to contain more

details while retaining in the policy and procedure document the administrative application details and allowable public locations for Mobile Food Vendors to operate. Additionally, staff removed references to the operation of Mobile Food Vendors within the Commercial and Central Business (C and CBD) districts. The emphasis is on private property locations within the Industrial (I) and Public Semi-Public (PSP) districts.

Dr. Harre asked Ms. Sitterle to walk the PC through several questions remaining so they can discuss as they go and come to a consensus. Ms. Sitterle said the first item up for discussion is the question of permit renewal and if everyone was comfortable with the split out between the policy and text amendment. The policy document and text amendment suggests June 30 as deadline for permit renewal so it would align with the renewal of business licenses and the PC members were in agreement.

The next item was the identification of public sites. The resulting discussions determined that public sites should include the WARF parking area and parks with parking areas, which could include Rady Park. A possible location was the public parking spaces on Alexandria Pike in front of Eva Walker Park. Mr. Nevill expressed his concerns about excluding some parks because of not having a parking lot. Ms. Schaeffer thought review of sites meeting certain standards is better than going by zoning districts, which can open up a variety of locations zoned public that are not parks. Ms. Schaeffer said she recently met with the Manager and Zoning Administrator for the City of Manassas who were in the process of reviewing key standards for their Mobile Food Vendor program.

Ms. Schaeffer brought up the reference to fitting into a parking space, which she recommended changing since many Mobile Food Vendor vehicles require more than one parking space. Mr. Nevill said he thought discussions mentioned use of two parking spaces like a pull through. Mr. Robinson mentioned the possibility of having a permit/placard issued with license that will allow them to use more than one space. Ms. Schaeffer made the point of at least one vendor wanting to set-up a pizza oven outside of the truck. Mr. Godfrey referred everyone to Section 9-24.4.1 (see below) that he interprets as two parking spaces:

The entire operation of a Mobile Food Vendor/ trailer must fit in the allowable public parking spaces. Vehicles that do not fit within the designated spaces will not be permitted to operate in the program.

Mr. Robinson said he agrees and does not see allowing vehicles to use more than two spaces. Ms. Schaeffer thinks this needs more clarity, knowing some Mobile Food Vendors require additional space. Mr. Nevill suggested updating Section 9-24.6.2 because it specifies trucks or trailers must be sized to fit into designated parking areas with dimensions as 9' x 18' (one parking space). Dr. Harre suggests wording for parking space(s) needs to be consistent throughout document. Mr. Robinson said he would work with Ms. Sitterle to correct references to parking spaces, removal of requirement for generators to be attached to mobile unit and add reference to noise nuisance instead of 75 decibels, allow waste receptacles to be placed on ground near Mobile Food Vendor, and correction of items identified by PC members and inconsistencies in documents. Ms. Schaeffer explained how use of Mobile Food Vendors for Special Events will remain with the Special Events Permit and not fall under Article 9-24 Mobile Food Vendors. The approval of locations for Mobile Food Vendors will remain with the Town Manager and subject to the Warrenton Mobile Food Vendor Program Policies and Procedures. Review of changes will be reviewed by a PC work session before coming back to PC for approval.

- **Breweries** – Discussion of Zoning Ordinances specific to brewery uses and the proposal for a text amendment.

Ms. Sitterle said a text amendment is necessary with the upcoming Wort Hog Brewery and increased in popularity of microbreweries. Staff compiled a comparative table of various local brewery ordinances that shows land use regulations along with code sections on breweries. The Town of Culpeper appears to have the least complex, while the City of Fairfax, Town of Leesburg, Loudoun County, and City of Manassas each have very detailed ordinances to guide the location of breweries. Staff recommends an evaluation of each of the examples and a discussion regarding direction for framing a proposed text amendment for the Town of Warrenton.

Dr. Harre asked about output projections for Wort Hog Brewery, which were unknown at this time. He said without that information it would be difficult to make a decision since it could be easy to locate breweries with large output in the Industrial District and those with lower output in the CBD. Mr. Robinson said he would meet with the Town Manager and representatives of Wort Hog Brewery to discuss their plans for output and distribution with the potential of locating large-scale distribution operation in Industrial district. Everyone agrees now is the time to determine strategy for future breweries and keep distribution operations within Town of Warrenton. Mr. Robinson does not think Wort Hog Brewery was planning to have large-scale production, but the meeting will provide insight and help for future planning.

Ms. Schaeffer recommends a simple ordinance, except that a simple ordinance may not provide the desired controls for a by-right use. Mr. Godfrey said he asked Ms. Sitterle to begin working on brewery ordinance because he recently had contact from another brewery wanting to locate in Town of Warrenton. Everyone likes the Brewing Ordinance in Leesburg, but it requires further investigation. Mr. Robinson and Ms. Sitterle said to expect updates back to PC soon.

Mr. Godfrey noted this was Mr. Hamby's last PC meeting and said they have received two applications with hope of having seat filled for August meeting.

The meeting was adjourned at 8:19 PM.

Minutes submitted by Karen Kowalski.

Minutes were approved on \_\_\_\_\_.



COMMUNITY DEVELOPMENT AND PLANNING DEPARTMENT  
STAFF REPORT

**PLANNING COMMISSION PUBLIC HEARING**

**DATE OF HEARING: July 26, 2016**

**SUP 2016-01/PLNG 2016-07**

**PLANNING COMMISSION DECISION DEADLINE: July 26, 2016**

**TOWN COUNCIL DECISION DEADLINE: September 11, 2016**

**SUBJECT:** The request, per Article 3-4.3.3 of the Zoning Ordinance, is to allow an accessory dwelling unit above a proposed by right detached garage at 23 N. Chestnut Street. The parcel is zoned Residential – R-6, and the Comprehensive Plan identifies the property as medium density residential on the future land use plan. The owners are Mr. Richard D. Wright and Ms. Susan G. Wright (Attachment I).

**EXECUTIVE SUMMARY**

The applicant has requested an accessory dwelling unit to be located above a proposed by right detached garage, in the rear yard of 23 N. Chestnut Street. On February 25, 2016, the Architectural Review Board approved a Certificate of Appropriateness (COAP 16-01) for the proposed accessory dwelling unit and garage. The conditions of COAP 16-01 were that a building permit and special use permit were acquired and that the windows reflect a contemporary design (e.g. no simulated divided light).

The footprint of the new structure is 22 feet by 31 feet and will be set back from the existing building. Parking will be provided on the property. The circa 1985 primary structure is a non-contributing resource in the Warrenton Historic District and is currently used as a three (3) unit apartment building with two bedrooms in each unit. The proposed accessory dwelling unit with garage meets all Zoning Ordinance requirements per Article 3-4.3.5.1, Article 3-4.5.2, Article 8-8.3.5, Article 9-1.1, and Article 9-1.2, encompassing building height, setbacks, size, parking, and buffers. While not part of this application, the size of the proposed by right decks may need to be adjusted to meet Article 9-1.1, which requires that accessory structures are no larger in size than 30% of the rear yard and 25% of the primary structure. This will be addressed at building permit review if approved.

## **STAFF RECOMMENDATION**

Staff has reviewed the application in relation to the criteria listed above and finds that the submission is an acceptable use in the R-6 District. The proposal is in keeping with the surrounding uses and the requirements of the Special Use Permit.

It is staff's recommendation that the Planning Commission approve the applicant's request for a special use permit for a garage with an accessory dwelling unit with the following conditions:

1. A building permit application is submitted.
2. All accessory structures must maintain conformity with Article 9-1 of the Zoning Ordinance.
3. Lighting fixtures must be full cutoff unless they use lights that are incandescent 160 watts or less, fossil fuel, any light source of 50 watts or less, as per Article 9-8.6.2.8
4. The accessory dwelling unit shall be required to have separate connections for water and sewer as required by Sections 17-68 and 17-69 of the Warrenton Town Code.
5. The development shall be in substantial conformance with the plans submitted on June 13, 2016 and Certificate of Appropriateness 2016-01.

## **SUGGESTED MOTIONS**

I move that the Planning Commission recommend approval of SUP 2016-01 / PLNG 2016-07 to the Town Council with the following conditions.

1. A building permit application is submitted.
2. All accessory structures must maintain conformity with Article 9-1 of the Zoning Ordinance.
3. Lighting fixtures must be full cutoff unless they use lights that are incandescent 160 watts or less, fossil fuel, any light source of 50 watts or less, as per Article 9-8.6.2.8
4. The accessory dwelling unit shall be required to have separate connections for water and sewer as required by Sections 17-68 and 17-69 of the Warrenton Town Code.
5. The development shall be in substantial conformance with the plans submitted on June 13, 2016 and Certificate of Appropriateness 2016-01.

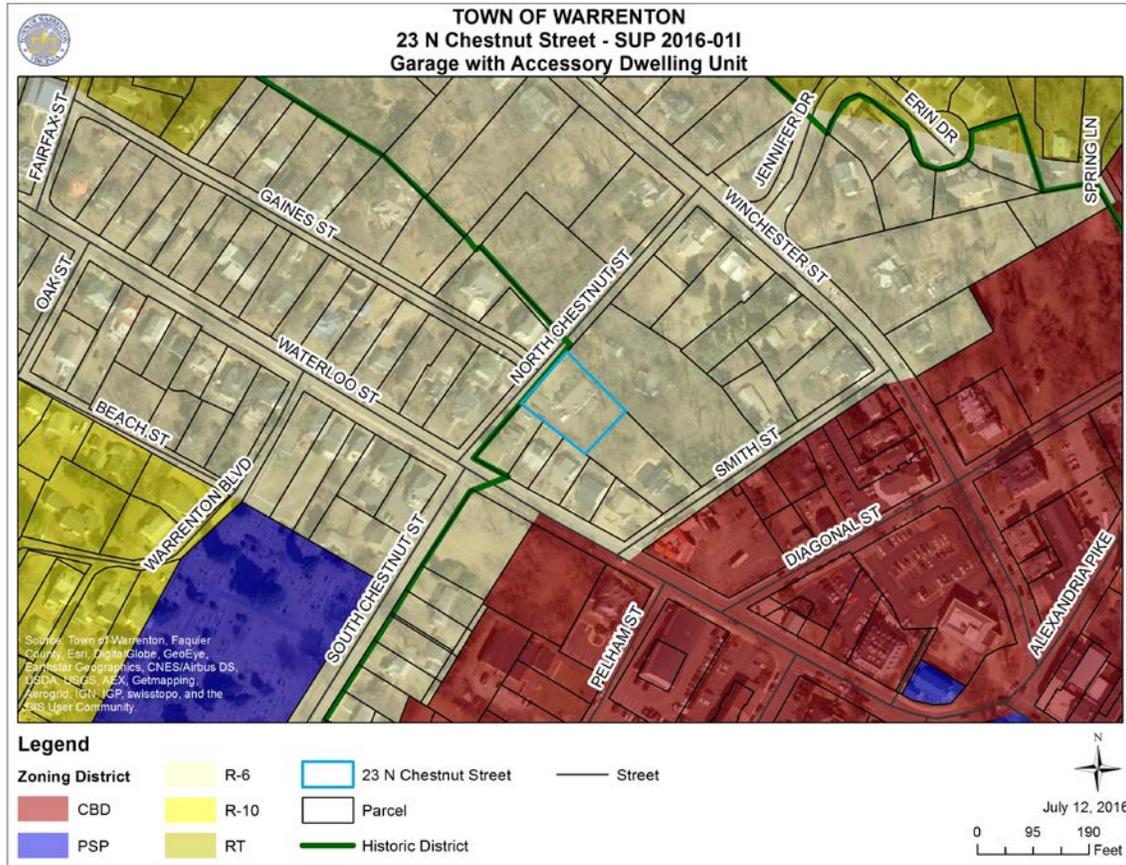
OR

I move that the Planning Commission recommend denial of SUP 2016-01 / PLNG 2016-07 to the Town Council for the following reasons.

OR

I move an alternative motion.

VICINITY MAP



Directions:

Property is on N. Chestnut Street, between Winchester Street and Waterloo Street. Gains Street is perpendicular to the property. The property lies within the Warrenton Historic District.

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**I. APPLICATION INFORMATION**

APPLICANT/PROPERTY OWNER: Richard D. Wright & Susan G. Wright

REPRESENTATIVE: Richard D. Wright

APPLICANT'S PROPOSAL/REQUEST

1. Build an accessory dwelling unit above a by right detached two-car garage

LOCATION: 23 N. Chestnut Street

PIN# 6984-34-1360-000

ZONING: R-6

ACERAGE: 0.33 acres

SURROUNDING LAND USES/ZONING Residential

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## **II. PROJECT REVIEW**

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### **A. Context**

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This Special Use Permit (SUP) proposes to build a second floor studio apartment above a by right two car garage with 23 N. Chestnut Street. The structure would have white painted Hardie-Board shingles, and a footprint of 22 by 32 feet. Accessory buildings are allowed by right in R-6 zoning district, but dwellings in an accessory building require an SUP per Article 3-4.3.3. The property owners plan on living on the property in one of the existing units within the primary structure. The primary structure contains three, two bedroom apartments. Nine parking spaces will be provided on site. Landscape screening will be provided on the rear and side of the proposed building.

Zoning on the subject property and surrounding properties is Residential - R-6. The subject property is surrounded by single family residential. The single family home across the street from the subject property (20 N. Chestnut Street) is about 0.17 acres and is set back about 35 feet from the road. The adjacent residence to the north is on approximately 1 acre, with a deeper setback from the main road. The property to the east (rear) of the subject property is approximately 0.35 acres and setback about 40 feet from Smith Street. The single family homes along Waterloo Road, on the south side of the subject property are approximately 0.1 acres and set back 20-30 feet from the road. The single family home on 111 Waterloo Street (adjacent to the 23 N. Chestnut Street) is approximately 0.2 acres and contains an accessory building used as a guest house and a detached garage. The primary structure on 23 N. Chestnut Street is set back 25 feet from the road and the accessory dwelling unit with garage will have about a 100 foot setback from the road.

Due to its location within the Warrenton Historic District, the applicant applied for and received an Architectural Review Board Certificate of Appropriateness (COAP 16-01) on February 25, 2016. The conditions of COAP 16-01 were: 1) a building permit and special use permit are acquired, and 2) the windows reflect a contemporary design (ex: no simulated divided light). A building permit is also required for the proposed decks.

### **B. Summary of Outstanding Issues**

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There are no outstanding issues for the accessory dwelling unit. The only outstanding issue to be dealt with, at building permit if approved, is the size of the proposed decks in conjunction with the size of the proposed accessory dwelling unit. The combined total size of all accessory structures cannot be larger than 25% of the principal structure (Article 9-1.1). If the sizes of the decks are found to increase the total accessory structures area beyond what is allowed per Article 9-

1.1, then the decks will be required to be adjusted at the time of building permit review.

**C. Zoning Analysis**

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In addition to the requirements for SUPs under Article 11-3.10.3 (SUP Evaluation Criteria, Issues for Consideration)<sup>1</sup> the proposed accessory dwelling unit must meet the following Zoning Ordinance criteria:

ARTICLE 3 – Zoning Districts

Article	Title	Description	Application	Meets Zoning Ordinance
3-4.4.5.1	Building Height	Allows a maximum height of 35 feet	2 Stories	Yes
3-4.3.5.2	Garages	Front-loaded garages must be set back at least fifteen (15) feet behind the front building line of the primary structure	Approximately 74 feet from front building line	Yes

ARTICLE 7 – Parking

Article	Title	Description	Application	Meets Zoning Ordinance
7-3	Residential Parking	Multifamily dwellings are required to have 2.5 parking spaces per two-bedroom unit and 1.5 parking spaces per efficiency unit	9 Parking Spaces (3 two bedroom units plus 1 efficiency unit <sup>2</sup>	Yes

<sup>1</sup> See Section II – E. *Zoning Ordinance Criteria for Special Use Permits*, for the full list of SUP evaluation criteria per Article 11-3.10.3.

<sup>2</sup> The proposed accessory dwelling is a studio apartment, which qualifies as an efficiency unit.

ARTICLE 8 – Landscaping

Article	Title	Description	Application	Meets Zoning Ordinance
8-8.3.5	Buffer Yards	Whenever a proposed development plan is adjacent to a developed property that has not provided any or all of the required buffer, the proposed development shall provide sufficient buffer to achieve one half of the width of the required buffer yard	7.5 feet on the rear and 8 feet on the side	Yes
8-8.5	Screening & Buffer Yard	A 15 foot buffer yard between multifamily dwellings and single family dwellings are required	7.5 feet on the rear and 8 feet on the side	No (Yes if include 8-8.3.5)

ARTICLE 9 – Supplemental Regulations

Article	Title	Description	Application	Meets Zoning Ordinance
9-1.1	Accessory Structures	The aggregate gross floor area of an accessory structure (i.e., the total gross floor area of all accessory structures) shall not exceed thirty (30) percent of the area of the rear yard, nor shall it exceed 25% of the total area of the principal structure	22 by 32 foot accessory structure <sup>3</sup>	Yes
9-1.2	Accessory Structures	Accessory structures shall not be located closer than five (5) feet to any rear or side property line	7.5 feet on the rear and 8 feet on the side	Yes

**D. Zoning Ordinance Intent & Comprehensive Plan Use Description**

Per the Zoning Ordinance, the legislative intent of the R-6 District is the following:

*This district is composed of medium to high concentrations of predominantly residential uses, generally intended to encompass and preserve those residential*

<sup>3</sup> The proposed by right decks may need adjustments at the time of building permit submission to meet the Article 9-1.1 total combined allowable accessory structure size. This will be confirmed when the building permit is submitted and reviewed.

*structures which have developed over the years along the traffic arteries serving the Central Business District. The regulations of this district are designed to stabilize and protect these areas while at the same time allowing compatible changes to occur in an effort to ensure that the use of these areas is economically feasible and to implement the Comprehensive Plan.*

The property in question is located in an area designated as medium density residential by the Future Land Use Map of the Comprehensive Plan. According to the Town of Warrenton Comprehensive Plan:

*This designation includes single family detached residential dwellings at densities up to five dwellings per net acre, contingent upon pedestrian and vehicular access, compatibility with surrounding properties and mitigation of potential impacts.*

*Much like the low density residential designated areas, the medium density areas are made up largely of established single family neighborhoods. The neighborhoods are located in many areas of the Town and have access to all Town services.*

The comprehensive plan also includes the following goals and objectives concerning affordable housing:

***Residential Goal 2:*** *To provide for affordable housing options.*

***Residential Objective 3:*** *To recognize the value of affordable housing and promote its development in new subdivisions.*

***Housing Objective 4:*** *To achieve and maintain a balanced mix of affordable housing in the Town so that a reasonable proportion of the people employed within the Town are able to live within the Town.*

#### **E. Zoning Ordinance Criteria for Special Use Permits**

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Section 11-3.10.3 of the Town of Warrenton Zoning Ordinance states *in considering requests for Special Use Permits, the following factors should be considered:*

##### **Standard**

*1. Whether the proposed Special Use Permit is consistent with the Comprehensive Plan.*

##### **Analysis**

The proposed SUP increases the density of the development beyond the amount shown on the future land use plan. However, the proposal is in keeping with the overall character of the property, which generally looks like a single family home, despite the number of existing units. The additional unit does help meet the Comprehensive Plan goal, “*to provide for affordable housing options.*” (pgs 2-14, 3-21, and 3-90)

Standard

*2. Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control.*

Analysis

Fire and police will have direct access to the proposed accessory dwelling unit via the existing driveway. Building code will require the installation of standard fire safety equipment (e.g. smoke detectors) when acquiring a building permit.

Standard

*3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.*

Analysis

The accessory dwelling unit will be held to Town Code provisions relating to disturbing the peace (e.g. Sections 11-19 – Noise; 11-20 – Nuisances; 11-21 – Odors).

Standard

*4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area*

Analysis

The proposed SUP condition states, “*Lighting fixtures must be full cutoff unless they use lights that are incandescent 160 watts or less, fossil fuel, any light source of 50 watts or less,*” as per Article 9-8.6.2.8.<sup>4</sup>

Standard

*5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.*

Analysis

No signs are proposed.

Standard

*6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.*

Analysis

Neighboring properties all contain single family residential. One adjacent property contains a guesthouse in a separate accessory structure.

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<sup>4</sup> Article 9-8.6.2.8, “*Lamp types that are not required to have full cut-off fixtures include Incandescent 160 watts or less, fossil fuel, any light source of 50 watts or less.*”

Standard

*7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood*

Analysis

See applicant's application plans for details (Attachment II). The proposed accessory structure will be 22 x 32 feet and located in the back of the property, at the end of the driveway. The structure will be two stories in height.

Standard

*8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.*

Analysis

Additional landscaping will be included to buffer the proposed accessory dwelling unit as well as additional landscaping across the entire property. A new brick walkway and front stoop will be added to the front of the apartment. See the applicant's application for more landscaping details (Attachment II). The proposed SUP condition #5 would ensure the landscaping details are included through substantial conformance with the submitted application.

Standard

*9. The timing and phasing of the proposed development and the duration of the proposed use.*

Analysis

The applicant has not proposed any phasing.

Standard

*10. Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.*

Analysis

The primary structure does not contribute to the historic district and will remain. The proposed accessory dwelling unit will not require the removal of any existing trees or additional grading.

Standard

*11. Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public.*

Analysis

The proposed SUP will add an additional affordable housing option to the Town of Warrenton. It is also within walking distance to Main Street and its surrounding uses.

Standard

*12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.*

Analysis

The addition of one accessory dwelling unit will add 3.35 daily weekday trips per the ITE daily trips. The proposed unit would be accessible to fire and police using the existing driveway.

