



PLANNING COMMISSION WORK SESSION
Wednesday, November 6, 2024 @ 6 PM
Town Hall – 2nd Floor, East Conference Room

AGENDA

CALL TO ORDER

ROLL CALL

WORK SESSION BUSINESS

- **2400599** – A zoning text amendment of Chapter 175 to include performance standards for tobacco, smoke or vape shops in the C-1 and C-3 Commercial Districts within Town limits.
- Zoning Ordinance Draft Review, Article 2

OTHER

ADJOURNMENT

PROPOSED VAPE ORDINANCE - ADMINISTRATIVE REVIEW

1 PROPOSED VAPE ORDINANCE, ADMINISTRATIVE REVIEW

2 175-3

3 *Tobacco, smoke, or vape shop*: A business involving the sale or sampling of tobacco
4 products, nicotine vapor products, alternative nicotine products, and hemp products,
5 as those terms are defined in the Code of Virginia § 18.2-371.2, and any kratom
6 products as regulated by the Code of Virginia § 59.1-200, and where such products are
7 twenty-five (25) percent or more of the store's total inventory or fifteen (15) percent or
8 more of the store's total display area.

9 *Alternative nicotine product*: means any noncombustible product containing nicotine
10 that is not made of tobacco and is intended for human consumption, whether
11 chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine
12 product" does not include any nicotine vapor product or any product regulated as a
13 drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21
14 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

15 *Cigar*: means any roll of tobacco wrapped in leaf tobacco or in any substance
16 containing tobacco, other than any roll of tobacco that is a cigarette as such term is
17 defined in § [58.1-1000](#).

18 *Closed system*: means any nicotine vapor product capable of utilizing a disposable
19 container that is (i) prefilled with liquid nicotine and sealed by the manufacturer, (ii) not
20 easily refillable or intended or designed to be refillable, and (iii) intended or used to
21 dispense liquid nicotine for use in a nicotine vapor product that is intended or designed
22 for reuse. "Closed system" does not include any open system.

23 *Consumer*: means the person who is the end or final user of tobacco products or liquid
24 nicotine.

25 *Delivery sale*: means a sale of liquid nicotine or nicotine vapor products to a consumer
26 in the Commonwealth in which the consumer submits the order for the sale by
27 telephone, over the Internet, or through the mail or another delivery system, and where
28 the liquid nicotine or nicotine vapor products are shipped through a delivery service.
29 "Delivery sale" does not include a sale of liquid nicotine or nicotine vapor products not
30 for personal consumption to a person who is a manufacturer, distributor, or retail dealer.

31 *Distributor*: means (i) any person engaged in the business of selling tobacco products in
32 the Commonwealth who brings, or causes to be brought, into the Commonwealth from
33 outside the Commonwealth any tobacco products for sale; (ii) any person who makes,
34 manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in
35 the Commonwealth; (iii) any person engaged in the business of selling tobacco
36 products outside the Commonwealth who ships or transports tobacco products to any
37 person in the business of selling tobacco products in the Commonwealth; or (iv) any
38 retail dealer in possession of untaxed tobacco products in the Commonwealth.

Heated tobacco product: means a product other than a cigarette intended to be heated, as such term is defined in § [58.1-1000](#), containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

Liquid nicotine: means a liquid or other substance containing nicotine in a concentration that is sold, marketed, and intended for use in a nicotine vapor product.

Loose leaf tobacco: means any leaf tobacco that is not intended to be smoked but does not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer-sized unit, pouch, or package containing at least four ounces but not more than eight ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer-sized unit, pouch, or package containing more than eight ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

3. "Loose leaf tobacco single-unit" means a consumer-sized unit, pouch, or package containing less than four ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but does not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form, including liquid nicotine.

"Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, closed system, open system, or similar product or device and any cartridge or other container of nicotine in a solution or other form, including liquid nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Open system" means a nicotine vapor product designed and intended by the manufacturer to be reusable and refilled with liquid nicotine of the end user's choice. "Open system" does not include any closed system.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

175-39.A Use Regulations

COMMERCIAL

Tobacco, smoke or vape shop in accordance with provisions of 175-152

175-53.2.A Use Regulations

COMMERCIAL

Tobacco, smoke or vape shop in accordance with provisions of 175-152

175-152 Tobacco, Smoke, or Vape Shop performance standards

1. Shall not be located within 1,000 feet of any property containing a religious institution, libraries, parks, community centers, public or private schools or any child or day care center.
 - a. Measurements made to verify compliance shall be made in a straight line, without regard for structures or objects, for, 1,000 feet from the boundaries of the property on which a public or private school or day care center operates.
2. Hours of operation shall be limited to within the hours of 8am to 8pm, Monday through Sunday.
3. During all hours of operation, all glass portions of windows and doors shall be maintained as transparent and shall not be heavily tinted or obscured.
4. No smoking or vaping shall be permitted on the premises at any time unless the establishment complies with the Virginia Indoor Clean Air Act (Virginia Code Section 15.2-2820).
5. Sign regulations
 - a. No more than four (4) signs per business

- 114 b. Wall signs shall not exceed 50 SF in size unless a Special Use Permit is
115 obtained.
- 116 c. Vape shops shall post clear signage stating that minors may not enter the
117 premises unless accompanied by a parent or legal guardian. At least one
118 such sign shall be placed in a conspicuous location near each public
119 entrance to the vape shop. It shall be unlawful for a vape shop or business
120 offering vape related products, and tobacco paraphernalia to fail to
121 display and maintain, or fail to cause to be displayed or maintained, such
122 signage.
- 123 d. No vape shop shall display tobacco paraphernalia in a manner that is in
124 plain view from the street or sidewalk
125

PROPOSED VAPE ORDINANCE - SPECIAL USE PERMIT

1 **PROPOSED VAPE ORDINANCE, SPECIAL USE PERMIT**

2 **175-3**

3 *Tobacco, smoke, or vape shop:* A business involving the sale or sampling of tobacco
4 products, nicotine vapor products, alternative nicotine products, and hemp products,
5 as those terms are defined in the Code of Virginia § 18.2-371.2, and any kratom
6 products as regulated by the Code of Virginia § 59.1-200, and where such products are
7 twenty-five (25) percent or more of the store's total inventory or fifteen (15) percent or
8 more of the store's total display area.

9 *Alternative nicotine product:* means any noncombustible product containing nicotine
10 that is not made of tobacco and is intended for human consumption, whether
11 chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine
12 product" does not include any nicotine vapor product or any product regulated as a
13 drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21
14 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

15 *Cigar:* means any roll of tobacco wrapped in leaf tobacco or in any substance
16 containing tobacco, other than any roll of tobacco that is a cigarette as such term is
17 defined in § [58.1-1000](#).

18 *Closed system:* means any nicotine vapor product capable of utilizing a disposable
19 container that is (i) prefilled with liquid nicotine and sealed by the manufacturer, (ii) not
20 easily refillable or intended or designed to be refillable, and (iii) intended or used to
21 dispense liquid nicotine for use in a nicotine vapor product that is intended or designed
22 for reuse. "Closed system" does not include any open system.

23 *Consumer:* means the person who is the end or final user of tobacco products or liquid
24 nicotine.

25 *Delivery sale:* means a sale of liquid nicotine or nicotine vapor products to a consumer
26 in the Commonwealth in which the consumer submits the order for the sale by
27 telephone, over the Internet, or through the mail or another delivery system, and where
28 the liquid nicotine or nicotine vapor products are shipped through a delivery service.
29 "Delivery sale" does not include a sale of liquid nicotine or nicotine vapor products not
30 for personal consumption to a person who is a manufacturer, distributor, or retail dealer.

31 *Distributor:* means (i) any person engaged in the business of selling tobacco products in
32 the Commonwealth who brings, or causes to be brought, into the Commonwealth from
33 outside the Commonwealth any tobacco products for sale; (ii) any person who makes,
34 manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in
35 the Commonwealth; (iii) any person engaged in the business of selling tobacco
36 products outside the Commonwealth who ships or transports tobacco products to any
37 person in the business of selling tobacco products in the Commonwealth; or (iv) any
38 retail dealer in possession of untaxed tobacco products in the Commonwealth.

Heated tobacco product: means a product other than a cigarette intended to be heated, as such term is defined in § [58.1-1000](#), containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

Liquid nicotine: means a liquid or other substance containing nicotine in a concentration that is sold, marketed, and intended for use in a nicotine vapor product.

Loose leaf tobacco: means any leaf tobacco that is not intended to be smoked but does not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer-sized unit, pouch, or package containing at least four ounces but not more than eight ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

2. "Loose leaf tobacco pound-unit" means a consumer-sized unit, pouch, or package containing more than eight ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

3. "Loose leaf tobacco single-unit" means a consumer-sized unit, pouch, or package containing less than four ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but does not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form, including liquid nicotine.

"Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, closed system, open system, or similar product or device and any cartridge or other container of nicotine in a solution or other form, including liquid nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Open system" means a nicotine vapor product designed and intended by the manufacturer to be reusable and refilled with liquid nicotine of the end user's choice. "Open system" does not include any closed system.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered or purchased by consumers as tobacco to be smoked in a pipe.

175-39.B Use Regulations

COMMERCIAL

Tobacco, smoke or vape shop in accordance with provisions of 175-152

175-53.2.B Use Regulations

COMMERCIAL

Tobacco, smoke or vape shop in accordance with provisions of 175-152

175-152 Tobacco, Smoke, or Vape Shop performance standards

1. Shall not be located within 1,000 feet of any property containing a religious institution, libraries, parks, community centers, public or private schools or any child or day care center.
 - a. Measurements made to verify compliance shall be made in a straight line, without regard for structures or objects, for, 1,000 feet from the boundaries of the property on which a public or private school or day care center operates.
2. Hours of operation shall be limited to within the hours of 8am to 8pm, Monday through Sunday.
3. During all hours of operation, all glass portions of windows and doors shall be maintained as transparent and shall not be heavily tinted or obscured.
4. No smoking or vaping shall be permitted on the premises at any time unless the establishment complies with the Virginia Indoor Clean Air Act (Virginia Code Section 15.2-2820).
5. Sign regulations
 - a. No more than four (4) signs per business

- 114 b. Wall signs shall not exceed 50 SF in size unless a Special Use Permit is
115 obtained.
- 116 c. Vape shops shall post clear signage stating that minors may not enter the
117 premises unless accompanied by a parent or legal guardian. At least one
118 such sign shall be placed in a conspicuous location near each public
119 entrance to the vape shop. It shall be unlawful for a vape shop or business
120 offering vape related products, and tobacco paraphernalia to fail to
121 display and maintain, or fail to cause to be displayed or maintained, such
122 signage.
- 123 d. No vape shop shall display tobacco paraphernalia in a manner that is in
124 plain view from the street or sidewalk
125

ZONING ORDINANCE DRAFT REVIEW - ARTICLE 2

ARTICLE 2 – APPLICATION OF REGULATIONS

DIVISION 2.1 – APPLICATION OF DISTRICT REGULATIONS

Section 2.1.1 - Application of district regulations.

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

Section 2.1.2 -Use, Occupancy, and Construction

Each use, building and structure, whether primary or accessory, shall hereafter be established only in compliance with all applicable regulations of the zoning district upon which the particular use, building or structure is located, except for nonconforming uses and structures as provided in this chapter.

Section 2.1.3 – Height, Bulk, Density, Lot Coverage, and Open Spaces

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

- a. To exceed the height or bulk;
- b. To accommodate or house a greater number of buildings, families or to have greater floor area;
- c. To occupy a greater percentage of lot area;
- d. To have narrower or smaller rear yards, front yards, side yards or other open areas than herein required; or in any other manner contrary to the provisions of this ordinance.

DIVISION 2.2 – ESTABLISHMENT OF DISTRICTS; OFFICIAL ZONING MAP; INTERPRETATION OF BOUNDARIES

Section 2.2.1 - Establishment of Districts, Official Zoning Map (175-4)

The Town of Front Royal is hereby divided into zones or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this chapter, together with all future notations, references and amendments.

Section 2.2.2 -Identification of Official Zoning Map (175-5)

The Official Zoning Map shall be identified by the signatures of the Town Council and attested to by the Secretary of the body, together with the date of the adoption of this chapter.

Section 2.2.3 -Changes on Zoning Map (175-6)

A. If, in accordance with the provisions of this chapter and the Code of the Commonwealth of Virginia, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Town Council.

34 B. No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in
35 conformity with the procedures set forth in this chapter or any state law, if applicable. All changes shall be
36 noted on the Official Zoning Map by date with a brief description of the nature of the change. Such change
37 shall also be accurately reflected in the minutes of the Town Council meetings at which the change is
38 adopted.

39 **Section 2.2.4 -Location of Official Zoning Map (175-7)**

40 The Official Zoning Map shall be located in a public place, as designated by the Council, and shall be the
41 final authority as to the current zoning status of land and water areas in the Town, regardless of unofficial
42 copies which may have been made or published from time to time.

43 **Section 2.2.5 -Replacement of Official Zoning Map (175-8)**

44 A. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret
45 because of the nature or number of changes and additions, the Town Council may, by resolution, adopt a
46 new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning
47 Map may correct drafting or other errors or omissions in the prior Zoning Map, but no such correction shall
48 have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The
49 new Official Zoning Map shall be identified by the signatures of the Town Council, attested by the Secretary
50 of that body and bearing the following words: "This is to certify that this Official Zoning Map supersedes
51 and replaces the Official Zoning Map adopted as part of Ordinance No. of the Town of Front
52 Royal, Virginia."

53 B. Unless the prior Official Zoning Map has been lost or has been totally destroyed, the prior map or any
54 parts thereof remaining shall be preserved, together with all available records pertaining to this adoption or
55 amendments.

56 **Section 2.2.6 -Enumeration of Districts (175-9)**

57 A. For the purpose of this Chapter, the incorporated area of Front Royal, Virginia, is hereby divided
58 into the following zoning districts:

59	Agriculture and Open Space Preservation District	A-1
60	Estate Residential District	R-E
61	Suburban Residential District	R-S
62	Residential District	R-1
63	Residential District	R-1A
64	Residential District	R-2
65	Residential District	R-3
66	Planned Neighborhood Development	PND
67	Mixed-Use Campus Development	MCD
68	Community Business District	C-1

69	Commercial District	C-2
70	Highway Corridor Business District	C-3
71	Limited Industrial	I-1
72	Industrial Employment	I-2

73

74 B. In addition to the above-stated zoning districts, following additional districts (overlapping the
75 above-stated enumerated zoning districts) have been created for portions of the incorporated area
76 of Front Royal, Virginia, as provided in this Chapter:

- 77 Floodplain District
- 78 Historic Front Royal District
- 79 Entrance Corridor District

80 Section 2.2.7 -Classification of Annexed Territory (175-9.1)

81 Any property coming into the territorial jurisdiction of the Town of Front Royal by annexation or
82 otherwise shall be temporarily classified in the “Agriculture and Open Space Preservation District
83 A-1 “which shall apply pending the orderly amendment of the zoning ordinance.

84 Section 2.2.8 -Interpretation of Boundaries (175-9.2)

85 Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described,
86 and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as
87 shown on the Zoning Map, the following rules shall apply:

88 A. Where district boundaries are indicated as approximately following or being at right angles to
89 the center lines of streets, highways, alleys, railroad main tracks or existing lot lines, such center
90 lines or lines at right angles to such center lines shall be construed to be such boundaries, as the
91 case may be.

92 B. Where a district boundary is indicated to follow a river, creek or branch or other body of water,
93 said boundary shall be construed to follow the center line at low water or at the limits of the
94 jurisdiction, and in the event of change in the shoreline, such boundary shall be construed as
95 moving with the actual shoreline.

96 C. If no distance, angle, curvature, description or other means is given to determine a boundary
97 line accurately and the foregoing provisions do not apply, the same shall be determined by the use
98 of the scale shown on said Zoning Map. In case of subsequent dispute, the matter shall be referred
99 to the Board of Zoning Appeals which shall determine the boundary.

100 Section 2.2.9 – Split Zoning

101 Changes made in base zoning district boundaries on the Official Zoning Map shall not result in
102 two or more zoning district classifications on an individual parcel of land.

103 Section 2.2.10 -Excluded Uses (175-9.3)

104 Within each zoning district of this chapter, uses that are not expressly listed as permitted, or
105 permitted with a special use permit, shall be deemed excluded. The use of property by a use that
106 is excluded from the underlying zoning district shall be a violation of this chapter, except where
107 such use is established as a legally nonconforming use.

108 Section 2.2.11 -Temporary Emergency Uses (175-9.4)

109 Despite the other provisions of this chapter, Town Council may authorize temporary housing and
110 temporary emergency response facilities when necessary to respond to the public needs during a
111 local, state or national disaster caused by either natural or man-made events. If such uses are
112 temporarily established in the future by action of Town Council, the time period they are
113 authorized for shall be specified with the action of approval.

114 DIVISION 2.3 – TRANSITIONAL PROVISIONS

115 Section 2.3.1 – Effective Date

116 This Ordinance shall become effective on (date), 2024, and repeals and replaces Chapter 175
117 of the Front Royal Municipal Code, or the “Zoning Ordinance of Front Royal, Virginia,” as originally
118 adopted (date) and subsequently amended.

119 Section 2.3.2 – Violations Continue

120 Any violation of the previous zoning ordinance shall continue to be a violation under this
121 Ordinance, unless the development complies with the express terms of this Ordinance, a
122 subsequently adopted ordinance, or other applicable ordinances, laws, or statutes.

123 Section 2.3.3 – Complete Applications

- 124 A. Any development application submitted and accepted as complete before (adoption
125 date), but still pending final action as of that date, shall be reviewed and decided in
126 accordance with the regulations in effect when the application was accepted. To the
127 extent such an application is approved and proposes development that does not comply
128 with this Ordinance, the subsequent development, although permitted, shall be
129 nonconforming and subject to the provisions of Division 2.4: Nonconforming Uses and
130 Features
- 131 B. Completed applications shall be processed and comply with any time frames for review,
132 approval, and completion as established in the regulations in effect at the time of
133 application acceptance. If the application fails to comply with the required time frames, it
134 shall expire and future development shall be subject to the requirements of this
135 Ordinance.
- 136 C. An applicant with a pending application accepted before (adoption date) may opt to have
137 the proposed development reviewed and decided under the standards of this Ordinance

Commented [AD1]: None of these sections exist in current ordinance. It is very important that these are in a new ordinance, to address any applications submitted or approved at the time of the adoption of the new ordinance!

by withdrawing the pending application and submitting a new application in accordance with the procedures and standards of this Ordinance.

- D. Any Zoning Permit issued prior to the date of effect of this Ordinance, regardless if construction has begun, shall be valid and subject to the regulations of the Zoning Ordinance in effect when the permit was issued. Consistent with **Section 4.1** of this Chapter, the Zoning Permit shall become invalid if the authorized work is not commenced within one year of its issuance.

Section 2.3.4 – Approved Zoning Subject to Proffers

Lands subject to a zoning classification approved subject to proffers before **(adoption date)** shall continue to be subject to the approved conditional rezoning and proffers until or unless the City Council amends the zoning classification of the lands in accordance with the procedures and standards of this Ordinance and the Code of Virginia.

DIVISION 2.4 – NONCONFORMING USES AND FEATURES

Section 2.4.1 – Continuation (175-124)

A. Any legal use that was in operation, or any building or structure that legally existed prior to the effective adoption date of this chapter, that no longer conforms to the requirements of this chapter at the effective adoption date, may be continued so long as the use, building and/or structure remains otherwise lawful. Such legally nonconforming uses, buildings and structures shall conform to all applicable laws in effect at the time when the use, building and/or structure was established.

B. If there is any change of ownership, possession, or lease, of any legally nonconforming use, building or structure, it may continue according to the requirements of this chapter.

C. When the boundaries of a district are changed, any uses, buildings, and/or structures, which become nonconforming as a result of such change, shall be subject to the provisions of this Chapter.

Section 2.4.2 – Vested Rights (175-125)

Pursuant to §15.2-2307 of the Virginia Code, plans for the establishment of new uses, buildings and/or structure may proceed, despite if the requirements of this chapter are not complied with, if a vested right is determined by the Zoning Administrator, after concurrence with the Town Attorney.

Section 2.4.3 – Discontinuance (175-126)

If any legally nonconforming use is discontinued for a period exceeding two (2) years after the enactment of this chapter, it shall be deemed abandoned, and any use thereafter shall conform to the use requirements of this chapter. However, the Town Council may approve, by a special use permit, the use to be reinstated and continued, if the structure was declared blighted by the Town Council and a spot blight abatement plan was approved by the Town Manager or designee pursuant to Town Code Chapter 9-303.

Section 2.4.4 – Parking Exemption for the Reuse of Existing Properties (175-127)

Regardless of Section 2.4.3, the reuse of properties with existing parking areas and/or loading spaces shall be exempt from the requirement to comply with the current parking area and loading space requirements of this Chapter, or Chapter 148; provided that, the following conditions are met.

1. A zoning permit was previously issued by the Town on the property for a business (commercial) or industrial use.
2. Town Council may require site improvements when a special use permit is required.
3. The number of existing parking spaces shall not be reduced for display or other purposes.
4. When the existing parking area and/or loading spaces are in disrepair, the Zoning Administrator may require the following types of maintenance improvements at the time of issuance of a zoning permit:
 - a. Additional landscaping.
 - b. The demarcation of existing parking spaces by striping, restriping, wheel stops, or signage.
 - c. The resurfacing of the existing surface material.

Section 2.4.5 – Nonconforming Lots of Record (175-128)

A. Except as hereinafter provided, the minimum lot width and lot area shall be required for the establishment of any new lot, or use of a lot, in the R-1 Residential District. Wherever possible, the consolidation of existing nonconforming lots is encouraged to meet the minimum lot size requirements. All new construction shall conform to the yard dimensions and all other regulations for the R-1 Residential District.

1. The Administrator may issue an administrative variance of up to twenty percent (20%) of the required lot width and/or area, where it is found that the proposed new construction is consistent with the structure size, orientation and pattern of development on the street and in the immediate neighborhood.
2. On lots with an area or lot width of less than eighty percent (80%) of the minimum required, approval for construction may be granted by special use permit by the Town Council, where the Council finds the application meets the following conditions:
 - a. The proposed structure has a finished floor area of not less than ninety percent (90%) of the amount of finished floor area prevalent in comparative homes. Finished floor areas do not include basement areas.
 - b. The proposed structure is compatible with comparative homes in terms of building orientation, scale, proportion and site layout.
 - c. The site grading provides for adequate drainage on and off the site, without any adverse impact onto adjoining properties.

213 3. For the purpose of this section, comparative homes shall mean characteristics that are present
214 in at least sixty percent (60%) of the homes located on both sides of the street in the immediate
215 block where the proposed structure is located.

216 4. The Council may approve a reduction of the required lot width and/or area, by not more than
217 forty percent (40%), where necessary, to achieve increased compatibility with other
218 structures in the immediate block.

219 B. In any other residential district, a single dwelling may be erected on any single lot of record,
220 notwithstanding limitations imposed by other provisions of this chapter. This provision shall apply
221 even though such lot fails to meet the requirements for lot area and/or lot width, that are generally
222 applicable in the district, provided that yard dimensions shall conform to the regulations for the
223 district in which such lot is located. All other uses, except a single dwelling, are required to meet
224 the minimum lot area requirements for the district in which it is located.

225 C. In any commercial or industrial district, a permitted structure may be erected on any single
226 lot of record at the effective date of adoption or amendment of this chapter, notwithstanding
227 limitations imposed by other provisions of this chapter. This provision shall apply even though
228 such lot fails to meet the requirements for lot area and/or lot width, that are generally applicable
229 in the district, provided that yard dimensions shall conform to the regulations for the district in
230 which such lot is located.

231 D. If any nonconforming lot of record contains a conforming use and/or structure, such use and/or
232 structure may be replaced in the area of the preexisting use and/or structure should damage or
233 destruction occur. Expansion of said use and/or structure may occur within the limits of this
234 chapter.

235 E. Except as otherwise noted herein, a variance of yard requirements may be obtained only
236 through action of the Board of Zoning Appeals.

237 Section 2.4.6 – Changes of Use (175-129)

238 A nonconforming use, if changed to a conforming use, shall not thereafter be changed back to any
239 nonconforming use. A nonconforming use may, by Special Use Permit, be changed to another
240 nonconforming use, provided that the Town Council shall find that the proposed use is equally
241 appropriate or more appropriate in the zoning district than the existing nonconforming use.

242 Section 2.4.7 – Expansions and Other Types of Alterations (175-130)

243 A. Except by approval of a special use permit by Town Council, a nonconforming use, building or
244 structure shall not be enlarged, increased or extended to occupy a greater area of land area than was
245 occupied at the effective date of adoption of this chapter unless such expansion conforms to the
246 requirements of this chapter. However, the Town Council may approve by a special use permit the
247 expansion of a nonconforming building or structure that will not create a new nonconformity, if it was
248 deemed blighted by Town Council pursuant to Town Code Chapter 9-303 and the proposed expansion is
249 part of a spot blight abatement plan to remedy the blighted building or structure.

250 B. New nonconforming structures or buildings shall not be erected in connection with a nonconforming
251 use of land.

252 C. A nonconforming building or structure may be enlarged if the expansion does not create a new
253 nonconformity and does not increase the degree or intensity of the existing nonconformity, as determined
254 by the Zoning Administrator.
255 D. A nonconforming structure or building shall not be moved, for any distance or reason, unless it shall
256 thereafter conform to the zoning district regulations for the district in which it is located after it is moved.

257 Section 2.4.8 – Replacement, Removal, Repair, and Reconstruction (175-131)

258 A. If a nonconforming use of land is damaged or destroyed, such use may be replaced to the extent to
259 which it existed prior to said damage or destruction. Removal or destruction of a building or structure in
260 which a nonconforming use was located shall eliminate the use which the structure or building was used
261 for (a nonconforming use), except if the structure was declared blighted by the Town Council and a spot
262 blight abatement plan pursuant to Town Code Chapter 9-303 was approved by the Town Manager or
263 designee prior to the use being damaged or destroyed, in which case, the blighted building or structure
264 may be completely replaced upon the approval of a special use permit by the Town Council.

265 B. Nonconforming buildings and structures that are damaged by a natural event or man-made accident
266 may be repaired and/or reconstructed to their previous condition and size if the work does not exceed fifty
267 percent (50%) of the replacement value.

268 C. Town Council may approve a special use permit for the repair and/or reconstruction of a building or
269 structure beyond 50% of the market value, provided that the special use permit application is submitted
270 within twelve (12) months of said damage or destruction or at any time if the building or structure was
271 deemed blighted by Town Council pursuant to Town Code Chapter 9-303. Otherwise, when the repair
272 and/or reconstruction work to a nonconforming building or structure exceeds 50% of the market value, it
273 may only be repaired and/or reconstructed to the requirements of this chapter, as applicable for new
274 construction.

275 D. If a nonconforming building or structure was deemed blighted by the Town Council pursuant to Town
276 Code Chapter 9-303, the Town Manager or designee may approve the demolition and reconstruction of
277 said building or structure as part of a spot blight abatement plan. The Town Manager or designee shall
278 impose a time period in which demolition and reconstruction must occur.

279 E. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of
280 any structure or part thereof declared to be unsafe by any official charged with protecting the public
281 safety, upon order of such official
282

283 Section 2.4.9 – Percent of Damage (175-132)

284 The cost of land or any factors other than the cost of the structure are excluded in the determination
285 of fair market value for the purpose of calculating the percent of damage. Such percentage shall
286 be determined by the Town Manager or designee

287 Section 2.4.10 – Uses Under Special Use Permit Provisions (175-133)

288 Any use which is permitted by a Special Use Permit in a zoning district under the terms of this
289 chapter (other than a change through the Town Council action from one nonconforming use to
290 another nonconforming use) shall not be deemed a nonconforming use in such zoning district, but
291 shall without further action be considered a conforming use.

292