

Nelson County Zoning Ordinance Update

Worksession 3 Memo

April 23, 2025



Overview:

Nelson County has partnered with the Berkley Group, a local government consulting firm, to update, modernize, and restructure the Zoning and Subdivision Ordinances. The revised Zoning and Subdivision Ordinance will:

- Provide streamlined and user-friendly regulations;
- Incorporate best planning practices and current state code requirements;
- Address the goals and strategies identified in the Comprehensive Plan; and,
- Consider citizen needs and issues identified through the public engagement process.

This process will be guided by County staff, the Planning Commission, and the Board of Supervisors with opportunities for input from the community.

Agenda:

The purpose of the joint work session scheduled for April 23, 2025, is to review the following Articles:

- Article 4 – Primary Zoning Districts
- Article 5 – Overlay Zoning Districts
- Article 9 – Nonconforming Uses, Lots, and Structures
- Article 11 - Definitions

The following agenda is provided as an outline for discussion:

- Schedule & Progress to Date – 5 minutes
- Article Review – 110 minutes
- Next Steps – 5 minutes

Schedule & Progress to Date:

See (Attachment A) for current schedule.

Progress to date includes:

- **Land Use Tools Diagnostic** – A diagnostic of the current Zoning and Subdivision Ordinances was conducted. The purpose of this diagnostic was to identify deficiencies in the Ordinances compared to requirements of state regulations and planning best practices. It also included a comparison of the Ordinances to the

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updated Comprehensive Plan. This diagnostic was presented to the Board of Supervisors and Planning Commission on August 28, 2024.

- **Public Workshops** – Two public workshops were conducted on October 22, 2024, at the Rockfish Valley Community Center, and on October 30, 2024, at the Nelson Center. Following a presentation on the Zoning and Subdivision Ordinance Update, attendees worked in groups to respond to exercise questions and provide meaningful feedback on the project.
- **Focus Groups** - On October 30, 2024, Berkley Group facilitated four focus group listening sessions for the Zoning and Subdivision Ordinance update. The topics and list of invitees were selected by Nelson County, and each session was conducted in a roundtable discussion format. The four discussion topics were: agriculture and agritourism, natural and cultural preservation, development and real estate, and business and economic development. A list of relevant questions was used to guide discussions and identify challenges that participants or their organizations face related to the Zoning and Subdivision Ordinances.
- **Joint Worksession 1** – Berkley Group met with the Nelson County Planning Commission and Board of Supervisors on December 18, 2024, to review the public engagement for the project and discuss the organization of the Zoning Ordinance.
- **Joint Worksession 2** - Berkley Group met with the Nelson County Planning Commission and Board of Supervisors on February 26, 2025, to review Article 1, General Provisions, Article 2, Administration, Article 3, Permits & Applications, Article 9, Nonconforming Uses, Lots, and Structures, and the relevant definitions in Article 11, Definitions.

Article Review:

Article 4 – Primary Zoning Districts (Attachment B)

Article 4 includes the regulations and procedures surrounding primary zoning districts within the County, including provisions that apply to all districts, the district standards for each primary zoning district, and cluster development standards. Some of the key changes in this Article compared to the existing ordinance are:

- Many primary zoning districts have received new names to better differentiate the districts and align them with their intent statements. This includes:
 - R-1, Low-Density Residential District
 - R-2, Mid-Density Residential District
 - B-1, Highway Business District
 - B-2 Neighborhood Business District

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- M-1, Light Industrial District
- M-2, Heavy Industrial District
- The intent statements for the primary zoning districts have been modified to better clarify their purpose and improve the detail of the statements.
- New text has been added to clarify how the standards contained within the Article are to be applied, measured, and determined.
- Regulations for steep and critical slopes have been added to protect slopes greater than 20% (steep) and 35% (critical) in grade throughout the County.
- Family subdivision standards have been consolidated into one location that will apply to all districts County-wide.
- Standard exemptions found across zoning districts have been consolidated into one section to apply to all districts.
- Minimum yard requirements have been removed from all districts. If Nelson County wishes to continue a similar practice, Berkley Group recommends discussing maximum lot coverages for incorporation.
- Front setback measurements have been modified to measure from the edge of the road right-of-way rather than the centerline, based on which is larger.
- The district standards for A-1 have been modified in the following ways:
 - Sliding scale zoning (aka development rights) has been removed in favor of a single, larger, minimum lot size.
 - Minimum lot size has been changed to 10 acres.
 - The reduced minimum lot size for lots served by private water and sewer has been removed.
 - Required road frontage has been increased to 200 feet.
 - The allowance for additional building height, provided an SUP is received, has been removed.
- The district standards for R-1 have been modified in the following ways:
 - The reduced minimum lot size for lots served by private water and sewer has been removed.
- The district standards for R-2 have been modified in the following ways:
 - Development within R-2 no longer requires public water & sewer.
 - Minimum lot size for lots without public water and sewer is now 1 acre and 20,000 square feet (~1/2 acre) for lots with water and sewer.
 - Scaled front setbacks based on road frontage has been removed in favor of a single 35 foot setback requirement.
- The R-3, High-Density Residential District, has been added as a new district. This district is intended for multi-family developments and has lower district standards

than R-1 and R-2 to accommodate denser development. Developments in this district are required to be served by public water and sewer.

- District standards for commercial districts have been modified to create a more tiered approach for commercial activities depending on their location within the County.
- The district standards for B-2 have been modified in the following ways:
 - A minimum lot size of 20,000 square feet (~1/2 acre) has been added.
 - Setbacks have been added that reflect a mid-point in intensity between B-1 and SE-1.
- The M-2 District has received many new district standards, such as minimum lot sizes, setbacks, and height restrictions, that are not in the current ordinance. These are designed to better protect the surrounding lands, especially when bordering rural or residential zones.
- Cluster housing development standards have been modified in the following ways:
 - Private streets are now required to be built to VDOT standards.
 - Lots serving structures in cluster developments must be setback at least 100 feet from any road or property line. Setbacks for structures located on those internal lots are listed in the district standards.
 - Density bonuses have been increased to allow more density in cluster developments.
 - Minimum lot sizes have been reduced but still differentiate those lots being served by public water or sewer. The maximum lot size for developments with public water or sewer has been removed.
 - Additional density bonuses have been included based on a point system. This would give developers more housing density in cluster developments if the developments include certain features that improve the community, preserve the character of the development, or address sustainability.

Article 5 – Overlay Zoning Districts (Attachment C)

Article 5 includes the regulations and procedures surrounding overlay zoning districts within the County, including provisions for floodplains in the County and regulations for two new overlay districts, the Village Overlay (VO) and the Route 29 Corridor Overlay (CO29). Some of the key changes in this Article compared to the existing ordinance are:

- Provisions in the floodplain district have been mostly carried over from the current ordinance but have been greatly reorganized. Where possible, sections have been reworded or modified to improve clarity and match FEMA's model ordinance.

- The Village Overlay district is a new district with standards intended to modify underlying district standards in rural villages to promote traditional village design principles. Some of the key standards include:
 - Small minimum lot sizes and setbacks, especially if served by public water and sewer.
 - Additional landscaping requirements to be drafted in Article 8.
 - Limiting the potential size of commercial uses.
 - Requiring parking to be located in the rear or side of buildings to promote pedestrian friendly accessibility and aid aesthetics.
 - New roads must be built to VDOT standards and accepted into the VDOT system.
 - Promotion of connectivity and required pedestrian accommodation for any new roadways.
- The Route 29 Corridor Overlay district is a new district with standards intended to promote commercial activities along Route 29 while maintaining a high-level of quality development and improved aesthetics along the County’s main gateway corridor. Some of the key standards include:
 - The CO29 district will apply to any new commercial or industrial developments within 500 feet of either side of Route 29.
 - Developments are required to submit additional information to outline and address impacts on traffic.
 - A landscaping plan must be submitted to show conformance with improved landscaping standards to be drafted in Article 8.
 - Additional sign standards have been included to encourage signs that better complement the natural beauty of the County.
 - New roads must be built to VDOT standards and accepted into the VDOT system.
 - Reduction of access points along Route 29 and encouragement of interconnectivity between developments.

Article 9 – Nonconforming Uses, Lots, and Structures (Attachment D)

This article as provided during the last worksession but was not discussed due to time constraints.

Article 9 includes the regulations and procedures surrounding nonconforming uses, lots, and structures within the County, nonconforming being a legally protected status to such items that are conforming with the existing ordinance but may not conform to the new ordinance at the time of adoption. Many of the regulations found within this article are

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controlled by state and federal codes but some changes have occurred. Some of the key changes in this Article compared to the existing ordinance are:

- Reorganization and streamlining of provisions to reference state code sections where possible and clarify any conflicting regulations.
- Removed the provision to allow for discontinued nonconforming uses to apply for an extension of their nonconforming use after two years of discontinuation.
- Added a provision to allow for building on nonconforming lots with reduced setbacks in special circumstances.

Article 11 – Definitions (Attachment E) & Changes Crosswalk (Attachment F)

Article 11 includes all relevant definitions and abbreviations to the zoning and subdivision ordinance. This article will be updated to include new definitions as more articles from the ordinance are drafted. New definitions will be highlighted in future drafts of the article. The current definitions included in this article are only those relevant to Articles 1, 2, 3, 4, 5, and 9 with definitions pertaining to Articles 4 and 5 highlighted.

In addition to this article, a definitions change crosswalk has been included (Attachment F). This document includes only those definitions from the existing ordinance that have been modified from their current definition. It includes the term, existing definition, and new proposed definition.

Comprehensive Plan Strategies Addressed:

Strategy Number	Strategy Text
3.10	Continue to encourage and administer cluster subdivision regulations and incentivize their use in rural areas of the County to preserve open space and reduce the impact of development. Regularly evaluate and modify cluster subdivision regulations as needed to ensure they are effective and meet County standards
3.16	Ensure that a natural transition is maintained between the Land Use Elements through careful development review.
3.17	Discourage the use of large-scale development in Montebello through zoning actions.
4.7	Identify areas to construct or expand natural trails and sidewalks for pedestrian traffic.

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5.6	Evaluate current zoning district densities and adjust them to allow for additional housing in appropriate areas.
5.11	Target housing near the County’s existing growth areas where public utilities are available with a range of housing types and densities.
5.15	Explore opportunities to implement cluster subdivision provisions within the Subdivision Ordinance.
5.16	Protect and connect to the surrounding environment by encouraging cluster developments and green infrastructure principles for new developments.
6.1	Define and guide development on steep slopes to maintain balance between slope, soils, geology, and vegetation. Where disturbance is unavoidable, enforce erosion and sediment control measures to prevent unnecessary degradation.
6.24	Encourage architectural compatibility of new development, including infill development, where significant historic resources exist.
6.27	Continue improving flood resiliency by updating the Floodplain District Ordinance as needed to reflect new flood maps and best practices, and participating in FEMA’s Community Rating System.
6.29	Encourage and incentivize green building certifications, energy efficiency, and renewable energy sources for new developments and existing development retrofits.
7.7	Continue to support the tourism industry while being mindful of over-tourism; diversify tourism assets across the County to distribute traffic and prevent negative impacts to local quality of life.

Next Steps:

The Berkley Group will continue drafting ordinance articles. Articles to be discussed at the next meeting include:

- Use Matrix
- Use Performance Standards
- Related Definitions

PROJECT TIMELINE																						
Phase	#	Task Description	2024						2025						2026							
			July	August	September	October	November	December	January	February	March	April	May	June	July	August	September	October	November	December	January	February
Investigation	A1	Project Management / Staff Input																				
	A2	Project Kickoff (Virtual)	V																			
	A3	Joint Kickoff & Land Use Diagnostic Presentation		X																		
	A4	Public Workshop (1)				X																
	A5	Focus Group Listening Sessions (up to 4)				X																
	A6	Engagment Summary																				
Development	B1	Joint Work Sessions (up to 6)					X		X		X		X		X		X					
	B2	Ordinance Table of Contents & Crosswalk					*															
	B3	Definitions																				
	B4	General, Administrative, Nonconformity							*													
	B5	Permit & Application Provisions							*													
	B6	District Standards									*											
	B7	Overlay & Special Districts									*											
	B8	Use Matrix										*										
	B9	Use Performance Standards										*										
	B10	Community Design Standards (Signs, Lighting,											*									
	B11	Subdivisions											*									
	B12	Formatting & Final Review																*				
	B13	Changes Matrix & Contents Crosswalk Update																*				
Adoption	C1	Open House (Public Draft Review) (up to 1)																X				
	C2	Pre-Adoption Joint Work Session (up to 1)																	X			
	C3	Incorporate Final Revisions																				
	C4	PC & Board of Supervisors Public Hearings																		X	X	
	C5	Post-Adoption Deliverables																				

X = Anticipated In-person Attendance; V = Virtual Attendance; * = Meeting Topic

ATTACHMENT A

Nelson County
Zoning & Subdivision Update
Project Timeline & Meeting Schedule – Updated 03/23/2025



Note: Topics to be covered at each meeting are tentative and subject to change. Public Meeting or Event

Date, Time, Location	Event	Topics/Notes	Attendees
7/24/2024, 10pm, Teams	Kickoff & Orientation	Staff & BG Internal Kickoff & Orientation	Berkley Group; County Staff
August 28, 2024 @6pm	Joint Worksession – Kickoff	Comprehensive Planning Overview Review Project Schedule Review Engagement Plan (Advertisement, Workshop Formats, Focus Groups) Review Land Use Report Discuss Current Issues, Challenges, and Opportunities	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
October 30, 2024	Focus Groups	Focus Topics (Development, Business, Agriculture, Conservation) and Issues Discussion with Stakeholder Groups – TBD	Berkley Group; Stakeholder Groups
October 22, 2024	Public Workshop # 1	Challenges & Opportunities Exercise	Public; Berkley Group; County Staff; Public Officials
October 30, 2024	Public Workshop # 2	Challenges & Opportunities Exercise	Public; Berkley Group; County Staff; Public Officials
December 18, 2024	Joint Worksession	Public Engagement Summary Report Table of Contents Crosswalk	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
February 26, 2025	Joint Worksession	Article Review: General Provisions Article Review: Administration Article Review: Permits and Applications Article Review: Nonconforming Uses, Lots, and Structures Article Review: Definitions Table of Contents Crosswalk Updates	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
April 23, 2025	Joint Worksession	Article Review: Primary Districts Article Review: Overlay Districts Article Review: Definitions Table of Contents Crosswalk Updates	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)

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Zoning & Subdivision Update
Project Timeline & Meeting Schedule – Updated 03/23/2025



Date, Time, Location	Event	Topics/Notes	Attendees
June 25, 2025	Joint Worksession	Article Review: Use Matrix Article Review: Use Performance Standards Article Review: Definitions Table of Contents Crosswalk Updates	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
August 27, 2025	Joint Worksession	Article Review: Community Design Standards Article Review: Subdivisions Article Review: Definitions Table of Contents Crosswalk Updates	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
October 22, 2025	Joint Worksession	Final Full Ordinance Review Table of Contents Crosswalk Updates	Berkley Group; County Staff; Planning Commission (PC); Board of Supervisors (BOS)
November, 2025	Public Open House	Present ordinance at a public open house. Receive feedback and comments from public.	Public; Berkley Group; County Staff; Public Officials
November, 2025	Joint Worksession – Final Review	Review open house public comments.	Berkley Group; County Staff; PC; BOS
January, 2026	Public Hearing & Recommendation	Present Final Ordinance for consideration by Planning Commission.	Berkley Group; County Staff; PC
February, 2026	Public Hearing & Adoption Present ZO/SO Diagnostic Part II	Present Final Ordinance for adoption by Board of Supervisors.	Berkley Group; County Staff; BOS

ATTACHMENT B

Article-4 Primary Zoning Districts

Division 4-I Establishment and Purpose

Section 4-I-I General¹

- A. **Zoning districts established.** Land within the County, as it exists at the time of this Ordinance being enacted, is hereby divided into classes of primary zoning districts to:
- (1) Regulate and restrict the location and use of buildings and land for trade, industry, residence, and other purposes in accordance with the objectives of the comprehensive plan;
 - (2) Regulate and restrict the location, height, and size of buildings hereafter erected or structurally altered; and
 - (3) Ensure adequate setbacks, open spaces, and public facilities to support the County’s population.
- B. Enumeration of Primary Zoning Districts. To carry out the purpose stated in Article I, In General, of this Ordinance and (A) above, Nelson County is hereby divided into the following primary zoning districts:

Table 4-I: Primary Zoning Districts

Rural Districts	
C-1	Conservation District
A-1	Agricultural District
Residential Districts	
R-1	Low-Density Residential District ²
R-2	Mid-Density Residential District ³
R-3	High-Density Residential District ⁴

¹ Editor’s Note: This is a new section of text that provides an overall purpose for primary zoning districts.

² Editor’s Note: R-1 Residential District renamed to “Low-Density Residential District” to establish unique district names that clearly state district purpose.

³ Editor’s Note: R-2 Residential District renamed to “Mid-Density Residential District” to establish unique district names that clearly state district purpose.

⁴ Editor’s Note: R-3 Residential District renamed to “High-Density Residential District” to establish unique district names that clearly state district purpose.

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Nelson County, Virginia, Zoning & Subdivision Ordinance

Draft Article 4 – Primary Zoning Districts

04/23/2025

Commercial Districts	
B-1	Highway Business District
B-2	Neighborhood Business District ⁵
SE-1	Service Enterprise District
Industrial Districts	
M-1	Light Industrial District
M-2	Heavy Industrial District ⁶
Planned Development Districts	
RPC	Residential Planned Community District

Section 4-1-2 References to District Names⁷

- A. For reference throughout this Ordinance, unless specifically provided to the contrary, the following terms shall be used to refer to primary zoning districts:
- (1) “Rural district” shall include C-1 and A-1 districts;
 - (2) “Residential district” shall include R-1, R-2, and R-3 districts;
 - (3) “Commercial district” shall include B-1, B-2, and SE-1 districts;
 - (4) “Industrial district” shall include M-1 and M-2 districts; and
 - (5) “Planned development district” shall include the RPC district.

