

**Section 18-836 Site Plan Review**

- 1. Site Plan Approval Required.** Development of, redevelopment of, or modifications to property must be approved through one of the following site plan types prior to the issuance of a building permit or commencing excavation.
- 2. Types of site plans.**
  - A. Minor.** Applications for minor changes to site plans must be for projects that have less than 2,500 square feet of land disturbance and not require Modifications of Requirements per §18-830. Examples include parking lot restriping (with a design change), refuse storage changes, addition of outdoor dining and patios, and other site plan amendments determined to be minor by the Zoning Administrator and the Director of Public Works.
  - B. Major.** All new site plans, new structures, and site plans with land disturbance of 2,500 square feet or more are considered major site plans. All site plans where a modification of requirements is requested shall follow the Major Site Plan process (See §18-830 Modification of Requirements).
  - C. Avenue Center Overlay (AC-O).** Applications for development in the Avenue Center District that wish to utilize the incentives of the Avenue Center Overlay zone (Article 2, §18-235) must submit a Major Site Plan demonstrating that the additional requirements of the Avenue Center Overlay process will be met as part of the plan.
  - D. Church Street Vision Overlay (CS-O).** Applications for development in the Church Street District that wish to utilize the incentives of the Church Street Vision Overlay zone (Article 2, §18-236) must submit a Major Site Plan demonstrating that the additional requirements of the Church Street Vision process will be met as part of the plan.
  - E. Corporate Park District (CP).** Applications for a building permit or certificate of occupancy in the Corporate Park District (Article 2, §18-227) that is not in accordance with the approved site plan of development for the property, must first submit an amendment to the site plan including all required information about the proposed use.
  - F. Parks Zones (PR & PC).** Any changes to a site plan for properties zoned Parks and Recreational (PR) (Article 2, §18-232) or Parks and Conservation (PC) (Article 2, §18-233) must be approved by Town Council.
  - G. Infill Lot Plan and Lot Grading Plan, Residential Application.**
    - i. Single-unit residential infill construction with 2,500 square feet or more of land disturbance requires the approval of a site plan prior to the issuance of a building permit for new construction or additions.
    - ii. Infill development on residential lots that are part of a subdivision that is in active development shall submit a Lot Grading Plan, demonstrating compliance with the approved subdivision.
- 3. Application Process for Site Plans, Generally.**
  - A. Completeness and Compliance.** Applications for site plans are reviewed for completeness and compliance with the Code of Vienna by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.

- B. **Final Approval Required before the Issuance of Other Permits.** A final site plan must be stamped as approved prior to the issuance of building permits or a Certificate of Occupancy.
- C. **Referral to Board of Architectural Review.** All site plans, except those for single-unit residential properties, may require referral to the Board of Architectural Review prior to approval.

#### 4. **Minor Site Plan Applications.**

- A. **Submission Requirements Reduced.** The Director of Public Works and the Zoning Administrator may, based on the proposed scope of work, accept the submission of a site plan with reduced detail or for a segment (rather than the whole) of a site, if they deem that the assessment for completeness and compliance will still be sufficient.
- B. **May Require Major Site Plan.** After review by the Director of Planning and Zoning, Director of Public Works, Zoning Administrator, and Director of Parks and Recreation, a determination may be made that the application shall be reviewed as a Major Site Plan, and that additional submission materials are required for a Major Site Plan application.
- C. **Application Review and Process.**
  - i. **Completeness and Compliance.** Applications for minor site plans are reviewed for completeness and compliance with Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
  - ii. **Final Approval by the Zoning Administrator and Director of Public Works.** The Zoning Administrator and Director of Public Works issue the final stamped site plan and the Town of Vienna site and zoning review approval letter.

#### 5. **Major Site Plan Applications.**

- A. **Full Submission Requirements.** The Director of Public Works and Zoning Administrator shall require a site plan submission that provides all material needed to ensure compliance with all Town, County and State regulations.
- B. **Required Public Improvements.** All major site plans are required to meet the required public improvements provisions outlined in Article 6, §18-628 in accordance with standards and specifications by the Director of Public Works per the road category shown on the Town's Official Map along all lot lines of all dedicated rights-of-way.
- C. **Application and Review Process.**
  - i. **Completeness and Compliance.** Applications for major site plans are reviewed for completeness and compliance with the Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
  - ii. **Final Approval by the Zoning Administrator and Director of Public Works.** The Zoning Administrator and Director of Public Works provide their final approach through the issuance of the final stamped site plan and the Town of Vienna site and zoning review approval letter.

#### 6. **Avenue Center Amenity Overlay Applications.**

- A. **Zoning Incentives.** Developments proposed within the Avenue Center Overlay Zone that intend to utilize the bonus modification incentives identified in §18-235 must submit a site plan to the Department of Planning and Zoning.

**B. Application and Review Process.**

- i. **Completeness and Compliance.** Applications to utilize the Avenue Center Overlay zoning bonuses are reviewed for completeness and compliance with the Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
- ii. **Final Decision by Town Council.** Once staff review is complete, the application will be transmitted to the Town Council for review and determination at a public hearing. Town Council shall review and consider the application for compliance with the Avenue Center (AC) Amenity Overlay District requirements in this Code.

**7. Church Street Vision Overlay Applications.**

- A. **Zoning Incentives.** Developments proposed within the Church Street Vision Overlay Zone that intend to utilize the bonus modification incentives identified in Article 2 §18-236 must submit a site plan to the Department of Planning and Zoning.
- B. **Required Public Improvements.** All major site plans are required to meet the required public improvements provisions outlined in Article 6, §18-628 in accordance with standards and specifications by the Director of Public Works per the road category shown on the Town's Official Map along all lot lines of all dedicated rights-of-way.
- C. **Application and Review Process.**
  - i. **Completeness and Compliance.** Applications to utilize the Church Street Vision Overlay zoning bonuses are reviewed for completeness and compliance with Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
  - ii. **Final Decision by Town Council.** Once staff review is complete, the application will be transmitted to the Town Council for review at a regular meeting. Town Council shall review and consider the application for compliance with the Avenue Center (AC) Amenity Overlay District requirements in this Chapter.

**8. Corporate Park District Plan of Development Application.**

- A. **Application.** An application for a Corporate Park District Plan of Development shall be submitted to the Director of Planning and Zoning on such forms as the Director may prescribe and shall include the following:
  - i. **Plan of Development.** In addition to the standard site plan requirements, the plan of development is required to include the following:
    - a. Location and height of all buildings and structures.
    - b. Area devoted to parking facilities and loading berths.
    - c. All access roads, landscaping and screening plans.
    - d. Areas designated for outdoor storage.
    - e. Proposed signs.
  - ii. **Description of proposed operation.** A description of the proposed operation including:
    - a. All machinery, processes, and products.
    - b. An estimate of the maximum number of employees contemplated and the number of shifts during which they would work.

- c. Specifications for the mechanisms and techniques to be used in restricting the emission of dangerous and objectionable elements.
- d. Effects of the operation including noise, glare, odor, sewerage, air pollution, water pollution, fire or safety hazards, or other factors detrimental to the health safety, and welfare of the area.
- iii. **Private covenants.** Private covenants and/or provisions for associations of individual owners proposed within a Corporate Park (CP) District shall be included as a part of the preliminary development plan.
- iv. **Other information required.** The applicant shall provide whatever other information the Planning Commission or the Town Council may require to determine the effect that the proposed uses may have upon their environment and on the cost of providing municipal services to the areas.

**B. Review Process.**

- i. **Completeness and Compliance.** Applications for Corporate Park Plan of Development are reviewed for completeness and compliance with Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
- ii. **Transmission to Planning Commission.** Once staff review is complete, the application will be transmitted to the Planning Commission for review at a regular meeting. The Planning Commission shall make a recommendation on the application to the Town Council.
- iii. **Final Decision by Town Council.** The application and Planning Commission's recommendation are then transmitted by the Director of Planning and Zoning to the Town Council for review and determination at a public hearing. Town Council shall review and consider the application for compliance with the Corporate Park (CP) District requirements in this Chapter and determination that the proposed development will achieve the following:
  - a. A maximum of coordination between the proposed use and the surrounding uses.
  - b. Harmony with the character of the surrounding neighborhood and consistent with the overall long-range plans for the community
  - c. Adequately landscaped, buffered, and screened; and
  - d. Will not result in traffic hazards.