Standard

*13. Whether the proposed use will facilitate orderly and safe road development and transportation.*

Analysis

The addition of one accessory dwelling unit does not trigger transportation improvements.

Standard

*14. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Town of Warrenton.*

Analysis

Not applicable.

Standard

*15. Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities.*

Analysis

The use is currently served by public utilities. Separate connections for water and sewer will be required for the new accessory dwelling, by Sections 17-68 and 17-69 of the Warrenton Town Code.

Standard

*16. The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.*

Analysis

No impacts anticipated.

Standard

*17. Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.*

Analysis

Not applicable.

Standard

*18. The effect of the proposed Special Use Permit use in enhancing affordable shelter opportunities for residents of the Town, if applicable.*

Analysis

The proposed SUP will add one additional affordable housing option for residents.

Standard

*19. The location, character, and size of any outdoor storage.*

Analysis

The ARB approval of COAP 16-01 addresses location, character, and size.

Standard

*20. The proposed use of open space.*

Analysis

Not applicable.

Standard

*21. The location of any major floodplain and steep slopes.*

Analysis

Not applicable.

Standard

*22. The location and use of any existing non-conforming uses and structures.*

Analysis

Not applicable.

Standard

*23. The location and type of any fuel and fuel storage.*

Analysis

Not applicable.

Standard

*24. The location and use of any anticipated accessory uses and structures.*

Analysis

The proposal includes a request for a garage with second floor studio apartment to be constructed in the back of the property, at the end of the driveway.

Standard

*25. The area of each proposed use*

Analysis

The proposed by right garage and accessory structure is 22 x 32 feet. Only the use of the accessory structure as a accessory dwelling unit requires a SUP.

Standard

*26. The proposed days/hours of operation.*

Analysis

Not applicable.

Standard

*27. The location and screening of parking and loading spaces and/or areas.*

Analysis

Parking is proposed along the side of the house, utilizing the existing driveway, plus two additional spaces within the proposed garage /accessory dwelling.

Standard

*28. The location and nature of any proposed security features and provisions.*

Analysis

Not applicable.

Standard

*29. The number of employees.*

Analysis

Not applicable.

Standard

*30. The location of any existing and/or proposed adequate on and off-site infrastructure.*

Analysis

Not applicable.

Standard

*31. Any anticipated odors which may be generated by the uses on site.*

Analysis

None anticipated.

Standard

*32. Refuse and service areas.*

Analysis

Not applicable.

**III. ATTACHMENTS**

<b>Name</b>	<b>Number</b>
<b>Application, Narrative, &amp; Vicinity Map</b>	<b>I</b>
<b>Application Plans/Drawings</b>	<b>II</b>
<b>February 25, 2016 ARB Meeting Minutes</b>	<b>III</b>
<b>COAP 2016-01 Approval Letter and Motion</b>	<b>IV</b>





**LETTER OF JUSTIFICATION**

**FOR**

**SPECIAL USE PERMIT FOR A DOUBLE GARAGE**

**WITH A STUDIO APARTMENT LOCATED ABOVE**

This Letter of Justification is submitted in accordance with section 11.3-11.3 of Article 11 for a Special Use Permit to allow a double garage with a studio apartment above the double garage.

There is an existing three unit apartment building that looks like a Cape Cod style home on the property. It does not look like an apartment building. A picture is included.

My wife and I will be taking one of the apartments to make as our permanent home we need a garage. We would like to put a studio apartment above the garage. It will be about 600 +/- square feet and suitable for only one person.

There is plenty of room for the garage on the property and will not look unsightly. A picture of the proposed garage and studio apartment is provided.

Parking will not an issue. The garage will hold two cars and there will be space for seven cars on the driveway. The parking spaces will be marked as shown.

There will be landscape screening that serves as a buffer and on the side of the garage and on the back of the garage. (See the enclosed plan)

Access to the garage and studio for fire and police protection is clear and direct.

We will be removing the existing vinyl siding and replacing it with the same Hardiboard shingle siding to be used on the garage which will be painted white. We will be adding a new brick walkway and stoop to the front of the apartment and completely landscaping the entire property. The plans for this are included.

The improvements we are making will enhance our neighborhood.

Sincerely,

A handwritten signature in black ink that reads "Dick Wright".

Dick Wright

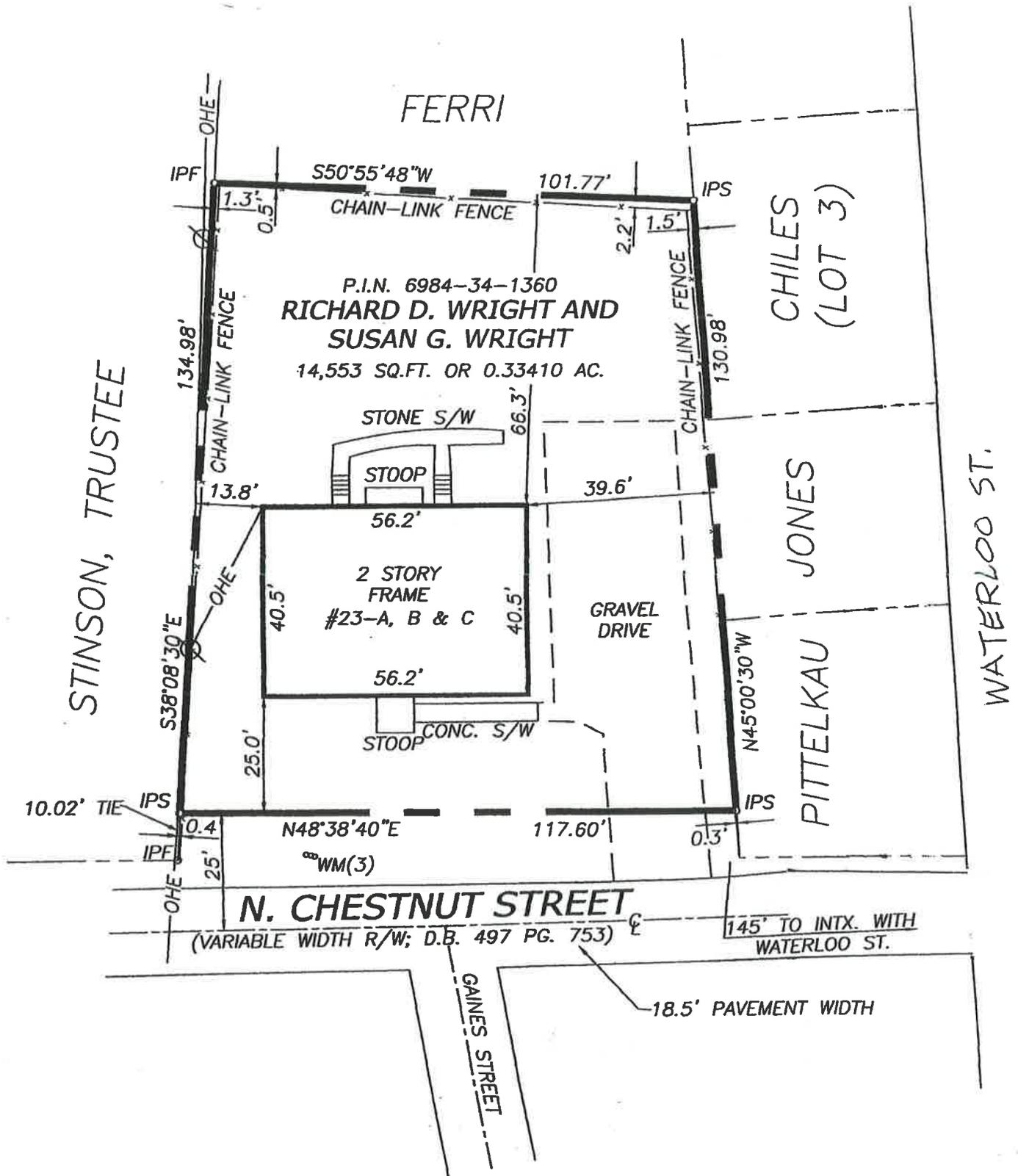
JUL 2016-01

RECEIVED

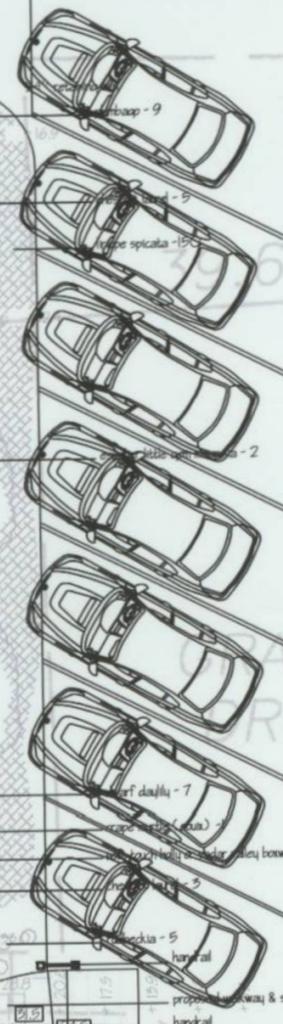
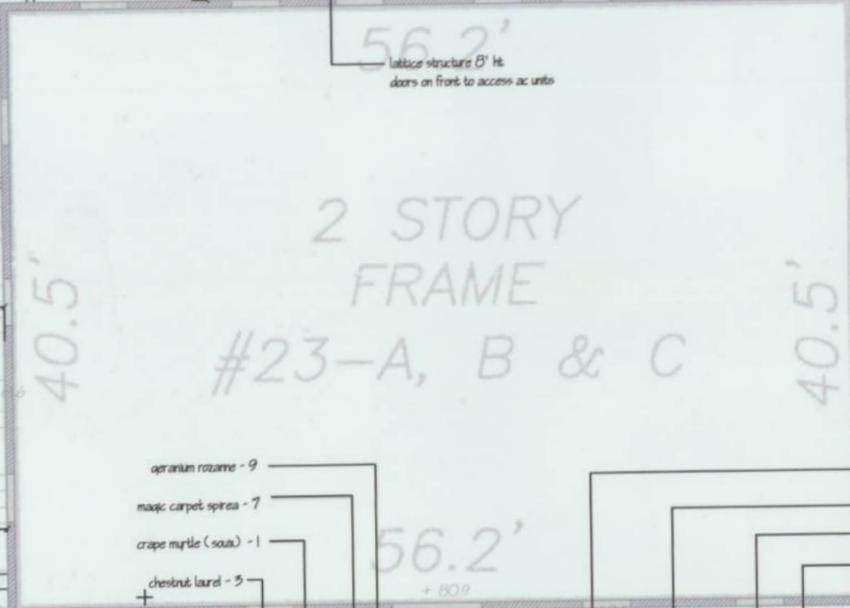
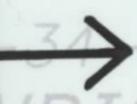
JUN 13 2016

COMMUNITY DEVELOPMENT  
TOWN OF WARRENTON

# VICINITY MAP



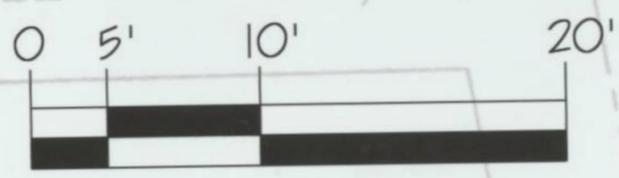
SUP 2016-01



- abelia sunshiner - 5
- eastern redbud - 1
- stepping stones
- azalea - 5
- hosta big blue - 5
- japanese painted fern - 5
- creeping jenny - 9
- fountain/ focal point
- canella - 5
- hosta pallid - 7
- rhododendron - 5

- apricot rozanne - 9
- maize carpet spirea - 7
- crrape myrtle (soul) - 1
- chestnut laurel - 5

- maize reptans - 15
- ajuga reptans - 24
- soft touch holly or vador valley boxwood - 5
- hosta frances - 9
- pachysandra - 48
- crrape myrtle (soul) - 1



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master 2016.dwg

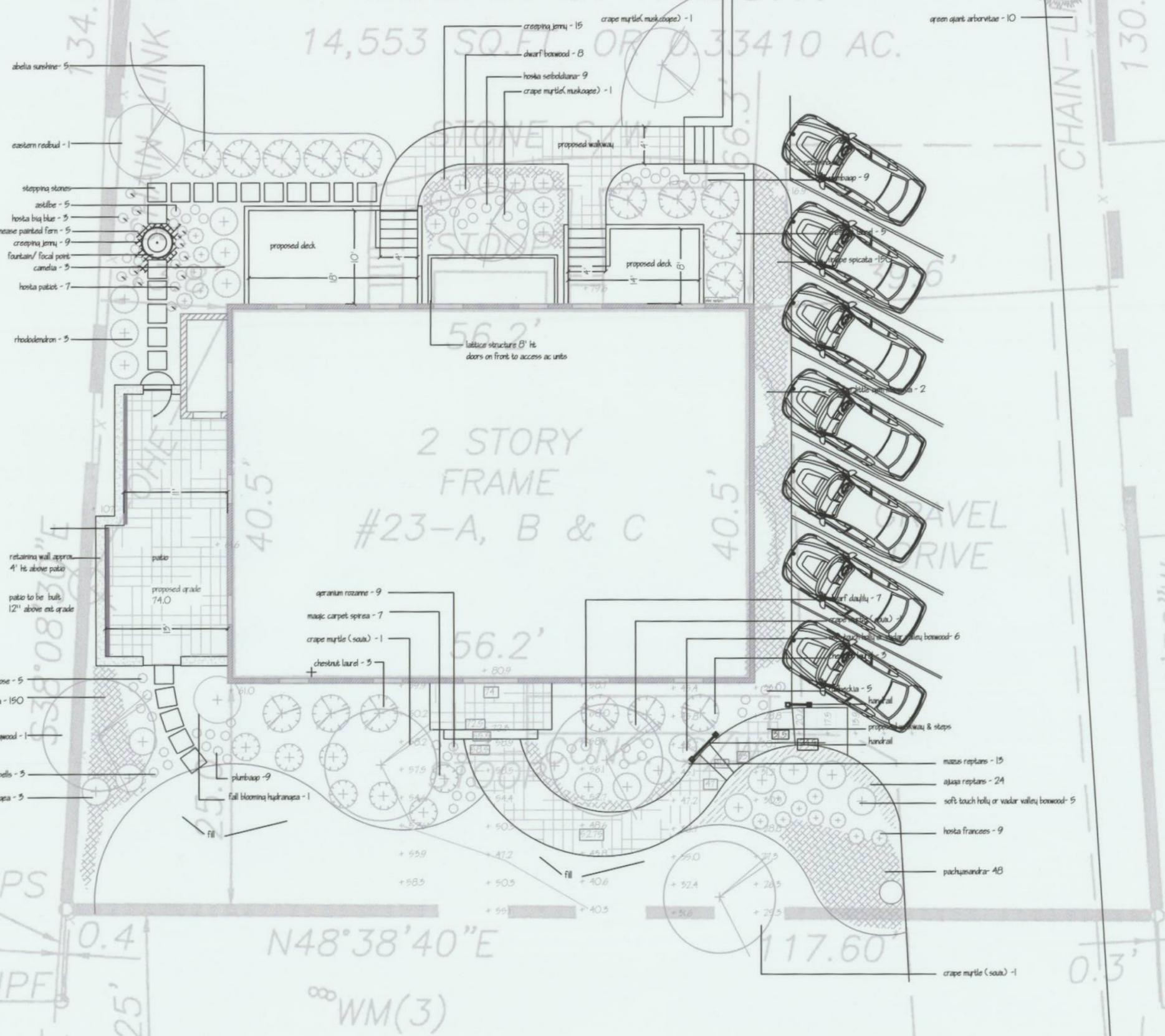
2016

Andrea Schmidt, Designer | andscape LLC

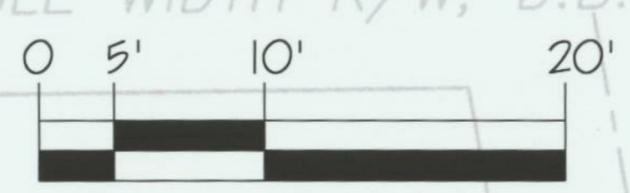
S50°55'48"W  
 101.77'  
 CHAIN-LINK FENCE  
 1.3'  
 0.5'  
 IPS

P.I.N. 6984-34-1360  
 RICHARD D. WRIGHT AND  
 SUSAN G. WRIGHT  
 proposed garage

14,553 SQ. FT. OR 0.33410 AC.



N. CHESTNUT STREET  
 (VARIABLE WIDTH R/W; D.B. 497 PG. 753)



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 TOWN OF WARRENTON

master 2016.dwg  
 2016  
 Andrea Schmidt, Premier Landscape LLC



## TOWN OF WARRENTON

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**MINUTES**  
**ARCHITECTURAL REVIEW BOARD**  
**TOWN OF WARRENTON**  
**February 25, 2016**  
**7:00 P.M.**

The regular meeting of the Town of Warrenton Architectural Review Board (ARB) convened on February 25, 2016 at 7:00 PM in the Municipal Building.

Dr. Melissa Wiedenfeld, Chair, called the meeting to order and a quorum was determined. The following members were present: Mr. Carter Nevill, Mr. J. Tucker, Vice-Chair, and Mr. Jerry Wood Town Council Ex-Officio member. Ms. Sarah Sitterle, Director of Planning and Community Development and Kelly Machen Community Development Planner were present and represented staff. Dr. Carole Hertz and Mr. Steve Wojcik were absent.

### **Purpose Statement**

Dr. Wiedenfeld stated the Purpose of the Architectural Review Board; Statement of Qualifications of Architectural Review Board to be: The Board makes a decision on applications in order to preserve the character of the Historic District of the Town of Warrenton on behalf of the Town of Warrenton. Decisions of the Board are based upon the Historic Guidelines and a decision for each application is made based upon its own merits. Those decisions do not constitute precedence for any future decisions. The guidelines provide the framework for consistent decision making by elaborating upon the Zoning Ordinances goal to identify, protect and preserve the buildings within the Historic District boundaries.

### **Approval of Minutes**

Dr. Wiedenfeld said there are two sets of minutes to vote on and asked if there were any changes or edits required for the **November 19, 2015 meeting minutes**.

Mr. Tucker requested the following revisions to the minutes:

#### Page 6:

- Second paragraph, *they* change to *the*
- Last paragraph, line 2, *it and out* change to *instead of*

#### Page 7:

- First paragraph, line 1, should include *Mr. Tucker*

- Last paragraph, line 1, in front of the word *processed* should be the word *the*

Page 9:

- Fifth paragraph that begins Mr. Tucker, it should state, *stated the issue here is what he calls the termite factor*

Page 10:

- At the top there needs to be clarification whether Mr. Wood made a motion or not

Page 12:

- The middle of the fourth paragraph down, handrail work *form* change to *from*, should say *from the surface of the walkway*

Page 14:

- The second full paragraph, next to the last line, the word *but* should be removed from that sentence

Mr. Wood stated that he did not make a motion on page 10.

Dr. Wiedenfeld said Mr. Wood should be stricken from that sentence.

Mr. Tucker made a motion to approve the minutes with amendments for the November meeting. Mr. Nevill seconded the motion and the motion passed.

Dr. Wiedenfeld asked, are there any changes needed to the **January 28, 2016 meeting minutes**.

Mr. Tucker requested the following revisions:

Page 3:

- The large paragraph at the bottom of the page, the word *handrail* should read *guardrail*. In the same paragraph, the word *rail* should read *guardrail*.

Mr. Tucker made a motion to approve the minutes for the January meeting. Mr. Nevill seconded the motion and the motion passed.

### **New Business**

Dr. Wiedenfeld stated the next part of the meeting is devoted to the applications for appropriateness. She would introduce each project, allow representatives to describe the project, and then call on each member of the Board for comments and questions. Members of the community would be given an opportunity to speak about a project.

**Certificate of Appropriateness 16-1:** Construction of a garage at 23 N. Chestnut Street, Roger Cordani, Agent.

Dr. Wiedenfeld explained that the existing structure at 23 N. Chestnut Street was constructed in 1965. It is a non-contributing resource within the Warrenton Historic District.

Mr. Cordani, the agent for Mr. Wright, then addressed the Board. He said the project is to build a two-car garage on the side of the property. It will have a one-bedroom apartment above and hardi-plank siding. The house has vinyl siding, which will be replaced with hardi-plank siding.

Dr. Wiedenfeld said the proposed structure respects the primary street, the town grid pattern, and the relationship of other nearby contributing structures. The proportions are moderate and do not dominate adjacent buildings. While the hardi-plank siding is not appropriate for use on historic structures, it is acceptable on this modern dependency and the new structure has appropriate fenestration. She asked if Mr. Cordani could talk about the proposed windows for the garage.

Mr. Cordani explained that they would be the same windows as shown on the proposal, vinyl windows with 2/6 grids.

Dr. Wiedenfeld stated that the windows are not true divided lights.

Mr. Cordani said yes they are true divided lights, double hung as shown in the proposal.

Dr. Wiedenfeld then asked if the windows had fake grids.

Mr. Cordani said yes they have a grid.

Mr. Tucker stated that is called simulated divided light.

Dr. Wiedenfeld asked if the hardi-plank siding would be painted.

Mr. Cordani said yes.

Dr. Wiedenfeld asked if the structure would have a cupola or an ornamental vent on the roof.

Mr. Cordani said the picture shows one, but he was not sure if it was going to be used.

Mr. Nevill said the plans submitted do not show a cupola and that the Board should go by the plans that have been submitted and not the photograph.

Dr. Wiedenfeld asked if the structure's setbacks meet the zoning requirements.

Mr. Cordani stated Mr. Wright would have a surveyor check setbacks before submission.