Section 4-1-3 Purpose and Intent of Primary Zoning Districts⁸

- A. **Rural Districts.**

⁵ Editor’s Note: B-1 and B-2 Business Districts renamed to “Highway Business District” and “Neighborhood Business District” to establish unique district names that clearly state district purpose, and match a similar naming structure to industrial districts.

⁶ Editor’s Note: Editor’s Note: M-1 and M-2 Industrial Districts renamed to “Light Industrial District” and “Heavy Industrial District” to establish unique district names that clearly state district purpose, and match a similar naming structure to industrial districts.

⁷ Editor’s Note: This is a new section of text that provides a disclaimer that references to various districts could include all those districts within that category.

⁸ Editor’s Note: Intent statements have been moved from their respective zoning district Articles and placed into this section. They have been edited for clarity and with proposed uses and terminology.

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Draft Article 4 – Primary Zoning Districts

04/23/2025

- (1) **C-1, Conservation.** This district encompasses areas of the County characterized by natural open spaces, including steep slopes, forests, parks, wetlands, rivers, marshlands, lakes, and stream valleys. The district is established to protect and conserve critical natural resources and aims to minimize soil erosion, safeguard watersheds, mitigate flood and fire risks, and preserve the ecological integrity of these sensitive landscapes. Land uses should be limited to those that directly support these conservation objectives, including agricultural activities and single-family dwellings that adhere to best conservation practices.⁹
- (2) **A-1, Agricultural District.** This district is established to support and protect agricultural and forestry uses while allowing limited residential development. It is intended to preserve farmland, maintain the viability of working landscapes, and sustain the rural character of the County. While some rural areas may experience residential growth, this district seeks to prevent the scattered encroachment of residential, commercial, or industrial development that could compromise agricultural operations and open space preservation.¹⁰

B. Residential Districts.

- (1) **R-1, Low-Density Residential.** This district is intended to accommodate low-density residential development, primarily consisting of single-family homes. The district is designed to protect residential identity, support a high quality of life for residents, and ensure compatibility with the surrounding rural or suburban landscape. While residential use is the primary focus, certain complementary uses, such as schools, parks, and places of worship, may be permitted to serve the needs of the community. Commercial and high-intensity development are not permitted to maintain the district's low-density character.¹¹

⁹ Editor's Note: The C-1 intent statement has been streamlined and modified to serve as a protection to natural resources. The existing inclusion of farmlands has been omitted in this district and is instead moved to the Agricultural District intent statement.

¹⁰ Editor's Note: The Agricultural District intent statement has been revised to provide a greater emphasis on the preservation of existing farmlands.

¹¹ Editor's Note: The R-1 intent statement has been modified to better fit the districts new title and purpose as a low-density neighborhood district.

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Draft Article 4 – Primary Zoning Districts

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- (2) **R-2, Mid-Density Residential.** This district is intended to accommodate medium-density residential development in areas served by public water and wastewater infrastructure. It supports a mix of single-family, duplexes, townhomes, and similar multi-family housing while maintaining residential character, providing a suitable environment for households, and limiting commercial uses that could disrupt neighborhoods. Certain public facilities, such as schools, parks, and places of worship, may be permitted to serve residents and enhance community character.¹²
- (3) **R-3, High-Density Residential.** This district is intended to accommodate high-density residential development, primarily consisting of multi-family housing, in areas that are served by adequate infrastructure, such as public water and wastewater services and major transportation routes. This district promotes well-planned, sustainable residential growth while maintaining compatibility with surrounding land uses. Limited non-residential uses, such as community-oriented services, parks, and facilities, may be permitted to support residents and enhance the district's livability.¹³

C. Commercial Districts.

- (1) **B-1, Highway Business District.** This district is intended to support general commercial activities that require direct and frequent public access. It accommodates a broad range of retail, service, and office uses designed to serve both the traveling public and the surrounding community. The district promotes attractive, accessible development along principal roadways while discouraging traffic diversion onto local streets or through residential neighborhoods. Uses involving heavy trucking are not supported, except for routine stocking and delivery of retail goods. Activities should not generate nuisance impacts beyond the typical light and noise associated with customer traffic and passenger vehicles.¹⁴

¹² Editor's Note: The R-2 intent statement has been modified to better fit the districts new title and purpose as a medium-density suburban district.

¹³ Editor's Note: This is a new proposed district selected by the Board and Planning Commission (PC) for inclusion. The Board and PC should review and consider if the intent of the new district aligns with their vision. .

¹⁴ Editor's Note: The B-1 and B-2 intent statements have been slightly alter to further expand upon their current intents and create commercial districts suitable for the principal traffic routes in the County and another for smaller neighborhood scale commercial activity.

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Draft Article 4 – Primary Zoning Districts

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- (2) **B-2 Neighborhood Business District.** This district is intended to provide small-scale commercial development with uses designed for the service of daily needs of nearby residents, while maintaining the character of the surrounding neighborhood. Traffic and noise are held to a minimum to protect surrounding property.
- (3) **SE-1, Service Enterprise District.** This district is designed to balance the area's need for service-oriented commercial uses adjoining residential and agricultural districts. The district allows limited service-oriented commercial uses that are compatible with the low-density, quiet, rural atmosphere characterized and promoted within agricultural and residential districts. This district is characterized by significant setbacks and limited signage. The district supports a mix of agricultural, residential, and small-scale commercial enterprises—such as farm-based businesses, agritourism, and artisan services—that promote economic vitality while preserving the area's scenic qualities and rural way of life.¹⁵

D. Industrial Districts.

- (1) **M-1, Light Industrial District.** The intent of this District is to foster the local economy in appropriate locations for less intense industrial uses, such as research facilities, wholesale, warehousing, light industrial, offices, and heavy commercial uses. Uses should occur in enclosed buildings, and activities should not create a danger to health and safety in surrounding areas nor create off-site noise, vibration, smoke, dust, lint, odor, heat, or glare.¹⁶
- (2) **M-2, Heavy Industrial District.** The intent of this District is to encourage and provide for larger-scale industrial, manufacturing, processing, and warehousing operations in appropriate areas separated from daily services and residences. The uses in this District may require outside storage, or generate noise, smoke, or odor, which shall be mitigated with industry best practices for the compatibility of the surrounding area and the preservation of the environment.

E. Planned Development Districts.

¹⁵ Editor's Note: The SE-1 District's intent statement has been adjusted to further add strength and clarity to the district's purpose without changing the substance or the intent.

¹⁶ Editor's Note: The M-1 and M-2 District's intent statements have been slightly modified to improve clarity and language to better fit expected uses and standards throughout the Ordinance.

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Draft Article 4 – Primary Zoning Districts

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- (1) **RPC, Residential Planned Community District.** This district is intended to permit development in accordance with a master plan therefor of cluster-type communities containing not less than three thousand (3,000) contiguous acres under one (1) ownership or control, in a manner that will protect and preserve the natural resources, trees, watershed, contours and topographic features of the land, protect and enhance the natural scenic beauty and permit the greatest amount of recreational facilities by leaving as permanent open area not less than twenty-five (25) percent of the total acreage. Within such communities, the location of all improvement shall be controlled in such manner as to permit a variety of housing accommodations in an orderly relationship to one another, with the greatest amount of open area and the least disturbance to natural features. "Open area" shall include parks, lakes, roads, roadways, walkways, trails, playground and recreation facilities, golf, skiing and other sports facilities, nonresidential clubhouse grounds and rights-of-way and surface easement for drainage and other utilities over areas not within the lines of any residential lot. (A planned residential district may include a variety of residential accommodations with light commercial facilities and light craft manufacturing facilities in Village Centers to an extent necessary to serve the needs of the particular residential planned community and its visitors.)¹⁷

Division 4-2 General District Standards

Section 4-2-1 Application of Standards¹⁸

- A. The requirements specified in this Article shall be considered the minimum required to promote public health, safety, and general welfare.
- B. Regulations shall apply uniformly to each use, structure, and lot within the zoning district.
- C. Except as provided in **Article 9, Nonconformities**, of this Ordinance, every structure hereafter constructed shall be located on a lot meeting the minimum requirements for the district in which it is located.

¹⁷ Editor's Note: The RPC District's intent statement has not been modified from its existing version at staff's direction to ensure that it aligns with the existing Wintergreen Resort. The BOS and PC should review and give direction if they wish to see any modifications to this district's intent including, but not limited to, restricting the expansion of this district to other portions of the County.

¹⁸ Editor's Note: This section has been added to provide clarity on how the regulations of this Article shall be enforced.

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Nelson County, Virginia, Zoning & Subdivision Ordinance

Draft Article 4 – Primary Zoning Districts

04/23/2025

- D. Photographs, graphics, and/or diagrams in this Article are included for illustrative purposes only. If there is any inconsistency between them and the text of this Ordinance, including tables, the text will govern.
- E. It is the intent of the height regulations of this Ordinance to secure safety, to provide light and air, and to protect the character of districts and the interests of the public. No building shall be erected, constructed, or altered to exceed the height limitations specified in the district regulations set in this Ordinance.
- F. Required minimum setbacks may be altered by the Board of Supervisors, with recommendation from the Planning Commission, when any right-of-way is proposed to be widened, in order to preserve and protect the widening of such right-of-way.
- G. In addition to the provided standards for each district, additional standards may apply, including but not limited to:
 - (1) Use Performance Standards. Article 7, Use Performance Standards, of this Ordinance establishes additional standards pertaining to specific uses.
 - (2) Community Design Standards. Article 8, Community Design Standards, of this Ordinance establishes additional standards for:
 - (a) Landscaping and screening;
 - (b) Walls and fences;
 - (c) Parking and loading;
 - (d) Lighting;
 - (e) Signs; and
 - (f) Open space.
 - (3) Drainage. Provisions shall be made for proper stormwater drainage from streets, parking, and loading areas, in accordance with Nelson County stormwater regulations. Water shall not be permitted to drain from such areas onto adjacent property except into a natural watercourse or a drainage easement. Provisions shall be made for protection against erosion and sedimentation in accordance with Nelson County stormwater regulations.
 - (4) Streets and Sidewalks. Provisions shall be made for the construction and maintenance of streets and sidewalks, in accordance with Article 8, Community Design Standards.

ATTACHMENT B

Section 4-2-2 Determination and Measurement¹⁹

Figure 4-1: Lot Standard Terms and Required Setbacks



A. Lot Standards.

(1) Determination of Lot Front.

- (a) **Interior Lots.** The front shall be construed to be the portion adjacent to the street.
- (b) **Corner Lots.** The front shall be construed to be the shortest boundary fronting a street. If the lot has equal frontage on two (2) or more streets, the front shall be construed in accordance with the prevailing building pattern, or the prevailing lotting pattern if a building pattern is not established.

B. Measurement Methods. (See figures 4-3 and 4-4). The following methods shall be used for measuring setbacks:

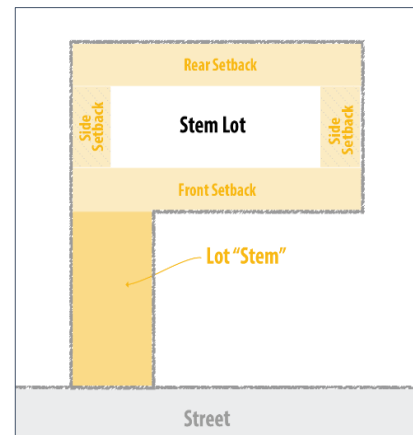
- (1) **All Setback Types.** Setbacks shall be measured in such a manner that the lot line and the setback line are parallel to one another.
 - (a) Where lots are convex or concave, required setbacks shall be measured radially from the edge of the right-of-way (ROW). (See figure 4-4)

¹⁹ Editor's Note: This new section has been added to give guidance on how to measure lot lines, setbacks, and building heights.

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- (b) In accordance with Article 2, Administration, the Administrator shall determine the boundary line(s) from which the setback(s) shall be measured for Irregular lots.
- (2) **Street Frontage Required.** Except as otherwise provided in this Ordinance, every lot shall front a public street.
- (3) Lot area shall be the total horizontal area included within the property lines of a lot.
 - (a) The Administrator may require a larger minimum lot size than prescribed in this Article if it is considered necessary by the Virginia Department of Health to facilitate private water or sewer systems.
- (4) Lot width shall be the horizontal distance between the side property lines of a lot, measured at the front setback.
- (5) Creation of new pipe stem, or stem, lots is prohibited. (See Figure 4-1)
 - (a) No building or structure shall be permitted in the stem portion of existing pipe stem lot.
- (6) **Front Setback.** Front setbacks are determined as follows:
 - (a) A front setback shall be included for the full width of the lot frontage, measured between the side lot lines.
 - (b) Depth of the front setback shall be measured from the front lot line at the edge of the public right-of-way, inward towards the lot, until the distance required in the district standards is met.
 - (c) Interior Lots, Corner Lots, and Stem Lots shall have the following setbacks (See **Figures 4 – 1 and 4 - 2**):
 - i. One (1) front, two (2) side, and one (1) rear.
 - (d) Double Frontage Lots shall have the following setbacks (See *Figures 4 – 1*):
 - i. Two (2) fronts and two (2) sides.

Figure 4 – 2: Stem Lot Front Setback



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- (e) The front setback required for nonconforming lots may be the average of the front setbacks within 125 ft. on either side of the lot, except that no front setback shall be required to be greater than the minimum required for the underlying zoning district.
 - i. To maintain the pattern of the neighborhood, if the adjacent lots are vacant, the average(s) of the nearest developed lot(s) on the same side of the street shall be used.

(7) Side Setback.

- (a) Side setbacks shall be measured from the front setback to the rear setback.
- (b) Depth of a side setback shall be measured from the lot line in towards the lot until the distance required in the district standards is met.

Figure 4-3: Setback Example



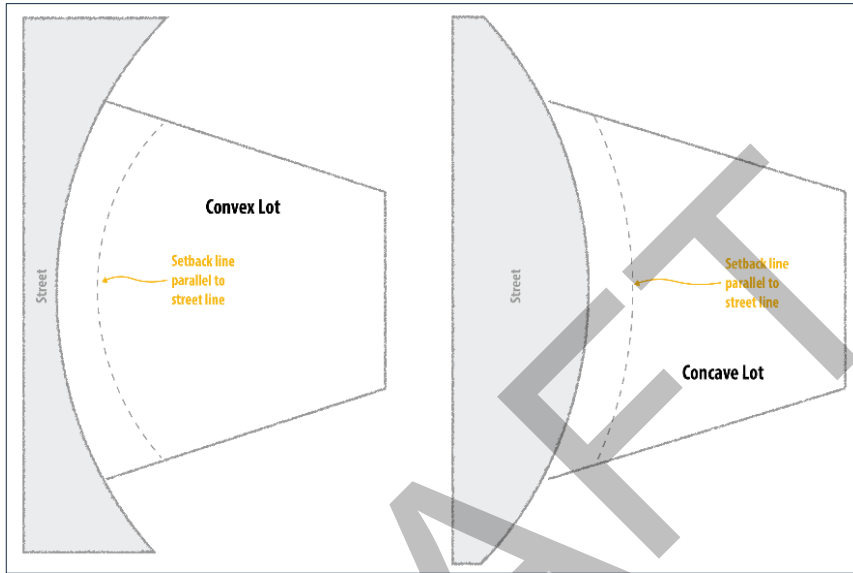
(8) Rear Setback.

- (a) A rear setback shall be included for the full width of the rear of the lot, measured between the side lot lines.

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- (b) Depth of a rear setback shall be measured from the rear lot line in towards the lot until the distance required in the district standards is met.

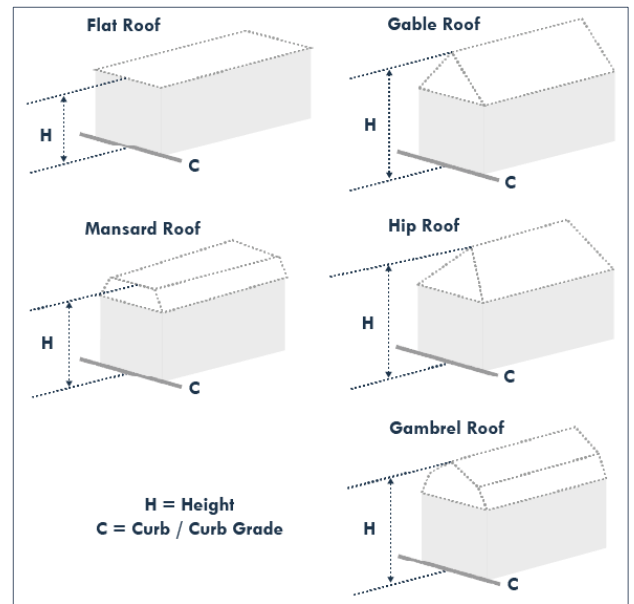
Figure 4-4: Concave or Convex Setback Example



- (9) **Measuring Height.** Building height is measured, in feet, as the vertical distance from the established curb grade to the roofline. (See Figure 4-5)²⁰
- (10) **Floodplain Height.** For structures that are in AE and A Flood Zones, as identified in Article 5, Overlay Zoning Districts, of this Ordinance, the following applies:

- (a) Height is measured from the required number of inches above the base flood elevation (freeboard) to the ridge of the roof as required in this Section, item (1) for the building site. (See figure 4-6)

Figure 4-5: Height Measurement in Primary Districts

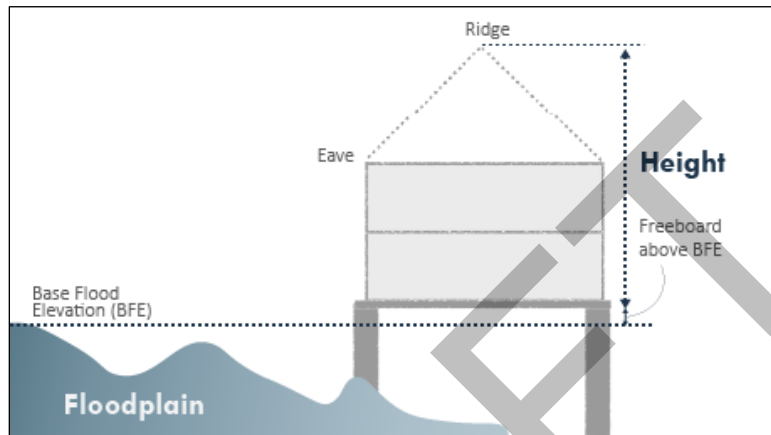


²⁰ Editor's Note: This subsection modifies the current definition for 'Building, height of' which was: "The vertical distance measured from grade to the highest roof beams of a flat roof, or to the mean level of the highest gable or slope of a gable, hip, or other roof."

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- (b) In cases where there is a ground floor enclosure below the base flood elevation, height shall be measured as provided in (1), above. (See figure 4-6)

Figure 4-6: Height Measurement of Raised Structures in Floodplain Areas



Section 4-2-3 Steep and Critical Slopes²¹

- A. **Purpose.** The purpose of this section is to address development within areas of the County that have extreme elevation change and are considered steep or critical slopes. The disturbance of these areas is subject to additional consideration to:
- (1) Protect downstream lands and waterways from the adverse effects of the unregulated disturbance of steep slopes;
 - (2) Protect land from excessive stormwater runoff;
 - (3) Avoid the degradation of surface water;
 - (4) Promote a safe means of ingress and egress for vehicular and pedestrian traffic in sloped areas;
 - (5) Preserve the visual quality of steep and critical slope areas, which are a valuable natural resource; and
 - (6) Encourage innovative and imaginative building techniques to create structures and site plans that are suited to sloped terrain.

²¹ Editor's Note: This new section of text has been included to add regulations for steep and critical slopes throughout the County.

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- B. Definitions.** Areas of extreme elevation change within the County shall have the following definitions:
- (1) Steep slopes are those areas in the County with slopes greater than 20%.
 - (2) Critical slopes are those areas in the County with slopes greater than 35%.
- C. Methods of Measurement.** The source of delineation of steep and critical slopes in the County shall be a field-prepared or aerial topographic survey, certified by a licensed surveyor or engineer. The Administrator, based upon the available information, shall determine the slope of any land in question.
- D. Requirements.** Prior to the issuance of any Zoning or Building Permit(s) for any use, structure, or activity, the following must be satisfied:²²
- (1) For any use, structure, or activity on any parcel of land which includes within its boundaries steep slopes:
 - (a) The developer shall submit a map, plan, or plat showing the location and extent of steep slopes within the area to be disturbed, as well as the location and extent of land disturbing activities and mitigation measures, including the proposed building sites, paved areas, drainfields, well locations, and other uses.
 - (b) The developer shall obtain a Land Disturbance Permit and incorporate stormwater management facilities and erosion and sediment control measures, in accordance with the Nelson County Code.
 - i. Any development occurring on steep slopes shall submit an Erosion and Sediment Control Plan and is not eligible to submit an Agreement in Lieu of a Plan, as provided in the Nelson County Erosion and Sediment Control Ordinance in Chapter 9 of the Nelson County Code.
 - (2) For any use, structure, or activity on any parcel of land which includes within its boundaries critical slopes:

²² Editor's Note: This text proposes that any slope of 20-34% in grade can be administratively approved through a normal building/zoning permit process provided the proper mitigations are documented. Any development upon slopes with a gradient of 35% or higher will require an approved special use permit through the normal SUP method.

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- (a) In addition to the requirements of Sec. 4-2-3(D)(1), above, if any portion of a development is intended to disturb areas with critical slopes, the developer must obtain a Special Use Permit following the requirements of Article 3, Division 4, Special Use Permits, of this Ordinance.

E. Design Limitations.

- (1) All streets/roads and driveways shall follow natural contour lines to the maximum extent feasible.
- (2) No driveway shall be constructed with a grade greater than 10%.
- (3) Minor utilities, individual water systems, or septic lines serving an individual sewage disposal system shall not disturb steep slope areas with slopes greater than 15%.
 - (a) However, a run of no more than 200 ft. or 10% of the entire length of the minor utility, water line and/or septic line, whichever is greater, shall be allowed to disturb steep slope areas with slopes greater than 15%, based on a geotechnical study or findings from a geotechnical professional that:
 - i. Such minor utility, water lines and/or septic lines will not have significant adverse visual, environmental or safety impacts, or appropriate engineering or other measures will be taken by the developer to substantially mitigate any such adverse impact; and
 - ii. No alternative location for such minor utility, water line and/or septic line is feasible or available.

Section 4-2-4 Family Division Dimensional Standards

- A. The provisions of this Division are subject to the provisions of Article 10, Subdivisions, of this Ordinance.
- B. All family divisions are subject to all the applicable standards of this Ordinance, and all other requirements of Nelson County, unless specifically modified or excepted by the provisions of this Article.
- C. Family divisions as allowed by the provisions of this Division are permitted only in the following districts:
 - (1) C-1, Conservation District
 - (2) A-1, Agricultural District

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- (3) R-1, Low-Density Residential District
- D. Family divisions are not required to front a public street as required by **Sec. 4-2-2(B)(2)**.
- E. The dimensional requirements set forth in **Table 4-2** shall supersede those stipulated in this Ordinance for other development types. If a dimensional requirement is not listed in **Table 4-2**, then the dimensional requirement of the primary or overlay zoning district shall apply.

Table 4-2: Family Division Dimensional Regulations

	C-1 Conservation District	A-1 Agricultural District	R-1 Low-Density Residential District
Minimum Lot Size			
All lots	1 acre	1 acre	1 acre
Minimum Required Setbacks			
Front	50 ft.	50 ft.	50 ft.
Side	25 ft.	25 ft.	25 ft.
Rear	25 ft.	25 ft.	25 ft.

Section 4-2-5 Exemptions²³

- A. The following uses and structures are permitted in required setbacks, subject to the limitations provided:
 - (1) Plantings, fences, or shrubbery.
 - (a) On a Corner Lot, fences, walls, shrubbery, or other plantings, that will materially obstruct vision within the visibility triangle shall be prohibited by the Administrator.
 - (2) Unenclosed porches, steps, and decks, not exceeding 24 sq. ft. in size, may project into any required setback, but shall not be closer than five (5) ft. to any lot line.

²³ Editor’s Note: This new section has been added to include any exemptions to the regulations contained within this article.

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- (3) Architectural features, chimney, eaves, windowsills, and other like building features may project into any required setback but shall not be closer than three (3) ft. to any lot line.

B. The height limitations of this Ordinance shall not apply to:

- (1) Agricultural Buildings;
- (2) Belfries;
- (3) Broadcasting or communication towers;
- (4) Chimneys, flues, and smokestacks;
- (5) Cooling towers;
- (6) Church Spires;
- (7) Cupolas;
- (8) Domes;
- (9) Flagpoles;²⁴
- (10) Public memorials or monuments;
- (11) Parapet walls;
- (12) Radio aerials;
- (13) Roof-top mechanical equipment screened by parapet walls;
- (14) Silos;
- (15) Solar collectors;
- (16) Spires;
- (17) Television antennas;
- (18) Utility service, major; and
- (19) Water storage tanks.

²⁴ Editor's Note: Current height regulations provide a blanket exemption for flagpoles but the PC and Board may wish to consider only exempting flagpoles under a certain height and require additional approvals to be pursued for taller flagpoles.

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Division 4-3 Rural Districts Dimensional Standards

Section 4-3-1 Rural Districts Regulations

Table 4-3: Rural Districts Regulations

	C-1 Conservation District	A-1 Agricultural District
Minimum Area Requirements		
Minimum Lot Size	20 acres	10 acres ^{25,26}
Minimum Required Setbacks		
Front	300 ft.	50 ft.
Side	300 ft.	20 ft. ²⁷
Rear	300 ft.	50 ft.
Corner Lot Side	35 ft.	30 ft.
Accessory Structure	15 ft.	15 ft.
Minimum Lot Width²⁸		
Road Frontage	200 ft.	200 ft.
Maximum Structure Height²⁹		
Building Height	35 ft.	35 ft.

²⁵ Editor’s Note: Minimum lot size for the A-1 district is proposed to be increased to 10 acres from the current 2 acres. This is based on guidance from the comprehensive plan and community engagement to better protect rural parts of the County. Division rights have also been removed in favor of a larger minimum lot size approach.

²⁶ Editor’s Note: Single and two family detached dwellings are currently allowed a smaller minimum lot size in A-1. This standard is proposed to be removed but can be incorporated back into use standards for these uses if the Board or PC desires.

²⁷ Editor’s Note: Rear and side setbacks from Section 4-3 have been modified to no longer be different for lots less than 5 acres and lots larger than 5 acres. Proposed setbacks are 20 feet for all side setbacks other than family subdivisions. In addition, the larger yard requirements have been removed in favor of a simpler flat side setback.

²⁸ Editor’s Note: Minimum required road frontage has been increased from 125 ft. to 200 ft.

²⁹ Editor’s Note: The provision allowing structures to be higher than 35 feet in height, provided they receive a Special Use Permit, has been removed.

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Division 4-4 Residential Districts Dimensional Standards

Section 4-4-1 Residential District Regulations

Table 4-4: Residential Districts Regulations

	R-1 Low-Density Residential District	R-2 Mid-Density Residential District	R-3 High-Density Residential District
Minimum Area Requirements			
Minimum Lot Size without Public Water and Sewer	2 acres ³⁰	1 acre ³¹	_32
Minimum Lot Size with Public Water and Sewer		20,000 sq. ft. ³³	10,000 sq. ft. + 5,000 sq. ft. per additional du
Minimum Required Setbacks			
Front	50 ft.	35 ft. ³⁴	20 ft.
Side	10 ft. ³⁵	10 ft. ³⁶	5 ft.
Rear	25 ft.	25 ft.	10 ft.
Corner Lot Side	20 ft.	20 ft.	10 ft.
Accessory Structure	10 ft.	10 ft.	5 ft.
Minimum Lot Width			
Road Frontage	125 ft.	100 ft.	75 ft.
Maximum Structure Height			

³⁰ Editor’s Note: Removed the 30,000 sq. ft. minimum lot size for lots served by public sewer to better match zoning district density expectations.

³¹ Editor’s Note: Development in R-2 currently requires lots be served by public water services. The proposed text is recommending that developments be allowed in the R-2 district with a minimum of 1 acre lots.

³² Editor’s Note: Development of lots in the R-3 district will require lots be served by public water and sewer.

³³ Editor’s Note: The proposed text removes increases the minimum lot size required for lots, removes the allowance for lots with only public sewer, and removes the additional lot size requirements for multiple dwelling structures to better accommodate the new R-3 district. Multi-family dwellings are intended to be only allowed by SUP in R-2 where additional lot size requirements can be set.

³⁴ Editor’s Note: Current front setbacks scale based on the width of the fronting street.

³⁵ Editor’s Note: Removed required combined side yard width of 25 ft.

³⁶ Editor’s Note: Removed required combined side yard width of 25 ft.

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Building Height	35 ft.	35 ft.	45 ft. ³⁷
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**du = dwelling unit*

Division 4-5 Commercial Districts Dimensional Standards

Section 4-5-1 Commercial District Regulations

Table 4-5: Commercial Districts Regulations

	B-1 Highway Business District	B-2 Neighborhood Business District	SE-1 Service Enterprise District
Minimum Area Requirements			
Minimum Lot Size		20,000 sq. ft. ³⁸	40,000 sq. ft.
Minimum Required Setbacks			
Front		50 ft. ³⁹	50 ft. ⁴⁰
Front, Adjoining Rural or Residential District		75 ft.	
Side		10 ft.	25 ft.
Side, adjoining Rural or Residential District	10 ft.	20 ft.	
Corner Lot Side		25 ft.	75 ft.
Corner, Lot Side Adjoining Rural or Residential District	10ft.	50 ft.	
Rear		10 ft.	25 ft.
Rear, Adjoining Rural or Residential District	10 ft.	25 ft.	
Accessory Structure		10 ft.	15 ft.
Accessory Structure, Adjoining Rural or Residential District	10 ft.	15 ft.	

³⁷ Editor’s Note: A 45 ft. height limitation is recommended to allow for up to four story multi-unit buildings. The County should consider if their emergency response units are able to accommodate such heights.

³⁸ Editor’s Note: A minimum lot size for the B-2 district has been added to better capture the intent of the district.

³⁹ Editor’s Note: Setbacks for the B-2 district have been added and modified to better capture the intent of the district.

⁴⁰ Editor’s Note: Current setbacks for this district differ based on whether the use is commercial or residential. Instead, the proposed text removes this distinction and uses similar setbacks to the B-2, R-1, and A-1 Districts but it is recommended that the Board and PC review these setbacks and recommend any changes they wish to see.

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Minimum Lot Width ⁴¹			
Road Frontage	75 ft.	125 ft.	125 ft.
Maximum Structure Height			
Building Height	45 ft. ⁴²	35 ft.	35 ft.

Division 4-6 Industrial Districts Dimensional Standards

Section 4-6-I Industrial District Regulations

Table 4-6: Industrial Districts Regulations

	M-1 Light Industrial District	M-2 Heavy Industrial District ⁴³
Minimum Area Requirements		
Minimum Lot Size	20,000 sq. ft.	40,000 sq. ft.
Minimum Required Setbacks		
Front	20 ft.	40 ft.
Front, Adjoining Rural or Residential District	50 ft.	100 ft.
Side	10 ft.	30 ft.
Side, Adjoining Rural or Residential District	20 ft.	100 ft.
Rear	10 ft.	30 ft.
Rear, Adjoining Rural or Residential District	20 ft.	100 ft.
Corner Lot Side	20 ft.	40 ft.
Corner Lot Side, Adjoining Rural or Residential District	40 ft.	100 ft.
Accessory Structure	10 ft.	30 ft. ⁴⁴
Accessory Structure Adjoining Rural or Residential District	20 ft.	100 ft.

⁴¹ Editor’s Note: Road frontage requirements have been added for the B-1 and B-2 districts that complement the district’s intent statements.

⁴² Editor’s Note: The height limitation for the B-1 District has been increased to match the district’s purpose for more intensive commercial uses.

⁴³ Editor’s Note: The M-2 District currently has very limited district standards. The proposed text includes all new district standards that complement the new M-1 District. These modified district standards are intended to complement each districts intent statements and provide reasonable protections to the surrounding lands.

⁴⁴ Editor’s Note: Proposed text includes a new setback for accessory structures in the M-2 District.

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Minimum Lot Width		
Road Frontage	100 ft.	100 ft.
Maximum Structure Height		
Building Height	35 ft.	60 ft.

Division 4-7 Planned Development Districts Dimensional Standards

Section 4-7-1 Purpose and Intent

- A. The purpose of Planned Development Districts is to encourage innovative and efficient land use planning and physical design on large, unified sites. Planned Development Districts are intended to:
- (1) Achieve a high quality of development while protecting environmentally sensitive areas;
 - (2) Provide a well-integrated mix of non-residential and recreation uses with various residential dwelling types to achieve a walkable, connected neighborhood;
 - (3) Allow more efficient use of land through coordinated networks of streets, utilities, and pedestrian connections, both within the development and to adjacent development;
 - (4) Encourage the provision of accessible and useable open space and recreational amenities within the development;
 - (5) Promote development forms and patterns that respect the character of established surrounding neighborhoods and other land uses; and
 - (6) Promote development patterns that complement a site's natural and man-made features, such as rivers, lakes, wetlands, floodplains, trees, and historic and cultural resources.

Section 4-7-2 General⁴⁵

- A. The following standards will apply to all planned development districts:
- (1) **Character of Development.**

⁴⁵ Editor's Note: General standards for all planned communities have been included in this Section to prepare the Ordinance for more planned community districts if the County wishes to adopt them in the future.

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- (a) Development within planned development districts should encourage development form and character that is aesthetically pleasing and different from conventional suburban development through inclusion of the following elements:
 - i. Neighborhood friendly streets and paths;
 - ii. Interconnected streets and transportation networks;
 - iii. Open space amenities;
 - iv. Appropriately scaled buildings and spaces;
 - v. Mixture of housing types and affordability; and
 - vi. Environmentally sensitive design.
- (b) The planned development must:
 - i. Substantially conform to the adopted Comprehensive Plan with respect to type, character, intensity of use, density, and public facilities;
 - ii. Result in a development achieving the stated purposes of the planned development district more than development under a conventional zoning district;
 - iii. Efficiently utilize the available land, and protect and preserve to the extent possible all scenic assets and natural features such as trees, streams, and topographic features; and
 - iv. Prevent substantial injury to the use and value of existing and surrounding properties and uses in accordance with the adopted Comprehensive Plan.
- (2) **Application and Procedures.** All planned development districts must be established in accordance with the standards of **Article 3, Permits and Applications**, of this Ordinance.
- (3) **Consistency with Site Plan.** All development and subsequent operation within planned development districts must be undertaken in accordance with the provisions of the approved application and Site Plan.

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- (a) **Major Modifications.** Major modifications to a planned development district site plan – including changes to housing types, densities, permitted uses, architectural elevations, or general location of any elements, or other aspects of a planned development district site plan – where the change is not in keeping with the concept of the approved a planned development district site plan will require an amendment to the a planned development district site plan in accordance with **Article 3, Permits and Applications**, of this Ordinance.
- (b) **Minor Modifications.** Minor modifications to a planned development district site plan, which clearly are in substantial conformity with the approved a planned development district site plan, may be approved by the Administrator without applying for an amendment to the site plan.
 - i. Substantial conformity means that conformity which leaves a reasonable margin for adjustment due to final engineering data, but conforms to the general nature of the development, the specific uses, the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant.
- (4) **Waivers.** A proposed development may vary from the guidelines outlined in this Division, except for uses subject to approval of a rezoning or Special Use Permit in accordance with **Article 3, Permits and Applications**, of this Ordinance. Any waiver from the standards and guidelines must be specifically acknowledged by means of a proffer or conditions. A request for waiver must:
 - (a) Clearly outline the requested waiver(s), and
 - (b) Justify the need or benefit to the public and community should the waiver be granted.

Section 4-7-3 RPC Residential Planned Community District⁴⁶

A. Establishment.

⁴⁶ Editor’s Note: Standards and regulations for the RPC district remain unchanged from the current Ordinance to ensure no conflicts arise between the County Zoning Ordinance and Wintergreen Resort. Minor edits have been incorporated to ensure proper organization and grammatical consistency. Much of the provisions in this section may be better suited in different areas of the Ordinance, some of the terminology differs from those found throughout the rest of the Ordinance, and potential conflicts between this section and other provisions of the Ordinance may arise. The BOS, PC, and County staff should review and give direction for any potential modifications for this section of the Article.

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- (1) **Request and Master Plan.** Request for establishment of a residential planned community shall be made initially to the Planning Commission and subsequently to the County Board of Supervisors accompanied by a "Master Plan" for the proposed community of not less than three thousand (3,000) contiguous acres under one (1) ownership or control.

B. Application.

- (1) The applicant shall furnish with his application for establishment of a Residential Planned Community ten (10) copies of a Master Plan prepared by a surveyor, engineer, or architect, duly authorized by the state to practice as such, upon which shall be shown the approximate location of the open areas which shall comprise not less than twenty-five (25) percent of the whole and the general location of the various types of land uses, including the general location of any Village Centers and the residential density classifications of each residential area.
- (2) The applicant shall further submit with his application ten (10) copies of a set of schematic preliminary plans which shall indicate a method by which the Master Plan may be implemented and show the general location of all public and private roads, the location and particular use of all open areas, the location and type of such proposed improvements and buildings as are required to be shown on the Final Plan, and a general sewer, storm drainage and water supply plan.
- (3) Upon approval by the County Board of Supervisors of the Master Plan, the Residential Planned Community shall be deemed established. After approval, the Master Plan may not be altered without approval of the County Board of Supervisors, but the preliminary plans shall be superseded by the Final Plans hereinafter provided for.

C. Final Plan.

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- (1) Following the establishment of a Residential Planned Community by approval of the Board of Supervisors of a Master Plan therefor, the applicant shall furnish to the planning commission ten (10) copies of a Final Plan of any part or section of the community comprising not less than five (5) acres of land shown on the Master Plan and from time to time thereafter shall submit additional Final Plans comprising the whole area of the Master Plan. The final plan shall be prepared or certified by a surveyor, engineer or architect. The final plans shall be consistent with the Master Plan as approved but may vary from the preliminary plans to any degree which the Planning Commission believes does not vary the basic concept or character of the development.
- (2) The final plans shall show by metes and bounds the layout of all major and local roads, public and private, the location of all buildings and improvements, other than single-family dwellings (as to these buildings the general location for improvements within the lines of each lot shall be shown) and other than school buildings or other buildings to be built by public authority (as to which the site or lot shall be shown), all parking areas, pedestrian ways, utility easements, lot lines, and shall show the different types of open areas and other public or community amenities, the proposed use of all buildings and of all areas dedicated for public or private common use.
- (3) The applicant shall furnish with a Final Plan a proposed deed of easement including restrictions safeguarding the permanent use of open areas and preventing encroachment thereupon.
- (4) When the Final Plan and deed of dedication shall have been approved by the Planning Commission as being in conformity with this ordinance and the Master Plan as approved by the County Board of Supervisors, and Final Plan submitted as provided for in the original Final Plan.

D. Additional Land.

- (1) Additional land area may be added to an existing Residential Planned Community if it is adjacent (except for public roads) and forms a logical addition to the existing Residential Planned Community and if it is under the same ownership or control.
- (2) The procedure for an addition shall be the same as if an original application were filed, and all of the requirements of this ordinance shall apply except the minimum acreage requirement of three thousand (3,000) acres.

E. Use Regulations.

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- (1) All uses permitted by right or by special permit in the Conservation District C-1, Residential Districts R-1 and R-2, and Business District B-1 of the Nelson County Zoning Ordinance shall be permitted in the Residential Planned Community District, subject to the limitations hereinafter provided. In addition, the following land use categories (sectors) shall apply to Residential Planned Community Districts. All land use sectors shall be clearly indicated on the Master Plan and subsequent Final Plans, including the area of each sector in acres, maximum floor areas used for commercial or light craft manufacturing purposes, total numbers of dwelling units, and average gross densities in dwelling units per acre.
- (2) **Multiple Use Sector, MU.** In Multiple Use Sectors, the following uses are permitted:
 - (a) Commercial, public, civic, and light craft manufacturing and sales uses as permitted in Business Districts B-1 and provided that the total floor areas used for commercial or light craft manufacturing purposes shall not exceed those shown on the Master Plan unless by special permit.
 - (b) Residential, recreation, public, semipublic, community, and professional office uses as permitted in Residential Districts R-1 and R-2, and Multiple-Family Residential Sectors as provided hereinafter in 4-7-3(E)(4), provided that the total number of dwelling units shall not exceed that shown on the Master Plan unless by special permit. The maximum allowable gross density shall not exceed twenty (20) dwelling units per acre, including roads, streets, parking, and open spaces and recreational areas.
 - (c) Ancillary recreation and public and private uses not specifically provided for in the zoning ordinance shall be permitted, including:
 - i. Golf courses and country clubs.
 - ii. Riding stables, horse show areas.
 - iii. Indoor and outdoor recreation facilities.
 - iv. Ski areas and facilities.
- (3) **Single-Family Residential Sector, SR.** In Single-Family Residential Sectors, the following uses will be permitted:
 - (a) Single-family detached dwellings.
 - (b) Single-family attached dwellings.

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- (c) Other uses as permitted in Residential Districts R-1 and in 4-7-3(E)(2); except that Vacation House shall be a permissible by-right use in the SR Sector of the RPC District and shall not require a Special Use Permit.
- (d) The total number of dwelling units shall not exceed that shown on the Master Plan unless by special permit. The maximum allowable gross density shall not exceed ten (10) dwelling units per acre, including roads, streets, parking, open spaces and recreational areas.

(4) **Multiple-Family Residential Sector – MR.**

- (a) In Multiple-Family Residential Sectors, the uses permitted in Residential Districts R-1 and R-2 and in Section 4-7-3(E)(2) will be permitted. The total number of dwelling units shall not exceed that shown on the Master Plan unless by special permit. The maximum allowable gross density shall not exceed fifteen (15) dwelling units per acre, including roads, streets, parking, open spaces and recreational areas.

F. Building Location Requirements.

- (1) The location of all structures shall be as shown on the Final Plan as required in Section 4-7-3(C) other than single-family dwellings as to which building restriction lines or construction area limit shall be shown with respect to each lot. The proposed location and arrangement of structures shall not be detrimental to the existing or prospective adjacent dwellings or to the existing or prospective development of the neighborhood.
- (2) Open spaces between structures shall be protected where necessary by adequate covenants running with the land, conveyances or dedications. There shall be no minimum lot size, no minimum setback lines, no maximum percentage of lot coverage, no minimum yard or side yard width and no frontage requirement on a public or private street in a Residential Planned Community except as shown on the approved Final Plan.

G. Utilities.

- (1) Prior to approval of the Final Plan, the applicant must submit plans and specifications of a public or private sewer and a public or private water supply system adequate to serve the area covered by the Final Plan in conformity with standards of the Virginia State Water Control Board and the Virginia State Health Department.

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- (2) Approval may be granted to a Final Plan subject to the condition that no lot may be sold or conveyed until assurances satisfactory to the Planning Commission have been given by the applicant with respect to the timely extension of water and sewer to the particular lot.

H. Street Improvements.

- (1) All dedicated public streets shown on the Final Plan shall meet all requirements of the Virginia Department of Highways Subdivision Standards. Before approval of any Final Plan the Resident Engineer shall so certify. Such public streets shall be coordinated with the Major Transportation Network shown in the County Comprehensive Plan.
- (2) Private streets shown on the Final Plan shall be similarly coordinated with existing or planned streets of both the Master Plan and the County Comprehensive Plan. Private streets shown on the Final Plan need not meet the requirements of the Virginia Department of Highways but shall meet all other requirements of the **Article 10, of this Ordinance**, as these may be waived or modified by the Planning Commission as set forth hereafter.
- (3) The following provisions of the **Article 10, of this Ordinance**, as applicable to Residential Planned Communities are modified as follows, subject to approval of the Final Plans by the Planning Commission:
 - (a) There shall be no predetermined requirements for intersection or approach angles for private streets.
 - (b) There shall be no predetermined maximum number of lots or units served by a cul-de-sac. Cul-de-sac turnarounds will not be required if serving less than twenty (20) lots, and if required, shall not be less than sixty (60) feet in diameter.
- (4) To the extent streets are private rather than public, the applicant must also submit assurances satisfactory to the Planning Commission that a property owners' community association or similar organization has been legally established under which the lots within the area of the Final Plan will be assessed for the cost of maintaining private streets, and that such assessments shall constitute a pro-rate [pro rata] lien upon the individual lots shown on the Final Plan.

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- (5) Approval may be granted to a Final Plan subject to the condition that no lot may be sold or conveyed until assurances satisfactory to the Planning Commission have been given by the applicant with respect to the timely extension of public or private roads to the particular lot.
 - (6) The uniqueness of each proposal for a Residential Planned Community requires that the specifications for the width, surfacing, construction and geometric design of streets, alleys, ways for public utilities, and the specifications for curbs, gutters, sidewalks, streetlights, and stormwater drainage shall be subject to modification from the specified, waive or modify the specifications otherwise applicable for a particular facility where the Planning Commission finds that such specifications are not required in the interests of the residents of the Residential Planned Community and that the modifications of such specifications are not inconsistent with the interests of the entire county, and conform to all other applicable ordinances and laws.
 - (7) It shall be the responsibility of the applicant to demonstrate to the satisfaction of the Planning Commission with respect to any requested waiver or modification:
 - (a) That the waiver or modification will result in design and construction that is in accordance with accepted engineering standards;
 - (b) That the waiver or modification is reasonable because of the uniqueness of the Residential Planned Community or because of the large area of the Residential Planned Community within which the nature and excellence of design and construction will be coordinated, preplanned, and controlled;
 - (c) That any waiver or modification as to streets is reasonable, with respect to the generation of vehicular traffic that is estimated will occur within the area of the Master Plan;
 - (d) That traffic lanes of streets are sufficiently wide to carry the anticipated volume and speed of traffic; and
 - (e) That waivers or modifications as to base and surface construction of streets and as to the construction of ditches or drainage way be based upon soil tests for CBR value and erosion characteristics of the particular subgrade soils in the area.
- I. **Average Daily Traffic Estimates.** The basis for determining average daily traffic estimates from the Final Plans are:

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Table 4-7: Average Daily Traffic

Use	Peak Occupancy	Average Daily Trips	No. of Dw. Units	Average Daily Traffic
Hotel	95% X	.75 X	=	
Multifam. Res.	80% A	1.00 X	=	
Single-Fam. Att. Res.	80% X	1.25 X	=	
Single-Fam. Det. Res.	80% X	1.50 X	=	

J. **Road Widths.** The basis for determining road widths from the Final Plans are:

Table 4-8: Road Widths

Average Daily Traffic	Traffic Lanes Number	Traffic Lanes Width
0 – 100	2	8'
100 – 500	2	9'
500 – 1000	2	10'
1000 – 3000	2	11'
3000 – 7500	2	12'
Over 7500	4	12'

K. **Special Provisions.**

- (1) The provisions hereof shall not be limited by any provisions of any other part of the Nelson County Zoning or Subdivision Regulations herewith.
- (2) Temporary Events conducted wholly within the Residential Planned Community District (RPC) shall not be require an approved Temporary Use Permit per **Article 3, Permits & Applications, of this Ordinance.**
- (3) If following the establishment of a Residential Planned Community, a Final Plan shall be submitted to the Planning Commission as hereinbefore provided, such Final Plan shall be deemed approved by the Planning Commission if no action has been taken by the Planning Commission within sixty (60) days after such submission.

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Division 4-8 Cluster Housing Development Standards⁴⁷

Section 4-8-1 Purpose and Intent⁴⁸

- A. The purposes of cluster housing developments are to:
- (1) Preserve rural character;
 - (2) Encourage the protection and preservation of open space and agricultural lands in the County;
 - (3) Encourage development in a manner which lessens the cost of infrastructure;
 - (4) Provide incentives for clustering residential development in the most appropriate locations;
 - (5) Encourage more efficient and aesthetic use of open space;
 - (6) Encourage the preservation of open space for agricultural, scenic, and recreational uses;
 - (7) Create and encourage the use of a variety of development choices to satisfy the changing needs of the County; and
 - (8) Offer flexibility to the developer in their approach and solution to land development problems.

Section 4-8-2 Development Standards

- A. The provisions of this Article will allow residential dwellings to be developed in clusters, subject to the provisions of **Article 10, Subdivision**, of this Ordinance.
- B. A cluster development shall be subject to all the applicable standards of this Ordinance, and all other requirements of Nelson County, unless specifically modified or excepted by the provisions of this Article.
- C. Cluster development as allowed by the provisions of this Article shall be permitted only in the following districts:
- (1) C-1, Conservation District;

⁴⁷ Editor's Note: This Division includes updated regulations for cluster housing development within the County. The standards for required open space areas for these developments will be found in Article 8, Community Design Standards.

⁴⁸ Editor's Note: The purpose and intent of cluster developments has been modified to be more streamlined and simplified.

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- (2) A-1, Agricultural District; and
 - (3) R-1, Residential District.
- D. All cluster developments shall provide open space in accordance with **Table 4-8** and the open space shall be designed and used in accordance with the standards for open space provided in **Article 8, Community Design Standards**, of this Ordinance.
- E. The permitted uses for cluster developments shall conform to the permitted uses for the zoning district in which the development is located, per **Article 6, Use Matrix**, of this Ordinance.
- F. The dimensional requirements set forth in **Table 4-8** shall supersede those stipulated for other development types, except that:
- (1) The allocated densities for each zoning district shall not be exceeded, as described in **Table 4-8**. The maximum net density and net buildable area for a cluster development shall be calculated as follows:
 - (a) Net buildable area is equal to the gross area of the property divided by minimum lot size based on the zoning district in which the project is located, as described in **Table 4-8**, below.
- G. Each lot within a cluster housing development must front a public or private road built to the Virginia Department of Transportation Standards for Residential Streets.⁴⁹
- H. All residential lots, buildings, and structures must be interior and setback 100 ft. from the development property line. Minimum setbacks included in **Table 4-8**, below, are for interior lots adjoining other lots within the cluster development.⁵⁰
- I. Each lot within a cluster housing development shall serve no more than one (1) dwelling unit.

⁴⁹ Editor's Note: Current cluster housing standards allow privately maintained streets to have standards defined within the Ordinance. Instead, the proposed text allows private roads but requires them to be built to VDOT standards to ensure that any future incorporation of these streets into the VDOT system will be possible.

⁵⁰ Editor's Note: This subsection proposes a minimum 100 foot setback from any property line for any dwelling within the cluster development. This require cluster subdivisions to be set back away from principal roads or other properties but still allow for smaller more clustered development of dwellings with reduced interior setbacks.

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Table 4-9: Cluster Development Standards

	C-1	A-1	R-1
Minimum Area Requirements⁵¹			
Minimum Open Space Required	40%	40%	40%
Maximum Density ⁵²	1 du / 10 acres	1 du / 5 acres	1 du / 1 acres
Minimum Development Area ⁵³	50 acres	30 acres	10 acres
Minimum Lot Size	1 acre	1 acre	1 acre
Minimum Lot Size with Public Sewer	30,000 sq. ft.	30,000 sq. ft.	30,000 sq. ft.
Minimum Lot Size with Public Water and Sewer ⁵⁴	10,000 sq. ft.	10,000 sq. ft.	10,000 sq. ft.
Minimum Required Setbacks			
Front	20 ft.	20 ft.	20 ft.
Side ⁵⁵	10 ft.	10 ft.	10 ft.
Rear	10 ft.	10 ft.	10 ft.
Accessory	10 ft.	10 ft.	10 ft.

**du = dwelling-unit*

J. Density Bonus. ⁵⁶

⁵¹ Editor’s Note: Cluster development standards have been modified to allow for more incentives and encourage them throughout the County. Notably, the minimum required road frontage has been removed to encourage more organic and creative clustering from developers.

⁵² Editor’s Note: The maximum density requirements for cluster housing developments have been changed to further encourage these types of developments.

⁵³ Editor’s Note: Minimum lot sizes for cluster developments have been reduced to further encourage these types of developments.

⁵⁴ Editor’s Note: The proposed text removes the maximum allowed lot size for developments with public sewer and/or water.

⁵⁵ Editor’s Note: The proposed text removes the requirement for a larger total yard than the required setbacks.

⁵⁶ Editor’s Note: This subsection contains newly proposed density bonus text for cluster subdivisions. This text would allow developers to incorporate development features that satisfy the requirements of the table and in exchange receive points that can be allocated towards additional densities within the cluster subdivision. It is recommended that the Nelson County BOS and PC review these development bonus features and ensure that they would be desirable and worthwhile for additional density bonuses.