**9. Parks Zones (PR & PC).**

- A. **Full Submission Requirements.** The Director of Public Works and the Zoning Administrator shall require a site plan submission that fulfills the requirements of the complete site plan submission checklist.

**B. Application Review and Process.**

- i. **Completeness and Compliance.** Applications for site plans for development in the Parks and Recreation or Parks and Conservation zones are reviewed for completeness and compliance with Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.

- ii. **Transmission to Planning Commission.** Once staff review is complete, the application will be transmitted to the Planning Commission for review at a public hearing. The Planning Commission shall make a recommendation on the application to the Town Council.
- iii. **Final Decision by Town Council.** The application and Planning Commission's recommendation are then transmitted by the Director of Planning and Zoning to the Town Council for review and determination at a public hearing.

**10. Infill Lot Plan and Lot Grading Plan, Residential Application.**

- A. **Full Submission Requirements.** The Director of Public Works and the Zoning Administrator shall require a site plan submission that fulfills the requirements of the complete site plan submission checklist.
- B. **Application Review and Process.**
  - i. **Completeness and Compliance.** Applications for Infill Lot Plans are reviewed for completeness and compliance with Town code by the Director of Planning and Zoning, the Director of Public Works, the Director of Parks and Recreation, and the Zoning Administrator.
  - ii. **Final Approval by the Zoning Administrator and Director of Public Works.** The Zoning Administrator and Director of Public Works issue the final stamped site plan and the Town of Vienna site and zoning review approval letter.

**11. Appeals.**

- A. **Administrative Zoning Decisions.** The zoning decisions made by the Director of Planning and Zoning and the Zoning Administrator on any site plan applications may be appealed by the process within §18-820 Appeals of Zoning Administrator Decision.
- B. **Town Council Decisions.** Decisions by Town Council may be appealed to the Circuit Court.

**Section 18-837 Subdivision, Lot Line, and Boundary Adjustment**

Processes related to subdivisions, lot line and boundary adjustments can be found in [Article 6](#).

**Section 18-838 Temporary Use Permit**

- 1. Temporary Uses Requiring a Permit.** The following temporary uses identified in [Article 3](#) require approval of a Temporary Use Permit prior to commencement of the desired use:

- A. Construction Site Office and Storage ( [§18-319](#) )
- B. Farmers Market ([§18-325](#))
- C. Model Home Sales or Leasing Office/Trailer ([§18-334](#))
- D. Portable Storage Container Permit ([§18-338](#))
- E. Shelter, Hypothermia Prevention ([§18-344](#))

**2. Permit Validity.**

- A. **Portable Storage Container.** No permit for a Portable Storage Container is valid for greater than thirty (30) days. No lot may have a Portable Storage Container Permit for longer than a total of thirty (30) days in any consecutive twelve (12) month period.

- D. **Decision of Town Council.** Within thirty (30) days of such hearing, and after consultation with the Windover Heights Board of Review (WHBR), the Town Council may reverse or modify the decision of the WHBR, in whole or in part, or affirm the decision of the WHBR.
- E. **Appeal Decision of Town Council.** Any person jointly or severally aggrieved by any decision of the Town Council, or any citizen of the Town, may appeal such decision to the Circuit Court of Fairfax County within thirty (30) days after the final decision is rendered by the Council. The filing of the said petition shall stay the decision of the Town Council pending the outcome of the appeal to the Court. The Court may reverse or modify the decision of the Town Council in whole or in part, if it finds upon review that the decision is arbitrary and constitutes an abuse of discretion or it may affirm the decision of the Town Council.

## **DIVISION 4. APPLICATIONS AND PROCESSES**

### **Section 18-819 Applications and Process Generally**

1. **Purpose.** The following Sections establish the submission and review processes for applications relevant to this Chapter, ensuring compliance with the requirements of this Chapter, and other State, County, and Town regulations.
  - A. **Administrative Officials May Appoint Designees.** The Town Manager, Director of Planning and Zoning, Director of Public Works, Director of Parks and Recreation, and/or the Zoning Administrator may designate staff to perform the functions within these processes on their behalf.
  - B. **Submission Requirements.** The Town Manager, Director of Planning and Zoning, Director of Public Works, Director of Parks and Recreation, and Zoning Administrator or their designees shall prepare submission requirements for the applications and processes within Article 8.
  - C. **Responsibility to Prove Compliance.** Applicant(s) shall meet the submission requirements and provide sufficient information and documentation to demonstrate compliance with all applicable State, County, and Town regulations.
2. **Authority to File Applications.** All development applications reviewed under this Chapter must be submitted by the owner of the land on which the development is proposed, or by a person authorized (an “authorized representative”) in writing by the owner to submit the application on behalf of the owner. If there are multiple owners of the land on which a development is proposed, all such owners or their authorized representative(s) must sign the application or a power of attorney, letter, or other document consenting to the application.
3. **Notifications.** For information about notification requirements for public hearings required for decision on applications, see [Division 5](#).

### **Section 18-820 Appeals of Zoning Administrator Decision**

1. **Right to Appeal.** Per State Code [§15.2-2301](#), of the Code of Virginia, 1950, as amended, any applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of [§15.2-2299](#) of the Code of Virginia, 1950, as amended, may petition the Board of Zoning Appeals for review of the decision of the zoning administrator.

2. **Zoning Administrator Decision Must be Written and Appealable.** A decision by the Board of Zoning Appeals on an appeal taken pursuant to this section shall be binding upon the owner of the property that is the subject of such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination, or other appealable decision, per §15.2-2311 of the Code of Virginia, 1950, as amended.
3. **Deadline on Right to Appeal.**
  - A. All applications for appeals of Zoning Administrator decisions shall be filed with the Zoning Administrator and with the clerk of the Board of Zoning Appeals within thirty (30) days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved. Any application submitted more than thirty (30) days after the date of the decision shall not be considered.
  - B. The Zoning Administrator may determine that appeals of decisions regarding temporary uses are subject to a limit of ten (10) days after the date of the decision for which an application for an appeal would be submitted.
4. **Final Decision.** The Board of Zoning Appeals shall hold a public hearing within ninety (90) days of the date of acceptance of the completed application. The Board of Zoning Appeals may uphold the Zoning Administrator decision, modify the decision, or overturn the decision.
5. **Appeals.** Decisions by the Board of Zoning Appeals may be appealed to the Fairfax County Circuit Court, per State Code §15.2-2285 of the Code of Virginia, 1950, as amended.
6. **Appeal Decision Standards.** The determination of the zoning administrator will be presumed correct. The appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The BZA must consider the record on appeal and any applicable ordinances, laws, and regulations in making its decision.
7. **Notification.** Notice of the public hearing shall be provided as required by §15.2-2204 of the Code of Virginia, 1950, as amended, as outlined in Division 5. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

### Section 18-821 Board of Architectural Review Certificate of Approval

1. **Certificate of Approval Required.** Per Chapter 4, Section 4-8 of the Town Code, no structure, building, sign or other improvements or other major landscape features surrounding such building, structure, sign or improvement located on any land within any architectural control district shall be erected, reconstructed, altered or restored until the plans for such shall have been approved by the Board of Architectural Review; provided that the provisions of this chapter shall not apply to the regular maintenance of the same as opposed to the reconstruction, alteration or restoration. For the purposes of this section, the repainting of a structure, building or sign that results in the complete change of color of the said structure, building or sign or a substantial portion thereof shall be deemed an alteration and not regular maintenance.
2. **Criteria for Review.** The criterion for the Board of Architectural Review decision is found within §4-15. - Design criteria and §8-B.3 Same—Purposes.

## § 15.2-2311. Appeals to board

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date

of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587; 2005, cc. 625, 677; 2008, c. 378; 2010, c. 241; 2011, c. 457; 2012, cc. 400, 550, 606; 2017, c. 665; 2019, c. 387.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.