Mr. Nevill suggested that, since some of the building is visible from Waterloo Street, some landscaping to beautify the project be considered. He believed this would benefit the project. This was a request.

Mr. Tucker said the only issue he has is with the use of simulated divided lights in the double hung windows. The Board frequently sees them, but the guidelines suggest not replicating historic materials with modern materials. Modern windows are generally double pane insulating glass that is a large sheet of glass per sash and the simulated dividing is an adaptation to make it

look like it is from a different era. He then asked if the applicant would accept omitting the simulated divided light from the windows.

Mr. Cordani said yes.

Dr. Wiedenfeld said not on the garage doors or the entrance door but on the windows. She then asked if there were any further questions or comments.

Mr. Nevill made a motion to approve **Certificate of Appropriateness 16-1** construction of a garage at 23 N. Chestnut Street with the following conditions:

- 1) A building permit is required.
- 2) A special use permit is required.
- 3) The window treatments properly reflect a contemporary design, not to conflict with buildings surrounding the structure, in other words, no simulated divided lights.

Mr. Tucker seconded the motion and the motion passed with no opposition.

**Certificate of Appropriateness 16-3** Removal of a two-story addition to guest cottage and replacement with smaller one story addition, roof replacement and siding repairs at 319 Falmouth Street, William and Sally Semple, owners.

Utilizing the overhead flat screen monitor to show the Board drawings of their project, Mrs. Semple gave a presentation to the Board. She said showed the original house on their property. The house is a Victorian house fronting Falmouth Street, dating to before the civil war. Research found that was the site of a tan yard.

She went on to say that sometime before her purchase of the house in 1994, there was a non-conforming addition. It is a two-story addition and it obliterates the historic roofline. It has been a lifelong goal to get rid of this addition, but it serves valuable storage space, which is at a premium in historic homes. She would like to take off this addition and build a one-story structure with a more sensitive roofline. In the picture here, there is an enclosure, which covers the original back door to the cottage. The doors on this house are a bit of a mystery, as the door the side does not continue to the inside, but they will keep it as a false entrance. There is a back entrance, which is covered by an enclosure. The applicant will take the walls off that enclosure and put on a proper porch entrance.

She said in terms of the repairs, when they remove the new addition, they do not know what will be behind it. They are hoping the original Board and batten siding from 1840 is there. If not, they will have to make repairs that are consistent with the Board and batten. Additionally, the other part of this application is to put on a new roof for the whole structure. The current asphalt roof is in poor condition. They will put a new roof on and new gutters and down spouts.

Dr. Wiedenfeld has a few comments on the project. This project is a model submission. She thanked the applicant for their thoroughness and clarity. The historic cottage dates to before the Civil War. It is a contributing structure to the Historic District. The 1980s addition is non-contributing and its demolition is an improvement for the structure and the district. The project

appropriately proposes the preservation of newly exposed historic materials. The proposed addition respects the historic materials, respects the form of the original material and the mass and proportion of the addition does not overwhelm the historic structure.

Mr. Nevill said he wants to commend the applicants on the ideal and model submission. All the information included in the application eliminates the need for questions from the Board. This is an appropriate and very model example of historic preservation and stewardship. It adds to the structure and appropriately restores it, still updating it to contemporary use, and respects the historic value of the property. With that said, he wished them the best with the construction.

Mr. Tucker said he likes this project and that they have done a nice job. He likes the fact that they are respecting the original building, removing what is an inappropriate addition. As with the last submission and application, he does not agree with using simulated divided light windows.

Mr. Nevill asked if they are simulated or true divided light windows.

Mrs. Semple said they are proposing simulated divided light windows.

Mr. Semple said it is consistent with the windows they put in their house in Old Town Alexandria. They prefer it because of the cost and it is a good performing window. It looks almost identical to a true divided light window. That is what they want to do and this addition is not visible from the street.

Mr. Tucker said this addition should reflect 2016. He suggests that the simulated divided lights not be used and instead use a one over one window to differentiate it from the original building. He stands by that and will stand by that for any project brought before the Board. It is inappropriate to replicate material with material that is not true. Otherwise, it is a great project.

Mrs. Semple said he has a comment about the aesthetics. It is a good-sized window because they do want light. A one over one is just two big plates of glass. It is not a modern looking addition, it does use modern materials, but it is in the spirit of an older style.

Dr. Wiedenfeld asked if Mrs. Semple has a spec sheet of what window they are proposing to use.

Mrs. Semple said it should be in the application.

Mr. Tucker said it does not matter who the manufacturer is. They all produce the wrong result.

Mr. Semple said we provided this type of window to the ARB in Alexandria, deferring to this Board's decision of course. To put in a window that is 1/1, without any treatment that reflects the quality and central architectural aspects of the windows that already exist, in my opinion, would be inconsistent with the overall appearance of the entire project. He has never liked one over one clear glass windows. If he thought that was appropriate, he would have put them in the application.

Mr. Tucker said he fully understands. It is counter to the guidelines and its counter to trying to differentiate the addition from the original building. You are trying to replicate it with modern materials. It does not work.

Mr. Semple asked if the Board would accept a true divided light window.

Mr. Tucker said he would rather see that, yes.

Mr. Semple said this is a difficult requirement when windows cannot be seen from the street.

Mr. Tucker said if you cannot see them from the street, then what is the matter with using true divided.

Mrs. Semple said because it is their preference. They do not want to put in something they dislike.

Mr. Nevill said he believes the applicants have gone above and beyond to respect the intent of the guidelines. Mr. Tucker's points are well noted and there are times when it is very important that we follow them, not to say that this is an exception. In the nature of the addition, the fact that the applicant is using modern materials, should meet the standard of the time. Given the nature of a small cottage, and unduly forcing the use of single pane-divided lights, is not beneficial in this instance. Mr. Nevill was comfortable with the application as presented.

Mr. Wood said he believes the plans that have been brought for this project are good. The applicant has gone above and beyond and they will have a nice place when it is complete.

Mr. Nevill made a motion to approve **Certificate of Appropriateness 16-3** for the removal and replacement of addition, roof replacement, and siding and trim repairs at 319 Falmouth Street with the following conditions:

1) A building permit is required.

Dr. Wiedenfeld seconded the motion, taking into consideration the windows are in the back.

Mr. Tucker denied. The motion passed with a majority vote.

**Certificate of Appropriateness 15-22** resubmission of the application to construct ten (10) townhouses at 67 Waterloo Street. Horatio Magalhaes, Applicant - Mr. Norden and John Foote, representatives.

Dr. Wiedenfeld said the property is significant and prominent within Warrenton's Historic District. It is incumbent upon the Board to apply the Warrenton Historic District Design Guidelines in review of this application to determine whether the design, as submitted, meets the requirements of the Design Guidelines. It is imperative that the Board considers the long view, encouraging construction that is an asset to the Historic District, stands the test of time, and makes succeeding generations proud. The site of the project is a large, now empty lot. It is immediately adjacent to two modest two story historic houses, both contributing to the Historic District, one at 23 Smith Street and one at 14 Diagonal Street.

She said the resubmission includes some requested information and the following changes:

- The addition of brick walls with interpretive signage explaining the site's history or the promise of interpretive signage.

- New porches on Waterloo elevations.
- Brick instead of hardi-plank in the gables.
- Stamped concrete pavement.
- Additional green space along Smith Street.
- Fence enclosures for the heating and air conditioning.

Dr. Wiedenfeld asked for Mr. Norden and/or Mr. Foote to explain the application. She requested that the applicants please be sure to state their names clearly for the record and that Board members delay comments and questions for a few moments. The applicants were to speak first, followed by members of the community, and then the Board.

Mr. Foote introduced himself and his assistant Jessica Pfeiffer, a professional planner. He said they represent HC Investors. They were retained by Mr. Magalhaes to look at what happened at the first ARB meeting regarding this application. Mr. Foote listened to the entire tape of the first ARB meeting and understood the dissatisfaction with elements of the application as previously presented. They took everything from the tape, made notes, and asked what the ARB found to be missing for its purpose of a decision in this case.

Mr. Foote explained that Mr. Norden thought he would have the opportunity to provide the additional information, and he understood why the ARB voted as it did. The applicant filed an appeal to the Town Council as permissible under the law, as Mr. Foote has done on numerous occasions. It was known that there was additional information needed. Mr. Norden was asked to take the notes that Mr. Foote took and modify the plans to meet the specific comments about design issues and provide additional details. Mr. Foote also asked Mr. Shepherd to make the 3D depiction of the townhouses presented at the meeting, which is something that was not available previously.

Mr. Foote went on to say, that they know this parcel will be developed; a decision that will be made by the private sector, not by the public sector. They also know that issues of site planning and zoning are not issues for the ARB. They have come before the Board to show how the project has changed and to ask the ARB to reconsider its previous decision. The applicant asked to go back before the ARB because they wanted the ARB to have a look at the project again before the council acted on it.

Mr. Norden then came forward and gave a presentation to the Board. He said one of the biggest complaints was the facades that face Waterloo Street. These were ends without any detail so they put a new face on the facades that face the street. While they did not face the units and the front doors toward Waterloo Street, they did create new brick entryways and three story porches on those end facades to make those buildings have a good face toward Waterloo Street. The new brick entryway walls are six feet high, the posts are ten, and the middle piece, where they provided a place to talk about the history or the centerpiece, is thirteen feet high.

One of the concerns was the ability to look into the project and the porches. By adding the three story porches on the end elevations, they have not only improved what was a bland elevation, but also removed the decks on the first two units, making those end units have porches on the street side instead of internally. The new entryway helps screen what is seen first when passing by on Waterloo Street. They were hoping, with a 3D rendering, it would give a better understanding of the overall image. They kept the staggered buildings on Diagonal and on Smith Street to help

break the scale and bring it back to human scale in keeping with the surrounding structures.

Dr. Wiedenfeld said she knows there are several members of the community who would like to speak. She asked community members to please step forward to speak to the Board.

Michelle Ferri spoke to the Board and said she lives on Smith Street, across the street from the development. She spoke in opposition. She believes this site offers a unique opportunity to provide a nice transition from the residential district to the business district. This application falls far short of achieving this. It remains intent on filling the site to maximum density, instead of taking into consideration that none of its immediate neighbors have built to the property line. This property does not exist on Main Street, but sits among historic homes. This development seems designed to punish its neighbors. It fails to consider the uniqueness of the site and poorly imitates the character of its neighbors instead of providing well thought out design that will add value to the charms and traditions of Old Town.

She went on to say, as the Board has already sited its review of the application, the proposal does not meet the simple, basic requirements of Warrenton's historic guidelines in overall design, building proportions, height, scale, spacing, or mass. It fails to follow the rhythm of the contributing structures in the block with its zigzag presentation on Smith and Diagonal Streets, inadequate yards, and street presence. The design creates its own inner street instead of a truly inviting street character. The Board's previous decision to deny this application is the correct one. She sees nothing but lipstick added to this revised submission and requests that the Board seek significant alterations to this development before considering it worthy of appropriateness.

Nancy Blough spoke to the Board and said she lives adjacent to the proposed project. She would like the Board to reconsider the proposed townhouse project. Her concern is that regardless of the structure approved it must conform to the historical and architectural guidelines. In addition, the safety of all of the residents in the immediate area of 67 Waterloo Street must be protected. The drawings lack the historic presentation consistent with neighboring properties and the rest of the Town of Warrenton's older residences. The renderings of the proposed project at 67 Waterloo Street are not in keeping with the character, harmonious values, and historic ambience of Old Town Warrenton. Looking out her kitchen window, Ms. Blough will see a three story brick wall and limited light through six three story townhouses, representing an overly dense use of a half acre piece of property. This can be compared to a property on Falmouth Street, which has fifteen townhouses on two and one half acres, a lot of green space, and sidewalks. Additionally, that space provides much more room for their residents to enter and park in the rear of each residence. There is a wall around that townhouse subdivision helping to curb the density. When this property was a restaurant, it had much more green space than is proposed with this project.

She went on to say, an extremely important consideration is the safety of the residents. Having witnessed one fire at the property in question, she saw firsthand the potential for catastrophe. At the time of that event, in the parking lot at 67 Waterloo Street, which would no longer exist according to the proposed plan, fire fighters had to go over the top of a burning historic structure to keep water on her home and Michelle Ferri's and Bill Weaver's home. The heat was so threatening, they were asked to remove their vehicles from parking spaces and driveways on Smith Street. She is very concerned with emergency vehicles being able to control a fire or help someone in need of an ambulance because when vehicles are parked on Smith Street, there is no

room for emergency vehicles. The same consideration would be true of Diagonal Street since parking is allowed on both sides of the street. She requests that a Fire Marshall approve the plan's areas of egress to insure emergency vehicles access to project and neighboring properties.

She continued that it was her understanding that a new application was submitted to the ARB, allowing for another public hearing, because the owners altered their original plans. A number of residents had similar concerns after attending the Town Council meeting on February 9 and they should be allowed the opportunity to express them. The townhouse fortresses should be less dense, to allow green space and attention to the concerns mentioned here.

Mr. Bill Weaver then addressed the Board. He elaborated on Nancy's comments. His major concern is in regards to emergencies. They were there when the fire took place and the only way, not criticizing Warrenton's first responders, to get a fire truck in range to protect homes was through the parking lot of the restaurant. With this project, that is going to be gone. The street is 16 ½-foot wide and zoning calls for 20-foot wide streets. With a car parked on a street, it is 10 feet wide. Twenty feet of road is needed for fire apparatus. Diagonal Street is narrow with lots of traffic, Smith Street is narrow and one way, and Chestnut Street is very narrow. His concern is that, for those dwellings, it would take a boom to get to the top. The renderings have cherry picked the views to make it look like there is plenty of room. The rendering also removed trees and in one of the drawings removed Mr. Weaver's house. Mr. Weaver is not against it, but against the density. He knew this was a zoning issue, not an ARB issue, but this was also a safety issue. He asked why their homes should have increased risk. He wants to fix the problem.

Ms. Cheryl Shepherd introduced herself as having been on the ARB for many years. She heard the guidelines mentioned and how they were referred to in a past hearing. She did a revision to the Historic District guidelines sometime after 2003. She is an architectural historian and studies, analyzes and photographically documents historical buildings to get them on the historic register. The guidelines are a document to have at hand. They are not part of the ordinance. Having heard the comment about the windows tonight, she knows there is a clause or a sentence in the guidelines that says, "A new building under construction should be recognized as a product of the period of its construction for design, materials and craftsmanship and consistent with the architecture of the Historic District." She believes that "product" has become a misunderstood word. She would like to offer to the Town and to Sarah through a letter that the word that would be better a "labor" of its period of its construction. It makes those who have to look at projects across the district begin to think more modernly, that everything has to be considered a "product" of its time, and it is not meant that way. It is meant as a "labor."

She then went on to say that concerning the windows earlier, on new construction on a property with non-contributing buildings, the new construction is non-contributing. Under new construction for buildings within the Historic District, "windows may have simulated divided light sashes, but true divided lights are encouraged." It does not say that they have to be true divided light or simulated divided light. True divided lights are encouraged, required because it is 2016. "Product" in that respect is clouding the issue.

She lives on Winchester Street. Looking at the plans for the new construction on Waterloo Street the parcel is difficult for new buildings. Part of the concern is the density allowed on the lot. That is a zoning issue and does not come in front of the Board. Waterloo Street is considered a major street, but Smith Street and Diagonal Street are in close proximity. If you look at the setting and

at the guidelines for the setbacks and orientation of buildings, it is not as the guidelines suggest. It is somewhat different from the grid form in this location. The Fauquier Bank is facing Main Street but on the Diagonal Street side, one is not looking at the front of the buildings, which is unique. The house that is now the Natural Market Place is facing Diagonal Street. The guidelines are suggesting that buildings front a major street. This is a very difficult and unique site and it is going to take a considerable amount of planning and forethought to get it right, keeping in mind that the guidelines suggest that the history of the location be respected.

Dr. Wiedenfeld asked if Ms. Shepherd was speaking as a citizen and not as a consultant.

Ms. Shepherd said yes, as a citizen.

Dr. Wiedenfeld said the Board would begin their comments. She provided her comments and the other Board members gave their comments in turn. The Warrenton Historic District Design Guidelines have a section on new construction that begins on page 72. The application design as presented does not meet these Historic District Design Guidelines for new construction in the central business district. It lacks architectural compatibility and aesthetic continuity that is called for in the guidelines. This is a quote from the guidelines, *“in order to maintain the character of the central business and Historic Districts, the new Design Guidelines take into consideration the historic variation of building types, their architectural design, arrangement and spacing.”*

She had four main areas of concern. One is the siting of the buildings and the guidelines state, *“recognize and insure consistency with the relationship and situation of existing buildings to the street when siting a new building. Recognize the historic grid street plan throughout the district and the immediate surroundings where historic buildings face toward the major street. Orient primary buildings to face the front major street in keeping with neighboring buildings in the immediate surroundings. New primary buildings on corner lots should face the major street.”* The buildings with the saw tooth siding does not recognize the historic grid street plan. District buildings are parallel to the street not at an angle. The adjacent buildings are disrespected by this angled siding; like turning ones side away from a neighbor. By placing the primary facades on Smith and Diagonal Streets, the project does not meet the requirement to front the major street, which is Waterloo. To have an alley/driveway dump into a major street is inappropriate within the Historic District and is in direct opposition to the guidelines. It is obvious that Waterloo is the primary street but this design has made Waterloo secondary. She noted there is a parking lot behind the church on the same block that empties onto Smith and onto Diagonal Street.

Her second concern is mass and scale. The guidelines state, *“Proportion is defined as the relationship between the width, height and depth of a building or its features. Scale is defined as the relative portion of a building to neighboring buildings, or to a pedestrian or of a building to its surroundings in general. Massing is the enclosed volume or block of a building or its features. Rhythm means the pattern of buildings or features to one another. The guidelines for new construction state that new construction should comply with the predominate width and proportion of contributing buildings. Characteristic of their style, houses are of varied forms: vertical, square, compound or horizontal in their overall proportions. Therefore, the proportional character of any new construction in a given neighborhood should reflect that of contributing houses, and comply with the predominate massing of the form and elements of contributing buildings in their block or neighborhood. Contributing residences have varied massing according to their styles.”* Her comment was that these are enormous buildings that do

not respect the predominate massing of neighboring structures. It is possible to design townhouses that respect the massing of buildings nearby. In terms of proportions, according to the guidelines, *“the new construction of houses should reflect that of contributing houses in the neighborhood. New construction should comply with the predominate massing of the form and elements of contributing buildings in their block or neighborhood.”* She noted that none of the illustrations provided presented of the neighboring structures are in relation to the proposed construction. She has not seen what the neighboring houses look like adjacent to this. She attempted to design a figure to illustrate this, but does not have the skills.

Her third concern is height or rather stories. The guidelines state, *“comply with the predominate height of the contributing buildings on a block. No new building, commercial or office in the block of two or three story buildings should ever exceed three stories unless the structure can be lowered into the ground. Avoid heights that exceed the adjacent building. New townhouses or multi-family residences in permitted zones should also comply with the predominate height of contributing buildings and not to exceed three stories. Lower roof pitches are encouraged on tall buildings.”* This block has several two-story buildings. Are there any three-story buildings on this block? Four story townhouses would tower over the smaller nearby houses and create a canyon out of Smith Street. Yes, there are houses in the Historic District that are more than two stories but they are set back from the street and their neighbors. They do not create a canyon such as this would create. The guidelines or the zoning ordinance state that the church cannot be used for comparison.

The fourth item is other issues. The guidelines state, *“A new building should be recognized as a product of its period of construction and craftsmanship.”* That wording by the way is from the National Register of Historic Places and is used appropriately. The guidelines further state, *“respect the size, proportion, spacing and rhythm of door and window openings on all stories of contributing buildings in the subject block or neighborhood when designing and constructing new commercial or residential buildings. Respect the relationship between wall surface area and window opening area of contributing commercial and residential buildings of the block or neighborhood and true divided lights are encouraged.”* This will be much more visible than an addition on the backside of a lot. The design does seem more derivative than a product of its period, but the materials, including a brick façade, stamped concrete, and false divided light windows lend a 21<sup>st</sup> century element. The size, proportion, spacing, and rhythm of fenestrations on the Waterloo Street side do not respect that of contributing buildings in the subject block or neighborhood. The relationship between wall surface area and window opening area similarly do not respect the contributing buildings in the subject block or neighborhood. The placement of porches on the Waterloo side of both buildings tries to address the requirement to avoid blank undifferentiated walls, but the porches neither copy porches in the Historic District, nor do they present themselves as a product of the current period. The lack of fenestration behind those porches only serves to highlight the blank, undifferentiated wall behind the porch. The lack of fenestration on each bay is something Dr. Wiedenfeld has never seen before on a design.

She went on to say, on a positive note thank you for the effort to have interpretive signage recognizing Eppa Hunton and the history of the site as required on page 97 of the guidelines. The ARB looks forward to the formal application for a COA on that signage. In short, her comments are that the design presented in the application for **Certificate of Appropriateness 15-22 to construct ten (10) townhouses at 67 Waterloo Street** does not conform to the Town of

Warrenton Historic District Design Guidelines for new construction.

Dr. Wiedenfeld asked for Mr. Nevill's comments.

Mr. Nevill said that he has looked at this from many different aspects, from that of the applicant and from our view. In all applications, he believes it is important to look at the applicant's view and try to understand what they are trying to do. He understands they are approaching this from a by-right point of view, which he respects. The ARB, the overlay, must also be taken into consideration. There is precedence where ARB decisions have upheld and superseded by-right applications. With that in mind, he looked at this through view of the Town Comprehensive Plan, suggestions of creating corridor and overlay districts, and expanding the Historic District. This has not happened and it is not something that he can take into consideration. The ARB looks in terms of Historic District preservation, town culture and future, and what new construction means.

He went on to say, this is within the 1810 route plan, and at that point they have to take a much more strict and very deliberate approach towards what is considered new and appropriate. That is the Town of Warrenton's historic foundation. This site is a transition property as moving from a neighborhood into the business district. It is zoned CBD, but it is on the shoulder. It is important to reflect and respect that transition nature of the neighborhood immediately adjacent and the flow of the location. It sits in the shadow of the courthouse, the most iconic building in the county. All of these factors need to be taken into consideration with this application. He respects what the applicant says about the private sector developing this property. The ARB wants to see that happen. This is too important a property to go undeveloped. However, the public should benefit from the development of this property, not just the private sector. With that in mind, as well as Dr. Wiedenfeld's comments, this application still has not addressed its orientation toward Waterloo Street in a manner that is real, but through decoration. It has not fulfilled the request. In reference to the orientation of the buildings in respect to the grid pattern, these buildings sit on various angles and do not reflect that. This staggered effect breaks up the grid pattern. It does not respect the orientation toward the street. He understands the difficulties to overcome with the development of this property. Unfortunately, he has not seen this project as meeting the standards they are trying to promote. It is those two elements, and the fact that this sits at a primary entrance, that lead him to the decision of not being able to support this project.

Dr. Wiedenfeld asked if Mr. Tucker had any comments.

Mr. Tucker said he believes the Board has spoken very well. Not to argue with the individuals who have spoken in favor of this application, he would like to say that the guidelines either are or are not meaningful with respect to this and any other project within the Town of Warrenton. They use the guidelines for just that purpose, to help us guide the applicants to what is appropriate or is not appropriate. Ultimately, guidelines aside, whether this building or any building is appropriate comes to the ARB for its decision. With respect to what was presented to Town Council as an attempt to appeal and was then withdrawn, it was essentially the same project. It did include many details, which are required for any construction. However, that addressed only a portion of the first half of a two-point motion to deny this project several months ago. Contrary to what has been heard, the resubmission does not satisfy all the points brought up when it was first denied. It does not address the second point, which was its relationship to its surroundings and the overall appropriateness.

Mr. Tucker went on to say there are other features here that do not comply with zoning or the ARB guidelines. There is a fourth floor and four floors are prohibited. Three stories are the maximum. There are other features here in question such as the site plan. People would argue the ARB does not review site plans. *Paragraph 3-5 3.5.4 of the zoning ordinance – final action by the Architectural Review Board shall be taken prior to consideration of proposals requiring site plan approval.* Numerous areas within the zoning ordinance refer to the ARB and its role in reviewing issues in the Town of Warrenton with respect to the zoning ordinance and the ARB guidelines. This application has not addressed those. There are three members present at the meeting. Mr. Wood does not vote. This is the most important presentation since he has been on the Board, and probably the most important one to be presented for a long time to come. Many issues need to be covered. He suggested that a motion be made to table this application and work with the applicant, through numerous work sessions if required, to resolve any differences between the applicant and this Board prior to the next meeting at which point this project will need to be approved or denied with whatever can be hashed out in a one hour meeting. It is time for a discussion on what is needed in this case.

Mr. Nevill asked if the applicant considered other designs for this project.

Mr. Foote said Mr. Norden would have to address that question.

Mr. Norden asked in what respect.

Mr. Nevill asked if when looking at this site, were there any other possibilities or designs that were being considered before coming to this design.

Mr. Norden said this is the design that was in everyone's thought in the initial concept. They explored different orientations since the Board rejected it. They honestly feel it is a worse solution. They can put six townhouses along Waterloo Street and then more units in the back. When looking at the mass on Waterloo Street, which is the most important street, not that the others aren't important, which again is why they did a saw tooth affect to breaks the mass of those buildings down for the neighbors on Smith and Diagonal. When looking at six townhouses across the front of Waterloo, it is not very inviting. Having the end of the run was much more reflective of the scale of chip shot across the street, for example. These buildings are shorter than chip shot. They came back with the idea to try to create a much more inviting entrance on Waterloo Street and to try to address the facades that were blank. There is a lot of fenestration on those facades. They are going to see two individual buildings with these porches. It is a better thing to have facing Waterloo Street. It is a vast improvement on what they had before. If they put six units on Waterloo Street, all the traffic is going back and forth from Diagonal to Smith. This is why they pursued this model the first time, and came back with the same orientation.

Dr. Wiedenfeld asked if the restaurant had an entrance onto Diagonal Street.

Mr. Tucker said it did not. He went on to say, Mr. Norden what you are presenting here on the screens are 3D architectural models of the project as you have designed it. He wants everyone to know these are what architects call bird's eye views. Architects use these to sell designs to their clients. He asked Mr. Shepherd to lower the point of view so that it is at eye level, five foot six from the ground. At eye level, one can see the underside of the porches. He asked to rotate the model clockwise so to see the house adjacent on Diagonal Street from eye level. From here, one

can see the fourth story that towers above the house next door. This is something not seen before. This view was a required part of the submission materials that they have not had the opportunity to review. He asked to rotate the model 180 degrees and see the Smith Street view from the same 5-foot elevation. The townhouses are a full story higher than the contributing property next door. He asked to see the intersection of Smith and Waterloo Street to show the house across Smith Street from the property and its relationship to the proposal. He said the house model is far larger in scale than it actually is.

Mr. Norden said all the surrounding buildings were done through photography and computer programs that establish the scale of the structures.

Mr. Tucker did not believe the height of the house was shown appropriately. The site plan seems to indicate there is only three feet of elevation difference between the intersection of Diagonal and Waterloo Street and the intersection of Smith and Waterloo Street and yet the drawing appears to be more than 3 feet of rise. He asked the engineers to double check those elevations because; walking the site, there appears to be more than a 3-foot difference in elevation.

Mr. Norden said there is a "topo" site plan in the application packet.

Mr. Tucker said that is where they are getting their information.

Mr. Norden said it goes from 606 down to entrance level and climbs more rapidly as you get to the corner of Smith, then once on Smith it's almost dead level for the length of the project.

Mr. Tucker said he wants everybody to see this from a realistic point of view not birds eye.

Mr. Norden said that is why they brought the live model

Mr. Tucker requested the model be checked. The wall is an interesting attempt to hide what is behind it. It is in violation of the guidelines, if the guidelines mean anything. If they do not then it is in the violation of the zoning ordinance. It is too tall.

Mr. Norden asked if the zoning ordinance dictates wall height. The ARB discusses wall height and review.

Mr. Tucker said Zoning Ordinance 2 - 19, fences and walls might be erected to a height of 6 feet.

Mr. Norden said the wall is 6 feet.

Mr. Tucker disagreed. He took the 1/8 scale drawing and drew a 6 foot high line across and saw that the wall was higher than 6 feet.

Mr. Norden said there is no question we are at the posts.

Mr. Tucker felt all of these things need to be worked out in the time it is going to take for a few work sessions. He proposed work sessions before a motion is made. The applicant requested work sessions in the past after they were denied. He asked if they would like work sessions now before a motion is made. There is a lot here, two Board members are missing, and they deserve the opportunity to go over this with you.

Mr. Foote said they have no explicit authority from their client, but taking the members of the Board in good faith, this would be an effort to work through the details. They would agree to the work sessions.

Mr. Tucker said he would see a work session's purpose to have the Board massage the project to bring it into compliance.

Mr. Foote understood and took it as suggested. The client makes the decisions. Mr. Foote was saying on behalf of his client, without explicit authority, they we will work with the Board.

Mr. Tucker said if Mr. Foote cannot speak for the applicant, then they do not have an applicant before them.

Mr. Foote said that would not be correct. His authority is limited to presentation, his client and he had not discussed deferral or work sessions. As his representative and his lawyer, he will speak for him tonight and agree to a work session with the Board.

Mr. Robinson, the Town Attorney, said everyone is on the same page. He clarified that Mr. Foote is saying they we will do a work session, and the ARB is suggesting a work session, so if someone made a motion for a work session, that would be agreed on. Mr. Foote will work with The ARB during a work session.

Mr. Tucker asked for the requirements in advertising work sessions.

Mr. Robinson said there are no requirements and the ARB can table this whether the client agrees or not.

Mr. Tucker asked what if they make a motion to table and suggest one work session a week, as many as three, whatever it takes to work out the details? This major project needs major work.

Mr. Robinson felt everyone agrees to do that. If ARB wants to set up work sessions, Ms. Sitterle would help. Work sessions could be arranged with enough public notice.

Mr. Wood asked it would it be better to postpone.

Mr. Robinson said that is what you would be doing by tabling and setting up work sessions.

Dr. Wiedenfeld said there are three choices regarding applications according to the guidelines. ARB can approve an application with conditions, deny an application, or table an application. Staff can help arrange a work session. ARB can table it and arrange work sessions. She suggested having one and seeing how that one goes before the next one is arranged. The next meeting is in 28 days. ARB has 60 days to vote if it is tabled. 60 days puts ARB beyond the April meeting. Essentially, ARB has 28 days to work this out.

Mr. Neville asked if the applicant withdrew the application, would it reset the time.

Mr. Robinson said it might reset the time. If ARB does a work session, and the media is notified well enough in advance, ARB has the work session and things are progressing well, the applicant would be able to agree to an extension.

Mr. Tucker said work sessions only work if they effect changes. If there is no change, there is no point in having a work session.

Mr. Robinson believed that is what the applicant is saying that they will work with you on. Have a work session; see how it is progressing, and go from there.

Mr. Foote said that gives them the opportunity to brief our client.

Mr. Nevill said in preparation for that, they have been looking at this within the twelve-unit presentation. Part of the problem is that no matter how it is done, it seems to be running against fitting into the Historic District and the transition from the neighborhood to the central business district in respect to the placement and the scale of the buildings surrounding it. He asked the applicant be open to perhaps less units or a different configuration. That was a personal request.

Mr. Foote understood. He explained to the ARB that they receive instruction from their client. They will go back to the client, give him the information, and then get in touch with Ms. Sitterle.

Dr. Wiedenfeld said if a motion is, made ARB has 60 days to act.

Mr. Foote suggested a longer deferral. He suggested ARB gives both of them enough time.

Mr. Robinson said what can be done, with Mr. Foote's consent, is agree to two meetings from this month. ARB can table until the May meeting. If it goes beyond the 60 days, Mr. Foote would agree to an extension.

Dr. Wiedenfeld said what is appropriate for the Board is to entertain a motion to table this and set up a work session to discuss the project. That puts ARB at 60 days. Before the next meeting, ARB will look at this, see where it is, and if it looks like ARB will go beyond 60 days. Then ARB will have to vote on it at the next meeting or the applicant can ask for a delay. She asked for a motion to table it with the planning of a work session before the next ARB meeting. If ARB believes they need more time beyond the 60 days, the applicant will have to ask for it.

Mr. Robinson said there has to be a tabled time because it cannot be tabled indefinitely.

Mr. Nevill made a motion to table the application **Certificate of Appropriateness 15-22**, a resubmission until the next meeting on March 24, 2016 and that ARB establishes a work session with the applicant prior to that meeting.

Mr. Tucker seconded the motion. The motion passed.

Dr. Wiedenfeld said the next item on the agenda is a work session and the regular session is over. She asked Ms. Sitterle, is there anything for the work session.

Ms. Sitterle said no.

Mr. Nevill made a motion to adjourn. Mr. Nevill seconded the motion.

With no further business to discuss, the meeting adjourned at 9:00 p.m.

**TOWN OF WARRENTON**

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February 26, 2016

Richard Wright  
7331 Meadow CT.  
Warrenton, VA 20186

**RE: ARB Approval for Certificate of Appropriateness 16-01**

Dear Mr. Wright:

During the meeting of the Architectural Review Board on February 25, 2016 the Board approved your request for the proposed wall garage at 23 N Chestnut Street based on the Zoning Ordinance, the Historic District Design Guidelines, and your application. The motion sheet with conditions is enclosed. Conditions are that a building permit is acquired, a special use permit is acquired for the accessory dwelling, and windows reflect a contemporary design (i.e. no simulated divided light). If these conditions are not met, the applicant will need to again appear before the board.

If any work to be conducted at the site will deviate from these conditions in any way, ARB review may be required. If you have any additional questions or concerns please feel free to contact me at [ssitterle@warrentonva.gov](mailto:ssitterle@warrentonva.gov) or 540-347-2405.

Sincerely,

A handwritten signature in blue ink that reads "Sarah A. Sitterle".

Sarah A. Sitterle, AICP, CZA  
Director of Planning & Community Development  
Zoning Administrator

CC: File





DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT  
STAFF REPORT

**PLANNING COMMISSION PUBLIC MEETING**

**DATE OF PUBLIC HEARING: May 17, 2016**  
**DATE OF PUBLIC MEETING: July 26, 2016**  
**PLANNING COMMISSION DECISION DEADLINE: August 19, 2016**  
**TOWN COUNCIL DECISION DEADLINE: May 16, 2017**

**SUBJECT**

Town staff submits to the Planning Commission for consideration amendments to the Zoning Ordinance and Town Code that would enable the following potential business uses:

- **Mobile Food Vendor** — Mobile Food Vendors are a growing industry that has proven successful throughout the country in providing not only additional food choices, but increased food sales overall and where multiple gather, creating new points of interest. Amendments to the Zoning Ordinance (Attachment I) and the Town Code are proposed that would add Mobile Food Vendors as allowable uses in the Industrial and Public/Semi-Public districts, subject to a comprehensive Mobile Food Vendor Policy (Attachment II). The proposed policy would be administered by the Town Manager and delineate hours, conditions, and fees for operation.

**PLANNING COMMISSION ACTION AND STAFF ACTION**

The Planning Commission held a public hearing on May 17, 2016 and a work session on June 21, 2016 to review and make recommendations to the proposed Mobile Food Vendor Policy, Zoning Ordinance text amendment, and Town Code text amendment. The public hearing on May 17, 2016 was closed, and the Planning Commission voted 7-0 to table the request for thirty (30) days pending a meeting to be held with vendors, Commission members, elected officials, and the public for discussion of the Mobile Food Vendor issues. The work session on June 21 further discussed the changes to the text amendment and Mobile Food Vendor Policy. Staff has updated the text amendment documents to reflect the requests expressed by the Planning Commission, which included:

- Replace all references to food truck and trailers with “Mobile Food Vendors”
- Check consistency of wording for parking space(s).
  - Article 9-24.4.1—Update text to require that Mobile Food Vendors fit in allowed public parking areas rather than allowable public parking spaces.
- Article 9-24.5.6—Remove the requirement that generators be attached to the unit and the reference 75 decibels, replacing with a reference to nuisance.
- Article 9-24.8.2—Clarify that only Mobile Food Vendors are prohibited from using public waste receptacles. Add allowance for waste receptacles to be placed on the ground near Mobile Food Vendors.

- Upon review, staff also added the following condition (underlined) to Article 9-24.4.3, “Mobile food vendors are to comply with the vending hours between 8:00 AM and 9:00 PM, or lesser time as administered by the Town Manager, and not leave mobile food vendor vehicles beyond the allowable vending hours. Mobile food vendor vehicles left beyond these hours are subject to towing.”
- Other minor grammatical and formatting changes.

In addition, while the Planning Commission indicated a desire to include Eva Walker Park as a permissible location, it was removed from the list of permissible public parks in the Mobile Food Vendor policy and procedure document because upon review of the zoning map, the onsite parking located on Alexandria Pike was determined to be located within the Central Business District (CBD). The Planning Commission can revisit the proposed Article 9-24 at a later date if it is determined that CBD should be included. Mobile Food Vendors may still utilize Eva Walker Park under Article 9-19 (temporary uses) which allows for special event permits with the provisions<sup>1</sup> that:

- Permits are valid for a period not to exceed thirty consecutive (30) days unless extended by the Zoning Administrator.
- Each event or activity on a site shall be separated by a period of not less than thirty (30) consecutive days.
- Carnivals, festivals, fairs, or similar outdoor entertainment events may have four (4) permits per parcel, per calendar year.
- Additional permits may be authorized by the Town Council

## **BACKGROUND**

Mobile Food Vendors, or food trucks, continue to gain popularity and use across the country. Their mobile nature presents new intricacies and challenges for localities. Like many localities, Warrenton’s Town Code and Zoning Ordinance do not envision this type of business.

Currently, Mobile Food Vendors are able to operate on private property for a limited time-period. However, these businesses are not able to receive a business license or remit meals tax without a zoning permit.

Therefore, several amendments are necessary that will define what a Mobile Food Vendor is and indicate within which zoning districts it is an allowable use. Additionally, rules and regulations on how and when Mobile Food Vendors must operate, and other requirements are desired.

Staff reviewed the programs for Mobile Food Vendors in several localities (including City of Charlottesville, Fairfax County, and the City of Norfolk), as well as best practice documents from the National Association of Food Trucks and data on industry trends and impact.

Staff’s goals are to create a program that is uncomplicated, can be administered with minimal cost, and that can be adapted as Warrenton’s experience with Mobile Food Vendors grows. Staff found the model used by the City of Norfolk to be most suitable. To follow this model, the Town of Warrenton would need to do the following:

- Amend the Town Code to define Mobile Food Vendors;

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<sup>1</sup> Any use located on government-owned property which is approved by the Town shall not be considered a temporary use subject to these restrictions.

- Amend the Zoning Ordinance to allow Mobile Food Vendors as allowable uses in the Public Semi-Public and Industrial Districts, subject to the policy and procedures of a Mobile Food Vendor Program; and
- Create a Mobile Food Vendor Program, including Policy and Procedures document that the Town Manager administers and may amend.

Specifying the rules and regulations in a policy document administered by the Town Manager allows the program to operate more succinctly and evolve over time. This document specifies:

- Requirements and process for application into the Mobile Food Vendor Program
- Fee schedule and meals bond requirement

At this time, it does not require the use of a decal system or specially marked areas.

## **ECONOMIC & FISCAL IMPACT**

The long-term impact of allowing Mobile Food Vendors is reported by national research to be positive. Among the benefits are increased sales, customers, diversity, entrepreneurship opportunities, and tax revenue as well as a positive reflection of community values. These can all benefit existing restaurants, as well as Mobile Food Vendors. Potential benefits include:

### **Increased sales to customers who may not otherwise purchase food,** due to:

- **Location**—For example, at the WARF parents may not be inclined to leave while their child participates in sports and there are no food options available.
- **Cost**—The low cost of some trucks attracts customers who wouldn't normally go to a restaurant to eat or wouldn't go to a restaurant for a lunch or a snack.

### **Increased draw of new customers and new sales.** Including customers that:

- **Follow a specific Mobile Food Vendor**—Some loyal foodies will drive upwards of 20 miles for their favorite Mobile Food Vendor. This potentially draws new customers in from outside areas.
- **Are attracted by a specific food type or dish**—For example, specialty offerings (like lobster rolls, fugu kimbap, or watermelon jalapeno lemonade) and international flavors not available in the current market create interest and draw new customers to dine on a 'must-have'.

### **Creates new business opportunities.** The small size and mobile nature of Mobile Food Vendors allows Mobile Food Vendor entrepreneurs to:

- **Try out new markets**—Testing demand can be very helpful for would-be restaurant owners. For example: Vietnamese and Korean food are very popular in northern Virginia, but are not offered in the Warrenton area. Successful Mobile Food Vendor sales of these cuisines would demonstrate demand to the Mobile Food Vendor operator and other potential restaurateurs that a potential market opportunity exists.
- **Sustain a business with smaller sales volumes**— Mobile Food Vendors are often what many would consider 'micro-businesses', employing only one or two people. The smaller volume of sales required to keep a Mobile Food Vendor operation running allows entrepreneurs with limited cash-flow or time a new opportunity to start their own business. Additionally, smaller sales volumes allow owners to prepare smaller amounts of food at a time, which can be an important cost savings for those using organic or other specialty products (such as, gluten-free dough, etc.).
- **Expand into mobile sales (in addition to a brick and mortar location)**—With the swell of interest in Mobile Food Vendors, many traditional restaurateurs are capitalizing on the Mobile

Food Vendor scene by taking their cuisine mobile as an additional revenue stream and a way to reach new customers.

**Capture of tax revenue.** Creating opportunities for Mobile Food Vendors to operate legally allows the Town to capture tax revenue from Mobile Food Vendor vendors, including business license taxes and meals tax. The 4% meals tax applied by the town is one of the largest sources of revenue for the Town. The Mobile Food Vendor policy, as proposed, would make applying to operate a Mobile Food Vendor in Town a simplified process and make timely submission of meals tax a requirement of continued operation.

## STAFF RECOMMENDATION

Staff recommends the following amendments to the Code of the Town of Warrenton, VA:

1. Section 9-69 – Itinerant Merchants: Addition of, “(d) *Any itinerant merchant who engages in the sale of food or beverages, whether prepared on-site or off-site, and does so through the use of a mobile unit with a current certificate of inspection from the local health department, shall only be permitted in specific areas as provided within the rules and regulations administered by the Town Manager, or his designee. All other ordinances applicable to Mobile Food Vendors remain in effect and shall be enforced by the Town.*”

Staff recommends the following amendments/adoption to the Zoning Ordinance of the Town of Warrenton, VA:

2. Article 3-4.9.2 (Public/Semi-Public Institutional District-Permitted Uses): Addition of, “*Mobile Food Vendors as permitted per Article 9-24.1.*”
3. Article 3-4.12.5 (Industrial): Addition of, “*Mobile Food Vendors, as permitted per Article 9-24.*”
4. Adoption of **Article 9-24 (Mobile Food Vendors)** within the Zoning Ordinance of the Town of Warrenton, VA.
5. Article 12 (Definitions): Addition of, “*Mobile Food Vendor: Any itinerant merchant who engages in the sale of food or beverages, whether prepared on-site or off-site, and does so through the use of a mobile unit.*”

## SUGGESTED MOTIONS

1. I move the Planning Commission Recommend to the Town Council:
  - a. Amending the Warrenton Town Code Section 9-69 to add, “(d) *Any itinerant merchant who engages in the sale of food or beverages, whether prepared on-site or off-site, and does so through the use of a mobile unit with a current certificate of inspection from the local health department, shall only be permitted in specific areas as provided within the rules and regulations administered by the Town Manager, or his designee. All other ordinances applicable to Mobile Food Vendors remain in effect and shall be enforced by the Town.*”
  - b. Amending the Zoning Ordinance Article 3-4.9.2 to add, “*Mobile Food Vendors, as permitted per Article 9-24.*”
  - c. Amending the Zoning Ordinance Article 3-4.12.5 to add, “*Mobile Food Vendors, as permitted per Article 9-24.*”
  - d. Adoption of the Zoning Ordinance Article 9-24 – Mobile Food Vendors.

- e. Amending the Zoning Ordinance Article 12 to add, “*Mobile Food Vendor: Any itinerant merchant who engages in the sale of food or beverages, whether prepared on-site or off-site, and does so through the use of a mobile unit.*”
- f. Adoption of the Warrenton Mobile Food Vendor Program.

2. I move an alternative motion.

**DRAFT** – June 9, 2016

**Revised** – June 13, 2016

June 14, 2016

June 28, 2016

July 26, 2016

Proposed Text Amendment  
Article 9-24 Mobile Food Vendors

9-24.1 Purpose

The Town of Warrenton shall administer a program to receive, review and approve permit applications for Mobile Food Vendors that desire to vend in designated zoning districts. The associated policy and procedures document sets out guidelines for the permitting process for vending in designated Mobile Food Vendor areas in specified zoning districts. This policy does not cover participation in Special Events (such as, festivals). To participate in Special Events, all vendors must comply with the rules and regulations laid forth in the Special Event permit provided to the event organizer.

9-24.2 Allowable Zoning Districts

Mobile Food Vendors are allowable in the following zoning districts only, subject to the Mobile Food Vendor policy and procedures document: Public/Semi-Public Institutional (PSP), and Industrial (I).

9-24.2.1 Operation on Private Property

Mobile Food Vendors may operate on private property within the Industrial (I) zoning district from an existing, improved parking-area with the expressed, written consent of the property owner. All operations, on public or private property, must comply with the Mobile Food Vendor policy and procedures document.

9-24.2.2 Operation on Public Property

Mobile Food Vendors may operate on public property only at public parks with on-site parking. All operations, on public or private property, must comply with the Mobile Food Vendor policy and procedures document. The following standards apply to parking and operation for Mobile Food Vendors.

1. The entire operation of a Mobile Food Vendor must fit in the allowed public parking area. Vehicles that do not fit within the designated parking area will not be permitted to operate in the program.

2. Each Mobile Food Vendor parking area shall not be within 10 feet of an intersection, crosswalk, driveway, bus stop, taxi stand or handicapped parking space. Nor will any Mobile Food Vendor be situated in any part of a designated loading zone or fire lane.
3. Mobile Food Vendors are to comply with the vending hours between 8:00 AM and 9:00 PM, or lesser time as administered by the Town Manager, and not leave Mobile Food Vendor vehicles beyond the allowable vending hours. Mobile Food Vendor vehicles left beyond these hours are subject to towing.
4. The Town may adjust these sites in cases of construction or other circumstances, as approved by the Town Manager.
5. The Town may consider additional locations based on demand and impact, as approved by the Town Manager.

#### 9-24.5 Program Fees and Operation Costs

Participants are subject to annual program and business license fees as specified in the Mobile Food Vendor policy and procedures document, including routine collection of meals and consumption taxes. Mobile Food Vendors are required to comply with all other applicable local, state and federal taxes including remittance of sales tax in accordance with state law. Fees are subject to change with Town Manager approval.

#### 9-24.6 Rules and Regulations

- 9-24.6.1 Allowable vehicles include, but are not limited to, Mobile Food Vendor vehicles from which service is provided to customers through the side of the vehicle or trailer.
- 9-24.6.2 Mobile Food Vendors are required to maintain minimum Mobile Food Vendor vehicle standards for continued participation in the program. Standards include, but are not limited to, the following:
  1. Floors, walls, ceilings and food contact surfaces must be easily cleanable (i.e. stainless steel, aluminum or other approved non-corrosive and non-rusting metal).
  2. Surfaces must be waterproof, smooth, readily cleanable, and resistant to dents and scratches.
  3. All outer openings must be screened and/or sealed when not operating.
  4. Serving areas on top of carts and truck serving windows may be made of whatever material is appropriate for food preparation: metal, tile, synthetic countertop, etc.).
  5. There should be no structural defects (i.e. holes, openings, rust, seams or broken parts).
  6. The business name should be affixed to the back or side of the operation and clearly visible to customers.

7. Mobile Food Vendor vehicles must be sized to fit into designated parking areas.

9-24.6.4 If any area is closed for an emergency or other permitted activity, no vendors will be allowed to set up. Areas will be monitored for compliance and any violations could result in a permit being suspended or revoked. 9-24.6.5 The entire operation must be fully mobile. For Mobile Food Vendors, coolers may not be placed on the ground, nor may tables and chairs be provided for customers. Generators should be whisper or quiet models that do not present a nuisance.

#### 9-24.7 Prohibited Items

- 9-24.7.1 Radio or sound-amplifying devices;
- 9-24.7.2 Flashing signs or signs that move or give the appearance of moving;
- 9-24.7.3 Sign, menu board, tables, chairs, waste receptacles or other objects in the roadway or sidewalk;
- 9-24.7.4 Water, sewer, gas or electrical connections to a building.

#### 9-24.8 Refuse Control

- 9-24.8.1 Participants must ensure that no pollutants, including waste/grease, liquid wastes, gray water garbage/debris, and other materials are discharged to the Town's storm drain system (including gutters, curbs, and storm drains).
- 9-24.8.2 A waste receptacle shall be provided for the use of customers and shall be affixed to the Mobile Food Vendor Vehicle or be placed on the ground near the Mobile Food Vendor, so long as they meet Article 9-24.7.3. All trash must be removed from the site by the Mobile Food Vendor. Use of Town waste receptacles by Mobile Food Vendors is prohibited.
- 9-24.8.3 Participants are required to pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials dispensed from the vending vehicle and any residue deposited on the street from the operation thereof, and otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where Mobile Food Vending is occurring. Assistance in cleaning any public eating spaces is appreciated.

#### 9-24.9 Insurance Coverage

The vendor shall secure and maintain a policy of automobile liability insurance coverage issued by a company authorized to do business in the Commonwealth of Virginia in the amount of at least \$1,000,000 for injury to or death of any person or persons in any one

incident and \$100,000 for property damage, and the policy shall list the Town of Warrenton as an additional insured.

#### 9-24.10 Monthly Reports

Monthly Mobile Food Vendor Sales data reports and meals tax receipts are required to be submitted each month for the calendar year. Failure to comply and submit in a timely manner may result in revocation or suspension of vendor participation in the program.

#### 9-24.11 Revocation or Suspension

9-24.11.1 The participant may be removed from the Program at the discretion of the Town Manager in the event of any of the following:

1. The use of conditions under which the truck or trailer is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity;
2. The property is operated or maintained so as to constitute a nuisance;
3. Operation in violation of the conditions of the program; or
4. Any other violation of applicable law.

#### 9-24.12 Renewal Process

Please refer to the Mobile Food Vendor Program policy and procedures document for specific license renewal requirements. Please note the following regarding license renewal:

9-24.12.1 Vendor licenses expire on June 30th of each calendar year with annual renewals subject to administrative review, modification (if necessary) and approval.

9-24.12.2 Proof of current health department permit, fire inspection, insurance, and property owner authorization (as described in the Mobile Food Vendor Program policies and procedures document) are required at the time of renewal.

9-24.12.3 The Annual Program Fee and Annual Business License Fee are required at the time of renewal.

#### 9-24.13 Violation and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in the Zoning Ordinance, in accord with Article 11 of this Ordinance and §15.2-2286 (A) (5) of the Code of Virginia.

**DRAFT** – June 9, 2016

**Revised** – June 13, 2016

June 14, 2016

June 28, 2016

July 26, 2016

Proposed Text Amendment  
Article 9-24 Mobile Food Vendors

9-24.1 Purpose

The Town of Warrenton shall administer a program to receive, review and approve permit applications for Mobile Food Vendors that desire to vend in designated zoning districts. The associated policy and procedures document sets out guidelines for the permitting process for vending in designated Mobile Food Vendor areas in specified zoning districts. This policy does not cover participation in Special Events (such as, festivals). To participate in Special Events, all vendors must comply with the rules and regulations laid forth in the Special Event permit provided to the event organizer.

9-24.2 Allowable Zoning Districts

Mobile Food Vendors are allowable in the following zoning districts only, subject to the ~~specific sites noted in the policies and procedures document~~ Mobile Food Vendor policy and procedures document: ~~Industrial (I); and Public/Semi-Public Institutional (PSP), and Industrial (I).~~

9-24.~~2.13~~ 2.13 Operation on Private Property

Mobile Food Vendors may operate on private property within the Industrial (I) zoning district from an existing, improved parking-area with the expressed, written consent of the property owner. All operations, on public or private property, must comply with these Mobile Food Vendor policy and procedures document ~~regulations~~.

9-24.~~2.24~~ 2.24 ~~Designated Public Vending Sites~~ Operation on Public Property

Mobile Food Vendors may operate on public property ~~ONLY~~ only at public vending sites at public parks with on-site parking. ~~All operations, on public or private property, must comply with the Mobile Food Vendor policy and procedures document. designated in the Mobile Food Vendor policy and procedures document.~~ The following standards apply to parking and operation for Mobile Food Vendors.

~~1.~~ ~~9-24.4.1~~—The entire operation of a Mobile Food Vendor must fit in the allowed public parking area. Vehicles that do not fit within the designated parking area will not be permitted to operate in the program.

~~1.2.~~ ~~9-24.4.2~~—Each Mobile Food Vendor parking area shall not be within 10 feet of an intersection, crosswalk, driveway, bus stop, taxi stand or handicapped parking space. Nor will any Mobile Food Vendor be situated in any part of a designated loading zone or fire lane.

~~2.3.~~ ~~9-24.4.3~~—Mobile Food Vendors are to comply with the vending hours between 8:00 AM and 9:00 PM, or lesser time as administered by the Town Manager, and not leave Mobile Food Vendor vehicles beyond the allowable vending hours. Mobile Food Vendor vehicles left beyond these hours are subject to towing.

~~3.4.~~ ~~9-24.4.4~~—The Town may adjust these sites in cases of construction or other circumstances, as approved by the Town Manager.

~~4.5.~~ ~~9-24.4.5~~—The Town may consider additional locations based on demand and impact, as approved by the Town Manager.

#### 9-24.5 Program Fees and Operation Costs

Participants are subject to annual program and business license fees as specified in the Mobile Food Vendor policy and procedures document, including routine collection of meals and consumption taxes. Mobile Food Vendors are required to comply with all other applicable local, state and federal taxes including remittance of sales tax in accordance with state law. Fees are subject to change with Town Manager approval.

#### 9-24.6 Rules and Regulations

9-24.6.1 Allowable vehicles include, but are not limited to, Mobile Food Vendor vehicles from which service is provided to customers through the side of the vehicle or trailer.

9-24.6.2 Mobile Food Vendors are required to maintain minimum Mobile Food Vendor vehicle standards for continued participation in the program. Standards include, but are not limited to, the following:

1. Floors, walls, ceilings and food contact surfaces must be easily cleanable (i.e. stainless steel, aluminum or other approved non-corrosive and non-rusting metal).
2. Surfaces must be waterproof, smooth, readily cleanable, and resistant to dents and scratches.
3. All outer openings must be screened and/or sealed when not operating.

4. Serving areas on top of carts and truck serving windows may be made of whatever material is appropriate for food preparation: metal, tile, synthetic countertop, etc.).
5. There should be no structural defects (i.e. holes, openings, rust, seams or broken parts).
6. The business name should be affixed to the back or side of the operation and clearly visible to customers.
7. Mobile Food Vendor vehicles must be sized to fit into designated parking areas.

~~9-24.6.3 Mobile Food Vendors must park in the same direction as traffic.~~

9-24.6.4 If any area is closed for an emergency or other permitted activity, no vendors will be allowed to set up. Areas will be monitored for compliance and any violations could result in a permit being suspended or revoked. 9-24.6.5 The entire operation must be fully mobile. For Mobile Food Vendors, coolers may not be placed on the ground, nor may tables and chairs be provided for customers. Generators should be whisper or quiet models that do not present a nuisance.

#### 9-24.7 Prohibited Items

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- 9-24.7.3 Sign, menu board, tables, chairs, waste receptacles or other objects in the roadway or sidewalk;
- 9-24.7.4 Water, sewer, gas or electrical connections to a building.

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- 9-24.8.2 A waste receptacle shall be provided for the use of customers and shall be affixed to the Mobile Food Vendor Vehicle or be placed on the ground near the Mobile Food Vendor, so long as they meet Article 9-24.7.3. All trash must be removed from the site by the Mobile Food Vendor. Use of Town waste receptacles by Mobile Food Vendors is prohibited.
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area within a 25-foot radius of the location where Mobile Food Vending is occurring. Assistance in cleaning any public eating spaces is appreciated.

#### 9-24.9 Insurance Coverage

The vendor shall secure and maintain a policy of automobile liability insurance coverage issued by a company authorized to do business in the Commonwealth of Virginia in the amount of at least \$1,000,000 for injury to or death of any person or persons in any one incident and \$100,000 for property damage, and the policy shall list the Town of Warrenton as an additional insured.

#### 9-24.10 Monthly Reports

Monthly Mobile Food Vendor Sales data reports and meals tax receipts are required to be submitted each month for the calendar year. Failure to comply and submit in a timely manner may result in revocation or suspension of vendor participation in the program.

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9-24.11.1 The participant may be removed from the Program at the discretion of the Town Manager in the event of any of the following:

1. The use of conditions under which the truck or trailer is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity;
2. The property is operated or maintained so as to constitute a nuisance;
3. Operation in violation of the conditions of the program; or
4. Any other violation of applicable law.

#### 9-24.12 Renewal Process

Please refer to the Mobile Food Vendor Program policy and procedures document for specific license renewal requirements. Please note the following regarding license renewal:

- 9-24.12.1 Vendor licenses expire on June 30th of each calendar year with annual renewals subject to administrative review, modification (if necessary) and approval.
- 9-24.12.2 Proof of current health department permit, fire inspection, insurance, and property owner authorization (as described in the Mobile Food Vendor Program policies and procedures document) are required at the time of renewal.

9-24.12.3 The Annual Program Fee and Annual Business License Fee are required at the time of renewal.

9-24.13 Violation and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in the Zoning Ordinance, in accord with Article 11 of this Ordinance and §15.2-2286 (A) (5) of the Code of Virginia.

DRAFT

## **Warrenton Mobile Food Vendor Program**

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### **Policies and Procedures**

The following is a guidance document for the Mobile Food Vendor Program. The regulations that govern the program are listed under Article 9-24 of the Zoning Ordinance. The program is administered by the Town Manager's Office. Permitting for the program is processed through the Department of Planning & Community Development. If you have any questions about the program details specified in the Zoning Ordinance or herein, please contact the Department of Planning & Community Development at (540) 347-2405, Monday through Friday between 8:00 am and 4:30 pm.

#### **I. Vending Permit Application Process**

- A. Interested Mobile Food Vendors must submit a completed Application for a Mobile Food Vendor Permit and required documentation via email or in person at Town Hall at 18 Court Street, from 8 a.m. to 4:30 p.m. The Town will verify all permits have been obtained prior to issuing a vending permit to the selected vendor.
- B. The Mobile Food Vendor must submit all required documents, pass all physical inspections, provide payment and hold a permit to participate in the program. The following permits and documentation are required:
  - 1. A Health Permit from the Virginia Department of Health;
  - 2. Proof of Current Fire Inspection;
  - 3. Statement of authorization from property owner or their agent if operating on private property;
  - 4. Certificate of insurance (see Article 9-24.9 of the Zoning Ordinance); and
  - 5. Signed policy and procedure document.
- C. The Mobile Food Vendor must supply at the time of application all applicable Program Fees (see descriptions below).
- D. Staff will review applications for completion and no application will be accepted unless deemed complete.

#### **II. Designated Public Sites**

The following are designated as public vending sites for Mobile Food Vendors:

- A. Warrenton Aquatic and Recreation Facility, Parking Area
- B. Rady Park, Parking Area

### III. Program Fees

- A. All Mobile Food Vendors (new and renewing) must submit all fees and taxes as outlined below.
- B. Annual Program Fee. The full annual program fee is due upon acceptance into the Warrenton Mobile Food Vendor Program. If a vendor chooses to withdraw from the program, the annual fee is forfeited. The annual fee for renewing Mobile Food Vendors is due by June 30<sup>th</sup>.
- C. Annual Business License Fee. The business license fee for Mobile Food Vendors is an annual flat fee and cannot be refunded. The business license fee is due by June 30<sup>th</sup>.
- D. Meals and Consumption Tax. Mobile Food Vendors are required to collect Meals and Consumption Tax on all applicable food and beverage sales at a rate of 4%, and remit to the Town on a monthly basis.
- E. Meals and Consumption Tax Bond (New Vendors). At the time of application to the program, a one-time Meals and Consumption Tax Bond in the amount of \$300 is required. The Bond is refundable only if the vendor application is not approved, or if before incurring any meals tax liability the participant goes out of business, moves their business, or otherwise ceases to operate in the Town of Warrenton.
- F. Meals and Consumption Tax Bond (Other). Mobile Food Vendors that do not maintain participation in the program for a period of two years or more will be considered “new vendors” and will be required to provide the meals tax bond again upon application to re-enter the program. Mobile Food Vendors that are delinquent in the remittance of meals tax may be required to provide the meals tax bond annually, at the discretion of the Town Manager.
- G. Mobile Food Vendors are required to comply with all other applicable local, state and federal taxes, including remittance of Sales Tax in accordance with state law.

H. Fee Chart

<b>Fees</b>	<b>Town of Warrenton</b>	<b>Other Agencies</b>
Annual Downtown Mobile Food Vendor Program Fee (per vendor)	\$100	
Annual Business License Fee (per vendor)	\$50	
<u>One-time</u> Meals Tax Bond (per vendor)	\$300	
Annual Fire Inspection Fee (per vehicle)	\$50 <sup>1</sup>	
Annual Health Permit Fee (per vehicle)		VA Department of Health (Fauquier County Office)
<b>Total</b>	<b>\$500</b>	

**IV. Associated Fees**

Reserved.

**V. Program Compliance**

I understand and will abide by the regulations in Article 9-24 of the Zoning Ordinance and by the Policies and Procedures for the Warrenton Mobile Food Vendor Program. I further understand that should I commit any violation of the Ordinance and/or this policy, my participation in this program may be revoked.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

<sup>1</sup> \$50.00 up to 2,500 sq. ft. plus \$0.01 per sq. ft. for every square foot over 2,500.



## TOWN OF WARRENTON

POST OFFICE DRAWER 341  
WARRENTON, VIRGINIA 20188-0341  
<http://www.warrentonva.gov>  
TELEPHONE (540) 347-1101  
FAX (540) 349-2414  
TDD 1-800-828-1120

### MEMORANDUM

**TO:** Planning Commission  
**FROM:** Denise M. Harris, AICP, Interim Director  
**DATE:** July 26, 2016  
**SUBJECT:** State Code §15.2-2303.4 Review

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Virginia State Code §15.2-2303.4 is a new law relating to how proffers are approached with residential rezonings (Attachment I). The law states that jurisdictions cannot suggest, demand or accept unreasonable proffers for applications accepted after July 1, 2016. It goes on to restrict proffers to impacts specifically attributable to a proposed new residential development. Offsite proffers may only address public facilities (defined as a public transportation facility improvements, public safety facility improvements, public school facilities, or public parks).

Many questions are being raised by localities across the Commonwealth on the law and how it applies to their processes. On July 1, 2016, the Planning Commission was forwarded a memo from the Town Attorney (Attachment II) which provides his interpretation for the Town. In addition, during the New Business on the July 26, 2016 Planning Commission Public Meeting, the Town Attorney will seek to provide further guidance.

Article 11 of the Zoning Ordinance is provided for your information and reference (Attachment III). Staff is currently revising this section for the Planning Commission's consideration. The outcome of the discussion on State Code §15.2-2303.4 may also result in proposed revisions to Article 11.

## CHAPTER 322

An Act to amend the Code of Virginia by adding a section numbered 15.2-2303.4, relating to conditional zoning.

[S 549]

Approved March 8, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 15.2-2303.4 as follows:**

**§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers.**

*A. For purposes of this section, unless the context requires a different meaning:*

*"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.*

*"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.*

*"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.*

*"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.*

*"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.*

*"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.*

*"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.*

*"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.*

*"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.*

*"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.*

*"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.*

*"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.*

*B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.*

*C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to*

subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a locality in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285.

2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was suggested, requested, or required by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a locality in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition amendment within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the locality from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

E. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

**2. That this act shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.**

**3. That this act is prospective only and shall not be construed to apply to any application for rezoning filed prior to July 1, 2016, or to any application for a proffer condition amendment amending a rezoning for which the application was filed prior to that date.**

**TOWN OF WARRENTON**

POST OFFICE DRAWER 341  
WARRENTON, VIRGINIA 20188-0341  
<http://ci.warrenton.va.us>  
TELEPHONE (540) 347-1101  
FAX (540) 349-2414  
TDD 1-800-828-1120

June 29, 2016

Mayor  
Town Council  
Planning Commission  
Town Staff  
18 Court Street  
Warrenton, VA 20186

Re: Virginia Code §15.2-2303.4 (New Proffer Legislation)

Ladies and Gentlemen,

As most of you are aware, beginning July 1, 2016, new legislation becomes law regarding the abovementioned code section and how proffers are now to be treated by applicants who file their applications post July 1. There has been a fair amount of analysis regarding this new legislation as well as significant confusion. I am writing to you all to provide you with the legislation itself and some analysis. Some of this discussion is available online, however, I have picked a few that read well and have been helpful in my own education.

My initial viewpoint is to not take an immediate defensive posture given that this legislation has been mostly drafted by the development community. Stark knee-jerk reactions may often times be the undoing of those with legitimate concerns about opposing views. It is my opinion to look at the plain language of the statute and derive my own views therefrom. That does not mean that as a government we shouldn't look to outside resources to assist with an interpretation if one is warranted.

It is important to bear in mind that §15.2-2303.4 is for proffers relating to residential applications, or mixed use ones with a residential component. Often these tend to be controversial. The most delicate aspect of this new code section, however, is the language in subsection (B) that states "Notwithstanding any other provision of law, general or special, no locality shall (i) *request* or accept any unreasonable proffer, as described in subsection C, in

connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment." (emphasis added). This subsection appears to be the focus for jurisdictions clamping down on the discussions being had between applicants and either appointed or elected officials. The specific word that marks the area for removing the free flowing discussion from the previously normal way of doing business is "request". What most jurisdictions are nervous about is that elected officials, or appointed ones, will make unreasonable requests regarding proffers. In my more liberal opinion the free flowing discussions should not be affected by that word as the "request" should truly be more formal and in writing. The problem with a common sense approach to this is that it could be argued that the "request", while informal, may be construed to be unreasonable at the mere mention of it. That would then give grounds for the applicant later to file an action against the Town based upon the very informal and verbal request as being unreasonable.

This would then lead to the procedural litigation portion of the new statute in subsection (D)(2) which states, "In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was *suggested, requested*, or required by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for denial." (emphasis added). So it would seem that the mere suggestion of an "unreasonable proffer" could be the basis for overturning a denial of a rezoning. The aggrieved (ie, the applicant seeking the rezoning) has a much lower threshold to show that an elected official merely suggested a proffer, than the threshold the locality would have to overcome to defeat the then presumption that the rezoning was denied based upon the simple request. I would prefer that common sense would win out in that any request or suggestion of a proffer during an informal discussion would simply be exploratory until it is in writing. Unfortunately, that is not what the code says.

It is for this reason that I ask all elected or appointed officials to only meet with applicants for residential rezonings (even those that are commercial but have residential components) in Town Hall and with staff present. I ask that I be apprised of any such meetings so that I may

attend. Please also bear in mind that FOIA still applies and any meeting of more than two must have public notice. Some localities have taken a much stricter approach to elected or appointed officials meeting with applicants by advising them to not meet at all. I believe that is not necessarily appropriate here as most major residential projects in the Town have already been filed prior to July 1. This means that most of the future projects in Town will either be commercial in nature or small infill parcels.

As for the rest of the legislation the code speaks for itself. It is not easy to read, but that's called career security for land use attorneys and consultants. The main points of it are that localities shall not accept proffers for offsite uses, unless it can be shown that there is a direct impact attributed by the project above and beyond what would ordinarily occur. In other words, we cannot ask for proffers for the general upkeep and maintenance of public facilities where the Town would typically incur the expense for said upkeep with or without the project. This creates a tipping point for the Town in a sense that we should rework our fee structure for new applications. The current fee structures for applications are dated and need to be reviewed, but specifically the Town needs to address charging for an impact analysis by an independent consultant. In order for any proffers to be legally accepted the applicant should be required to show an analysis as to the project's impact on the community. To accept a proffer that goes beyond the project's impact would subject the Town to a court action whereby the Circuit Court could order the Town Council to approve a project without the proffer within 90 days of said order.

There are many aspects of this statute that will be litigated in the coming months and years. The Town should take a conservative approach to any new application coming in as there could be pitfalls with each new application. For example, if a mixed use rezoning project is submitted to the Town post July 1, then the project could become bi-furcated with respect to any proffers between the residential and the commercial components. The tricky issue of this is determining what proffers to accept regarding the commercial side and its traffic impact and the needed infrastructure associated with any offsite improvements therefrom versus distinguishing how much would then be attributed to the residential aspect of the traffic analysis proportionately away from the commercial.

I believe we all would prefer to avoid being the proverbial guinea pig before our Circuit Court, and again is why I advise not meeting with any applicant without Town Staff being present. If you have any questions please contact me, and I will be more than happy to discuss them with you as we all work through this new law.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Robinson', with a long horizontal flourish extending to the right.

Whitson W. Robinson  
Town Attorney  
Town of Warrenton

## Article 11 Administration, Procedures and Enforcement

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## **11-1 Administration**

### **11-1.1 Zoning Administrator.**

The provisions of this Ordinance shall be enforced by the designated agent of the Town of Warrenton, who shall be known as the Zoning Administrator. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce the Zoning Ordinance. His authority shall include:

1. ordering in writing the remedying of any condition found in violation of this Ordinance;
2. insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311 of the Code of Virginia and Article 11 of this Ordinance; and
3. in specific cases, making findings of fact and, with concurrence of the Town attorney, conclusions of law regarding determinations of rights accruing under § 15.2-2307 of the Code of Virginia.
4. granting a variance from any building setback requirement contained in the Zoning Ordinance in accord with Article 11 of this Ordinance and § 15.2-2286 of the Code of Virginia.
5. The Zoning Administrator shall respond within ninety (90) days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.
6. In addition to the regulations and requirements herein contained concerning the administration of this Ordinance, the Zoning Administrator may establish reasonable additional administrative forms and procedures deemed necessary for the proper administration of this Ordinance.
7. Such other powers as may be granted in the Code of Virginia.

### **11-1.2 Certified Copy.**

A certified copy of the Zoning Ordinance, as adopted and including any amendments, shall be filed in the office of the Zoning Administrator of Warrenton and in the office of the Clerk of the Circuit Court of Fauquier County, Virginia.

### **11-1.3 Processing Fees.**

It is the intent of the Town that at least part of the cost of administering this Ordinance be borne by those responsible for development; therefore, a fee schedule, as prescribed by the Town Council and modified from time to time, shall apply to all permits, reviews, and processing as required by this Ordinance.

**11-1.4 Payment of Delinquent Taxes Prior to Filing a Land Use Application.** Prior to the filing of an application for a special use permit, special exception, variance, rezoning, site plan, subdivision plat, land disturbance permit, or other land use permit, the applicant shall produce evidence that any delinquent Town real estate taxes properly assessed against the subject property have been paid in full, in accord with § 15.2-2286 (E) of the Code of Virginia, as amended.

## **11-2 Board of Zoning Appeals**

### **11-2.1 General Provisions (Purpose, Authority and Membership)**

- 11-2.1.1 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 the Zoning Ordinance.
- 11-2.1.2 The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary to carry out its authorized business.
- 11-2.1.3 The Board shall consist of five (5) members and shall be appointed by the Circuit Court of Fauquier County. Members shall be residents of the Town of Warrenton. The Board shall receive compensation for traveling expenses and may receive other such compensation as may be authorized by the Town Council. Appointments to fill vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- 11-2.1.4 The term of office shall be for five (5) years. One of the five (5) appointed members may be an active member of the Planning Commission.
- 11-2.1.5 Any member of the Board 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 fifteen (15) days written notice.
- 11-2.1.6 Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- 11-2.1.7 The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.
- 11-2.1.8 The Town Manager shall appoint a staff member to serve as secretary to the Board of Zoning Appeals, without vote and shall prepare minutes of meetings, keep all records and conduct official correspondence of the Board. In the absence of the secretary at any meeting, the Board shall appoint some other person, who may or may not be a member of the Board, to prepare the minutes thereof.

### **11-2.2 Rules and Regulations**

- 11-2.2.1 The meeting of the Board shall be held at the call of its chairman or, in his absence, the acting chairman, or at such times as a quorum of the Board may determine.

- 11-2.2.2 The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- 11-2.2.3 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 records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
- 11-2.2.4 All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.
- 11-2.2.5 For the conduct of any hearing and the taking of any action or transaction of official business, a quorum shall be required of not less than three (3) members of the Board.
- 11-2.2.6 In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

**11-2.3 Powers and Duties.**

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

- 11-2.3.1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Ordinance or of any ordinance adopted pursuant thereto, in accord with Section 11-3.13 of this Ordinance, including decisions of the Zoning Administrator. The decision on such appeals shall be based on the Board's judgment of whether the administrative officer was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision. In the case of interpreting the zoning map, the board shall 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. The Board shall not have the power to change the locations of district boundaries as established by Ordinance.
- 11-2.3.2. To authorize upon appeal or original application in specific cases a variance as defined in § 15.2-2201 of the Code of Virginia, from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done and the requirements in Section 11-3.12.
- 11-2.3.3. 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 any ordinances duly adopted by the Town Council.

11-2.3.4. When giving any required notice to 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.

11-2.3.5. 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.

11-2.3.6. Periodic Reports

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

11-2.3.7. Limitation

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

11-2.3.8. Decisions Subject to Judicial Review

In accord with § 15.2-2314 of the Code of Virginia, as amended, all decisions and findings of the Board shall be final decisions, and shall be subject to judicial review in the following manner:

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the Town, may present to the Circuit Court of Fauquier County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.
2. 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 petitioner's attorney, 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 of Zoning Appeals and on due cause shown, grant a restraining order.
3. 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 such portions thereof as may be called for by such writ. 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.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the

proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

5. Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from. In the event the decision of the Board 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 a return of the record pursuant to the Writ of Certiorari.

### **11-3 Procedures for Application Review and Approval**

#### **11-3.1 Types of Permit Applications**

This Ordinance provides for the following types of permit applications for land use and development:

1. Land Disturbance Permit, subject to review and approval by the Planning Director.
2. Zoning Permit, subject to review and approval by the Zoning Administrator.
3. Building Permit, subject to review and approval by the Building Official.
4. Occupancy Permit, subject to review and approval by the Zoning Administrator.
5. Site Development Plan approval, in accord with the Zoning Ordinance of the Town of Warrenton, and subject to review and approval by the Planning Director.
6. Subdivision Plat approval, in accord with the Subdivision Ordinance of the Town of Warrenton, and subject to review and approval by the Planning Director.
7. Commission Permit ("2232 Review"), subject to public review and approval by the Planning Commission.
8. Zoning Amendment (including Conditional Zoning Procedures), subject to review and approval by the Town Council.
9. Special Use Permit, subject to review and approval by the Town Council.
10. Variances, subject to review and approval by the Board of Zoning Appeals, and for certain cases as provided for herein, subject to review and approval by the Zoning Administrator.
11. Appeals, subject to review and approval by the Board of Zoning Appeals.
12. Additional Governmental Approvals. All departments, officials and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits or licenses for uses, buildings or purposes only when they are in conformance with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

#### **11-3.2 Public Hearing Procedures**

##### **11-3.2.1 Advertisement and Notice is Required.**

Prior to each public hearing involving planning and zoning matters before the Planning Commission, the Town Council or the Board of Zoning Appeals, the Town shall provide advertisement and written notice as may be required by §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

11-3.2.2 Notice by 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 pertinent application or case.

11-3.2.3 Notice and Certification by Applicant.

For any application for amendment or development approval for which a public hearing is required before the Planning Commission and the Council and which is initiated by an applicant, the applicant shall be responsible for providing notice in accord with § 15.2-2204 of the Code of Virginia. A certification of notice and a listing of the persons to whom notice has been sent shall be filed with the Zoning Administrator by the applicant at least five days prior to the first public hearing of the Commission. A counterpart of such affidavit shall be presented to the Planning Commission or the Council at the beginning of its public hearing. The applicant may rely upon records of the local real estate assessor's office or the applicable website, if available, to ascertain the names of persons entitled to notice.

11-3.2.4 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.

11-3.2.5 Additional Notice Required for Deferrals

If an item is not heard at a public hearing for which it was noticed, but is deferred to a specific date, no additional notice at a public hearing is required by this Section.;

11-3.2.6 Additional Notice Required for Recessed Public Hearings.

If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

11-3.2.7 Speakers at Public Hearings.

All witnesses and speakers presenting facts, evidence or opinion at any public hearing shall provide their name, address and affiliation, if any, for the record. Witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements. At the discretion of the person presiding over the hearing, speakers may be limited as to the time they are allowed to speak.

**11-3.3 Land Disturbance Permit**

**11-3.3.1 Permit Required.**

No person shall engage in any kind of land disturbing activity, as defined in Article 11, within the Town of Warrenton until they have acquired a Land Disturbance Permit.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan and receipt of a land disturbance permit shall be the responsibility of the owner of the land.

**11-3.3.2 Plan Submission.**

If filed separately from a site development plan, three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator. If submitted with the site development plan, the erosion and sediment control plan shall accompany each copy of the site plan submission.

**11-3.3.3 Approved Plan.**

An approved plan is required before the issuing of any other building or development permits.

**11-3.3.4 Plan, Action.**

Any erosion and sedimentation plan submitted under the provisions of this Article and the Town's Erosion and Sediment Control Ordinance will be acted on within forty-five (45) days from receipt by either approving or disapproving in writing and, if disapproved, giving specific reasons for such disapproval. If no formal action has been taken by the plan approving authority within forty-five (45) days after receipt of a plan, the plan shall be deemed approved.

**11-3.3.5 Plan Amendments.**

An approved plan may be changed by the plan approving authority in the following cases:

1. where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. where the person responsible for carrying out the approved plan finds that because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

**11-3.3.6 Bonding.**

Prior to the issuance of any permit, the Administrator shall also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney for the Town of Warrenton, to ensure that measures could be taken by the Town, at the applicant's expense, should they fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land disturbing activity. This cash escrow, letter of credit, or other acceptable legal arrangement will provide for a right-of-entry by representatives of the Town, for purposes of inspection, reinstallation, maintenance, or any conservation practices as may be necessary.

1. If the Town takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
2. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
3. These requirements are in addition to all other provisions of this Article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

**11-3.3.7 Inspections and Enforcement, Generally.**

Inspections shall be performed by the Town's Construction Inspector or Building Official and enforcement shall be performed by the Zoning Administrator.

**11-3.3.8 Monitoring, Reports, and Inspections.**

The Construction Inspector or Building Official, through the Administrator shall: (i) provide for periodic inspections of the land disturbing activity, and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan, or operator shall be given notice of the inspection. If the plan approving authority through the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the mail to the plan certification, or by delivery

at the site of the land disturbing activity to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Article and upon conviction shall be subject to the penalties provided in Section 11-5 herein.

With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities which require a permit, the Administrator may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control is performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such person shall have the opportunity to accompany the inspector on any on-site inspection.

After land clearing operations have begun, no area shall be denuded for more than thirty (3) days unless authorized by the Administrator. All trenches for storm, sewer, water, and gas lines are to be backfilled, compacted, seeded, and mulched within seven (7) days of backfill.

#### **11-3.3.9 Acceptance of Performance.**

Upon completion of an approved erosion and sedimentation control plan, the permittee shall notify the Administrator of such completion. The Town Construction Inspector or Building Official shall then inspect the work and plantings, and upon their determination that they are in compliance with the approved plan, they shall notify the Administrator, who shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the applicant or permittee guarantee all erosion and sedimentation control work for a period of one (1) year from the date of its preliminary acceptance, or for a period of one (1) year from repair or replanting ordered by the Administrator, until such time that all control structures and a minimum of ninety (90) percent of all plantings shall have survived for a year without need of further replanting or repair. The Administrator may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan and guarantee at any time during the one (1) year period. Such an order shall serve to revoke the preliminary acceptance and shall cause the applicant to renew the guarantee for an additional one (1) year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one (1) year, or when all control structures and a minimum of ninety (90) percent of all plants have survived for a period of one (1)

year without need of further replanting or repair. For the purposes of this Article, normal cleaning of silt basins alone shall not be construed to be repair work.

**11-3.3.10 Appeals.**

Final decisions of the Administrator under this Article shall be subject to review by the Board of Zoning Appeals, provided, that an appeal is filed within thirty days from the date of any written decision by the Administrator.

Final decisions of the Administrator or Board of Zoning Appeals under the Article shall be subject to review by the Fauquier County circuit court, provided, that an appeal is filed within thirty (30) days from the date of the final written decision of the Board.

**11-3.3.11 Violations; Remedies; Civil Penalties; Notice.**

**1. Stop Work Order.**

Upon receipt of a sworn complaint of a violation of this Article from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of a land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply a specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the chief administrative officer or his designee may issue an order to the owner requiring that all construction and other work on the site other than corrective

measures be stopped until an approved plan or any required permit have been obtained.

Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting, or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

## **2. Civil Penalties, generally.**

Except as set out immediately herein below, any person who violates this Article may be liable to the Town in a civil action for civil penalties of One Hundred Dollars (\$100.00) for any one violation. Each day during which the violation is found to have existed shall constitute a separate offense. The total civil penalties for a series of specified violations arising from the same operative set of facts shall not exceed Three Thousand Dollars (\$3,000.00). Notwithstanding the foregoing, the civil penalty for commencement of land-disturbing activities without an approved permit as provided in Section 4-5 of this ordinance shall be One Thousand Dollars (\$1,000.00), except that civil penalties for a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not exceed a total of Ten Thousand Dollars (\$10,000.00).

## **3. Injunctions and Other Relief.**

Notwithstanding any other relief or remedy available under this Article, the Administrator may apply to the Circuit Court of Fauquier County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of the Article, without the necessity of showing that there does not exist an adequate remedy at law.

## **4. Notice of Violation.**

In no case shall the Administrator begin legal action to enforce the provisions of this Article unless and until they have first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this Article for which such legal or equitable relief is to be

sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before the enforcement action is brought.

**5. Civil Penalties.**

Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation.

**6. Cumulative Remedies.**

The remedies provided for in this Article shall be cumulative in the sense that the imposition of, or attempt to impose, one (1) remedy shall not act as a restriction of any right to impose or attempt to impose, any other remedy authorized by this Article.

**7. Administrative Fines.**

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Administrator, or any condition of a permit or any provision of this Article, the Town Council, or the Administrator may provide, in an order issued by the Town Council or the Administrator against such person, for payment of civil charges for violations in specific sums, not to exceed Two Thousand Dollars (\$2,000) for each violation. Such civil charges shall be instead of any appropriate civil penalties which could be imposed as outlined in Section 11-5.

**11-3.3.12 Criminal Penalties - Misdemeanor.**

Violators of this Article shall be guilty of a Class One misdemeanor and subject to a fine not exceeding \$2,500, or twelve months imprisonment in jail, or both, for each violation.

**11-3.4 Zoning Permits**

**11-3.4.1 Zoning Permit Required**

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 zoning permit issued by the Zoning Administrator. A zoning permit is required in all cases where a building permit is required.

Failure to obtain a zoning permit shall be a violation of this chapter and punishable under Section 11-5.

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

#### 11-3.4.2 Application for Zoning Permit

An application for a Zoning Permit shall be made to the Zoning Administrator, who shall require and be furnished by the applicant with all plans and documents as may be determined to be necessary to evaluate whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance.

In order for an application for a zoning permit to be deemed complete, each such application shall be accompanied by the following items, unless waived by the Zoning Administrator as not pertinent. The Zoning Administrator may also require additional information necessary in order to determine if the application conforms with the provisions of this Ordinance.

1. A statement from the Town Director of Public Works that all applicable regulations and requirements for water and wastewater facilities have been complied with.
2. A complete description of the intended use or uses.
3. If a dwelling, the number of housekeeping units within the structure.
4. A plot plan 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 required setback distance from any property line or right-of-way of any public highway.
5. Number, size, location and lighting of signs, if any.
6. Off-street parking and other facilities.
7. Proposed utilities and their locations.
8. Drainage design and proposal.
9. Topographic map, if determined to be necessary by the zoning administrator.
10. Fee in accord with the fee schedule adopted by the Town Council.

#### 11-3.4.3. Standards for Issuance

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 the 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 11-5.

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 Ordinance or any other applicable law, ordinance or regulation. The issuance of a zoning permit shall not afford protection to any owner who is found to be in violation of this Ordinance 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 Ordinance, before proceeding, the applicant is still required to ensure compliance with the Virginia Uniform Statewide Building Code, and all other applicable laws, ordinances and regulations.

Approval or denial of a zoning permit shall be made within ten (10) working days of the time at which the Zoning Administrator has deemed that the zoning permit application is complete.

#### 11-3.4.4. Duration of Valid Zoning Permit

Any zoning permit issued shall be valid for one year. If an applicant has not completed construction of the building after one year of receiving the permit, the applicant may re-apply.

### **11-3.5 Building Permits**

#### 11-3.5.1 Building Permit Required

No principal or accessory building, structure or use shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a building permit issued by the Building Official.

Failure to obtain a building permit shall be a violation of this chapter and punishable under Section 11-5 of this Ordinance.

The Building Official shall maintain a record of all building permits and a copy shall be furnished, upon request, to any person.

#### 11-3.5.2 Application for Building Permit

An application for a Building Permit shall be made to the Building Official, 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 ordinance and with the Virginia Statewide Uniform Building Code.

In order for an application for a Building Permit to be deemed complete, each such application shall be accompanied by the following items, unless an item is deemed not pertinent by the Building Official, and such additional information as the Building Official may require as being necessary in order to determine if the application conforms with the provisions of this Ordinance and the Building Code:

1. The size and shape of the parcel of land on which the proposed building is to be constructed
2. Scale drawings which accurately show the design, construction, dimensions and materials of all proposed buildings and structures
3. The location of such buildings and structures with respect to the property lines of said parcel of land, and the right-of-way of any street or highway adjoining said parcel of land.
4. Proposed utilities and their location.
5. Drainage scheme.
6. Fee in accord with the fee schedule adopted by the Town Council.

#### 11-3.5.3. Standards for Issuance

Building permits issued on the basis of plans and applications approved by the Building Official 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 11-5 of this chapter.

No building permit shall be issued before receipt of a zoning permit for the proposed use and structure. Building and zoning permits for the same use and structure may be submitted, reviewed and approved concurrently.

No building 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 Ordinance or any other applicable law, ordinance or regulation. The issuance of a building permit, however, shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If the proposed structure is in conformity with the provisions of this Ordinance and the Virginia Uniform Statewide Building Code, a building permit shall be issued to the applicant by the Building Official.

Approval or denial of a building permit shall be made within ten (10) working days of the time at which the Building Official has deemed that the application for permit is complete.

11-3.5.4. Duration of Valid Building Permit

Building permits issued shall be valid for one year.

**11-3.6 Occupancy Permit**

11-3.6.1 Occupancy Permit Required.

Land may be used, and buildings occupied, structurally altered, erected, or changed in use for any purpose as permitted in the District in which such land or building is located, only after an occupancy permit has been issued by the Zoning Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Ordinance. A similar permit shall be issued for the purpose of maintaining, renewing, or changing a nonconforming use. An occupancy permit either for the whole or a part of a building or the use of the land shall be applied for simultaneously with the application for a building permit.

11-3.6.2 Standards for Issuance.

The Occupancy Permit shall be issued within ten (10) days after final approval by the Building Official of the erection or structural alteration of such building or part which has conformed with the provisions of this Ordinance and all previously issued permits and approvals for the site, including building permits, zoning permits and site plans.

No Occupancy Permit shall be granted until all improvements shown on any approved site plan have been completed in accordance therewith.

**11-3.7 Site Development Plan**

11-3.7.1 Site Development Plan Required

No person shall commence any use or erect any structure, including additions to existing structures, parking areas or other required site plan features, without first obtaining the approval of a site development plan by the zoning administrator as set forth in this article. No use shall be carried on, no structure erected or enlarged, and no other improvement or construction undertaken, except as shown upon an approved site development plan.

A site development plan shall be required for the following uses in the enumerated districts:

- Multi-family dwellings, town houses and all other dwellings except single family detached, two-family and accessory dwellings.
- All uses in the RO, PSP, CBD, LI and C Districts
- For all special use permits

11-3.7.2 Exemptions from Site Development Plan Requirement

The following are exempt from having to file a site plan: the lawful construction, alteration and occupancy of a single or two-family dwelling or accessory unit, with or without a garage. Exemption from the site plan requirements does not authorize violation of any other provision of this Ordinance.

11-3.7.3. Site Development Plan Requirements

Every site plan shall be submitted to the zoning administrator in accordance with the applicable standards and regulations for Site Development Plans as provided in the Town of Warrenton Subdivision and Development Ordinance.

11-3.7.4. Review and Approval

Upon receipt of any Site Development Plan, the Zoning Administrator shall review it in accordance with the applicable procedures, standards and regulations for Site Development Plans as provided in this Ordinance.

11-3.7.5. Revisions To, Or Deviation From, Approved Plan.

After a Site Development Plan has been approved by the Zoning Administrator, minor adjustments of the plan, which are in substantial compliance with this article and the other provisions of this Ordinance and which serve the overall purposes of this section, may be approved by the Zoning Administrator. Deviation from an approved site plan without the written approval of the zoning administrator shall void the plan and the Zoning Administrator shall require the applicant to resubmit a new plan for consideration. Any major revision of an approved Site Development Plan shall be made in the same manner as the originally approved plan.

**11-3.8 Commission Permit (“2232 Review”)**

11-3.8.1 Permit Required

In accord with the Code of Virginia, §15.2-2232, no street, park or other public area or public structure, public utility, public building or public service corporation facility other than railroads, 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.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

#### 11-3.8.2. Application

An application for a commission permit shall be filed with the Zoning Administrator and shall meet the minimum submission requirements as prescribed for a zoning permit in Section 11-3.4.2. and in addition shall include a written statement of justification from the applicant as to why the proposed improvement should be deemed to be in accord with the Comprehensive Plan.

An application is not necessary for features already specifically shown on the Comprehensive Plan, as determined by the Planning Director.

#### 11-3.8.3. Planning Commission Action

In connection with any such determination, the Planning Commission may, and at the direction of the Town Council shall, hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

The Planning Commission shall communicate its findings pursuant to this section to the Town Council, indicating its approval or disapproval, along with written reasons therefore. Failure of the commission to act within sixty (60) days of submission of an application, unless such time is extended by the Council, shall be deemed approval.

#### 11-3.8.4. Issuance of Permit; Town Council Review

The Zoning Administrator, on behalf of the Planning Commission, shall issue a Commission Permit following approval by the Planning Commission pursuant to this section. The Council may overrule the action of the Commission by a vote of a majority of its membership.

#### 11-3.8.5. Appeal of Denial of Permit

The owners or their agents may appeal the decision of the Planning Commission to

the Council within ten (10) days after the decision of the Commission. The appeal shall be by written petition to the Council setting forth the complete reasons for the appeal. The appeal shall be heard by the Council within sixty (60) days of its submission. A majority vote of the Council shall overrule the Commission.

### **11-3.9 Zoning Amendments**

#### **11-3.9.1 Authority for Change.**

Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Town Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the Town Council, or by motion of the Planning Commission, or by petition of any property owner, addressed to the Town Council, in accord with the procedures and requirements of this Ordinance.

The regulations, restrictions and boundaries established in this Ordinance may, from time to time, be amended, supplemented, changed, modified or repealed, by ordinance, by a majority vote of the Town Council after recommendation by the Planning Commission, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard; and that notice shall be given of the time and place of such hearing as provided for in §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

#### **11-3.9.2 Initiation of Amendment**

Either a zoning map or text amendment may be proposed by resolution of the Town Council, by motion of the Planning Commission, or by application by the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed amendment.

#### **11-3.9.3 Submission of Application for Amendment.**

Every application for amendment of the Zoning Ordinance shall contain the following items, as applicable. Applicability shall be determined by the Planning Director who may waive or modify any of the designated submission items if appropriate given the nature of the application and so as to facilitate review by the Town and the public. Five (5) copies of the complete application shall be submitted.

1. The applicant's name, address, phone number and email address, and signature.
2. The applicant's authorized representative's name, address, phone number and email address.

3. The property owner's name, address, phone number and email address and signature.
4. A summary of existing data and conditions of the property, including:
  - Existing zoning classification
  - Tax Map and parcel numbers
  - Address of the property
  - Total acreage
5. A plan of the property, at a scale of 1"=200', showing the extent of the area to be rezoned, streets bounding and intersecting the area, the land use and zone classification of abutting districts, and photographs of the area to be rezoned and abutting areas.
6. A plan to a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, indicating the locations of existing and proposed topography, vegetation, floodplain, wetlands, structures, uses, streets, and areas for off-street parking and loading.
7. A boundary survey of the property to be rezoned
8. Information at the time of submission, on all parcels contiguous to the subject property and any property within 100 feet of the boundary, including:
  - Existing zoning
  - Existing land use
  - Proposed land use
  - Historic buildings or structures
9. A statement of justification that explains the circumstances in the proposed district and the abutting districts and any other factors on which the applicant relied as reasons for supporting the proposed zoning amendment, including the degree of compliance of the proposed request and subsequent development plans with the provisions of the Comprehensive Plan.
10. The approximate time schedule for the beginning and completion of development in the area and any proposed phasing of the development.
11. A Concept Development Plan for the property, showing the proposed uses and their general relationships within the site and external to the site, including proposed structures, uses, streets, parking areas, open space areas, vegetation, sidewalks and trails and means of access to the existing road system
12. A Traffic Study that shows the projections for trip generation, traffic volume and levels of service on site and on the adjacent road system, including provisions for safely accommodating both vehicular and pedestrian traffic.
13. Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed

business facilities, and any other information describing the relationship of the proposed development to the needs of the market area.

14. A statement of Impact Mitigation describing and analyzing the various impacts of the proposed rezoning, including fiscal, environmental conditions, and public facilities and utilities impacts, and the proposed methods for mitigating any anticipated impacts.
15. Any development conditions or proffers
16. Disclosure of Real Parties in Interest
17. Certificate of Payment of Taxes, verifying that real estate taxes have been paid for all property included in the application.
18. Record of Pre-Application Conference
19. Fees, in accord with the fee schedule adopted by the Town Council
20. A statement describing in detail the existing character of the area.

#### **11-3.9.4 Staff Review of Application**

1. Pre-Application Conference.

Prior to filing an application, an applicant shall meet with the Planning Director and discuss the proposed application and land uses and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made to the Planning Director and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. The Planning Director shall respond to each written request for a pre-application conference within fifteen (15) calendar days of receipt.

2. Review of Application for Completeness.

No application shall be accepted and reviewed unless determined by the Planning Director to be complete. A complete application is one which meets the minimum submission requirements established herein. Each application shall be reviewed to determine if it includes the minimum submission requirements. The Planning Director shall maintain a current log of all pending complete applications.

3. Acceptance of Complete Application.

Within fifteen (15) calendar days of submission of the application, the Planning Director shall either officially accept the application as complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness

specifying those areas of additional information necessary for acceptance and review.

If a notice of incompleteness is issued, the applicant may resubmit the application with the additional data required. Upon resubmission, the Planning Director will review the resubmitted application in the manner provided in this section for the original application.

If the application is not resubmitted within sixty (60) days of being determined incomplete, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

4. Referrals. Upon official acceptance of the application for zoning amendment, the Planning Director shall forward a copy of the application to all town departments and county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.
5. Referral responsibilities. Each reviewing agency shall prepare a staff report of referral comments which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.
6. Review of Referrals. All referral comments shall be provided to and reviewed by the Director of Planning within thirty (30) calendar days after an application has been officially accepted. The Planning Director shall forward to the applicant a written review of the issues raised by the application.
7. Applicant Response. Upon receipt of the written report from the Planning Director, an applicant may submit a written request for a meeting with the Planning Director to discuss the matters contained in the report and the application. Such request shall include a response to the matters raised in the Director's written report.
8. Required Action by Other Entities. In the event that this Ordinance requires that an application not be granted until acted upon by some government board or agency other than the Town Planning Commission and Council, the Planning Director shall forward the application for amendment to such board or agency for appropriate action prior to notification to an applicant that an application is ready to be presented to the Planning Commission or Town Council. The Planning Commission may make its recommendations on an application contingent on required action by the other boards or agencies.
9. Report and Notice to Applicant. The Planning Director shall compile the referrals and other information pertinent to the application, prepare a written staff report with proposed findings and recommendations as to the application, and

notify the applicant that the report is complete and the application is ready to be presented to the Planning Commission and Town Council for public hearing.

10. Submission to Planning Commission. Within sixty (60) days of formal acceptance of the application, the Planning Director shall forward the application and staff report to the Planning Commission for its review.

#### **11-3.9.5 Amendment to Application**

An application may be amended by the submission of additional information or proposed changes to the application after it has been officially accepted. If the additional information or proposed changes submitted are to conform with recommendations made by Town staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line.

However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the Planning Director shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the review process including public hearings. If any portion must be repeated, the Director shall notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes must be withdrawn, submitted as a new application, or will require the applicant to approve an extension of the time limits prescribed in this Section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the Director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

#### **11-3.9.6 Withdrawal of Application**

An application for rezoning may be withdrawn at any time upon written request by the applicant and with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing; There shall be no refund of rezoning fees in the case of withdrawal either before or after advertising. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action.

#### **11-3.9.7 Planning Commission Review.**

Within sixty (60) calendar days after a zoning amendment application has been submitted to the Planning Commission from the Planning Director, and generally within one hundred twenty (120) days after official acceptance of the application by the Town, the Planning Commission shall hold a public hearing on the application after notice as required by § 15.2-2204 of the Code of Virginia.

### **11-3.9.8 Report by Planning Commission**

The Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the Town Council within one hundred (100) days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, shall be deemed a recommendation for approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period

If the proposed amendment consists of a change in the text of this Ordinance, the Commission may recommend revisions to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accord with sound zoning practice and the adopted Comprehensive Plan, is in furtherance of the purposes of this Ordinance and is not more intensive than the advertised/noticed proposed use. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.

In recommending the approval or denial of any proposed amendment to this Ordinance, the Planning Commission should state its reasons for such recommendation.

Tabling or deferring an application for rezoning on the grounds of inadequate data may be requested by the applicant for a period of no longer than ninety (90) days, after which the application shall be considered to be automatically withdrawn. All costs involved in re-applying and re-advertising shall be paid by the applicant.

### **11-3.9.9 Town Council Review and Action.**

After receiving the report of the Planning Commission, or after the lapse of one hundred (100) days past the initial meeting of the Planning Commission on the application without Commission recommendation, the Town Council shall hold its own public hearing after notice and advertising required by § 15.2-2204 of the Code of Virginia. The Council may approve the zoning amendment as requested by the applicant, it may deny the amendment, or it may approve a zoning classification of less intensity than that requested, if available in the Ordinance, without holding a new hearing. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing. The Town Council must act on the proposed zoning amendment within one year of official acceptance of the application.

### **11-3.9.10 Evidentiary Matters Before the Town Council**

All information, testimony or other evidence presented by an applicant for a zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Town Council determines that an applicant is presenting evidence which is substantially or materially different from that presented to the Commission, the Council may refer the application back to the Commission for such additional consideration and action as the Council may deem appropriate. All costs in re-advertising shall be paid by the applicant.

### **11-3.9.11 Contesting a Decision of the Town Council**

Every action contesting a decision of the Town Council for granting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception or special use permit, shall be filed within thirty (30) days of such decision with the Fauquier County Circuit Court.

### **11-3.9.12 Criteria for Consideration of Zoning Map Amendments.**

In considering requests for zoning map amendments, the Planning Commission and Town Council should consider, among other issues, the following factors:

1. whether the rezoning request, if granted, would further the public interest, and whether it conforms with the goals, objectives, and policies of the Comprehensive Plan;
2. whether the rezoning is consistent with the town's Future Land Use Plan, as identified in the Comprehensive Plan, and established character of the area and land use patterns;
3. whether the rezoning is justified by changed or changing conditions;
4. whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
5. whether utility, sewer and water, transportation, school, recreation, stormwater management and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;
6. whether the rezoning will be compatible with properties and uses in the vicinity and not have an adverse impact on these properties or their values;
7. whether there are adequate sites available elsewhere in the Town for the proposed use, or uses, in districts where such uses are already allowed;
8. whether the impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning provides sufficient measures to mitigate such impacts;

9. whether a reasonable and viable economic use of the subject property exists under the current zoning;
10. whether the effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality is compatible with the Town's Comprehensive Plan;
11. whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base;
12. whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes, including housing and business, as determined by population and economic studies;
13. the effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of the Town; and
14. the effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

**11-3.9.13 Criteria for Consideration of Text Amendments.**

If the request is for an amendment of the text of this Ordinance, the Planning Commission and Town Council shall consider the following matters, in addition to any relevant matters included in Section 11-3.9.12:

1. Whether the proposed text amendment is consistent with the Comprehensive Plan.
2. Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

**11-3. 9.14 Joint Public Hearing.**

The Town Council and the Planning Commission may hold a joint public hearing following proper public notice under § 15.2-2204 of the Code of Virginia, as amended.

**11-3.9.15 Majority Requirement for Change in Ordinance.**

An affirmative vote of at least a majority of the members of the Town Council shall be required to adopt, amend, or reenact a zoning ordinance.

**11-3.9.16 Timing of Application Consideration and Reconsideration**

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of the Planning Commission and the Town Council meetings and the schedule of newspaper publication relative to public notice.

Upon the denial of any application filed to change a zoning district designation, no further application concerning any or all of the same property shall be filed for rezoning to the same use in less than twelve (12) months from the time of denial by the Town Council, unless this requirement is specifically waived by the Town Council.

### **11-3.9.17 Conditional Zoning**

#### **1. Purpose and Authority**

As part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing certain conditions and restrictions on the use and development of his property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296 et seq. of the Code of Virginia, as amended.-

While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner, or operator, and the provisions of this section shall not be used for the purpose of discrimination in housing.

#### **2. Proffered Conditions.**

As a part of an application for rezoning or amendment to the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case to address impacts of the proposed use.

For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council, and the undersigned."

#### **3. When Proffers Are Made.**

Proffered conditions should be submitted for Staff review as part of the initial application for rezoning.:

Proffered conditions made at the Planning Commission meeting shall be forwarded to the Town Council prior to the Council's public hearing.

To be considered by the Planning Commission, proffers must be submitted with the application prior to advertising for public hearing.

4. Contents of Proffer.

Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

5. Review and Revision of Proffered Conditions.

Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Town Council has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any proffered condition shall be approved without a second advertised public hearing thereon.

6. Modifications to Proffers.

After the Town Council's public hearing has been advertised, , should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the Town Council before the application and the modified conditions can be reviewed and acted on by the Council.

7. Additional Conditions.

Should additional conditions be proffered by the applicant at the time of the public hearing before the Town Council, 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 both the Planning Commission and the Town Council, which hearing may be held either separately or jointly.

8. Annotation of Zoning District Map.

The zoning district map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

9. Enforcement of Conditions.

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

Upon approval by the Town Council, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in the Ordinance.

10. Substantial Conformance Required.

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 the approved zoning and 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.

11. Substantial Conformance Defined.

For the purpose of this Section, substantial conformity-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 or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.

12. Guarantee for Construction of Improvements.

A guarantee, satisfactory to the Town Council, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by a rezoning request and the proffered conditions. This guarantee may be reduced or released by the Council or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. The guarantee shall be required no later than final site plan or subdivision approval, whichever may occur earlier in time.

13. No Permits Shall Be Issued That Do Not Comply With Proffers.

Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

14. Appeal of Proffer Decision.

Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Town Council. Such appeal shall be filed within thirty (30) calendar days from the date of the decision being appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the complete basis for the appeal. Upon receipt of the appeal notice, the Council shall take such testimony as it deems appropriate and should render its decision within sixty (60) calendar

days after receipt of the appeal notice. The Town Council may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.

15. Change of Approved Conditions.

Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 11-3.7 of this Ordinance, except that the Planning Director may waive any submission requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application.

**11-3.10 Special Use Permits**

**11-3.10.1 Authorization.**

Uses listed in the district regulations as “permissible uses upon approval by the Town Council” shall be reviewed and acted upon by the Planning Commission and Town Council as provided in Section 11-3.2 of this Ordinance.

Uses listed in the district regulations as “permissible uses upon approval by the Town Council” shall be reviewed and acted upon by the Town Council as provided in Section 11-3.11.11 of this Ordinance.

Special use permits may be granted to establish or construct uses or structures which have the potential for a harmful impact upon the health, safety, and welfare of the public upon finding that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.

In acting on a request for a special use permit, the Town Council shall consider the impact of the requested special use.

Only those special use permits that are expressly authorized in a particular zoning district, or elsewhere in this Ordinance may be approved. The Council may approve special use permits subject to conditions on such permits that shall apply to the property or use, regardless of any change in ownership.

**11-3.10.2 Application.**

Application for a special use permit shall be filed on the appropriate form therefore as provided by the Zoning Administrator and in accordance with the instructions which accompany the form. Special use permit applications shall contain the same information as required for zoning amendment applications set forth in Section 11-3.9. In addition, unless waived in part by the Zoning Administrator, the applicant shall provide all of the information, data, and studies needed to allow the Planning Commission and Town Council, to reach conclusive evaluations, which shall include, but not be limited to, the following:

- 1 A Statement of Justification explaining the compatibility of the proposed use with the existing and proposed land uses adjacent to and in the vicinity of the site and any potential impacts on the environment and on the neighborhood due to the proposed use intensity, number of participants, acreage, hours of operation, traffic, lighting, and access, as well as the matters set forth in section 11.3-11.3.
- 2 A vicinity map depicting the adjacent and nearby (within 1,000 feet) land uses, streets and other data customarily incidental to a vicinity map.
- 3 A proposed site development plan indicating the location of the anticipated structures, setback lines, street pattern, parking provisions, a screening plan, and common open space if applicable. Such plans shall be contained on sheets measuring a minimum of 18" X 24" and a maximum of 36" X 24".
- 4 An analysis of the impact on the Town's transportation network and the ability of adjacent streets and intersections to efficiently and safely move the volume of traffic generated by the development, along with estimates of cost and means of providing improvements required to service the proposed special use.
- 5 An analysis of the impact on the Town's community facilities including estimates of costs and means of providing the additional community facilities which will be needed to serve the proposed special use. Community facilities include, but shall not be limited to, sewage disposal facilities and systems, solid waste disposal facilities and systems, water supply facilities and systems, storm drainage facilities and systems, and electrical utility facilities and systems.
- 6 An analysis of the ability of the Town to provide police and fire protection to the proposed special use.
- 7 The proposed configuration and intensity of lighting facilities to be arranged in such a manner to protect the streets and neighboring properties from direct glare or hazardous interference.
- 8 Noise impact and abatement studies to determine potential impact on adjoining properties and neighborhoods.
- 9 The delineation of any necessary screening for any uses or structural features deemed to be incompatible with the objectives of this Article, the remainder of this Zoning Ordinance, or the Comprehensive Plan including walls, fences, plantings, and/or other enclosures. Other landscaping to enhance the effectiveness of the screening and to insure the compatibility of use may also be required.

- 10 The delineation of screening and buffering of all parking areas will be required in accordance with a landscaping plan. Parking areas forward of the established building setback line will be prohibited.
- 11 The delineation of major trees on the site. Except to protect the public safety, avoid property loss, or provide for required parking, all major trees forward of the building setback line may be required for preservation if their removal would diminish the character of the neighborhood.

### **11-3.10.3. Evaluation Criteria; Issues for Consideration**

In considering a Special Use Permit application, the following factors should be considered. The applicant also shall address these factors in its statement of justification:

1. Whether the proposed Special Use Permit is consistent with the Comprehensive Plan.
2. Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control.
3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.
6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.
11. Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.
13. Whether the proposed use will facilitate orderly and safe road development and transportation.

14. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Town of Warrenton.
15. Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities.
16. The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
17. Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
18. The effect of the proposed Special Use Permit use in enhancing affordable shelter opportunities for residents of the Town, if applicable.
19. The location, character, and size of any outdoor storage.
20. The proposed use of open space.
21. The location of any major floodplain and steep slopes.
22. The location and use of any existing non-conforming uses and structures.
23. The location and type of any fuel and fuel storage.
24. The location and use of any anticipated accessory uses and structures.
25. The area of each proposed use.
26. The proposed days/hours of operation.
27. The location and screening of parking and loading spaces and/or areas.
28. The location and nature of any proposed security features and provisions.
29. The number of employees.
30. The location of any existing and/or proposed adequate on and off-site infrastructure.
31. Any anticipated odors which may be generated by the uses on site.
32. Refuse and service areas.

#### **11-3.10.4. Conditions and Restrictions**

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Council may require a guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the Special Use Permit.

#### **11-3.10.5. Period of Validity**

As a condition of approval, a special use permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such case, an extension may be granted prior to expiration by the original approving body, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special use permit unless a qualified application for renewal is actively under consideration by the approving body.

**11-3.10.6. Staff Review**

Wherever a use or structure is listed either as a permissible use subject to approval of a special use permit, application shall be made to the Planning Director who shall prepare a report and refer such application to the Planning Commission for those uses that are listed as permissible upon approval by the Town Council, and to the Board of Zoning Appeals for those uses listed as permissible upon approval by the Board. Application for a special use permit shall be filed, containing such material and be processed in the same manner as for zoning amendments as provided for in Section 11-3.10. A Special Use Permit may be submitted in conjunction with a zoning map amendment application.

**11-3.10.7. For Uses to be Acted Upon by the Town Council, as listed in Article 3**

Upon review of the application and supporting data, the Planning Commission shall make its recommendation to the Town Council as to whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

Before submitting its recommendation to Town Council, the Planning Commission shall hold a public hearing which may be a joint public hearing with the Town Council, after notice as required by § 15.2-2204 of the Code of Virginia, as amended. Following the public hearing, the Commission shall forward its recommendation to the Town Council.

**11-3.10.8 Town Council Review and Hearing.**

For those uses that are listed as permissible upon approval by the Town Council, the Town Council shall consider the recommendations of the Town Planning Commission before granting or denying approval of a special use permit. Before rendering a decision on a particular special use permit, the Town Council shall hold a public hearing, which may be a joint public hearing with the Planning Commission, after notice as required by § 15.2-2204 of the Code of Virginia, as amended.

### **11-3.10.9 Modifications to the Application or Conditions.**

For those uses that are listed as permissible upon approval by the Town Council, after the Planning Commission has made its recommendation to the Town Council, should the application be modified, or additional conditions be agreed to or offered by the applicant that results in a more intense use or higher density or alters conditions that were intended to mitigate the impact of the development as determined by the Zoning Administrator, then a second public hearing shall be held by the Planning Commission before the modified application can be heard by the Town Council. The applicant shall be responsible for paying any additional advertising fees required for a subsequent public hearings before the Planning Commission and the Town Council. The Town Council may still impose reasonable conditions on the applicant, in accord with § 15.2-2286 of the Code of Virginia, as amended.

However, should additional information or modified conditions be submitted by the applicant after the Planning Commission has made its recommendation to the Town Council, which modifications or conditions were discussed at the public hearing before the Planning Commission, then a second public hearing before the Planning Commission shall not be required.

### **11-3.10.10 For Uses to be Acted Upon by the Town Council**

Upon review of the application and supporting data, and before rendering a decision on a particular special use permit, the town Council shall hold a public hearing after notice as required by § 15.2-2204 of the Code of Virginia, as amended, and subsequently shall determine whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

### **11-3.10.11 Construction Already Commenced.**

Nothing contained herein shall require any change in the plans or construction of any building or structure subject to a vested right prior to the effective date of this Ordinance.

## **11-3.11 Variances**

### **11-3.11.1. Variances Determined by the Board of Zoning Appeals**

#### **1. Variances Authorized**

The Board of Zoning Appeals may authorize variances from the terms of this chapter as will not be contrary to the public interest, when, owing to

special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done.

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance, the Board may grant a variance to alleviate those conditions, under the terms and procedures provided for herein.

No such variance shall be authorized by the Board unless it finds:

- i. That the strict application of the Ordinance would produce undue hardship;
- ii. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- iii. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- iv. That the condition or situation of the property concerned or the intended use of the property 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.

## **2. Board May Impose Conditions**

In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for 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.

## **3. Public Hearing Required**

No variance shall be authorized except after notice and hearing as required by §15.2-2204 of the Code of Virginia as amended.

**11-3.11.2. Unauthorized Variances**

1. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
2. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
3. No variance shall be authorized that would relate to nonconforming uses.
4. No variance shall be authorized that would reduce the amount of off-street parking space required by Article 7.
5. No variance shall be authorized that would relate to signs.
6. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.
7. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.
8. No variance shall be authorized merely for the purpose of convenience or economic hardship.

**11-3.11.3. Procedures for Variances**

**1. Application for Variance**

Pursuant to provisions of this article and §15.2-2309 of the Code of Virginia, as amended, any person seeking a variance from the application of regulations of this chapter, shall first submit his proposal to the Zoning Administrator on a form to be provided by the Zoning Administrator, including therewith satisfactory evidence that any delinquent real estate taxes owed to the county which have been properly assessed against the subject property have been paid, and all plans and information relating to the application required by the board of zoning appeals pursuant to §15.2-2310 of the Code of Virginia. 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.

The Zoning Administrator shall also transmit a copy of the application to the local Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

## **2. Decision on Variance Application**

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 of the Code of Virginia.

The proposal shall then be advertised pursuant to provisions of §15.2-2204 of the Code of Virginia prior to public hearing by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

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.

## **3. Burden of Applicant**

The applicant for a variance shall bear the burden of producing evidence to support the required findings and to establish that the requested variance satisfies all standards for a Variance.

## **4. 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 for the first public hearing.. 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 its merits.

## **5. Re-Application**

If any application is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board within twelve (12) months after the date of such denial.

### **11-3.12 Appeal to the Board of Zoning Appeals**

### **11-3.12.1 When Appeals May be Taken**

1. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto.
2. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise, than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

### **11-3.12.2 Appeal Procedure**

1. Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, who shall provide a copy of the appeal to the secretary of the Board, and a third copy provided to the individual, official, department, or agency concerned, if any.
2. Appeals requiring an advertised public hearing shall be accompanied by cash payments to the Town in accordance with the Fee Schedule as set by Town Council by resolution.
3. Upon receipt of an application or appeal, the Board shall fix a reasonable time for the hearing, give public notice thereof in accord with § 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest.
4. The Board shall make its decision within ninety days of the filing of the application or appeal.
5. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the

applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance.

6. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

#### **11-3.12.3 Withdraw of Appeal**

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant/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. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits by the Board, either in whole or in part.

#### **11-3.12.4 Court Petition**

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
2. 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 relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances 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. 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 such portions thereof as may be called for by such writ. 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.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the

proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

5. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

## **11-4 Non-Conforming Uses and Structures**

### **11-4.1 Purpose**

The purpose of this section is to regulate and limit the development and continued existence of uses, structures, and lots legally established prior to the effective date of this Ordinance which do not conform to the requirements of this Ordinance. Many nonconformities may continue, but the provisions of this subsection are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement to a conforming status or elimination in order to preserve the integrity of this Ordinance and the desired character of the Town and to protect the public health and safety.

Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Ordinance and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this section. The limitations of this section shall not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or by the Zoning Administrator, or a modification or condition that was approved by the Town Council.

It is the intent of this chapter to abide by the letter and spirit of the provisions of § 15.2-2307 of the Code of Virginia. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved.

### **11-4.2 Continuation**

- 11-4.2.1 If at any time after the enactment of this Ordinance a lawful use of land and/or structures exists which would not be permitted by this chapter, the use may be continued so long as it remains otherwise lawful. A use of land or use of structure established in violation of contemporary zoning regulations is illegal, not nonconforming.

- 11-4.2.2 If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.
- 11-4.2.3 If any nonconforming use (structure or activity) is discontinued for a period exceeding two (2) years, after the enactment of this Ordinance, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this Ordinance.
- 11-4.2.4 Whenever a nonconforming structure, lot, or activity has been changed to a more restricted nonconforming use, such existing use may only be changed to a use of the same or less restricted category or to a less non-conforming activity as identified in the zoning district within which it is located.

### **11-4.3 Non-Conforming Uses**

#### **11-4.3.1 Expansion**

No nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this provision to the Ordinance, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

#### **11-4.3.2 Discontinuance**

If any nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years, , any subsequent use of such land and/or structure shall conform to the regulations specified by this chapter for the district in which such land is located.

#### **11-4.3.3 Superseded**

When any nonconforming use, or nonconforming structure and use in combination, is superseded by a permitted use and/or structure, the use shall thereafter conform to the regulations for the district, and no nonconforming use and/or structure shall thereafter be resumed.

#### **11-4.3.4 Moving**

No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the land or parcel other than that occupied by such use and/or structure at the effective date or amendment of this ordinance, unless such move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

#### **11-4.3.5 Additional Uses**

No additional uses which would be prohibited in the district involved shall be allowed.

#### **11-4.3.6 Special Use Permits**

Any lawful existing use which is permissible as a special permit use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall, with written notification and proof to the Zoning Administrator, be considered a lawful conforming use in that district.

### **11-4.4 Non-Conforming Structures and Buildings**

#### **11-4.4.1 Repairs and Maintenance**

On any building or structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent-not exceeding twenty (20) percent of the current replacement value of the structure provided that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

#### **11-4.4.2 Expansion or Enlargement**

A nonconforming structure to be extended or enlarged shall conform with the provisions of this Ordinance, except as provided for herein. No nonconforming use and/or structure shall be enlarged, increased or extended to occupy a greater area of land than twenty-five percent (25%) more than was occupied on the date of adoption or amendment of this ordinance unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

#### **11-4.4.2 Restoration or Replacement**

1. If a nonconforming use or structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five (75) percent of the cost of reconstructing the entire structure, it shall be restored only if it complies with the requirements of this Ordinance.
2. Where a conforming structure devoted to a nonconforming activity, or where a nonconforming structure is damaged less than seventy-five (75) percent of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started within twelve (12) months and completed within eighteen (18) months from the date of partial destruction.

3. Historic structures designated as contributing structures to an Historic District adopted by the Town Council shall be exempt from the limitations of Sections 11-4.4.2.1 and 11-4.4.2.2.
4. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.
5. If a nonconforming structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt or used, except in conformity with the regulations of the district in which it is located.

#### **11-4.4.3 Pre-existing Setback**

Any structure which existed on the date of adoption of this Ordinance which is nonconforming solely due to a setback or yard requirement imposed by this Ordinance may be enlarged, increased, extended, repaired or replaced so long as any such improvements do not result in an increase in the degree of nonconformity.

#### **11-4.4.4 Illegal Structures**

No structure that fails to conform with the requirements of this chapter shall be erected.

### **11-4.5 Non-Conforming Lots**

#### **11-4.5.1 Use**

Any lot of record at the time of the adoption of this Ordinance which is less in area or width than the minimum required by this Ordinance may be used when the requirements regarding setbacks, side, and rear yards are met.

#### **11-4.5.2 Changes in District Boundaries**

Whenever the boundaries of a district are changed by amendment of this Ordinance, any uses of land, legal structures or buildings which become nonconforming as a result of such change shall become subject to the most current provisions of this Ordinance. Such affected use, lot or structure shall be accorded nonconforming use, lot and/or structure status as may be appropriate under the terms of this Ordinance.

### **11-4.5.3 Division, Boundary Line Adjustment**

No lot or parcel or portion thereof shall be used or sold in a manner reducing compliance with lot width or other requirements established by this chapter, nor shall any division be made which creates a lot with width or area below the requirements stated in this chapter.

Notwithstanding the provisions of the paragraph above, boundary line adjustments may be permitted between nonconforming lots, or between a conforming and a nonconforming lot, provided that the Zoning Administrator determines that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment.

### **11-4.5.4 Condemnation**

Any lawfully created lot which, by reason of condemnation for alignment, realignment of a federal or state road, has been reduced in size to any area less than that required by this Ordinance shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section.

### **11-4.5.5 Violations Are Not Nonconformities**

Uses or structures established in violation of zoning regulations are lawful nonconformities. The burden of proof shall be upon the owner of the property to establish the lawful nonconforming status of a claimed non-conforming use.

### **11-4.5.6 Accessory Uses/Buildings, Signs**

A lawful nonconforming use of a structure, a lawful nonconforming use of land or a lawful nonconforming use of a structure and land in combination shall not be continued, extended or enlarged by use or establishment of either an accessory use or building or by attachment on a building or premises of additional signs intended to be seen from off the premises.

## **11-5 Enforcement and Penalties**

**11-5.1 Conformance to Provision.** All departments, officials, and public employees of the Town of Warrenton which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null and void.

### **11-5.2. Zoning Administrator**

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written violation complaint.. The Zoning Administrator shall properly record such complaint, investigate it and take appropriate action thereon if warranted.

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 thirty (30) days or such other reasonable time set by the Zoning Administrator and specified in the notice, he shall institute such legal action as may be necessary to remedy and 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.

### **11-5.3 Violation of Provisions.**

Any person, firm, or corporation, whether as principal, owner, lessee, agent, employee or otherwise, who violates, causes, or permits the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand (\$1,000) dollars. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

### **11-5.4 Recourse for Unlawful Use.**

The Zoning Administrator of the Town of Warrenton may institute any appropriate action of proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, or conversion of any building or structure, or the unlawful use of land; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.



## TOWN OF WARRENTON

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### MEMORANDUM

**TO:** Planning Commission  
**FROM:** Denise M. Harris, AICP, Interim Director  
**DATE:** July 26, 2016  
**SUBJECT:** Planning Commission By-Law Review

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Per the request of the Chair of the Planning Commission, please find attached a copy of the Planning Commission By-Laws for discussion (Attachment I). Last reviewed and revised in December, 2013, the Planning Commission may choose to consider updates to meet current needs. Items that might be taken under consideration include, but are not limited to:

- 1) Membership
- 2) Meeting Structure
- 3) Order of Business
- 4) Procedures for Public Hearings

This item will be opened for discussion under New Business of the Public Meeting on July 26, 2016. At that time, based on the conversation the Planning Commission may choose to direct staff to begin drafting revisions to the Planning Commission By-Laws.

**TOWN OF WARRENTON, VIRGINIA**

**PLANNING COMMISSION**

**BY-LAWS**

PREAMBLE- These by-laws set forth the rules for the transactions of business by the Planning Commission of the Town of Warrenton which operates under the authority of the laws of Virginia and the ordinances of the Town of Warrenton.

**ARTICLE 1 - OBJECTIVES**

- 1-1 The Planning Commission, as established by the Town Council, has adopted the subsequent Articles in order to facilitate its powers and duties under Title 15.1, Chapter 11, Article 3, Code of Virginia.
- 1-2 The official title of this Commission shall be the Town of Warrenton Planning Commission.

**ARTICLE 2 - MEMBERS**

- 2-1 The Warrenton Planning Commission shall consist of seven members appointed by the Town Council. One member shall be a Town Council member.
- 2-2 The members shall be appointed for terms of four years. Any vacancy in membership shall be filled by appointment by the Town Council and will fulfill the unexpired term of the member being replaced. Any member missing three meetings in a twelve month period without valid reason will be deemed to have resigned and will be automatically replaced after proper advertising.
- 2-3 The Commission members are strongly encouraged to attend training sessions sponsored by the State of Virginia or other planning agencies, in order to more effectively carry out their responsibilities to meet the objectives of the Planning Commission.

**ARTICLE 3 - OFFICERS**

- 3-1 The Commission shall appoint a Secretary who need not be a member of the Commission.

3-2 Nomination of officers shall be made from the floor of the regular meeting held at the first meeting of the calendar year.

3-2-1 Each candidate for office shall be nominated by and seconded by one member of the Commission.

3-3-2 A candidate for an office of the Commission receiving a majority vote of the members shall be declared elected and shall take office immediately upon the conclusion of the regular meeting and serve for one year or until his successor shall take office.

#### ARTICLE 4 - DUTIES OF OFFICERS

4-1 The Chairman shall:

4-1-1 Preside at all meetings and call the meetings to order at the appointed time;

4-1-2 Announce the business in its proper order;

4-1-3 Preserve order and decorum;

4-1-4 State and put all questions properly brought before the Commission;

4-1-5 Rule on all procedural questions. Such rulings may be reversed by a majority vote of the members present.

4-1-6 Be informed immediately of any official communication and report the same at the next regular meeting;

4-1-7 Affix his/her signature to all correspondence issued by the commission and all official minutes; and

4-1-8 Appoint committees as necessary.

4-2 The Vice Chairman shall assume the duty of the Chairman in the Chairman's absence or in the Chairman's inability to act.

4-3 The Secretary or the Secretary's appointee shall:

4-3-1 Keep a written record of all business transacted by the Commission;

4-3-2 Notify all members of all meetings;

- 4-3-3 Keep a file of all official records and reports of the Commission;
- 4-3-4 Certify all records and reports of the Commission;
- 4-3-5 Attend to correspondence of the Commission;
- 4-3-6 Serve notice of all hearings and public hearings;
- 4-3-7 Keep a set of minutes of all meetings which shall become a public record; and
- 4-3-8 Prepare and be responsible for publishing of advertisements relating to public hearings.

#### ARTICLE 5 - MEETINGS

- 5-1 When applications or other Commission business are pending, regular meetings of the Commission shall be held the third Tuesday of each month.
- 5-2 When a meeting falls on a legal holiday, the meeting shall be held on the following Tuesday unless otherwise designated by the Chairman or by a vote of the Commission.
- 5-3 When no application or other business is pending, no meeting will be held. The Commission shall meet at least once a year.
- 5-4 The meetings shall begin at 7:00 p.m.
- 5-5 A regular meeting may be adjourned if all business cannot be addressed on the meeting date set. The meeting may be reconvened at a later date, as set at the meeting, or properly advertised.
- 5-6 Special meetings may be called at the request of the Chairman or at the written request of two members of the Commission upon proper notice.
- 5-7 A member, other than the Chairman, may introduce a motion. Any member of the Commission may second a motion. Motions shall be restated by the Chairman before a vote is taken. The names of persons making and seconding motions shall be recorded.
- 5-8 Parliamentary procedure in Commission meetings shall be governed by Robert's Rules of Order, revised.
- 5-9 A quorum of the Commission shall consist of four of the seven members, and no action of the Commission is valid unless authorized by a majority vote of those present and voting.

## ARTICLE 6 - - ORDER OF BUSINESS

- 6-1 The order of business for a regular meeting shall be:
- 6-2 Call to order by the Chairman and determination of a quorum;
- 6-3 Adoption of minutes;
- 6-4 Hearing of public hearing items;
- 6-5 New Business;
- 6-6 Worksession items;
- 6-7 Comments from the Commission;
- 6-8 Comments from the Staff;
- 6-9 Adjournment.

## ARTICLE 7 - PROCEDURES FOR HEARING ITEMS

- 7-1 The order for the public hearing shall be:
- 7-2 A staff presentation on each item prior to the applicant's comments.
- 7-3 The applicant or his representative should appear at the public hearing and shall be afforded the privilege of making a statement.
- 7-4 All interested parties desiring to be heard shall have an opportunity to speak at the public hearing.
- 7-5 The applicant or his representative may have the opportunity for rebuttal and answer further questions by the Planning Commission.
- 7-6 The Chairman shall then close the public hearing and the Planning Commission shall deliberate on the application and make its recommendation to the Town Council. Only input from the staff shall be permitted at this time, however, the Commission may ask specific questions of the applicant or his representative.
- 7-7 The Chairman may impose time limits for presentations by the applicant and other persons wishing to speak at the public hearing.

## ARTICLE 8 - AMENDMENTS

These by-laws may be amended by a majority vote of the entire membership of the Commission at a regularly scheduled meeting, provided notice of intent to amend these by-laws has been given at a prior regularly scheduled meeting by at least two members.

ADOPTED: December 17, 1996  
Revised December 16, 1997  
Revised December 20, 2013