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- (1) Cluster developments may exceed the base maximum density specified in **Table 4-8**, above, only in accordance with a density bonus by providing a development feature as detailed in **Table 4-7**, below. The following density bonus point system will apply:

Table 4-10: Cluster Development Density Bonus

Development Feature		Bonus Points
A	Use native plant species for at least 75% of the landscaping in the development.	2.5
B	Provide community garden space (at least 5% of the required open space acreage).	2.5
C	Install rainwater harvesting systems or greywater recycling for at least 50% of the development's units.	2.5
D	Provide electric vehicle charging stations for at least 10% of the residential units.	2.5
E	Preserve wetlands, steep slopes, or floodplains within open space.	2.5
F	Provide an additional 5% open space above the minimum requirement.	5
G	Provide additional active recreation areas such as playgrounds, sports fields, or community centers.	5
H	Use permeable paving, rain gardens, bioswales, or other LID techniques in at least 50% of the paved areas.	5
I	Preserve at least 70% of the existing mature tree canopy.	5
J	Install renewable energy systems (e.g., solar panels) on at least 50% of units.	5
K	Provide an additional 10% open space above the minimum requirement.	5
L	Provide pedestrian and bicycle accommodations that exceed standard requirements and provide connectivity to existing networks, where possible.	5
M	Achieve LEED or equivalent certification for all residential units.	5
N	Dedicate at least 10% of units to market-rate affordable housing.	5
O	In Rural Districts, dedicate conservation or agricultural easement for land preservation or continued farm use.	5

- (2) The density bonus is calculated as the total sum of points awarded for public benefits provided.

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- (a) 5 Points: Allows an increase of 10% in the number of dwelling units above the base density.
 - (b) 10 Points: Allows an increase of 15% in the number of dwelling units.
 - (c) 15 Points: Allows an increase of 20% in the number of dwelling units.
 - (d) 20 Points: Allows an increase of 25% in the number of dwelling units.
 - (e) 25 Points: Allows an increase of 30% in the number of dwelling units.
- (3) With any approved density bonus, the minimum lot area, lot width, frontage, and/or setbacks as shown in **Table 4-9** may be reduced up to 50%.
 - (4) The total density bonus may not exceed 30% of the base density, regardless of the total points earned.

Section 4-8-3 Review

- A. A landowner who intends to develop a cluster subdivision must submit the required number of development plans and subdivision plats to the Planning Director for review and approval. In the performance of his/her duties, the Planning Director may request opinions or decisions in writing from various departments or agencies of the Commonwealth of Virginia, other departments of the Nelson County government, and utility companies.
- B. The Planning Director shall act on the final development plan and subdivision plat within sixty 60 days after it has officially submitted for approval by either approving or disapproving the plans. The 60 day time period for action shall not apply to cluster development plans and plats under the following circumstances:
 - (1) If the subdivision plat and/or development has a feature(s) requiring approval by a State agency, the Planning Director shall approve or disapprove the plans within 35 days of receipt of the approvals from all Federal, State, and local agencies.
 - (2) Nothing contained in **Section 4-7-3(B)** shall require approval of the final subdivision plat and development plan for a cluster housing development in less than 60 days.

Article-5 Overlay Zoning Districts

Division 5-1 Establishment and Purpose

Section 5-1-1 General

- A. This Article establishes overlay districts, which apply additional standards to the development and design requirements of land in the County. These district standards exist as overlays to the primary zoning districts, and, as such, do not replace, but will supplement the underlying primary district provisions.
- B. If there is any conflict between the provisions or requirements of an overlay district and those of any underlying primary district, the provisions or requirements of the overlay district shall apply.
- C. Nelson County hereby establishes and designates the following overlay zoning districts:

Table 5-1: Overlay Zoning Districts

Overlay Districts	
FP	General Floodplain District
VO	Village Overlay District ¹
CO29	Route 29 Corridor Overlay District ²

Section 5-1-2 Purpose and Intent of Overlay Districts

- A. **FP, General Floodplain District Intent.** The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and necessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
 - (1) Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

¹ Editor’s Note: The Village Overlay District is a new overlay district proposed in this text.

² Editor’s Note: The Route 29 Corridor Overlay District is a new overlay district proposed in this text.

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- (2) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
 - (3) Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and
 - (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
- B. **VO, Village Overlay District Intent.** The Village Overlay District is established to preserve and enhance traditional village character in historic communities by promoting walkable, mixed-use development that integrates residential, office, commercial, and public uses. This district provides flexibility for small-scale businesses, housing, and essential services and supports the rehabilitation of older structures, infill development of vacant lots, and infrastructure improvements to reinforce the village as a rural community hub. This district is intended to promote the land use policies for rural villages throughout the County as established in the Comprehensive Plan.
- C. **CO29, Route 29 Corridor Overlay District Intent.** The Route 29 Corridor Overlay District is intended to promote high-quality commercial development along Nelson County's key thoroughfare and gateway. This district allows for a broader range of tourism-friendly businesses and services while emphasizing cohesive design and development standards that enhance the corridor's visual character and functionality. Additional design standards, including those related to landscaping, signage, and site aesthetics, are encouraged to support the preservation and promotion of the County's natural beauty and promote a gateway corridor that reflect the values of the County.

Division 5-2 FP – General Floodplain District³

Section 5-2-1 Authority

This Division is adopted pursuant to the authority granted to localities by the Code of Virginia §§ 15.2-2200, 15.2-2280, and 15.2-2283, as amended, and may be referred to as the Nelson County General Floodplain Overlay District, floodplain management overlay district, floodplain district, or flood hazard overlay district.

Section 5-2-2 Applicability

These provisions shall apply to all lands within the jurisdiction of Nelson County and identified as special flood hazard areas (SFHAs) identified by the County, shown on the flood insurance rate map (FIRM), or included in the flood insurance study (FIS) that are provided to the County by the Federal Emergency Management Agency (FEMA).

Section 5-2-3 Compliance and liability.

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this Division and any other applicable ordinances and regulations, which apply to uses within the jurisdiction of this Division.
- B. The degree of flood protection sought by the provisions of this Division is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This Division does not imply that districts outside the floodplain district or that land uses permitted within such district will be free from flooding or flood damages.
- C. This Division shall not create liability on the part of Nelson County or any officer or employee thereof for any flood damages that result from reliance on this Division or any administrative decision lawfully made under these regulations.

³ Editor's Note: The floodplain district has been slightly modified from its current version to promote better organization, improve clarity, and better match FEMA's model floodplain ordinance. Standards from the current floodplain ordinance have primarily been maintained.

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Section 5-2-4 Abrogation and Greater Restrictions.

- A. This Division shall supersede any other regulation currently in effect in flood prone districts. Any regulations, however, shall remain in full force and effect to the extent that its provisions are more restrictive.
- B. These regulations are not intended to repeal or abrogate any existing ordinances including Zoning and/or Subdivision Ordinances or Building Codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

Section 5-2-5 Penalties.

- A. Any person who fails to comply with any of the requirements or provisions of this Division, or directions of the Administrator, or any other authorized employee of Nelson County, shall be subject to the penalties pursuant to the Code of Virginia, and as outlined in the VA Uniform Statewide Building Code (USBC) for building code violations, and **Article 2, Administration**, of this Ordinance for violations and associated penalties.
- B. In addition to the above penalties, all other actions are hereby reserved, including an action of equity for the proper enforcement of this Division.
- C. The imposition of a fine or penalty for any violation of, or noncompliance with, this Division shall not excuse the violation or noncompliance or permit it to continue, and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time.
- D. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this Division may be declared by the Board of Supervisors to be a public nuisance and abatable as such.
- E. Flood insurance may be withheld from structures constructed in violation of this Division.

Section 5-2-6 Designation of the Floodplain Administrator.

- A. The Zoning Administrator (or their designee) (hereby referred to as the Administrator) shall serve as the Floodplain Administrator. The Administrator may:
 - (1) Administer the duties and responsibilities herein.
 - (2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

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- (3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of this Division. Administration of any part of this Division by another entity will not relieve the County of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program (NFIP) as set forth in the Code of Federal Regulations at 44 CFR Section 59.22.

Section 5-2-7 Duties and Responsibilities of the Floodplain Administrator.

- A. The duties and responsibilities of the Administrator shall include but are not limited to:
 - (a) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
 - (b) Interpret floodplain boundaries and provide available BFEs (BFEs) and flood hazard information.
 - (c) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
 - (d) Review applications to determine whether all necessary permits have been obtained from the Federal, State, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
 - (e) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Virginia Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (such as Virginia Department of Environmental quality and U.S. Army Corps of Engineers), and have submitted copies of such notifications to FEMA.
 - (f) Approve applications and issue permits to develop in SFHAs if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.

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- (g) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- (h) Review Elevation Certificates prepared in accordance with FEMA standards and require incomplete or deficient certificates to be corrected.
- (i) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for Nelson County, within six (6) months after such data and information becomes available if the analyses indicate changes in BFEs.
- (j) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - i. Copies of Flood Insurance Studies, FIRMs (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
 - ii. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood-proofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- (k) Enforce the provisions of these regulations, investigate violations, issue notices of violations, and require permit holders to take corrective action.
- (l) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- (m) Administer the requirements related to proposed work on existing buildings:
 - i. Make determinations as to whether buildings and structures that are located in SFHAs and that are damaged by any cause have been substantially damaged.
 - ii. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct the structure.

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- iii. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
- (n) Undertake, as determined appropriate by the Administrator due to the circumstances, other actions which may include but are not limited to:
- i. Issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures;
 - ii. Coordinating with other Federal, State, and local agencies to assist with substantial damage determinations;
 - iii. Providing owners of damaged structures information related to the proper repair of damaged structures in SFHAs; and
 - iv. Assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
- (o) Notify FEMA when the corporate boundaries of Nelson County have been modified and:
- i. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
 - ii. If the FIRM for any annexed area includes SFHAs that have flood zones that have regulatory requirements that are not set forth in these regulations:
 - a. Prepare amendments to these regulations to adopt the FIRM and appropriate requirements;
 - b. Submit the amendments to the governing body for adoption; and
 - c. Such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to the Virginia Department of Conservation and Recreation and FEMA.

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- (p) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
- (q) Take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the County, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

Section 5-2-8 Records

Records of actions associated with administering this Division shall be kept on file and maintained by the Administrator or their designee.

Section 5-2-9 Use and Interpretation of FIRMs.

- A. The Administrator shall make interpretations, where needed, as to the exact location of SFHAs, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:
 - (a) Where field surveyed topography indicates that adjacent ground elevations:
 - i. Are below the base flood elevation, even in areas not delineated as a Special Flood Hazard Area on a FIRM, the area shall be considered as Special Flood Hazard Area and subject to the requirements of these regulations; or
 - ii. Are above the Base Flood Elevation, the area shall be regulated as a Special Flood Hazard Area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
 - (b) In FEMA-identified SFHAs where Base Flood Elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
 - (c) BFEs and designated floodway boundaries on FIRMs and in FISs shall take precedence over BFEs and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower BFEs.
 - (d) Other sources of data shall be reasonably used if such sources show increased BFEs and/or larger floodway areas than are shown on FIRMs and in FISs.

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- (e) If a Preliminary FIRM and/or a Preliminary FIS has been provided by FEMA:
- i. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - ii. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to **Section 5-2-14** and used where no BFEs and/or floodway areas are provided on the effective FIRM.
 - iii. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary BFEs or floodway areas exceed the BFEs and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

Section 5-2-10 Jurisdictional Boundary Changes.

- A. The Nelson County General Floodplain Overlay District in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Nelson County shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- (1) If the FIRM for any annexed area includes SFHAs that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to DCR Division of Dam Safety and Floodplain Management and FEMA.
- B. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

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- C. To ensure that all FIRMs accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

Section 5-2-11 District Boundary Changes.

The delineation of the general boundaries of the General Floodplain District may be revised by Nelson County where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed Letter of Map Revision (LOMR) is a record of this change.

Section 5-2-12 Interpretation of District Boundaries.

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination in accordance with **Article 3, Permits and Applications**, of this Ordinance. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present their case to the Board of Zoning Appeals and to submit his own technical evidence if they so desire.

Section 5-2-13 Letters of Map Revision (LOMR).

- A. The County's BFEs may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the County shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The County may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- B. When development in the floodplain will cause or causes a change in the Base Flood Elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision (CLOMR) and then a LOMR. Examples include:
 - (a) Any development that causes a rise in the BFEs within the floodway.

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- (b) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one (1) foot in the BFE.
- (c) Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations §65.3 and §65.6(a)(12).

Section 5-2-14 Establishment of Flood Hazard Zones.

- A. **Basis of Flood Hazard Zones.** The various floodplain districts shall include special flood hazard areas (SFHAs). The basis for the delineation of these districts shall be the FIS and the FIRMs for Nelson County, prepared by FEMA.
 - (1) The County may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, or approximate study methodologies.
 - (2) The boundaries of the special flood hazard area and floodplain districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Nelson County Planning and Zoning Office.
- B. **Description of Flood Hazard Zones.** The flood hazard zones described below constitute the General Floodplain Overlay District. The General Floodplain Overlay District is an overlay to the existing underlying zoning districts as shown on the official zoning ordinance map, and as such, the provisions for the Floodplain Overlay District will serve as a supplement to the underlying district provisions.⁴
 - (1) **AE Zone.** Those areas for which one percent (1%) annual chance flood elevations have been provided and the floodway has been delineated on the FIRM.
 - (2) **Floodway Zones.** Those areas in a AE Zone(s) and delineated, for purposes of this Division, using the criterion that certain areas within the floodplain must be capable of carrying the water of the one percent (1%) annual chance flood without increasing the water surface elevation of that flood more than one foot at any point.

⁴ Editor's Note: This newly proposed text has been updated to better describe flood zone areas as they appear on FEMA's FIRM maps.

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- (3) **A Zone.** Those areas for which no detailed flood profiles or elevations are provided, but the one percent (1%) annual chance floodplain boundary has been approximated.
 - (4) **X Zone.** If shaded on the FIRM, these are areas of the County where the annual flood risk is considered moderate at between one percent (1%) and 0.2 percent (0.2%). If unshaded, these are areas where the annual flood risk is considered low at below 0.2 percent (0.2%). There are no specific development requirements in the X Zone pursuant to this Division.
- C. Where the specific base flood elevation cannot be determined for an area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity must determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses must be undertaken only by professional engineers or others of demonstrated qualifications, who must certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., must be submitted in sufficient detail to allow a thorough review by Nelson County.

Section 5-2-15 Permits and Applications.

- A. All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance, the Virginia USBC, and all other applicable codes and ordinances.
- (1) Prior to the issuance of any such permit, the Administrator shall require all applications to include compliance with all applicable state and federal laws, and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- B. Prior to any proposed alteration or relocation of any channel or of any watercourse within this jurisdiction, a permit shall be obtained from the U. S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any one of these organizations).

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- (1) In riverine areas, notification of the proposal shall be given to all adjacent jurisdictions, the Department of Conversation and Recreation (Division of Dam Safety and Floodplain Management) other required agencies, and FEMA. A completed CLOMR is required from FEMA prior to commencement of work, and a completed LOMR is required pursuant to Section 5-2-11 upon completion of work.
- C. All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information, to be provided by a licensed professional, in addition to applicable requirements of **Article 3, Permits and Applications**, of this Ordinance:
- (1) The elevation of the Base Flood at the site.
 - (2) For structures to be elevated, the elevation of the lowest floor (including basement).
 - (3) For non-residential structures to be floodproofed, the elevation to which the structure will be floodproofed.
 - (4) Topographic information showing existing and proposed ground elevations.
- D. **Standards for Subdivision Proposals.**
- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
 - (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
 - (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
 - (4) Base Flood Elevation data shall be provided for subdivision proposals and other development proposals (including manufactured home parks and subdivisions) that exceed eleven lots or five acres, whichever is the lesser.
 - (5) **Sanitary sewer facilities.** All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

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- (6) **Water facilities.** All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- (7) **Drainage facilities.** All storm facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on site waste disposal sites. The Board of Supervisors may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate large, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- (8) **Utilities.** All utilities, such as gas lines, electrical and telephone systems being placed in flood prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- (9) **Streets and sidewalks.** Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

Section 5-2-16 Permitted Uses in the Floodway District.

- A. The following non-structural uses and activities are permitted in any floodplain district and the Floodplain Administrator may waive the requirements for an application for a zoning permit, provided the uses are in compliance with the zoning provisions of the underlying area and are not prohibited by any other ordinance and further provided that they do not require structures, fill, or storage of materials or equipment:
 - (1) Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
 - (2) Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming area, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas, but excluding golf courses and other recreational uses that cause change in land contours.

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- (3) Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.
 - (4) Flood warning aids and water measurement devices.
- B. Higher Standards and Critical Facilities.** For some activities and uses, even a slight chance of flooding poses too great a threat to public health, safety, and welfare. Critical facilities, as defined in this Ordinance, are examples of such activities and uses which require special regulation. Therefore, critical facilities are prohibited from being constructed or operated within a SFHA unless a variance is granted pursuant to **Section 5-2-21**. The following list of critical facilities provides examples of uses or improvements which are prohibited in a SFHA:
- (1) Structures or facilities that produce, use, store, or transport highly volatile, flammable, explosive, toxic, and/or water-reactive materials.
 - (2) Hospitals, nursing homes, or other housing likely to have occupants who may not be sufficiently capable of avoiding injury or death during a flood.
 - (3) Police stations, fire departments, rescue squads, and/or emergency operations centers and equipment storage facilities which are needed for flood response activities before, during, and after a flood.
 - (4) Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.
- C. Higher Standards and Hazardous Materials.** Some items and products are extremely hazardous and vulnerable to flood conditions, and would pose an unacceptable risk to public health, safety, and welfare during flooding. Therefore, the following hazardous materials are prohibited as follows, unless a variance is granted pursuant to **Section 5-2-21**:
- (1) The storage of Acetone, Ammonia, Benzene, Calcium carbide, Carbon disulfide, Celluloid, Chlorine, Hydrochloric acid, Magnesium, Nitric acid, Oxides of nitrogen, Phosphorus, Potassium, Prussic acid, Sodium, and/or Sulfur is prohibited in a SFHA.
 - (2) The storage of Acetylene gas containers, Storage tanks, Lumber/buoyant items, Gasoline, Charcoal/coal dust, Petroleum products, and/or Natural gas for any time period longer than thirty (30) days is prohibited in a SFHA.

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Section 5-2-17 Elevation and Construction Standards

- A. In all identified flood hazard areas where BFEs have been provided in the FIS or generated by a certified professional in accordance with **Section 5-2-11**, above, the following provisions shall apply:
- (1) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
 - (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State anchoring requirements for resisting wind forces.
 - (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - (5) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
 - (6) New construction and replacement of any utilities and facilities shall follow the provisions of **Section 5-2-16** of this Article.
 - (7) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
 - (10) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

B. Development in Floodway District.

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- (1) Within any designated Floodway Areas, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (a) Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Administrator.
 - (b) If (1), above, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of **Section 5-2-16**, above.
- (2) Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies for a Conditional Letter of Map Revision (CLOMR) and receives the approval of FEMA.

C. Development in AE Zones.

- (1) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within AE zones, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within Nelson County.
- (2) Development activities which increase the water surface elevation of the base flood by more than one (1) foot may be allowed, provided that the applicant first applies a Conditional Letter of Map Revision (CLOMR) and receives the approval of FEMA.

D. Development in A Zones.

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- (1) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within A zones, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within Nelson County.
 - (2) Development activities which increase the water surface elevation of the base flood by more than one (1) foot may be allowed, provided that the applicant first applies – with Nelson County’s endorsement – for a Conditional Letter of Map Revision (CLOMR) and receives the approval of FEMA.
 - (3) For these areas, the base flood elevations and floodway information from Federal, State, and other acceptable sources shall be used, when available [44 CFR 60.3(b)].
 - (4) Where the specific one percent (1%) annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation, in the following manner:
 - (a) The elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.
 - (b) Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Administrator.
 - (c) The Administrator reserves the right to require a hydrologic and hydraulic analysis for any development in this zone.
 - (d) When such base flood elevation data is utilized, the freeboard shall be 24 inches. Permits and Applications.
- E. In addition, in all SFHAs (SFHA), these additional provisions shall apply:
- (1) Fences shall be installed parallel to a waterway. When a fence crosses a waterway, it shall be designed as a drop-down fence or a suspended cable fence.

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- (2) No zoning permit shall be administratively issued by the Administrator for any proposed critical facilities as defined by this Ordinance within any SFHA.
 - (3) No zoning permit shall be administratively issued by the Administrator for the storage of hazardous materials for any time period longer than 30 days within any SFHA. ⁵
 - (4) No zoning permit shall be administratively issued by the Administrator for the placement of any non-native fill materials (such as fly ash or other waste by-products) within any SFHA. Only locally-borrowed mineral materials may be used as fill within a SFHA, and all such uses must first obtain the necessary permit approval(s) as required by this Ordinance.
- F. In all SFHAs where BFEs have been provided in the FIS or generated according to **Section 5-2-11**, the following provisions shall apply:
- (1) **Residential construction.** New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated 18 inches or more above the Base Flood Elevation.
 - (2) **Nonresidential construction.** New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured/mobile home) shall have the lowest floor, including basement, elevated 18 inches or more above the Base Flood Elevation.
 - (a) Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one (1) foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.
 - (b) A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood-proofed, shall be maintained by the Floodplain Administrator.

⁵ Editor's Note: The County should review this provision for hazardous materials in floodways and decide if it is still something they wish to include.

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- (3) **Elevated Buildings - Space Below the Lowest Floor.** Fully enclosed areas of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:
- (a) Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator);
 - (b) Be constructed entirely of flood resistant materials below the regulatory flood protection elevation; and
 - (c) Include, in Zones A, AO, AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - i. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding.
 - ii. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - iii. If a building has more than one (1) enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - iv. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.
 - v. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - vi. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- (4) **Standards for Manufactured Homes and Recreational Vehicles.**

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- (a) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must conform to either of the following:
 - i. Meet all the requirements for new construction, including the elevation and anchoring requirements of **Section 5-2-17**; or
 - ii. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions).
- (5) Accessory structures in the Special Flood Hazard Area shall comply with the elevation requirements and other requirements of this Section or, if not elevated or dry flood-proofed shall:
 - (a) Not be used for human habitation;
 - (b) Be limited to no more than 600 square feet in total floor area;
 - (c) Be usable only for parking of vehicles or limited storage;
 - (d) Be constructed with flood damage-resistant materials below the base flood elevation;
 - (e) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
 - (f) Be anchored to prevent flotation;
 - (g) Have electrical service and mechanical equipment elevated to or above the base flood elevation; and
 - (h) Shall be provided with flood openings which shall meet the following criteria:
 - i. There shall be a minimum of two (2) flood openings on different sides of each enclosed area; if a building has more than one (1) enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.

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- ii. The total net area of all flood openings shall be at least one (1) square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.
 - iii. The bottom of each flood opening shall be one (1) foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
 - iv. Any louvers, screens, or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.
- (i) A signed Declaration of Land Restriction (Non-Conversion Agreement) shall be recorded on the property deed.

Section 5-2-18 Existing Structures in Floodplain Districts

- A. Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved unless one (1) of the following exceptions is established before the change is made.
- (1) The Administrator has determined that:
 - (a) Change is not a substantial repair or substantial improvement;
 - (b) No new square footage is being built in the floodplain that is not compliant;
 - (c) No new square footage is being built in the floodway;
 - (d) The change complies with this ordinance and the VA USBC; and
 - (e) The change, when added to all the changes made during a rolling 5-year period does not constitute 50% of the structure's value.
 - (2) The changes are required to comply with a citation for a health or safety violation.
 - (3) The structure is a historic structure and the change required would impair the historic nature of the structure.

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Section 5-2-19 Variances⁶

A. General.

- (1) A request for a variance to the requirements of the Floodplain Overlay District may be made in accordance with **Article 3, Permits and Applications**, of this Ordinance.
- (2) The BZA has the authority to grant variances to the provisions of the Floodplain Overlay District only in strict compliance with this Section.
- (3) The BZA may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

B. In reviewing Variances, the BZA shall satisfy all relevant factors and procedures specified in other sections of this Ordinance, in addition to considering the following additional factors:

- (1) A showing of good and sufficient cause;
- (2) The BZA's determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (3) The BZA's determination that the variance will be the minimum required to provide relief; and
- (4) The BZA's determination that the granting of such variance will not result in:
 - (a) Unacceptable or prohibited increases in flood heights;
 - (b) Additional threats to public safety;
 - (c) Extraordinary public expense; and
 - (d) The authorization of such variance will not:
 - i. Create nuisances;
 - ii. Cause fraud or victimization of the public; or

⁶ Editor's Note: Text from Sec. 10-21 has been included in this new Section but modified to better address requirements for variances within the floodplain district. These variance standards are higher than those imposed in Article 3.

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iii. Conflict with local laws or ordinances.

C. The BZA will also give due consideration and weight to the following additional factors before granting a variance:

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments;
 - (a) No variance will be granted for any proposed use, development, or activity within any floodway zone that will cause any increase in the one percent (1%) chance flood elevation.
- (2) The danger of materials being swept on to other lands or downstream to the injury of others;
- (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
- (4) The susceptibility of the proposed facility and its contents to flood damage, and the effect of the damage on the individual owners;
- (5) The importance of the services provided by the proposed facility to the community;
- (6) The requirements of the facility for a waterfront location;
- (7) The availability of alternative locations for the proposed use which are not subject to flooding;
- (8) The compatibility of the proposed use with existing and anticipated development;
- (9) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area;
- (10) The safety of access by ordinary and emergency vehicles to the property in time of flood;
- (11) The expected heights, velocity, duration, rate of rise, and sediment transport of flood waters expected at the site;

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- (12) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure; and
- (13) Such other factors which are relevant to the purposes of this Ordinance.
- D. The BZA shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation:
 - (1) Increases the risks to life and property; and
 - (2) Will result in increased premium rates for flood insurance.
- E. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to FEMA.

Division 5-3 VO – Village Overlay District

Section 5-3-1 Applicability

- A. The Village Overlay District shall apply to all lands designated as such and shown on the official Zoning Map.
- B. Any new development within the VO District must conform with the regulations within this Division.
- C. Development within the VO shall adhere to the requirements of this Ordinance and the underlying zoning district.
- D. If a conflict exists between the standards of the VO found within this Division and the rest of this Ordinance, regulations in this Division shall govern.

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Section 5-3-2 Applications and Process

Prior to issuance of a building or zoning permit for any development in the VO District, a minor site plan must be approved for the proposed development in accordance with **Article 3, Permits and Applications**, of this Ordinance.

Section 5-3-3 Permitted Uses

In addition to those uses allowed by-right and by Special Use Permit in the underlying zoning districts, the VO District shall have the uses as established in **Article 6, Use Matrix**, of this Ordinance.⁷

Section 5-3-4 Development Standards

- A. The VO District shall have the following district standards:

Table 5-1: Village Overlay District Regulations

⁷ Editor's Note: This provision will allow all uses of any underlying zoning district within the VO district in addition to any uses specifically included for the VO district in the use matrix. Nelson County should consider if they want to restrict this to only allowing uses specifically outline for the VO district and not those in the underlying zoning district.

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VO Village Overlay	
Minimum Area Requirements	
Minimum Lot Size	20,000 acres
Minimum Lot Size with Public Water and Sewer	10,000 sq. ft.
Minimum Required Setbacks	
Front	10 ft.
Side	-
Rear	20 ft.
Corner Lot Side	10 ft.
Accessory Structure, Rear	15 ft. *
Accessory Structure, Side	10 ft. *
Minimum Lot Width	
Road Frontage	100 ft.
Maximum Structure Height	
Building Height	35 ft. **

** Accessory uses shall not be located within the front or corner lot side setback.*

*** Building height may be increased up to a maximum of 45 ft. with additional setbacks of 1 ft. for every foot of height above 35 ft.*

B. In addition to the development standards specified in this Ordinance for underlying primary zoning districts, the following standards will apply in the VO, unless otherwise noted:

- (1) Approval from the Virginia Department of Health is required for any development utilizing a private sewer system. Minimum area requirements may be altered by the Administrator to accommodate these systems.
- (2) Commercial uses shall not exceed 12,000 square feet of gross floor area per story.
- (3) All commercial uses within the VO District must conform with the VO District Landscape Design Standards and screening requirements of **Article 8, Community Design Standards**.⁸
- (4) All off-street parking requirements of **Article 8, Community Design Standards**, shall be located in the side or rear yards of any commercial use.

⁸ Editor’s Note: The intent of this provision is to require additional landscaping standards, notably within the developments road frontage area and parking areas, that will be detailed in Article 8. These additional standards are intended to promote aesthetically improved development along the County’s main thoroughfare.

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(5) **Roads.**

- (a) All new roads must conform to VDOT standards and be adopted for public use within six (6) months of the completion of new development.⁹
- (b) Any building along a public or private road shall architecturally front and have main entrances that face that road. For corner lots, the building shall front the more highly trafficked street or provide an angled corner entrance.
- (c) Roads and parking areas shall be arranged to serve and connect to adjacent development and provide an interconnected pattern of walkable blocks unless deemed infeasible by the Administrator.
- (d) Unless otherwise approved at the time of site plan review, direct and convenient onsite vehicular circulation and access between properties shall be provided. The intent is to provide shared access drives located to the rear of buildings fronting public roadways and to minimize the need of separate individual vehicular entrances along public roads.
- (e) New roads within the VO District that connect to two or more existing public roadways, shall include one of the following:¹⁰
 - i. Pedestrian accommodations, such as sidewalks and bicycle lanes, shall be provided along both sides of the entire length of the roadway whenever such road connects to an existing road where existing pedestrian accommodations exist; or
 - ii. Dedication of a public easement consisting of a five-foot-wide strip of land along both sides of the roadway, extending the full length of the road, to allow for the future installation of pedestrian accommodations, such as sidewalks and bicycle lanes.

Section 5-3-5 Waivers and Modifications

- A. The requirements of this Division may be modified by the Board of Supervisors in connection with the approval of an SUP or Zoning Map Amendment, in accordance with **Article 3, Permits and Applications**, of this Ordinance.

⁹ Editor's Note: This provision would restrict private roads for new developments within the VO district.

¹⁰ Editor's Note: This provision would require new roads to include pedestrian infrastructure if they connect to roads that already have such infrastructure, otherwise they must dedicate an easement for public access that can be developed with pedestrian infrastructure in the future.

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- B. The requirements of this Division may be waived or modified by the Administrator in accordance with modification criteria and procedures for a design requirement provided in **Article 8, Community Design Standards**, of this Ordinance.
 - (1) If modification criteria and procedures for a design requirement are not provided in **Article 8, Community Design Standards**, of this Ordinance, then administrative modification shall not be granted in the VO.
 - (2) The Administrator may attach conditions to any waiver or modification as deemed reasonably necessary.

Division 5-4 CO29 – Route 29 Corridor Overlay District

Section 5-4-1 Applicability

- A. CO29 District boundaries shall be as follows:
 - (1) 500 feet on either side of U.S. Route 29, measured from the edge of the road right-of-way.¹¹
- B. Any new commercial or industrial development within the CO29 District must conform with the regulations within this Division.¹²
- C. Development within the CO29 shall adhere to the requirements of this Ordinance and the underlying zoning district(s).
- D. If a conflict exists between the standards of the CO29 found within this Division and the rest of the Ordinance, regulations in this Division shall govern.

Section 5-4-2 Applications and Process

- A. In addition to all applicable requirements of **Article 3, Permits and Applications**, and **Article 8, Community Design Standards**, of this Ordinance, the following is required to be submitted for all development within the CO29 as part of a Site Plan or, in the case of a subdivision, as part of the plat submission:
 - (1) An access plan, drawn to scale, including dimensions and distances, and clearly detailing:

¹¹ Editor's Note: This provision would apply the overlay district to all of Route 29 within the County. The BOS and PC should review and decide if they wish to restrict the overlay district to only certain sections of Route 29 or keep the recommended provision.

¹² Editor's Note: The recommend text will require the provisions of this district to only apply to commercial and industrial districts and not residential subdivisions. This text can be modified to only apply to developments of a certain size or all uses.

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- (a) All nearby entrances and access points on both sides of the corridor highway within 400 ft. of the property line(s), and any entrances, including inter-parcel and secondary street access, for all adjacent properties; and
 - (b) The traffic circulation system and the pedestrian circulation system as coordinated with adjacent properties, including the location and width of all streets, driveways, access aisles, entrance to parking areas, walkways, and paths.
- (2) A traffic impact analysis detailing:
- (a) The anticipated additional Annual Daily Traffic (ADT) generated by the development; and
- (3) Any proposed improvements to mitigate potential negative impacts to the traffic circulation system.
- (4) A landscape plan showing compliance with the requirements of the CO29 Landscape Design Standards of **Article 8, Community Design Standards**.¹³

Section 5-4-3 Permitted Uses

In addition to those uses allowed by-right and by Special Use Permit in the underlying zoning districts, the CO29 District shall have the uses as established in **Article 6, Use Matrix**, of this Ordinance.

Section 5-4-4 Development Standards¹⁴

- A. The CO29 District shall have the following district standards:

Table 5-2: Route 29 Corridor District Regulations

CO29 Route 29 Corridor Overlay	
Minimum Area Requirements	
Minimum Lot Size	2 acres
Minimum Required Setbacks	
Front	50 ft.

¹³ Editor’s Note: The intent of this provision is to require additional landscaping standards, notably within the developments road frontage area and parking areas, that will be detailed in Article 8. These additional standards are intended to promote aesthetically improved development along the County’s main thoroughfare.

¹⁴ Editor’s Note: In addition to the uses and design standards that will be drafted for this district in future Articles, the provisions in this section shall also apply. The BOS and PC should review these standards and give direction for any changes.

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Side	20 ft.
Rear	50 ft.
Corner Lot Side	30 ft.
Accessory Structure	15 ft.
Minimum Lot Width	
Road Frontage	125 ft.
Maximum Structure Height	
Building Height	35 ft.

- B. In addition to the development standards specified in this Ordinance for underlying primary zoning districts, the following standards will apply in the CO29, unless otherwise noted:¹⁵
- (1) The design of new construction, exterior renovations, and nonexempt additions must be complementary to the character and materiality of the principal structure and adjacent properties.
 - (2) A structure nonconforming to height, area, yard, setback or bulk requirements of the CO29 may be only altered or expanded in accordance with **Article 9, Nonconformities**, of this Ordinance.
 - (3) All fencing, lighting, landscaping, and screening installed in the CO29 must comply with all applicable standards of **Article 8, Community Design Standards**, of this Ordinance.
 - (4) **Signs.** All signs erected in the CO29 must comply with the standards of **Article 8, Community Design Standards**, of this Ordinance, in addition to the following standards:
 - (a) Pole mounted signage is prohibited.
 - (b) Sign materials and colors must complement the overall design of the building.
 - (c) The base of signs placed at the primary access to the parcel must be landscaped in accordance with **Article 8, Community Design Standards**, of this Ordinance.

¹⁵ Editor’s Note: The development standards included in this section are some baseline recommendations for the County to consider. In addition to these standards, the County may wish to consider regulating building materials, colors, or facades, alternate parking and loading requirements, or open space requirements.

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- i. Plantings at the base of signage must not grow to a height that partially or fully obstructs sign copy, as visible from the Route 29 ROW.
- (5) All new roads must conform to VDOT standards and be adopted for public use within six (6) months of the completion of new developments.¹⁶
- (6) **Vehicular Access and Circulation.** ¹⁷
 - (a) Any parcel or assembly of parcels having frontage along a CO29 roadway will be allowed only one direct access to that CO29 roadway, unless an access plan is submitted to, and approved by the Planning Commission for more than one access point. However, additional access points, associated with subdivision, commercial, or industrial development, must also provide access to adjacent parcel for existing or future development.
 - i. The Administrator may approve additional direct access points to CO29 roadways if it is demonstrated that the proposed design accomplishes the purpose of the CO29. Access design must conform to or exceed the minimum guidelines contained in the Site Handbook, Lynchburg District Office of VDOT.
 - (b) There will be no direct access onto the CO29 roadway from out-parcels which are part of a larger, coordinated development site or shopping center. Access via the following means will be approved:
 - i. By provision of shared entrances, inter-parcel connections and travel routes, or on-site service drives connecting adjacent properties;
 - ii. By access from a secondary public street rather than a primary street; or
 - iii. By the internal streets of a commercial, office, or an institutional complex.

