

AN ORDINANCE AMENDING CHAPTER 10 ENTITLED ZONING OF
THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA
BY AMENDING SECTION 10-52 TO CLARIFY THAT ZONING COMPLIANCE OFFICERS AND
ASSISTANT ZONING ADMINISTRATORS ARE AUTHORIZED TO ACT
ON BEHALF OF THE ZONING ADMINISTRATOR IN ADMINISTRATION AND
ENFORCEMENT OF THE COUNTY ZONING ORDINANCE AND
BY ADDING DUTIES AND POWERS AUTHORIZED BY STATE LAW AND
BY UPDATING THE CRIMINAL AND CIVIL VIOLATION PENALTIES

BE IT ORDAINED, by the Board of Supervisors of the County of Montgomery, Virginia, that Chapter 10, entitled Zoning, Section 10-52 of the Code of the County of Montgomery, Virginia, shall be amended and reordained as follows:

Sec 10-52 Administration, Enforcement And Public Hearings

1. *Administration.*

a. *Zoning administrator.* It shall be the responsibility of the zoning administrator to administer, interpret and enforce the provisions of this chapter. The zoning administrator shall be guided in all of his or her actions pursuant to this chapter by the terms, purposes, intent and spirit of this chapter. The zoning administrator may be assisted in the enforcement of this chapter by the health officer, sheriff, zoning compliance officer; assistant zoning administrator and all other officials of Montgomery County, Virginia, pursuant to their respective fields. Duly appointed zoning compliance officer(s) or assistant zoning administrator(s) are authorized to act on behalf of the Zoning Administrator in the administration and enforcement of the County Zoning Ordinance. Specifically, the duties and powers shall include:

- i. To receive and/or review:
 - (1) Applications for variances.
 - (2) Notices of appeal to the BZA.
 - (3) Applications for certificates of occupancy.
 - (4) Applications for zoning permits.
 - (5) Applications for commission permits.
 - (6) All other applications, certifications, or materials required by this chapter to be submitted to the zoning administrator.
- ii. To issue zoning permits where the requirements of this chapter have been met.
- iii. To issue interpretations of this chapter upon proper application. Such interpretations shall be binding as to the applicant and as to the specific facts presented in the application for interpretation after the completion of the thirty-day appeal period. In administering this chapter and rendering determinations as to the uses permitted or allowed by special use permit in the various zoning districts, the zoning administrator shall have the power and authority to render decisions as to whether a specific proposed use, although not listed as permitted or allowed by special use permit, is so substantially similar in substance and effect to a permitted use or a use allowed by special use permit, that it should be allowed as if expressly permitted or allowed by special use permit. In specific cases,

making findings of fact and with the concurrence of the County Attorney, conclusion of law regarding determinations of rights under Section 15.2-2307 or subsection C. of Section 15.2-2311 of the Code of Virginia. Such interpretations shall include notification of appeal procedures and timelines.

- iv. To conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this chapter.
 - v. To maintain accurate records of proffered conditions as required by section 10-54(1)(i) of this chapter.
 - vi. To enforce the provisions of this chapter, the decisions of the BZA and conditions and proffers subject to which approvals of the BZA, planning commission and board of supervisors were made.
 - vii. To perform such other duties and functions as may be required by this chapter and the board of supervisors.
 - viii. To maintain and make available for public inspection and copying the official zoning map, the zoning ordinance, and the minimum submission requirements adopted by board of supervisors resolution.
 - ix. To maintain a compilation of the interpretations and opinions of the zoning administrator for public review.
 - x. 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 or her authority unless the requestor has agreed to a longer period.
 - xi. As authorized by Section 15.2-2286 of the Code of Virginia, the Zoning Administrator may make, when there is probable cause that a zoning ordinance violation exists, an affidavit under oath before a magistrate or court of competent jurisdiction, requesting that the magistrate or court grant the Zoning Administrator and his/or her agents an inspection warrant to enable the Zoning Administrator and his or her agents to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance do exist. The Zoning Administrator or his or her agents shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant.
- b. *Fees.* The county administrator shall recommend and the board of supervisors shall adopt a schedule of fees to be paid upon the filing of each application specified in this chapter. Application fees are hereby waived for the following:
- i. Applications for requested amendment from any district to a C-1 district.
 - ii. Applications for amendment, special use permit, or commission permit sought by the following governmental agencies:
 - (1) Montgomery County School Board.
 - (2) Public Service Authority (PSA).
 - (3) Fire and rescue companies serving Montgomery County.

(4) Any agency, board or division acting in the name of the Board of Supervisors of Montgomery County.

- c. *Submission requirements.* The board of supervisors shall adopt by resolution regulations enumerating those materials required to be included with each application provided for in this chapter, which materials shall constitute the minimum submission requirements for such application and be consistent with the requirements of this chapter. Such submission requirements shall include a letter signed by the applicant and by the owner of the property granting the right of entry upon the property to the zoning administrator, law enforcement agents, and county inspectors for the purpose of inspecting, and bringing law enforcement to the property, during the term of any permit which may be issued. In addition to the materials requested by the board of supervisors by resolution the submission requirements shall include in the case of any application for a zoning map amendment, zoning concept development plan amendment, special use permit or site plan, a traffic impact statement when the proposed zoning map amendment, zoning concept development plan amendment, special use permit or site plan substantially affects transportation on State controlled highways as defined by the Virginia Department of Transportation Traffic Impact Analysis Regulations Chapter 155, 24 VAC 30-155, et seq. The data and analysis contained in the traffic impact statement shall be acceptable to VDOT and comply with VDOT Traffic Impact Analysis Regulations 24 VAC 30-155-60 and this Ordinance. The applicant shall submit three (3) copies of the traffic impact statement. The zoning administrator shall forward the traffic impact statement to VDOT within ten (10) business days of receipt of a complete application. Such submission requirements shall also include, in the case of any application for a zoning map amendment, zoning ordinance modification, zoning concept development plan amendment, special use permit, variance, site plan or zoning permit, the provision of satisfactory evidence from the treasurer's office that any real estate taxes due and owed to the county which have been properly assessed against the property have been paid and that the property shall be in compliance with all county ordinances upon submission of such application. Revisions to the list of those materials required necessitated by an amendment to this chapter shall be attached to such amendment for concurrent consideration and adoption by resolution of the board of supervisors. If the application is a reclassification to a non-planned unit development district, a rezoning plat shall be required.
- d. *Inactive applications.* Any zoning map amendment application, zoning modification application, or concept development plan amendment application officially accepted by the county for processing but which has had processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of twelve (12) months or any special use permit application officially accepted by the county for processing but which has had such processing suspended either by request of the applicant or by having no contact or activity occur in regards to the application by the applicant for a period of six (6) months shall be deemed inactive. An application may remain inactive for up to three (3) years at the end of which period it will be processed to a final decision. If an applicant wishes to reactivate their application prior to the end of this three-year period, the applicant must notify the county in writing of intent to proceed with the application, grant the county an appropriate timeline extension and pay a reactivation fee as established by the board of supervisors.

2. *Enforcement and penalties.*

- a. *Zoning administrator.* The zoning administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this chapter.
- b. *General provisions.*
 - i. Any building or structure erected contrary to any of the provisions of this chapter and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be a violation of this chapter and the same is hereby declared to be unlawful.
 - ii. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this chapter or the provisions of any approval granted by the county under this chapter shall be subject to the enforcement provisions of this section.
 - iii. In addition to the remedies provided in this section, the zoning administrator may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove any unlawful building, structure or use.
 - iv. Upon becoming aware of any violation, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and the land owner. The administrator shall, in the notice of violation, state the nature of the violation, the date that it was observed, and the remedy or remedies necessary to correct the violation. The administrator may establish a reasonable time period for the correction of the violation, however in no case shall such time period exceed thirty (30) days from the date of written notification, except that the administrator may allow a longer time period to correct the violation if the correction would require the structural alteration of a building or structure. If the violation is not corrected within the time period specified in the first notification, a second written notice shall be sent. The second notification shall request compliance with these provisions within a period not to exceed seven (7) days. If such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice the zoning administrator shall institute such action as may be necessary to terminate the violation.
 - v. If the person responsible for the alleged violation denies that a violation exists, that person may appeal the decision of the zoning administrator pursuant to the provisions of section 10-55 of this article.
 - vi. Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. The zoning administrator shall record such complaint, investigate, and take action thereon as provided by this chapter.
- c. *Criminal violations.*
 - i. Any violation of the provisions of this chapter shall be deemed a Class 2 criminal misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00) for

each separate offense. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with this ordinance, within a time period established by the court. Failure to remove or abate the zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not ~~less than ten dollars (\$10.00)~~ or more than one thousand dollars (\$1,000.00) and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine not ~~less than one hundred dollars (\$100.00)~~ nor more than one thousand five hundred dollars (\$1,500.00) and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than two thousand dollars (\$2,000.00). Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation, including without limitation, pursuing injunctive relief. Each day during which the violation is found to have existed shall constitute a separate offense.

- ii. Any conviction resulting from a violation or provision regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00) and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period permissible by a fine of up to seven thousand five hundred dollars (\$7,500.00). A conviction resulting from a violation or provision regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.
- iii. The designation of a particular violation of this chapter as a civil violation shall preclude criminal prosecution of sanctions, except when such violation results in injury to any person.

d. *Civil violations.*

- i. Any violation of the provisions shall be deemed a civil violation and, upon an admission of liability, shall be punishable by a fine of ~~two one~~ two hundred dollars (~~\$100~~200.00) for each initial summons and five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts. individual charge. The civil penalties set forth herein shall be in lieu of criminal penalties. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified civil violations rising from the same operative set of facts result in civil penalties which exceed a total of ~~three~~ five thousand dollars (~~\$3,000~~5,000.00). Nothing in this subsection shall be construed as to prohibit the zoning administrator from initiating civil injunction procedures in cases of repeat offenses.
- ii. After having served a notice of violation on any person committing or permitting a violation of the zoning ordinance provisions and if such violation has not ceased within such reasonable time as is specified in such notice, the zoning administrator

shall cause two (2) copies of a summons to be personally served upon such person. If a person complies in writing to a notice of violation, and agrees to cease said violation, no further fines shall be levied after the date of such agreement, provided such agreement is complied with.

- iii. The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the county treasurer's office at least seventy-two (72) hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.
 - iv. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
 - v. Reserved.
3. *Public hearings, notice required.* Each public hearing involving planning and zoning matters before the planning commission, the board of supervisors and the board of zoning appeals, requires notice as set forth in section 15.2-2204 of the Virginia Code and below.
- a. *Written notice.*
 - i. *Contents.* All required written notices shall contain:
 - (1) The time, date and place of hearing.
 - (2) A brief description of the matter being heard.
 - (3) Identification of the land subject of the application including the tax map number of the property and complete street address of the property.
 - ii. *Second notice remailed if hearing continued.* If a public hearing is continued, or if a planning and zoning matter is deferred or tabled by the board of supervisors for a period more than ninety (90) days after the board's public hearing, then the second notice required in such case shall be remailed.
 - iii. *Notice by county.* Notwithstanding any other provision of this section, whenever the notices required under this section are sent on behalf of an agency, department or division of the county, such notice shall be sent by the zoning administrator and may be sent by first class mail; however, the zoning administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
 - iv. *Certification.* At least five (5) calendar days prior to the hearing, an affidavit, prepared by the person or persons, or their representative providing notice, shall be filed with the director of planning certifying that first and second notices have been sent and such affidavit shall include a list of names of those to whom notice was sent. A counterpart of such affidavit shall be presented at the beginning of the public hearing on the application.

- v. *Failure to receive notice.* Failure to receive any notice of a hearing required by this section, in and of itself, shall not invalidate any action taken at or subsequent to the hearing.
 - vi. *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.
- b. *Placard notice.* Each application shall be posted by county staff, using a form of placard provided by the zoning administrator, no less than five (5) days prior to the first public hearing. County staff shall document initial installation of the placard with a digital photograph. No further observation of the placard will be conducted until removal of the placard by staff no later than fifteen (15) calendar days following a decision regarding the application. Placard shall be reinstalled by County staff if notified of a damaged or missing placard. County-initiated amendments involving more than ten (10) parcels shall be exempt from placard requirements.
- i. *Location of placards.* Placards shall be affixed to a pole, post, fence or other structure to be clearly visible from each public road abutting the property. If no public roads abut the property, then the placard shall be posted so as to be clearly visible from at least two (2) abutting properties and at the access points to said property.
 - ii. *Maintenance and removal of placards.* County staff shall attempt to reinstall placards if notified of a damaged or missing placard and shall remove all posted placards no later than fifteen (15) calendar days following a decision regarding the application. Public hearing(s) may proceed even if placards are missing, damaged or vandalized.
 - iii. *Penalties.* It shall be unlawful for any person to destroy, deface or remove such placard notice. Any person taking such action shall be subject to the penalties set forth in subsection (2)(c) of this section.
- c. *Newspaper notice.* The county shall give newspaper notice prior to each public hearing in accord with section 15.2-2204A of the Virginia Code.
- i. *Contents of newspaper notice.* The notice shall contain:
 - (1) The time, date and place of the hearing;
 - (2) A brief description of the matter being heard;
 - (3) If the matter is one for which an additional public hearing is necessary and has been scheduled before the BZA or board of supervisors, the time, date and place of the scheduled BZA or board of supervisors hearing; and
 - (4) Identification of the land that is the subject of the application including the tax map number and complete address of the property.
 - (5) In the case of a zoning map amendment, including an amendment to an approved concept development plan, or a modification of ordinance regulations, the general usage and density range of the proposed zoning amendment, and the general usage and density range, if any, set forth in the comprehensive plan shall be included within the notice.
- d. *Notice requirements for particular hearings.* The following particular hearings require the following form of notice:

- i. *Appeals to board of supervisors.* Public hearings on appeals to the board of supervisors require that the county provide newspaper notice of the hearing.
 - ii. *Appeals to board of zoning appeals.* Public hearings on appeals to the BZA require that the county provide newspaper notice of the hearing.
- e. *Additional notice required.*
 - i. *Deferral.* If an item is not heard at the time for which it was noticed but is deferred at that time to another date, all notice required by this section shall be given of the deferred public hearing.
 - ii. *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.
- f. *Speakers at public hearings.* All witnesses and speakers presenting facts and evidence at any public hearing shall provide their name, address and affiliation, if any, for the record. At the discretion of the person presiding over the hearing, witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements.