

AN ORDINANCE AMENDING CHAPTER 10 ENTITLED ZONING OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA BY AMENDING SECTION 10-54 IN ORDER TO INCORPORATE STORMWATER MANAGEMENT CONSIDERATIONS INTO CONCEPT DEVELOPMENT PLANS FOR REQUESTS TO REZONE TO PUD DISTRICT AND FOR CONSIDERATION WHEN REVIEWING SPECIAL USE PERMIT REQUESTS

BE IT ORDAINED by the Board of Supervisors of the County of Montgomery, Virginia that Chapter 10, entitled Zoning, Section 10-54 of the Code of the County of Montgomery, Virginia shall be amended and reordained as follows:

**ARTICLE V PROCESSES AND ADMINISTRATION**

**Section 10-54 Special Development Approvals**

1. *Zoning amendment.*

- (a) *Authority.* The board of supervisors may, by ordinance, amend, supplement, change or repeal the provisions of this chapter or the boundaries of zoning classifications established in the official zoning map.
- (b) *Initiation of amendment.* Either a zoning map or text amendment may be proposed by resolution of the board of supervisors or planning commission. In the case of a zoning map amendment, an application may be filed by a person who owns or has a legal interest in or is a duly authorized representative of the owner. In all events, the application must exhibit the consent of all those who have a legal ownership interest in the property under consideration. In the case of a zoning text amendment, a landowner may file a petition for a resolution of intent to amend the ordinance text to be acted upon by the board of supervisors. The board shall either adopt such resolution, initiating the text amendment requested, or deny such petition.
- (c) *Review of application.* An application for a zoning map amendment shall be filed, contain such material and be reviewed pursuant to the following:
  - (1) *Pre-application conference.* Prior to filing an application, an applicant shall meet with the director of planning, or designee, and discuss the intentions with regard to a given application and questions regarding the procedures or substantive requirements of this chapter. A request for a pre-application conference 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. No matters discussed at said meeting shall be binding on either the applicant or the county.
  - (2) *Review and acceptance of application.* No application shall be accepted and reviewed unless determined by the director of planning, or designee to be complete. A complete application is one (1) which meets such minimum submission requirements as may be established pursuant to section 10-52(1)(c), including a concept development plan and a traffic impact statement if required. Within five (5) business days, the director of planning shall either accept the application if it is complete or reject the application if it is incomplete. The applicant will be notified of acceptance or rejection of the application. If it is deemed incomplete the applicant notice will specify those areas of additional information necessary for acceptance and review.

- a. If the application is incomplete, the applicant may resubmit the application with the additional data required, in which event the director of planning shall review the resubmitted application in the manner provided in this section for the application.
- b. If the application is not resubmitted within thirty (30) calendar days, the director of planning shall notify the applicant that the original application has been rejected as incomplete.

(d) *Staff review of application.*

- (1) *Referrals.* Upon acceptance of the application for zoning amendment, the director of planning, or designee, shall forward a copy of the application to any town, county, state agency or military installation whose comments are necessary or desirable for full and appropriate review of the merits of the application. In the event that approval of a feature or features of the application for zoning amendment by a state agency is necessary, the agent shall forward the zoning amendment application within five (5) business days of receipt of a completed application to the appropriate state agency or agencies for review. Requirements for review including time limitations shall be in accordance with the provisions of Code of Virginia, § 15.2-2222.1. The application for rezoning shall not be referred to the planning commission until the review by the state agency or agencies is complete.
- (2) *Referral responsibilities.* Each reviewing agency shall prepare a staff report which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the director of planning.
- (3) *Review of referrals.* Referral comments shall be obtained and reviewed by the director of planning within twenty (20) business days after a final application has been accepted. The director of planning, or designee, shall forward to the applicant a written review of the issues raised by the application.
- (4) *Applicant response.* Upon receipt of the written review, an applicant may request a meeting with the director of planning, or designee, to discuss the matters contained in the written review and the application generally. Such request shall be in writing and shall include a response to the matters raised in the written review received. If the applicant's response and/or such a meeting results in an amended application, the provisions of subsection (1)(e) herein below shall apply.
- (5) *Report and notice to applicant.* The director of planning shall compile the referrals and any other necessary information, prepare a written staff report with proposed findings and a recommendation, and notify the applicant that the report is complete and the application is ready to be presented to the board of supervisors or planning commission, as appropriate, for hearing.

(e) *Amendment to application.* An application may be amended by the submission of additional information or proposed changes to the application after it has been accepted. If the additional information or proposed changes submitted are to conform with recommendations made by county 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. If the additional information or proposed changes submitted by the applicant are at the applicant's request; however, then the director of planning shall review the information within ten (10) business days of receipt and render a finding as to whether the submitted

information necessitates repeating any portion of the reviewing process including public hearings. If any portion must be repeated, the director will notify the applicant in writing within the ten (10) business day period that the additional information or proposed changes will require an extension of the time limits prescribed in this section and such notice shall specify the required extension. The applicant will then have ten (10) business days to provide the director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes which necessitated the extension. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

(f) *Withdrawal of application.* An application may be withdrawn upon written request by the applicant any time prior to the board of supervisors taking final action on the application. In the event of and upon such withdrawal, procession of the application shall cease without further action required by this chapter.

(g) *Limitation on application after denial.* After the official denial of an application by the board of supervisors, substantially the same application concerning any or all of the same property shall not be filed within one (1) year of the date of denial.

(h) *Conditional zoning.*

(1) *Purpose.* Where the amendment of a zoning district classification would be deemed inappropriate under normal circumstances, because the uses, structures, configurations or densities permitted under the proposed zoning are incompatible with or might otherwise interfere with the character of the existing or planned surrounding properties and community the county may allow conditional rezoning to provide a more flexible and adaptable zoning method under which a zoning reclassification may be allowed subject to certain conditions which are voluntarily proffered by the applicant for the protection of the community. Such conditions which are not generally applicable to land similarly zoned may serve to ensure that the proposed rezoning will be compatible with the surrounding community, provided that (1) all onsite and offsite proffers address an impact that is specifically attributable to the proposed new residential development or other new residential use applied for; and (2) all offsite proffers address a need or an identifiable portion of a need, for one (1) or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and each new residential development or new residential use receives a direct and material benefit from the proffer made with respect to the public facility improvement; and (3) the conditions are in conformity with the comprehensive plan. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owner's association under Code of Virginia § 55-508 et seq., which includes an express further condition that members of a property association pay an assessment for the maintenance of public facilities owned in fee by a public entity; including open space, parks, schools, fire stations and other public facilities not otherwise provided for in Code of Virginia § 15.2-2241. Such facilities shall not include sidewalks, special street signs or markers or special street lighting in public rights-of-way not maintained by the department of transportation.

(2) *Definitions.* As used herein, the terms "offsite proffers", "on-site proffers", "new residential development", "new residential use", "public

facilities", "public facility improvement", and "unreasonable proffer", shall have the same meaning as set forth in Code of Virginia § 15.2-2303.4 as amended.

(3) *Content.* In addition to the information required for an application for a reclassification of property to a different zoning district classification every application for a conditional rezoning shall include a separate "proffer statement" in a form approved by the director of planning and the county attorney. Such proffer statement at a minimum shall include the following information:

- a. Name and address of applicant and owners (if different);
- b. Name and address of the agent listed on the application (if applicable);
- c. Description of the subject property;
- d. Description of the proposed rezoning identifying the existing zoning district classification on the subject property and the classification being sought in the rezoning application. Where more than one (1) zoning district classification is involved, the proffer statement shall describe the area to be encompassed by each different classification being sought.
- e. A description of the conditions being proffered. Such conditions may include, without limitation, the following: the construction of on-site and offsite improvements related to the subject property; limitations on uses, structures and arrangements of uses and structures on the subject property; limitations on densities, schedules or phasing of development; dedication of real or personal property for needed improvements; and conditions binding the owner(s) and successors to develop the proper schematic land use plan or other plans, profiles, elevations, demonstrative materials and written statements. The applicant shall not proffer conditions required by the county as part of the subsequent subdivision or site plan review process. All proffered conditions upon approval of the rezoning shall become a part of the rezoning.
- f. A statement setting out the named applicant(s) and owner(s), individually or by a duly authorized agent, are proffering, as a part and provision of the described rezoning, that the use and development of the property shall be in accordance with the described conditions and that those conditions shall constitute covenants running with the property and shall be binding upon the property and upon all parties and persons claiming under or through the applicant, the owners, their heirs, personal representatives, assigns, grantees and other successors in interest or title.
- g. A statement setting out that the applicant(s) and owner(s), for themselves, their heirs, personal representatives, assigns, grantees and other successors in interest or title are voluntarily proffering the described conditions without any requirement by or exaction from the county staff, the planning commission and/or the board of supervisors and that neither the county, nor any of its officers, employees or agents suggested, requested or accepted an unreasonable proffer as defined by state law. In addition, for all residential rezonings, including residential

components of a mixed use zoning, the applicant and owners shall certify for themselves, their heirs, personal representatives, assigns, grantees and other successors in interest or title that: i) all proffers address an impact that is specifically attributable to the proposed new residential development or other residential use, ii) all offsite proffers address an impact to the following types of offsite public facility improvements; public transportation facilities, public safety facilities, public school facilities or public parks, iii) all offsite proffers address a need or identifiable portion of a need, created by the new residential development or new residential use for public facility improvements in excess of existing public facility capacity at the time of the rezoning, which may be based on the projected impacts specifically attributable to the new residential development or new residential use and iv) all offsite proffers have a direct and material benefit on the new residential development or new residential use.

- h. A statement setting out that the applicant(s) and owner(s) acknowledge that the county is in no way obligated to rezone the subject property.
- i. For new residential rezonings including residential components of a mixed use zoning, a statement that the applicant(s) and owner(s) acknowledge that the proposed proffers address an impact that is specifically attributable to the proposed new residential development or other new residential use applied for; and that all offsite proffers are i) limited to the improvement of the following public facilities: public transportation facilities, public safety facilities, public school facilities and/or public parks, ii) address a need or an identifiable portion of a need, for one (1) or more public facility improvements in excess of existing public facility capacity at the time of the rezoning, and iii) each new residential development or new residential use receives a direct and material benefit from the proffer and that all such conditions are in conformity with the county's comprehensive plan.
- j. A statement that the applicant(s) and owner(s) acknowledge that, in the event the property is rezoned as requested by the application, the conditions proffered shall continue in full force and effect unless or until they are modified by subsequent amendment to the adopted zoning ordinance as part of the application's approval. In addition, the applicant(s) and owner(s) their heirs, personal representatives, assigns, grantees and other successors in interest or title shall not be released from the responsibility of fulfilling and adhering to each of the enumerated conditions by virtue of any variance or other change in or to the zoning ordinance.
- k. For those conditional rezoning applications in which the proffered conditions include offsite proffers, including the dedication of property to the county for the purpose of contributing toward a public capital improvement related to the subject property, a statement setting out the following: i) the proffer is voluntary and complies with all restrictions set out in state law; ii) the time or event at which the property shall be transferred to and owned by the county (or where appropriate, by the school board or

other public entity); iii) an acknowledgement that the improvements for which the property is being proffered are part of the county's overall program for capital improvements, even if not contained in the immediate five-year improvement plan; iv) a statement describing how the property is to be treated in the event the county or other public entity determines that it will not be able to use the property for the specific purpose intended; and v) a statement that no unreasonable proffers were suggested or requested by the county.

- l. A statement confirming that the proffer supersedes any and all previously submitted proffers.
- m. The notarized signatures of all of the owner(s) of the property as well as the applicant(s).

(4) *Procedure.*

- a. *Preliminary proffers.* An applicant requesting conditional zoning shall submit any voluntary proffers in writing to the planning department as part of the original rezoning application. The planning department shall distribute copies of the submitted proffers to the appropriate departments for review and comment prior to submission to the planning commission for hearing. In no event shall the county, its officers, employees or agents suggest or request an unreasonable proffer as defined by state law; nor shall any proffer be required by the county, its officers, employees or agents.
- b. *Changes to preliminary proffers.* In the event an applicant wishes to add new proffers or make substantial changes to previously submitted proffers, the applicant must do so in writing at least ten (10) business days prior to the public hearing at which the planning commission is scheduled to hear the rezoning. However, minor changes to previously submitted proffers may be made in writing up until noon of the day of the public hearing; provided that the director of planning deems the minor changes to be clarifying or supplemental in content. In no event shall a change to offsite proffers be considered a minor change.
- c. *Continuance required for substantial changes.* If within the ten (10) business day period preceding the planning commission hearing the applicant wishes to add new proffers or make substantial changes to previously submitted proffers, the applicant must request a continuance for this purpose. The planning commission may grant the continuance or elect to hear the application without the proposed new or substantially modified proffers. If a continuance is granted, the planning department and other affected departments shall review the new or substantially modified proffers and provide the planning commission with comments and recommendations.
- d. *Action by planning commission.*
  - 1. Where proffers are made for the first time at the scheduled public hearing, the application shall be continued by the planning commission for review by the planning department and other reviewing departments to determine the impact of such proffers and whether they

comply with existing laws, ordinances and regulations. Where proffers are modified in any manner at the hearing the application may be continued by the planning commission for review by the planning department and other reviewing departments to determine the impact of such proffers and whether they comply with existing laws, ordinances and regulations. Proffers so returned to the planning department for review shall be reviewed as though originally submitted to the planning department.

2. Where no changes are made in the proffers submitted to the planning commission during the public hearing, the planning commission may take action on the rezoning application recommending to the board of supervisors approval or denial of the application as submitted or recommending approval with the deletion of one (1) or more of the proffers, or any portion thereof, in the application.
- e. *Final proffers.* If the planning commission takes final action on a conditional rezoning application, it shall require the owner/applicant to both reduce in writing all proffers made to the planning commission to a final proffer statement in the proper form and return the final proffer statement to the planning department not more than three (3) business days after the planning commission hearing for transmittal to the board of supervisors. Failure of the owner/applicant to return the final proffer statement to the planning department within the required time may result in a delay in the applications consideration by the board of supervisors.
  - f. *Modifications of proffers after planning commission.* An applicant may add to, expand, clarify or otherwise modify the proffers acted upon by the planning commission prior to or at the time of public hearing before the board of supervisors. All such modifications shall be subject to the rules set out below:
    1. If an applicant adds to, expands or clarifies the onsite proffers acted upon by the planning commission and within three (3) business days after the planning commission action, submits a valid final proffer statement which contains such added, expanded or clarified onsite proffers, such modified application may be heard and acted upon by the board of supervisors at its scheduled public hearing, provided that such added, modified or clarified onsite proffers are included in one (1) or more forms of advertisement giving notice of the board of supervisors hearing. The added, expanded or modified onsite proffers shall be submitted to the director of planning, with copies to the county attorney. The board of supervisors, at its discretion may continue consideration of such modified application to a subsequent public hearing date or it may refer modified application to the planning commission for review and recommendation in accordance with the preceding sections.

2. If an applicant adds to, expands or clarifies the onsite proffers acted upon by the planning commission and submits a valid proffer statement which contains such added, expanded or clarified onsite proffers more than three (3) business days after planning commission action, the board of supervisors shall take any one (1) of the following actions:
    - i. Board of supervisors may act upon the application which was acted upon by the planning commission, if the board of supervisors find that the additional modifications do not alter the overall application sufficiently to warrant continued review or referral to the planning commission.
    - ii. Board of supervisors may continue the hearing on the application to another hearing date, in which case the applicant shall be required to submit to the director of planning, with copies to the county attorney, a final written proffer statement, signed by the owner and/or authorized applicant, not less than five (5) business days before the scheduled hearing or by a mutually agreed upon date, in order for the board of supervisors to act upon the application with the modified proffers. Nothing herein shall limit the board of supervisors discretion to continue applications to subsequent dates for further modification.
    - iii. Board of supervisors may refer the modified application back to the planning commission for review and recommendation in accordance with the preceding sections.
  3. If an applicant adds to, expands or clarifies the offsite proffers acted upon by the planning commission, the board of supervisors shall refer the modified application back to the planning commission for review and recommendation in accordance with the preceding sections.
- g. *Referral of modified proffers to planning commission.* If any applicant at any time modifies an application that has been reviewed and acted upon by the planning commission by deleting any substantive provision from any proffer, the board of supervisors shall refer the application with such modified proffer to the planning commission for review and recommendation in accordance with the preceding sections. Notwithstanding in the foregoing, proffers or portions thereof may be deleted within three (3) business days following the final planning commission hearing if necessary to:
1. Correct clerical error;
  2. Bring the proffers into conformance with state and local laws governing proffers, or

3. Bring the proffers into conformance with recommendations by the planning commission for the deletion of one (1) or more proffers or portion thereof.

(5) *Adoption and effect.*

- a. *Adoption in whole or in part.* The board of supervisors, when acting on an application for a conditional rezoning, may adopt the proffered conditions, in whole or in part. In no event shall the board of supervisors accept an unreasonable proffer as defined by state law.
- b. *Recordation and notation of proffered conditions.* Upon approval by the board of supervisors of a conditional zoning application, the property subject to the conditional zoning shall be appropriately annotated on the zoning map and other appropriate land records to note that it is subject to conditions and a copy of the proffer statement shall be recorded by county staff in the Montgomery County Circuit Court Clerk's Office. It shall be the responsibility of the applicant to pay any fees associated with recordation. No development of the rezoned property may occur and no plans for development of the property may be approved pursuant to such rezoning until such time as such recordation has occurred and payment of recordation fees have been received by the county.
- c. *Proffered conditions as part of zoning regulations.* The proffered conditions approved by the board of supervisors shall become a part of the zoning regulations applicable to the property in question, until a subsequent board of supervisors' amendment changes the zoning on the property covered by the conditions or changes the conditions applicable to the property and by its specific language nullifies conditions which are inconsistent with the new amendment or which are otherwise identified by the new amendment. All approved conditions shall continue in full force and effect until specifically nullified by subsequent amendment.
- d. *Development in compliance with conditions.* Upon approval of a conditional zoning, any subdivision plat, site plan or development plan thereafter submitted for the development of the property in question shall be in substantial conformance with all proffered conditions and no development shall be approved by any county official in the absence of said substantial conformance. For the purpose of this paragraph, substantial conformance shall mean conformance which leaves a reasonable margin for adjustment due to final engineering data but which otherwise conforms to the nature of the development, the specific uses and the layout depicted by the plans, profiles, elevations and other demonstrative materials presented by the applicant.
- e. *No waiver of other requirements in approval of conditional rezoning.* All subdivision regulations which are part of the County Code and site development requirements which are a part of this zoning ordinance and of other applicable ordinances, regulations and policies shall apply to any site for which a conditional zoning has been approved and such rezoning shall not be construed as

a waiver of any such requirement unless: (1) such waiver is specifically stated in the conditions made a part of this rezoning, and (2) the waiver is within the authority of the board of supervisors to grant.

- f. *Guarantee and bond requirement.* The board of supervisors, as a condition of approval of a conditional zoning application, may require a guarantee, satisfactory to the board, 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, to ensure the timely completion of the proffered conditions. Such guarantee shall be reduced or released by the director of planning, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. The board of supervisors may specify in its approval of a conditional zoning the timing or circumstances under which such a guarantee requirement may be imposed.
- g. *Denial of development for nonconformity with conditions.* Any failure to meet or comply with any proffered condition of a conditional zoning for a piece of property shall be sufficient cause to deny approval of any development or permit applications, including but not limited to those for site plans and subdivision plats and building and occupancy permits, which may be submitted for the subject property.

(6) *Administration.*

- a. *Zoning administrator.* The zoning administrator shall be vested with all necessary authority on behalf of the board of supervisors to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to ensure compliance, including injunction, abatement or other appropriate action or proceeding.
- b. *Appeals.* Any zoning applicant or other person who has legal standing and is aggrieved, as defined by law, by a decision of the zoning administrator in interpreting, applying and enforcing the terms of a conditional rezoning pursuant to the provision of this section may petition the board of supervisors for review of the decision of the zoning administrator per Code of Virginia § 15.2-2301. All such petitions for review shall be filed with the zoning administrator and with the county clerk within thirty (30) calendar days from the date of the decision from which review is sought and such petitions shall specify the grounds upon which the petitioner is aggrieved and the basis for the appeal. Upon receipt of the appeal notice, the board of supervisors shall take such testimony as it deems appropriate and shall render its decision within sixty (60) calendar days after receipt of the appeal notice. The board of supervisors may reverse or affirm wholly or partly or may modify the decision of the zoning administrator. A decision of the board of supervisors shall be binding upon the owner of the property which is the subject of

such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination or other appealable decision. An aggrieved party may petition the circuit court for review of the decision of the board of supervisors taken pursuant to this section.

- (i) *Planning commission hearing.* The director of planning will refer the application to the planning commission by placing the request on the agenda. This referral will occur after all agency comments are distributed and addressed, as necessary, by the applicant. No later than forty (40) calendar days after an application has been referred to the planning commission, the planning commission shall hold a duly noticed public hearing on an application for a zoning amendment.
- (j) *Report by planning commission.* The planning commission shall report to the board of supervisors its recommendation with respect to the proposed amendment.
  - (1) The planning commission need not confine its recommendation to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may recommend a revision to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned; or it may recommend that the land be rezoned to a different zoning district classification than that requested if, in either case, the planning commission is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan, and is in furtherance of the purposes of this chapter. 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.
  - (2) In recommending the adoption of any proposed amendment to this chapter, the planning commission may state its reason for such recommendation, describing any changes in conditions, if any, that it believes make the proposed amendment advisable and specifically setting forth the manner in which, in its opinion, the proposed amendment would be in harmony with the adopted comprehensive plan and would be in furtherance of the purpose of this chapter.
  - (3) *Text amendments.* If the request is for an amendment of the text of this chapter, the planning commission shall consider the following matters:
    - a. Whether the proposed text amendment is consistent with the comprehensive plan.
    - b. Whether the proposed text amendment is consistent with the intent and purpose of this chapter.
  - (4) *Zoning map amendments.* If the application is for a reclassification of property to a different zoning district classification on the zoning map, the applicant shall address all the following in its statement of justification or plat unless not applicable. The planning commission shall give reasonable consideration to the following matters:
    - a. Whether the proposed zoning district classification is consistent with the comprehensive plan.

- b. Whether there are any changed or changing conditions in the area affected that make the proposed rezoning appropriate.
- c. Whether the range of uses in the proposed zoning district classification are compatible with the uses permitted on other property in the immediate vicinity.
- d. Whether adequate utility, sewer and water, transportation, school and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned.
- e. The effect of the proposed rezoning on the county's ground water supply.
- f. The effect of uses allowed by the proposed rezoning on the structural capacity of the soils.
- g. 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 including any written comments provided by VDOT after review of the application for zoning amendment and whether the proposed rezoning uses sufficient measures to mitigate the impact of through construction traffic on existing neighborhoods and school areas.
- h. Whether a reasonably viable economic use of the subject property exists under the current zoning.
- i. The effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality.
- j. Whether the proposed rezoning encourages economic development activities in areas designated by the comprehensive plan and provides desirable employment and enlarges the tax base.
- k. Whether the proposed rezoning considers the needs of agriculture, industry, and businesses in future growth.
- l. Whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes as determined by population and economic studies.
- m. Whether the proposed rezoning encourages the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the county.
- n. Whether the proposed rezoning considers trends of growth or changes, employment, and economic factors, the need for housing, probable future economic and population growth of the county.
- o. The effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of Montgomery County.
- p. The effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

The planning commission shall make its recommendation to the board within sixty (60) calendar days after the public hearing of the commission.

- (k) *Hearing before board of supervisors.* A duly noticed public hearing shall be held by the board of supervisors regarding an application for zoning amendment.

- (l) *Action by board of supervisors.* After the conclusion of its public hearing, the board of supervisors shall act on the application for rezoning. The board of supervisors need not confine its action to the proposed amendment as set forth in the application. If the proposed amendment consists of a change in the text of this chapter, it may act on a revision to the application. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it rezones or it may rezone the land to a different zoning district classification than that requested if, in either case, it is of the opinion that such revision is in accordance with sound zoning practice and the adopted comprehensive plan and is in furtherance of the purposes of this chapter. Before rezoning a larger extent of land or rezoning the land to a more intensive classification than was set forth in the application, the board shall hold a further duly noticed public hearing on the matter.
  - (m) *Evidentiary matters before board of supervisors.* All information, testimony or other evidence presented by an applicant for zoning amendment shall be presented to the planning commission in conjunction with its review and hearing on the application. If the board of supervisors determines that an applicant is presenting evidence which is substantially or materially different from that presented to the commission, the board may refer the application back to the commission for such additional consideration and action as the board may deem appropriate.
2. *Rezoning to planned unit development (PUD) district.*
- (a) *Purpose.* The provisions of this section establish special procedures for approving concept development plans for planned unit development (PUD) districts. The procedures herein established are in recognition of the fact that traditional density, bulk, spacing and use regulations, which may be useful in protecting the character of substantially developed areas, may impose inappropriate and unduly rigid restrictions upon the development of parcels or areas which lend themselves to a unified, planned approach. A PUD shall be designed to ensure that the following general goals will be achieved.
    - (1) The proposed development shall be of such design that it promotes achievement of the stated purposes of the comprehensive plan and is consistent with the plan as well as other adopted plans and policies of the county.
    - (2) The development will efficiently use available land and will protect and preserve, to the extent possible, natural features of the land such as trees, streams and topographic features.
    - (3) The development will be located in an area in which transportation, police and fire protection, schools and other public facilities and public utilities, including water and sewerage, are or will be available and adequate for the uses proposed. The applicant may, where appropriate, make provision for such facilities or utilities which are not presently available.
  - (b) *Modifications.* The regulations of the PUD district sought shall apply after zoning is approved unless the board of supervisors finds that the zoning, subdivision or other requirements that would otherwise apply should be modified because the actions, designs or solutions proposed by the applicant, although not literally in accord with the applicable regulations, will satisfy public purposes to at least an equivalent degree. No modifications shall be permitted which affect uses, density, or floor-area ratio (FAR) of the district. Modifications to an

approved concept development plan may be approved as set forth in subsection (3)(i), herein below.

- (c) *Concept development plan/submission requirements; purpose and effect.* An application for rezoning to a PUD district shall include a concept development plan incorporating the format and information required as detailed in the PUD checklist, a traffic impact statement if the proposed PUD will substantially affect transportation on State controlled highways as determined by the Department of Transportation Traffic Impact Analysis Regulations, Chapter 155, 24 VAC 30-155, et seq. and such additional information as the applicant may deem necessary to provide a detailed understanding of the proposed planned unit development. The number of copies shall be determined by the zoning administrator.
- (d) *Contents of an approved concept development plan.* The concept development plan shall contain provisions to regulate the intensity of development within the PUD district, including estimated acreage of land bays or subareas with accompanying densities. Such provisions may apply to the project as a whole or to subareas within the project. Without limiting the foregoing, the plan shall depict:
  - (1) *Nonresidential densities.* For nonresidential development, (a) the floor area ratio or ratios; (b) the maximum gross floor area for the project as a whole or for components or subareas within the project; (c) the setbacks, height, and bulk restrictions for the project as a whole or for components or subareas within the project. In addition, nonresidential development plans shall specify any applicable performance standards that are imposed and restrictions regarding the location and nature of industrial, commercial and other nonresidential activities.
  - (2) *Residential densities.* For residential developments, (a) the maximum number of dwelling units for the project, (b) individual lot size, height and other building restrictions for the project as a whole or for individual subareas within the project; and (c) the distribution of residential densities for the project or individual subareas within the project sufficient to enable the county to judge the plan and compare future development to it for consistency.
  - (3) *Public facilities.* For residential and nonresidential developments, the approved conditions, restrictions and standards relating to ensuring the timely provision of necessary public facilities based on conformity with the existing comprehensive plan and capital improvements program and any proffers made by the applicant.
  - (4) *Transportation/access.* For residential and nonresidential development, the approved location and general design of transportation improvements and ingress and egress to the project, along with such access restrictions as are imposed to promote and ensure the integrity and function of the county's thoroughfare system and the safe and efficient circulation of vehicles and pedestrians within the PUD district.
  - (5) *Stormwater Management.* For residential and non-residential development, the approximate size, type and location of stormwater management facilities and the upstream drainage system; and a narrative summarizing how stormwater management compliance shall be achieved.

(6) Modification. For residential and nonresidential developments, any approved modifications to any provisions of this chapter, the land subdivision and development ordinance, or any other applicable county ordinance which would otherwise be applicable to the development and which are to be modified. The statement regarding modifications shall set forth clearly the text of the approved modification and the justification therefore.

(e) *Optional joint approvals.* At the applicant's option, an application for site plan and/or preliminary subdivision plat approval may be submitted in conjunction with an application for a rezoning to a PUD district. In such case, the applications shall be reviewed together pursuant to their respective standards, the time limits for rezoning shall apply to the joint application, and no approval of a site plan or preliminary subdivision plat shall be effective unless and until the application for rezoning to a PUD has been approved by the board of supervisors. The application for site plan and/or subdivision approval may be for the entire PUD site or for a phase thereof which is consistent with the phasing plan ultimately adopted by the board.

(f) *Approved changes to concept development plan after approval.*

(1) *Minor change.* Any proposed change or changes to an approved concept development plan which meets the following criteria shall be considered a minor change and may be permitted if approved by the zoning administrator.

- a. Decreases by less than five (5) percent the area approved for public and private open space.
- b. Relocates or modifies approved traffic circulation elements as a result of more detailed engineering or changes requested by staff or VDOT, unless the change would decrease the ability of such elements to function efficiently, adversely affect their relation to surrounding lands and circulation elements, or would reduce their effectiveness as buffers or amenities.
- c. Any decrease in residential units or nonresidential floor space.

(2) *Special use permit change.* The following change or changes to an approved PUD development plan may be made by special use permit approved by the board of supervisors.

- a. Increases by less than five (5) percent of the total number of units to be devoted to any particular residential or nonresidential use.
- b. Increases by less than five (5) percent of the total floor area to be devoted to any particular nonresidential use.
- c. Alteration of the arrangement of land uses, or land bays, within the PUD.

(3) *Major change.* Other than the minor adjustments authorized by subsection (1) above, if an approved PUD development plan is amended, varied or altered, such change shall be reviewed pursuant to the procedures established by this section for its original approval.

(4) *Minimum submission requirements.* The minimum submission requirements for changes to an approved concept development plan shall be the same for either a new or an amended plan. Changes being

made may be shown only for those areas affected, not the entire concept development plan.

3. *Special use permits.*

- (a) *Purpose.* The special use permit procedure is designed to provide the board of supervisors and in those specific instances, the Board of Zoning Appeals with an opportunity for discretionary review of requests to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public; and, in the event such uses or structures are approved, the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity of the proposed use or structure.
- (b) *Authorized special use permit uses.* Only those special use permits that are expressly authorized as such in a particular zoning district, or elsewhere in this chapter may be approved.
- (c) *Review of application.* The board of supervisors and in those specific instances, the board of zoning appeals may permit a special use permit as part of a zoning map amendment, or by special use permit procedures at any time after a zoning map amendment.
- (d) *Application.* An application for a special use permit from the board of supervisors shall be filed, contain such material and be processed in the same general fashion as detailed for zoning amendments at subsections (1)(c) through (g). An application for a special use permit from the board of zoning appeals shall be made to the zoning administrator in accordance with the rules adopted by the board of zoning appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall transmit a copy of the application to the planning commission which may send a recommendation to the board of zoning appeals or appear as a party at the hearing.
- (e) *Planning commission hearing.* Prior to a decision by the board of supervisors each application for special use permit shall be the subject of a public hearing and a recommendation made by the planning commission.
- (f) *Board hearing.* A duly noticed public hearing on an application for a special use permit shall be held by the board of supervisors and in those specific instances, the board of zoning appeals and a decision made by it within a reasonable time, not to exceed one (1) year from the date on which the application was accepted for processing unless the applicant agrees to a longer time period.
- (g) *Issues for consideration.* In considering a special use permit application, the following factors shall be given reasonable consideration. The applicant shall address all the following in its statement of justification or concept development plan unless not applicable, in addition to any other standards imposed by this chapter:
  - (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 chapter.
- (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 topographic or physical, natural, scenic, archaeological or historic feature of significant importance.
- (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 and efficient traffic movement including any written comments provided by VDOT after review of the special use permit application.
- (13) 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 Montgomery County.
- (14) Whether the proposed special use permit will be served adequately by essential public facilities and services.
- (15) The effect of the proposed special use permit on groundwater supply.
- (16) The effect of the proposed special use permit on the structural capacity of the soils.
- (17) Whether the proposed use will facilitate orderly and safe road development and transportation.
- (18) The effect of the proposed special use permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
- (19) 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.
- (20) Whether the proposed special use permit considers the needs of agriculture, industry, and businesses in future growth.
- (21) The effect of the proposed special use permit use in enhancing affordable shelter opportunities for residents of the county.
- (22) The provision for stormwater management and positive drainage within and adjacent to the development.
- ~~(23)(22)~~ The location, character, and size of any outdoor storage.
- ~~(24)(23)~~ The proposed use of open space.
- ~~(25)(24)~~ The location of any major floodplain and steep slopes.
- ~~(26)(25)~~ The location and use of any existing nonconforming uses and structures.
- ~~(27)(26)~~ The location and type of any fuel and fuel storage.

~~(28)~~~~(27)~~The location and use of any anticipated accessory uses and structures.

~~(29)~~~~(28)~~The area of each use, if appropriate.

~~(30)~~~~(29)~~The proposed days/hours of operation.

~~(31)~~~~(30)~~The location and screening of parking and loading spaces and/or areas.

~~(32)~~~~(31)~~The location and nature of any proposed security features and provisions.

~~(33)~~~~(32)~~The number of employees.

~~(34)~~~~(33)~~The location of any existing and/or proposed adequate on and off site infrastructure.

~~(35)~~~~(34)~~Any anticipated odors which may be generated by the uses on site.

~~(36)~~~~(35)~~Whether the proposed special use permit uses sufficient measure to mitigate the impact of construction traffic on existing neighborhoods and school areas.

- (h) *Conditions and restrictions.* In approving a special use permit, the board of supervisors or in those specific instances the board of zoning appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the special use permit as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special use permits upon other property in the neighborhood, and to carry out the general purpose and intent of this chapter. 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 safeguard the interest of the general public. The boards 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.
- (i) *Effect of issuance of a permit for a special use permit.* The issuance of a permit for a special use permit shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the county, including, but not limited to, a building permit, a certificate of occupancy, site plan and subdivision approval and a zoning permit.
- (j) *Period of validity.*
- (1) Authorization of a special use permit shall be void after two (2) years or such lesser time as the authorization may specify unless substantial construction has taken place, however, the board of supervisors or in those specific instances, the board of zoning appeals may extend authorization for an additional period not to exceed one (1) year, upon request by the applicant.
  - (2) If any special use authorized by this article is discontinued for a period exceeding two (2) years, it shall be deemed abandoned, and the special use permit shall be void.