¹⁶ Editor’s Note: This provision would restrict private roads for new developments within the CO29 district.

¹⁷ Editor’s Note: The provisions in this subsection are designed to promote inter connectivity between developments and restrict access points along Route 29.

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- (c) All primary travel lanes and private streets designed to allow vehicular access between properties must be established in recorded ingress/egress easements, which are reciprocal in nature and address the shared cost of construction and ongoing maintenance.
 - i. Such easements or dedicated public rights-of-way must be extended to the property line where inter-parcel access or dedicated public rights-of-way are required.
 - ii. Existing parcels of land will not be denied access to a public highway if no reasonable shared or cooperative access is possible, at the time of development.

Section 5-4-5 Waivers and Modifications

- A. The requirements of this Division may be modified by the Board of Supervisors in connection with the approval of an SUP or Zoning Map Amendment, in accordance with **Article 3, Permits and Applications**, of this Ordinance.
- B. The requirements of this Division may be waived or modified by the Administrator in accordance with modification criteria and procedures for a design requirement provided in **Article 8, Community Design Standards**, of this Ordinance.
 - (1) If modification criteria and procedures for a design requirement are not provided in **Article 8, Community Design Standards**, of this Ordinance, then administrative modification shall not be granted in the CO29.
 - (2) The Administrator may attach conditions to any waiver or modification as deemed reasonably necessary.

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Article-9 Nonconforming Uses, Lots, and Structures

Division 9-1 General

Section 9-1-1 Intent

With the adoption of this Ordinance or subsequent amendments, there exist lots, structures, and use of land and structures in combination which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue as established prior to Ordinance adoption and in accordance with the Code of Virginia § 15.2-2307.

Section 9-1-2 General

- A. A change in occupancy or ownership will not affect the right for the nonconforming use to continue or the nonconforming building or structure to remain.
- B. If a building, structure, lot, or use does not conform to the zoning prescribed for the district in which such is situated, the owner, lessee, or contract purchaser of such building, structure, or use may apply for a rezoning or a Special Use Permit without charge by the County or any agency thereof for fees associated with such filing, provided that:¹
 - (1) A business license was issued by the County for such building, structure, lot, or use;
 - (2) The holder of such business license has operated continuously in the same location for at least fifteen (15) years; and
 - (3) All relevant local, state, and federal taxes or delinquent charges related to such building, structure, or use have been paid.

¹ Editor's Note: This section has been expanded to include buildings, structures, and lots beyond the current provision that only applies to uses.

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Division 9-2 Nonconformities²

Section 9-2-1 Nonconforming Uses

- A. A legal nonconforming use may continue as it existed when it became nonconforming. A nonconforming use will not be reconstructed, relocated, altered, or expanded in any manner, including the addition of new accessory uses, except as provided for in this Section.³
- (1) A nonconforming use may change to a conforming use.
 - (2) A nonconforming use may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
 - (3) No additional uses which would be prohibited generally in the Zoning District involved shall be permitted.
 - (4) The nonconforming use may be extended throughout those parts of a building which are lawfully and manifestly arranged or designed for such use at the time of enactment of this Ordinance provided there are no structural alterations, expansion, or enlargement except those required by law or lawful order.
 - (5) A nonconforming dwelling unit may have a home occupation subject to the requirements of Article 6, Use Matrix, and Article 7, Use Performance Standards, of this Ordinance.
- B. A nonconforming use shall lose its nonconforming status, and any further use shall conform to the requirements of this Ordinance when:
- (1) The nonconforming use is discontinued for a period of two (2) years, regardless of whether or not equipment or fixtures are removed, and shall be deemed abandoned.⁴

² Editor's Note: This division includes many of the sections found in Article 11 but has streamlined and clarified many of the provisions.

³ Editor's Note: This provision updates and clarifies conflicting language found in section 11-1-4, that did not allow for any expansion or enlargement of a nonconforming use, and 11-4-1, that allowed expansion of a nonconforming use of up to fifty percent. This section now only allows for the expansion of a nonconforming use into a pre-existing building.

⁴ Editor's Note: The current allowance for an extension to the two year discontinued use removing a nonconforming status has been removed in this section.

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- (2) The nonconforming use is intentionally abandoned, regardless of the length of time that has passed.
 - (3) The removal of a structure in which a nonconforming use is carried out inside; removal of the structure shall eliminate the nonconforming status of the land, and the nonconforming use may not continue in a new structure.
- C. All nonconforming uses shall obtain a certificate of occupancy. Such permits shall be issued promptly upon the written request of the owner or operator of a nonconforming use.
- D. The casual, intermittent, seasonal, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot shall not be construed to establish a nonconforming use on the entire lot.
- E. When evidence available to the Agent is deemed to be inconclusive, whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Zoning Appeals (BZA) after public notice and hearing in accordance with **Article 3, Permits and Applications, Division 11, Public Hearings**, of this Ordinance, and in accordance with the rules of the BZA as provided in **Article 2, Administration, Division 3, Board of Zoning Appeals**, of this Ordinance.

Section 9-2-2 Nonconforming Lots of Record

- A. Any lot of record at the time of the adoption or amendment of this Ordinance does not meet the minimum area, length, or width required for the Zoning District it is in, it may be used or built upon without variance, provided that setbacks and other district requirements can be met.
- (1) The front setback requirement shall be no greater than the average of the adjoining lots' existing structure setbacks fronting on the same street.⁵
 - (2) A lot of record without road frontage shall have a legally recorded access easement.
 - (3) If the lot cannot meet setback and other requirements, a variance shall be obtained through the variance processes outlined in **Article 3, Permits and Applications**, of this Ordinance.

⁵ Editor's Note: This provision updates section 11-1-2 to allow for nonconforming lots to be used when front setbacks can not be met in special circumstances rather than not be used at all. The County should consider if they want to specify only specific areas for this to apply.

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- B. A developed nonconforming lot may continue in existence but may not be altered except in accordance with this Article.
- C. Any lot which is reduced in size and becomes less in area or width than the minimum required by the Zoning District, as the result of voluntary or required dedication of right-of-way shall be considered a nonconforming lot of record.
- D. A nonconforming lot may become a conforming lot by meeting the current minimum lot size, lot width, and lot frontage requirements of the Zoning District in which the lot is located through the following actions:
 - (1) A consolidation of the nonconforming lot with an adjacent lot;
 - (2) A boundary adjustment between two (2) contiguous lots, one (1) being nonconforming and the other being conforming, provided such adjustment does not make the conforming lot nonconforming, does not create an additional lot, and does not increase the nonconforming lot's nonconformity; or
 - (3) Rezoning to a different Zoning District to meet the lot size, lot width, and lot frontage requirements of that District.

Section 9-2-3 Nonconforming Structures, Buildings, and Improvements

- A. The construction of a nonconforming building for which a permit was issued legally prior to the adoption of this Ordinance may proceed in accordance with **Article 1, General, Division 4, Transition of Regulations After Adoption**, of this Ordinance.
- B. A nonconforming structure or nonconforming improvement may continue as it existed when it became nonconforming. A nonconforming structure or nonconforming improvement shall not be reconstructed, altered, or expanded in any manner, except as provided for in this Section.
- C. A nonconforming building or structure shall include those circumstances where Nelson County has:
 - (1) Issued a building permit or other permit authorizing construction and the building or structure was constructed in accordance with the building permit, and upon completion, the County issued a certificate of occupancy; or
 - (2) The owner of the building or structure has paid real estate taxes to the County for such building or structure for a period of more than the 15 years.

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- (3) In no instances shall the nonconforming circumstance of the structure relate, or provide nonconforming status to, a use. Nonconforming uses are established as outlined in **Section 9-2-1, Nonconforming Uses**, above.
- (4) Additionally, a nonconforming building or structure will include those circumstances where:
- (a) A permit was not required, an authorized governmental official informed the property owner that the structure would comply with the Zoning Ordinance, and the improvements were then constructed accordingly.
 - (b) However, in any proceeding when the authorized County official is deceased or unavailable to testify, uncorroborated testimony of the oral statement of such official will not be sufficient evidence to prove that the authorized County official made such statement.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming uses of land.
- E. A nonconforming structure may be changed to make it a conforming structure.
- F. Any extension, alteration, or enlargement of a nonconforming structure shall conform with the provisions of this Ordinance, provided such extension, alteration, or enlargement does not increase the degree of nonconformity in any respect.
- G. Any nonconforming building or structure may be brought into compliance with the Uniform Statewide Building Code without affecting the nonconforming status of the building or structure.
- H. If a nonconforming structure is demolished or removed, no nonconforming structure shall be reestablished, except as provided under **Section 9-2-4, Repairs and Maintenance**, below.
- I. If a nonconforming structure is moved for any reason to another parcel of land, regardless of distance, every portion of the structure and its principal use must then conform with the requirements for the Zoning District in which it is located.
- J. Nothing in this Article shall be construed to restrict an owner from seeking a variance in order to bring a nonconforming structure or building into compliance in accordance with **Article 3, Permits and Applications, Division 5, Variances** of this Ordinance.

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Section 9-2-4 Repairs and Maintenance

- A. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months if:
- (1) Such repair constitutes routine maintenance necessary to keep the structure or improvement in the same general condition it was in when it originally became nonconforming; or
 - (2) Such repairs constitute minor exterior repairs, cosmetic modifications, interior renovations, and similar changes.
 - (3) The cubic content of the structure, as it existed at the time of passage or amendment of this Ordinance, shall not be increased.
- B. Nothing in this Ordinance shall permit a complete rebuild of a nonconforming structure, nor serve to circumvent the requirements of this Article, except for necessary rebuilds in accordance with **Section 9-2-4 (D)**, below.
- C. 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, on order of such official.
- D. If 50% or more of a nonconforming building or structure or a conforming building with a nonconforming use is damaged or destroyed by fire, natural disaster or other Act of God, such building or structure may be repaired, rebuilt, or replaced provided that:
- (1) The nonconforming features are eliminated or reduced to the extent possible, without the need to obtain a variance;
 - (2) The owner shall apply for a building permit and any work done to repair, rebuild, or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code;
 - (3) The requirements of the Floodplain District of this Ordinance are met, if applicable; and
 - (4) The work is done within two (2) years unless the building is in an area under a federal disaster declaration and was damaged or destroyed as a direct result of the disaster, in which case the time period shall be extended to four (4) years.

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- E. Owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an Act of God. Nothing herein shall be construed to enable the property owner to commit an arson and obtain vested rights under this Section.
- F. An owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the Department of Health in effect at the time of the installation.
- G. Pursuant to the Code of Virginia § 15.2-2307(H), if a nonconforming manufactured home is removed other than by natural disaster, an Act of God, or public action, it may not be replaced except as provided for below unless it complies with regulations within the Ordinance. Any such replacement home shall retain the valid nonconforming status of the prior home.
 - (1) Nothing in this Section shall be construed to prevent the landowner or homeowner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home.
 - (2) The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code.

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Draft Article 11 – Definitions

April 23, 2025

*This Article will contain all the definitions for the Zoning & Subdivision Ordinance. As articles are drafted, definitions related to the new proposed articles are added here for context and review. ***The most recent text related to the current Articles under review are highlighted in green to ease review.***

Article-11 Definitions

Division 11-1 Abbreviations

A. Abbreviations used in this Ordinance are listed below with the term they abbreviate.

- (1) ANSI: American National Standards Institute
- (2) BFE: base flood elevation
- (3) BOS: Board of Supervisors
- (4) BZA: Board of Zoning Appeals
- (5) DEQ: Department of Environmental Quality
- (6) DU: dwelling unit
 - (a) du/acre: dwelling unit per acre
- (7) FT: feet
- (8) LF: linear foot
- (9) N/A: not applicable
- (10) PC: Planning Commission
- (11) SF: square feet
- (12) VDH: Virginia Department of Health
- (13) VDOT: Virginia Department of Transportation
- (14) USBC: Uniform Statewide Building Code
- (15) ZA: Zoning Administrator

Division 11-2 Word Usage

A. For the purposes of this Ordinance, certain words or terms shall be defined as follows:

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- (1) Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.
 - (2) The word "shall" or "must" is always mandatory; the word "may" is permissive.
 - (3) The words "may not" indicate a prohibition.
 - (4) The words "used for" include "designed for," "arranged for" or "occupied for."
 - (5) The word "building" includes "structures" and shall be construed as if followed by the phrase "or part thereof."
 - (6) The word "person" includes "individual," "partnership," "company," "profit or nonprofit corporation," "organization" or other similar entities.
 - (7) The word "erected" shall be deemed also to include "constructed, reconstructed, altered, placed, or moved".
 - (8) The word "State" means the Commonwealth of Virginia.
 - (9) The word "County" means Nelson County, Virginia.
 - (10) The terms "land use" and "use of land" shall be deemed also to include "building use" and "use of building".
 - (11) Unless otherwise specified, the term 'day' means a calendar day.
 - (12) Unless otherwise specified, all distance shall be measured horizontally and at right angles to the line in relation to which the distance is tied.
 - (13) The terms "architect," "engineer," "landscape architect," and "surveyor," or other profession listed, refer to those professionals who are registered with the Virginia Department of Professional and Occupational Regulation to practice those professions.
 - (14) The words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning.
- B. When a term or phrase is not specifically defined within this Article, the common definition of such term or phrase shall be applied per the Merriam-Webster Dictionary.
- C. See **Article 11, Division 4** for definitions that specifically pertain to the Floodplain Management Overlay District.

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Division 11-3 General and Use Definitions

Act of God. Pursuant to the Code of Virginia § 15.2-2307(E), any natural disaster or phenomena including, but not limited to, a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, or fire caused by lightning or wildfire.

Accessory Use or Structure. A subordinate use or building customarily incidental to and located upon the same lot occupied by the main use or building.

Adjacent. To be separated by common property lines, lot lines, streets, or roads; also known as: abutting, adjoining, contiguous, or touching.

Adjoining. Touching and/or contiguous to.

Administrator. The person or their designated agent responsible for the administration and enforcement of this Ordinance. The term Administrator shall apply to the Subdivision Agent and Zoning Administrator.

Area, buildable. The portion of a lot or site, exclusive of required setbacks, landscaping, or open space within which a structure may be built. May also be referred to in this Ordinance as “net area” or “net buildable area.”

Area, gross. The total area within a lot before dedication for roads, open spaces, or other public uses – but not including rights-of-way, easements owned by others, or marshlands/wetlands within a development.

Appeal. An action taken pursuant to Article 3, Division 10, of this Ordinance.

Board of Supervisors (BOS). The County’s governing body. Board of Supervisors members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations, and establishing County policy. The Board of Supervisors adopts the comprehensive plan, zoning, and subdivision regulations.

Board of Zoning Appeals (BZA). A quasi-judicial board appointed to review appeals and requests for variances made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance and to authorize, upon appeal, variances from the terms of this ordinance when justified by special conditions.

Boundary. A line, which may or may not follow a visible feature, that defines the limits of a geographic entity such as a zoning district, block, census tract, county, or place.

Building. Any structure having a roof supported by columns, walls, or other means.

Building height. The vertical distance, measured in feet, the vertical distance from the established curb grade to the roofline.

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Building Official. An appointed official of Nelson County who is responsible for certifying building inspections, and who administers and enforces the provisions of the Nelson County Building Code.

Certificate of Occupancy. The permit issued by the building code official that is required under the Uniform Statewide Building Code prior to the use or occupancy of certain buildings and structures.

Circuit Court. The circuit court for Nelson County, Virginia.

Cluster development. A development design technique that concentrates buildings on a portion or portions of the site to allow the remaining land to be used for recreation, open space, or preservation of land areas.

Code of Virginia. The official code of laws of the Commonwealth of Virginia. The term “Code of Virginia” shall include “as amended.”

Comprehensive Plan. The official plan of Nelson County that sets forth goals, policies, objectives, or strategies intended to direct the present and future physical, social, and economic development that occurs within the County, adopted pursuant to Code of Virginia, § 15.2-2223.

Concept Plan. A generalized plan indicating the boundaries of a tract or tracts of land, and presenting the general arrangement of proposed facilities, uses, structures, and improvements.

Condition. A specific requirement, restriction, or provision imposed as part of conditional zoning action that governs the use or development of land. A condition may supplement or modify the regulations of the underlying zoning district and is intended to address potential impacts or promote compatibility with surrounding land uses.

Conditional Zoning. A method for rezoning that permits the reasonable and orderly development and use of land with special restrictions in those situations in which unique, specific circumstances indicate that the existing zoning district regulations are not adequate.

County. Nelson County, Virginia.

County Code. The official code of laws of Nelson County, Virginia.

County Fee Schedule. The official schedule of County fees adopted by the Board of Supervisors.

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Critical slope. The portion of a lot with a grade of more than 35%, grade being the vertical elevation of land area divided by the horizontal distance.

Cul-de-sac. A street with only one (1) outlet having an appropriate turn-around area for safe and convenient reverse of traffic movement.

Dam. A manmade structure across a watercourse used to retain water.

Dam break inundation zone. The area downstream of a dam that would be inundated or otherwise directly affected by the failure of the dam, as established in Code of Virginia § 10.1-604, as amended. The dam break inundation zone must be shown on the dam break inundation zone map filed with the County and Virginia Department of Conservation and Recreation.

Deck line. The intersection of two (2) roof surfaces of a mansard roof forming the highest horizontal line of the steeper roof slope.

Density. The number of dwelling units that are allowed on a given unit of land, which will be permitted to include dedicated streets contained within the development. Density is determined by dividing the total number of residential units or lots to be located on the parcel by the area of the base parcel, excluding any minimum required open space.

Density Bonus. Pursuant to the Code of Virginia § 15.2-2305.1, as amended, an increase in the maximum allowed gross residential density beyond the usual limit, based on the applicant's request, or, the applicant may choose, a lesser percentage of density increase, or even no increase in density.

Development. A tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" will not be construed to include any tract of land which will be principally devoted to agricultural production.

Dimensional standards. Regulations controlling the size of structures and the relationship of structures and uses to each other and to open areas and lot lines, including but not limited to maximum building height, maximum floor area ratio, minimum setback and yard requirements, and grade.

District. See "Zoning District."

Division, family. The division of land for simultaneous conveyance to a member of the immediate family, or beneficiaries of a trust, of the property owner.

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Engineer. A professional who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested, through licensure, as a professional engineer by the Commonwealth of Virginia.

Engineer, Highway. The resident engineer employed by the Virginia Department of Transportation.

Grade, curb. The elevation of the recognized edge of the street, or centerline of the street, in front of a building or structure.

Governing Body. The Board of Supervisors of Nelson County, Virginia.

Health Official. An authorized official employed with the Virginia Department of Health.

Leadership in Energy and Environmental Design (LEED) Certification. An internationally used green rating designation given to a structure based on its performance in aspects of sustainability, including but not limited to energy use, water efficiency, and indoor environmental quality.

Lot. A parcel of land intended to be separately owned, developed, or otherwise used as a unit, established by plat, subdivisions, or as otherwise permitted by law. May also be referred to in this Ordinance as a “parcel”.

Lot, corner. A lot abutting on two or more streets at their intersection, where the interior angle of the intersection does not exceed 135 degrees.

Lot, interior. Any lot other than a corner lot.

Lot, regular. A lot that has direct access to a public or approved private road. They are located, shaped, and oriented to adjacent lots in such a way that the application of general measurements can be reasonably applied, and the location of front, side, and rear setbacks is logically determined by, and related to, adjacent streets and setback patterns.

Lot, stem. A lot which does not abut a public street other than by its driveway which affords access to the lot; may also be referred to as a flag lot or pipestem lot.

Lot, through. An interior lot, but not a corner lot, abutting on two (2) or more roughly parallel public streets, but not including an alley.

Lot area. The total horizontal area included within the lot lines of a lot.

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Lot coverage. The percentage of a lot, when viewed from above, that would be covered by a structure or structures (or any part thereof), including driveways, decks, stairs, eaves, and other improvements.

Lot depth. The distance between the front lot line and rear lot line of a lot, measured along a straight line.

Lot frontage. The horizontal distance between the side lot lines of a lot, measured at the street or road right-of-way.

Lot line, front. A lot line connecting the foremost points of the side lot lines and delineating the lot from the abutting street or road.

Lot line, rear. A lot line which is opposite and most distant from the front lot line and connecting the rearmost points of the side lot lines.

Lot line, side. Any lot line not considered a front or rear lot line.

Lot of record. A lot shown upon a plan of subdivision or upon a plat attached or referred to in a deed described by metes and bounds and recorded in the Circuit Court Clerk's Office of Nelson County.

Lot width. The horizontal distance between the side lot lines of a lot, measured at the front setback.

Low-Impact Development (LID). Methods of stormwater treatment and control that use the natural capacities of soil and vegetation to prevent or reduce stormwater runoff and associated nonpoint source pollution. LID methods may be combined with conventional or structural stormwater treatment systems. May also be referred to as “green infrastructure”.

Market-rate affordable housing. A non-subsidized, privately owned dwelling unit that is either rented or owned by those who pay market-rate rents or who paid market value to purchase the property.

Nonconforming lot. A lot of record that does not conform to the minimum area or width requirements of this ordinance for the district in which it is located either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

Nonconforming structure. An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance, for the district in which it is located, either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

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Nonconforming use. The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this ordinance for the district in which it is located, either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

Open space. The total area, inclusive of both land and water, in a development that is not covered by buildings, roads, driveway and parking areas, or outdoor storage areas – including, but not limited to, land area set aside for passive and active recreation, landscaping, and/or natural preservation.

Planned Development. A type of development that is designed and approved as a unified project, typically allowing for a mix of land uses, flexible design standards, and coordinated site planning. Planned developments often depart from traditional zoning requirements in order to promote creative design, efficient land use, and compatibility with surrounding areas.

Planning Commission. A board of the local government consisting of such appointed members whose functions include advisory or nontechnical aspects of planning and may also include such other powers and duties as may be assigned to it by the Board of Supervisors.

Proffer. A voluntary offer that addresses an impact or impacts from use of property or development, tendered by an applicant for conditional rezoning.

Public Hearing. A meeting announced and advertised for soliciting formal public comment on matters under consideration.

Rezoning. See “Zoning Map Amendment.”

Setback. The minimum distance by which any building or structure must be separated from a street right-of-way or lot line. Any area covered by a roof, such as a porch, will be subject to setback requirements.

Setback, front. The minimum distance from the edge of the public right-of-way, inwards towards the lot, until the distance required in the district standards is met. For Stem Lots, the front setback is the minimum distance from the edge of the right of way or “end” of the stem portion.

Setback, rear. The minimum distance from the rear lot line, inwards towards the lot, until the distance required in the district standards is met.

Setback, side. The minimum distance from the side lot line(s), inwards towards the lot, until the distance required in the district standards is met.

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Site Plan. A plan prepared by a professional engineer or land surveyor licensed by the state showing all proposed improvements to the site in accordance with this Ordinance. A Site Plan can be a Minor Site Plan or a Major Site Plan, see Article 3, Division 6.

Site Plan Review Committee. The Site Plan Review Committee shall consist of, but is not limited to, representatives from Federal, State, and local governments, utility companies, other agencies and departments, and other professionals as necessary to review, but not limited to, the site plan, subdivision plat, Special Use Permit application, Rezoning application, zoning amendment, in preparation of the Planning and Zoning Director's comments and recommendations.

Special Use Permit. An approval for a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration and restrictions relating to its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

Steep slope. The portion of a lot with a grade of more than 20%, grade being the vertical elevation of land area divided by the horizontal distance.

Structure. Anything constructed or erected, which requires location on the ground, or attached to something having location on the ground.

Structure, accessory. A subordinate structure, use of land, building, or a portion of a main building or use which is clearly incidental to or customarily found in connection with and located on the same lot as the principal structure or use. Accessory structures must not be used for human habitation unless permitted as a Dwelling, accessory, as defined herein.

Structure, mixed-use. A building containing residential uses in addition to non-residential uses permitted in the zoning district. Mixed-use structure should not be confused with a mix of uses each in separate structures in a single development.

Structure, non-residential. A building or structure, or part of a building or structure, not occupied in whole or in part for the purpose of human habitation. Examples include warehouse and industrial buildings, commercial buildings, buildings for public entertainment, hotels, restaurants, educational buildings, health buildings, etc.

Structure, principal. A building in which is conducted the primary use of the lot on which it is situated, or where a lot contains residential uses, the principal structure on the lot will mean the largest building that contains any dwelling unit.

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Structure, residential. A building, or any portion thereof, containing a complete set of living accommodations suitable for occupancy by one or more persons, consisting of sleeping, bathroom, and complete kitchen facilities for the exclusive use of such occupants.

Subdivide. The process of dealing with land so as to establish a subdivision as defined herein.

Subdivision. The division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots, shall be exempt from the provisions of this Ordinance.

Subdivision Agent. An official responsible for administering and enforcing the Subdivision Code of the County.

Surveyor. An individual or firm licensed by the Commonwealth of Virginia to practice surveying.

Use. The activity occurring on a lot or parcel for which land or a building is arranged, designed, or intended, or for which land or a building is or may be occupied.

Use, accessory. Uses of land and buildings that are found on the same parcel as the principal use but are subordinate and incidental, including parking.

Use, principal. A use that fulfills a primary function of a household, establishment, institution, or other entity.

Use, secondary. A use that is intended to provide for the needs and conveniences of residents or property owners within a district and is only permitted in a development which contains one or more approved principal uses.

Variance. A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

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Vested Right. Any written order, requirement, decision, or determination regarding the permissibility of a specific use, structure, or density of a landowner's property that constitutes a significant affirmative governmental act pursuant to the Code of Virginia, § 15.2-2307 and is issued in strict accordance with the requirements of this Ordinance.

Zoning. The process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

Zoning Administrator. The official, or an authorized agent thereof, responsible for administering and enforcing the Zoning Ordinance of the County, also referred to in this ordinance as the Administrator.

Zoning District. A specifically delineated section of the County in which the regulations are uniform and so designated on the Zoning Map.

Zoning district, overlay. A district which addresses special land use circumstances or environmental safeguards by superimposing additional standards and regulations over the underlying Primary Zoning District.

Zoning Map. A legally adopted map depicting the location of each zoning district of the county and all amendments thereto.

Zoning Map Amendment. A change in the zoning or district boundaries of the Official Zoning Map.

Zoning Permit. A permit issued by the Zoning Administrator on an appropriate form or certificate which certifies that a building or use of property complies with the regulations of the Zoning District in which the building or use is located.

Zoning Text Amendment. A revision, change, addition, or deletion of the text of this Ordinance.

Division 11-4 Overlay District Definitions

Section 11-4-1 General Floodplain Overlay Definitions

A. For purposes of the Floodplain Overlay District, the following terms will have the meanings respectively ascribed to them, unless the context clearly requires otherwise:

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100-Year Flood. The flood having a 1% chance of being equaled or exceeded in any given year. It does not imply that no greater flood is likely to occur, nor that such a flood will not happen more often than once every 100 years.

Base flood. The flood having a 1% chance of being equaled or exceeded in any given year.

Base flood elevation (BFE). The Federal Emergency Management Agency designated 100-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's flood insurance rate map. For the purposes of this Division, the 100-year flood or 1% annual chance flood.

Basement. A portion of a building where at least 50% of the exterior wall area between the floor and the ceiling is below ground level.

Development. Pursuant to the Code of Virginia § 15.2-2201, a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" will not be construed to include any tract of land which will be principally devoted to agricultural production.

Dock. A piling-mounted stationary or floating platform extending into the water and used as a landing place for boats or to protect or form a cove.

Elevated building. Any building without a basement built to have the lowest floor elevated above the ground by means of solid perimeter walls, pilings, or columns (posts and piers).

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

Existing construction. For the purposes of the insurance program, structures for which the "start of construction" commenced before the effective date of the FIRM or before December 1, 1987 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures" and "pre-FIRM".

Existing development. Any lawful development which existed on or before the effective date of the most-current FIRM, and/or development which has been properly permitted and for which construction has commenced on or before the effective date of the most-current FIRM.

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

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites, as permitted by the Zoning Ordinance, by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). An independent agency of the United States government that provides a single point of accountability for all federal emergency preparedness and mitigation and response activities.

Fill. The placing of any material which results in increasing the natural ground surface elevation.

Flood or flooding.

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(c) Mudflows which are proximately caused by flooding as defined in this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1) of this definition.

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Flood Insurance Rate Map (FIRM). The most recent official map prepared by the Federal Emergency Management Agency (FEMA) upon which has been delineated both the special hazard areas and risk premium zones applicable for Nelson County. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS). An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and/or flood-related erosion hazards.

Floodplain or flood-prone area. Any land susceptible to being inundated by water from any source.

Floodproofing. A combination of design modifications that results in a building or structure that is subject to flooding, including the attendant utility and sanitary facilities, being watertight with walls substantially impermeable to the passage of water.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot at any point within the community.

Floodway fringe. The floodway fringe encompasses the portion of the floodplain that could be completely obstructed without increasing the base flood elevation by more than 1.0 foot at any point.

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

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

Historic structure. Any structure in any of the following categories:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

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- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as defined by the Secretary of the Interior; or,
 - (b) Directly by the Secretary of the Interior in states without approved programs.

Hydrologic/Hydraulic engineering analysis. Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation (DCR) and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change (LOMC). An official written FEMA determination that amends or revises an effective FIRM or FIS. Letters of map change include:

- (1) **Letter of Map Amendment (LOMA):** An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area, and which amends the current effective FIRM and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.
- (2) **Letter of Map Revision (LOMR):** A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.
- (3) **Letter of Map Revision Based on Fill (LOMR-F):** A determination that a structure or parcel of land has been elevated by fill, permitted and placed in accordance with applicable regulations of the County, above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood.

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(4) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas, but does not revise the effective FIRM or FIS.

Lowest floor. The floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access, or limited storage provided that such enclosure is not built to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44 CFR §60.3.

Lowest adjacent grade. The lowest natural elevation of the ground surface next to the walls of a structure.

Mean sea level. For purposes of the National Flood Insurance Program, the datum to which base flood elevations shown on the County's FIRM are referenced.

New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after *date of general floodplain district adoption*¹, and includes any subsequent improvements to such structures. For floodplain management or development purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by Nelson County and includes any subsequent improvements to such structures.

Post-FIRM structure. A structure for which construction or substantial improvement occurred on or after *date of general floodplain district adoption*², .

Pre-FIRM structure. A structure for which construction or substantial improvement occurred before *date of general floodplain district adoption*³, .

Recreational vehicle. Any vehicle which is:

(1) Built on a chassis;

(2) Four hundred (400) square feet or less when measured at the largest horizontal projection;

¹ Editor's Note: The date when the general floodplain district was originally adopted by the County will need to be verified with and included here.

² Editor's Note: The date when the general floodplain district was originally adopted by the County will need to be verified with and included here.

³ Editor's Note: The date when the general floodplain district was originally adopted by the County will need to be verified with and included here.

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(3) Designed to be self-propelled or permanently towable by a light duty truck; and

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

Repetitive Loss Structure. A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a ten (10) year period, in which the cost of the repair, on the average, equaled or exceeded twenty-five percent (25%) of the market value of the structure at the time of each flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

Severe Repetitive Loss Structure. A structure that:

(1) Is covered under a contract for flood insurance made available under the NFIP; and

(2) Has incurred flood-related damage for which:

(a) Four (4) or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(b) At least two (2) separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

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

Special Flood Hazard Area (SFHA). The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in Section 5-3-14 of this Ordinance. Properties within the SFHA are at a high risk of flooding, with at least a 26-percent chance of flooding over the course of a 30-year mortgage.

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Start of construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred. Included in this term are flood-related damages sustained by a structure on two occasions in a ten (10)-year period, in which the cost of the repair, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure at the time of each such flood event.

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

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

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Draft Article 11 – Definitions

April 23, 2025

(3) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Violation. The failure of a structure or other development to be fully compliant with Nelson County's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(d)(3) of the National Flood Insurance Program regulations, is presumed to be in violation until such time as that documentation is provided.

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

Zone, A. Those areas for which no detailed flood profiles or elevations are provided, but the 1% annual chance floodplain boundary has been approximated.

Zone, AE. Those areas for which one percent (1%) annual chance flood elevations have been provided and the floodway has been delineated on the FIRM.

Zone, X. If shaded on the FIRM, these are areas of the County where the annual flood risk is considered moderate at between one percent (1%) and 0.2 percent (0.2%). If unshaded, these are areas where the annual flood risk is considered low at below 0.2 percent (0.2%). There are no specific development requirements in the X Zone pursuant to this Division.

ATTACHMENT F

Definitions		
Term	Existing Definition	Proposed Definition
Administrator	The official charged with the enforcement of the zoning ordinance. He may be any appointed or elected official who is by formal resolution designated to the position by the governing body. He may serve with or without compensation as determined by the governing body.	The person or their designated agent responsible for the administration and enforcement of this Ordinance. The term Administrator shall apply to the Subdivision Agent and Zoning Administrator.
Building	Any structure used or intended for supporting or sheltering any use or occupancy.	Any structure having a roof supported by columns, walls, or other means.
Building Height	The vertical distance measured from grade to the highest roof beams of a flat roof, or to the mean level of the highest gable or slope of a gable, hip, or other roof.	The vertical distance, measured in feet, from the level of the curb opposite the middle of the front of the structure to the highest point of the roof if a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof.
District	Districts as referred to in the Va. Code, § 15.1-486.	A specifically delineated section of the County in which the regulations are uniform and so designated on the Zoning Map.
Lot	A parcel of land occupied or to be occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width, and lot areas as are required by this ordinance, and having frontage upon a street either shown on a plat of record or considered as a unit property and described by metes and bounds.	A parcel of land intended to be separately owned, developed, or otherwise used as a unit, established by plat, subdivisions, or as otherwise permitted by law.
Lot of record	A lot which has been recorded in the clerk's office of the Circuit Court.	A lot shown upon a plan of subdivision or upon a plat attached or referred to in a deed described by metes and bounds and recorded in the Circuit Court Clerk's Office of Nelson County.
Lot, corner	A lot abutting on two (2) or more streets at their intersection. Of the two (2) sides of a corner lot the front shall be deemed to be the shortest of the two (2) sides fronting on streets.	A lot abutting on two or more streets at their intersection, where the interior angle of the intersection does not exceed 135 degrees.
Setback	The minimum distance by which any building or structure must be separated from the front lot line.	The minimum distance by which any building or structure must be separated from a street right-of-way or lot line. Any area covered by a roof, such as a porch, will be subject to setback requirements.
Structure	Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground. Fences are excluded from this definition.	Anything constructed or erected, which requires location on the ground, or attached to something having location on the ground.
Subdivision	A parcel of land which has been subdivided into smaller parcels or lots for the purpose, either immediate or future, of transfer of ownership or building development. The term "subdivision" includes family division, "re-subdivision," and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.	The division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots, shall be exempt from the provisions of this Ordinance.
Use, Accessory	A subordinate use, customarily incidental to and located upon the same lot occupied by the main use.	Uses of land and buildings that are found on the same parcel as the principal use but are subordinate and incidental, including parking.
Variance	A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done.	A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning