

ARTICLE IX – NONCONFORMING USES; VESTED RIGHTS; DEVELOPMENT RIGHTS

Chapter 84 – ZONING ORDINANCE

ARTICLE IX. – NONCONFORMITIES; VESTED RIGHTS; DEVELOPMENT RIGHTS

PART 900. – NONCONFORMITIES

Sec. 84-900.01. – Purpose

The purpose of this section is to regulate nonconforming uses, lots and structures in a manner consistent with sound planning and zoning principles. The general intent is that over time nonconforming uses, lots and structures will be discontinued in favor of uses, lots and structures conforming to this chapter and the zoning map. However, it is also recognized that nonconforming uses, lots and structures need not be entirely static, and that under certain circumstances, nonconforming uses, lots and structures may change, according to law and the provisions of this chapter.

Sec. 84.900-02. – Nonconforming use, lot and structure defined

- (a) Nonconforming use: Any use that was lawful on the date of enactment of this chapter, or amendment thereto, which has been continued although otherwise rendered unlawful by such enactment or amendment. Any use that was unlawful on the date of enactment of this chapter, or amendment thereto, shall remain unlawful and shall not be a "nonconforming use".
- (b) Nonconforming lot: Any lot that was lawful on the date of enactment of this chapter, or amendment thereto, which has been continued in existence although otherwise rendered unlawful by such enactment or amendment thereto, or as a result of public action. Any lot that was unlawful on the date of enactment of this chapter, or amendment thereto, shall remain unlawful and shall not be a "nonconforming lot". A lot is nonconforming if one or more of the following standards are not met as a result of enactment or amendment of this chapter.
 - 1. Lot area.
 - 2. Lot width.
 - 3. Lot frontage.
- (c) Nonconforming structure: Any structure, except signs, which was lawful on the date of enactment of this chapter, or amendment thereto, which has been continued in existence although otherwise rendered unlawful by such enactment or amendment thereto or as a result of public action. Any structure that was unlawful on the date of enactment of this chapter, or amendment thereto, shall remain unlawful and shall not be a "nonconforming lot". A structure is nonconforming if one or more of the following standards are not met as a result of enactment or amendment of this chapter or by virtue of public action:
 - 1. Setbacks.
 - 2. Yards.
 - 3. Buffers.
 - 4. Stormwater management.
 - 5. Open space.
 - 6. Lot coverage.
 - 7. Tree canopy.
 - 8. Height.

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Sec. 84-900.03. - Rights adhere to the land.

The nonconforming status of any nonconforming use, lot or structure shall adhere solely to the use of the land, and not to the owner, tenant, or other holder of any legal title to the property or the right to make use thereof.

Sec. 84-900.04. - Accessory, ancillary, secondary or incidental uses.

- (a) A use that is accessory, ancillary, secondary or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.
- (b) No use accessory, ancillary, secondary or incidental to a principal nonconforming use shall be continued after nonconforming status is lost, except as may be approved under section 84-900.07 of this chapter.

Sec. 84-900.05. - Continuation of nonconforming uses, lots and structures.

- (a) A nonconforming use, lot or structure may continue as it existed when it became nonconforming. A nonconforming use, lot or structure shall not be changed, altered, repaired, restored, replaced, relocated or expanded in any manner, including the addition of new accessory, ancillary, secondary or incidental uses, except as provided for in sections 84-900.07, et seq., of this chapter.
- (b) A building or structure shall be deemed nonconforming if;
 - 1. The building permit has been issued, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, a certificate of occupancy or a use permit for the building or structure was issued, or
 - 2. The owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, the building or structure shall be deemed nonconforming. Notwithstanding the above, the Building Official may require the building or structure to be brought into conformity with the Uniform Statewide Building Code.

Sec. 84-900.06. - Discontinuance or abandonment of a nonconforming use.

- (a) If any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status, and any further use shall conform to the provisions of this chapter.
- (b) For the purposes of this section, cessation of a nonconforming use for the aforesaid period shall be conclusively presumed to establish discontinuance.
- (c) Any nonconforming use which is intentionally abandoned, without regard to the length of time which shall have passed, shall be terminated, and any further use shall conform to this chapter.
- (d) Operation of only an accessory, ancillary, secondary or incidental use to the principal nonconforming use during the two-year period shall not operate to continue the principal nonconforming use.

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Sec. 84-900.07. - Permitted changes of nonconforming uses.

A nonconforming use may be changed, altered, repaired, restored, replaced, relocated or expanded only in accordance with the provisions of this section, and subject to the appropriate approvals otherwise required by law.

- (a) A nonconforming use may change to a conforming use.
- (b) A nonconforming use may change to a more restricted nonconforming use, as set forth in section 84-900.08 of this chapter.
- (c) A nonconforming use may be expanded throughout any part of a structure originally arranged or designed for such activity.

Sec. 84-900.08. - Change of a nonconforming use to a more restricted nonconforming use.

- (a) Nonconforming use may change as a matter of right to a more restricted nonconforming use, upon issuance by the Zoning Administrator of an approval for such a change. The Zoning Administrator's approval, which shall not be given until the nonconforming status of the use has been verified in accordance with section 84-900.13 of this chapter, shall include a determination in writing that the proposed use is "more restricted" than the existing nonconforming use, and a copy of such determination shall be forwarded to the planning commission and the Town Council. If the Zoning Administrator determines the proposed use is not "more restricted" than the existing nonconforming use, the application for a change to a more restricted nonconforming use shall be denied. An appeal from such a determination shall be to the Board of Zoning Appeals as provided by PART 1401 of this chapter.
- (b) In determining whether a proposed use is a "more restricted" nonconforming use, the following factors, among others, shall be considered:
 - 1 Whether the proposed use will change the size and scope of the existing use, and the magnitude of such change; and,
 - 2 Whether the proposed use will increase the intensity of the nonconforming use, including hours of operation, traffic, noise, and similar impacts; and,
 - 3 Whether the proposed use will have a more or less detrimental effect on conforming uses in the neighborhood; and,
 - 4 How the quantum effect of the factors evaluated in preceding subsections (a), (b) and (c) above relate to the purpose, policies and objectives of this chapter.
- (c) Upon the issuance of an approval to change to a more restricted nonconforming use, site plan approval, as set forth in Article 10 of this chapter, shall be required.

Sec. 84-900.09. - Permitted changes of nonconforming structures.

A nonconforming structure may be changed, altered, repaired, restored, replaced, relocated or expanded only in accordance with the provisions of this section, and subject to the appropriate approvals (including, among others, verification of the nonconforming use, site plan approval, building permit approval and zoning approval under section 84-200.09 of this chapter) otherwise required by law.

- (a) A nonconforming structure may change to a conforming structure.

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- (b) A lawful nonconforming structure may remain lawfully nonconforming when any of the development standards associated with the structure is reduced by virtue of public action.
- (c) A nonconforming structure damaged by casualty (as distinguished from ordinary wear and tear) may be restored in accordance with the provisions of section 84-900.10 of this chapter.
- (d) Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming structures may be permitted provided that such changes shall not increase the land area occupied by any portion of the nonconforming structure and shall not increase the gross floor area of any nonconforming structure, unless approved as an expansion pursuant to section 84-900.10.
- (e) Except for signs, nonconforming structures other than buildings (such as, but not limited to, underground storage tanks, private sewage disposal systems, and parking lots) may be restored or replaced when such structures become unsafe or unsound. A relocation on the same lot may be approved by the Zoning Administrator provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood. Nonconforming signs may be repaired or replaced in accordance with the provisions of section 84-900.11 of this chapter.
- (f) Nonconforming structures may expand only in accordance with the provisions of this section. Whenever a percentage limitation is placed on expansion, that limitation shall be the total expansion allowed, in increments of any size that add up to the total, or all at once. All expansion shall occur on the lot, inclusive of any permitted consolidations or resubdivisions, occupied by the nonconforming structures.
 - 1. A nonconforming one family dwelling may be expanded without limitation except as provided for in this section. In addition, new or expanded residential accessory structures (such as a storage shed, garage, swimming pool, etc.) may be permitted subject to the provisions of Article III of this chapter. Expansion of the dwelling and new or expanded accessory structures shall meet all zoning ordinance requirements, including height, yard and setbacks, for the zoning district in which located. However, expansions in height to existing nonconforming one family dwellings, except those identified in section ARTICLE VII which do not meet current setback requirements shall be permitted as long as:
 - A. The dwelling is only being increased in height; and
 - B. The footprint of such dwelling will be unchanged by the proposed expansion in height; and
 - C. The distance between the expansion and any other dwelling is not less than twice the current yard setback requirement for the zoning district in which it is located. Such expansion shall not be required to meet more restrictive setbacks enacted since the date the dwelling became nonconforming; however, all other zoning regulations for the district in which the dwelling is located shall apply.
 - 2. For nonconforming nonresidential structures where a related use is permitted by right or with a Special Use Permit in the zoning district in which the structure is located, but where the current development standards (including, but not limited to, yards, setbacks, screening and buffering, height, signs, lot coverage, or Special Use Permits) are not met, expansion of the structure, may be approved provided only yard, setback, buffer and height standards applicable to the expansion are met, and further provided that such expansion does not exceed 25 percent of the gross floor area of the existing structures. For any expansion

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exceeding 25 percent of the gross floor area of the existing structure(s), all development standards, including those in subsections (d) and (e), applicable to the property as a whole shall be met.

3. Prior to the approval of expansion of a nonconforming structure under this section, nonconforming status shall be verified as set forth in section 84-900.13 of this chapter.
4. In the event of any permitted expansion of a nonconforming structure, all signs located on the property shall be brought into full compliance with the current zoning ordinance requirements.
5. Expansions of nonresidential uses that require Special Use Permits and which are associated with expansions of structures pursuant to subsection (b) above are required to obtain Special Use Permits only when such expansion exceeds 25 percent of the gross floor area of the existing structure(s).

(g) Partial Demolition Due to Deterioration.

Notwithstanding the limitations of this section, the Zoning Administrator may approve the demolition and reconstruction of a portion of a lawful nonconforming structure when such demolition is necessitated by normal deterioration, decay, or structural degradation over time, and not by casualty. Such approval may be granted provided that:

1. The demolition shall not exceed fifty (50) percent of the structural components of the nonconforming structure, as determined by the Zoning Administrator based on visible conditions or supporting documentation.
2. The demolition and any associated work shall not create or result in unsafe conditions, life-safety hazards, or imminent threats to public health, safety, or welfare.
3. The remaining structure shall be stabilized and maintained in a safe and secure condition in accordance with applicable building and property maintenance codes.
4. Reconstruction or replacement of the demolished portion may be permitted within the original footprint of the structure, provided that such reconstruction does not increase the degree of nonconformity and complies with all applicable building code requirements and necessary approvals under this chapter.
5. Any reconstruction or replacement authorized under this subsection shall not expand the footprint, height, or overall bulk of the nonconforming structure except as otherwise permitted by this section.
6. This subsection shall not be construed to permit expansion of a nonconforming structure beyond what is otherwise authorized by this section.

Sec. 84-900.10. - Restoration of a nonconforming building damaged by casualty.

- (a) A nonconforming residential or commercial building that is damaged by any casualty may be restored to its condition prior to the casualty, provide such restoration is begun within one year of the date of the casualty and completed within two years of the date of the casualty.
- (b) Such restoration may include minor alterations, cosmetic modifications, interior renovations or similar changes under the provisions of subsection 84-900.09.4 of this chapter, but such restoration shall not include any expansion unless approved under the provisions of section 84-900.09.6 of this chapter. Such restoration may include changes that make the building less nonconforming than it was prior to the casualty. Restoration to reduce or eliminate the nonconforming features to the extent possible shall not require a granting of a variance.

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- (c) Prior to any restoration permitted by this section, the nonconforming status of the building shall be verified as set forth in section 84-900.13 of this chapter.
- (d) For all buildings except a one-family dwelling, restoration of a nonconforming building shall require site plan approval as set forth in ARTICLE X of this chapter.

Sec. 84-900.11. – Nonconforming Signs

Nonconforming signs shall be governed by the regulations set forth in this part, except where such regulations conflict with the following provisions:

- (a) Nonconforming signs shall not be expanded.
- (b) Nonconforming signs may be changed to reduce any nonconformity as to the number of signs permitted on a lot, sign height, sign size and sign type.
- (c) Signs that are nonconforming as to location may be relocated to be less nonconforming, provided such relocation shall not cause a greater detrimental impact on conforming uses in the neighborhood.
- (d) The face, message, or copy on a nonconforming sign may be changed, provided such change does not alter the sign type, unless the new sign type would be a conforming sign in all respects.
- (e) Damage or destruction of nonconforming sign. A nonconforming sign which is destroyed or damaged to the extent that the cost of repair exceeds 50 percent of its fair market value prior to the damage shall not be altered, replaced or reinstalled unless it is in conformance with these regulations. If the damage or destruction is 50 percent or less of the fair market value prior to damage, the sign may be restored within six months of the destruction, but shall not be enlarged in any manner, except;
 - a. Nonconforming signage within the Historic Districts shall be permitted to replace 100% of the signage with like-for like materials, design, and sign message.
- (f) Whenever land is acquired due to the widening, construction, or reconstruction of any highway as defined in Code of Virginia, § 33.1-351 by purchase or by use of the power of eminent domain and upon such land is situated a lawfully nonconforming billboard sign as defined in Code of Virginia, § 33.1-351, such billboard sign may be relocated, if such sign meets all requirements under the provision of Code of Virginia, §§ 33.1-351 and 4.1-113.1 in the case of outdoor alcoholic beverage advertising, but is considered a nonconforming sign; such billboard sign may be relocated by the owner of the billboard sign, at the owner's sole cost and expense, to another location as close as practicable on the same property, adjusting the height or angle of the billboard sign to a height or angle that restores the visibility of the billboard sign to the same or comparable visibility as before the taking, provided the new location also meets all the requirements of Code of Virginia, § 33.1-95.2 and regulations adopted pursuant thereto. The owner of such billboard sign shall not be allowed to increase the size of the sign face, and a relocated billboard shall continue to be nonconforming in its new location. Maintenance of such nonconforming billboard signs shall be governed by the provisions of Code of Virginia, § 33.1-370.2.
- (g) A sign permit, as set forth by section Part 302 of this chapter, shall be required for any changes permitted by subsections 2., 3., 4., and 5. hereinabove.
- (h) Whenever the provisions of this Part 900 require all nonconforming signs on a lot to be made conforming, such provision shall apply instead of the provisions of this section.

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Sec. 84-900.12. - Use of nonconforming lots.

- (a) Any unimproved lot or record, located in any zoning district, that is nonconforming as to the lot area, lot width or lot frontage, or combination thereof, required in the zoning district in which the lot is located may be used for any use permitted by right or with a Special Use Permit in such zoning district, provided all other standards of the zoning district are met.
- (b) Nonconforming lots may change as follows:
 - 1. 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 one of the following actions:
 - A. A boundary adjustment between two contiguous nonconforming lots, or among three or more such nonconforming lots located in the same zoning district.
 - B. A boundary adjustment between two contiguous lots, one being nonconforming and the other being conforming, provided such adjustment does not make the conforming lot nonconforming.
 - C. Rezoning to a different zoning district to meet the development standards of that district.
 - 2. A lawful nonconforming lot may remain lawfully nonconforming when the lot size, lot width and/or lot frontage are reduced by virtue of public action.
 - 3. The boundaries of a nonconforming lot(s) may be adjusted along with the boundaries of a contiguous nonconforming or conforming lot(s), provided such adjustment does not result in an additional nonconforming lot being created; does not make the conforming lot(s) nonconforming, does not result in further reduction of lot frontage or lot width to less than that required at the front setback line, of any of the nonconforming lots that existed prior to the boundary adjustment.
 - 4. When a building or structure to be constructed or expanded is located on more than one nonconforming lot, a boundary adjustment shall be required to consolidate the lots.
 - 5. When a nonconforming lot is changed as set forth in subsections 2.(a) (i), (ii), (iii), or (c) a plat of subdivision or boundary adjustment shall first be filed and approved. When a nonconforming lot is changed as set forth in subsection 2.(b) and 2.(d), only a deed of subdivision shall be filed and approved in accordance with law and the provisions of the Technical Design Manual.

Sec. 84-900.13. - Verification of nonconforming uses.

Prior to approval of any change in a nonconforming use, lot or structure permitted by section 84-900.09 et seq., of this chapter, the lawful status of the use, lot or structure shall be verified by the Zoning Administrator. The Zoning Administrator may also verify the lawful status of a nonconforming use, lot or structure not proposed to change, upon the request of the owner of the property, or upon the request of a neighboring property owner.

- (a) In verifying the lawful status of a nonconforming use, lot or structure, the Zoning Administrator shall determine the following:
 - 1. Whether the use, lot or structure is in fact lawfully nonconforming; and, if so, then;
 - 2. The location and gross floor area (in square feet) of all buildings;

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3. The location, use and size of all structures other than buildings;
 4. The area of land (in square feet) devoted to all aspects of the nonconforming use, lot or structure (including buildings, parking, outside storage, travelways, open spaces, etc.); and
 5. A description of the principal use(s) and all accessory, ancillary, secondary or incidental uses that make up the lawful nonconforming use as a whole.
- (b) The decision of the Zoning Administrator under subsection (1) shall be final after 30 days unless an appeal is filed to the Board of Zoning Appeals in accordance with section PART 1401 of this chapter.
- (c) The decision of the Zoning Administrator shall be based on information provided by the owner of the property, on information provided by other persons with knowledge of the property, and on any other information available to the Zoning Administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property.
- (d) The Zoning Administrator shall keep a record of all verified nonconforming uses, lots or structures. Not less than every two years after the original date of verification, the owner or operator of a verified nonconforming use, lot or structure shall file a report with the Zoning Administrator, on forms available from the Planning Office, showing that the nonconforming use, lot or structure has not ceased for a two-year period, or been abandoned, and that the use is being operated in accordance with the decision rendered as a part of the nonconforming verification process, and any subsequent changes approved.

PART 901. – VESTED RIGHTS

Sec. 84-901.01. – Applicability.

This Section applies to any application for development approval in which the Applicant claims an exemption from any provision of this ordinance based on common law, statutory vested rights or estoppel.

Sec. 84-901.02. – Common law vested rights.

Common law vested rights shall be acknowledged by the Zoning Administrator after consultation with the Town Attorney if the Applicant for common law vested rights demonstrates entitlement to statutory vested rights as provided in this Section. The Applicant for common law vested rights shall show compliance with the following criteria for the specific project to acquire such rights:

- (a) In reliance upon lawfully issued Approval or approval, the Applicant makes a substantial financial commitment or assumes substantial financial obligations within the purview of the activities authorized by said order or approval;
- (b) The Applicant has proceeded in good faith, has relied upon the issuance of the order or approval, and such order or approval has not lapsed or been revoked;
- (c) The Applicant has established any other factor that may establish estoppel under state or federal law; and

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(d) The Applicant has obtained a favorable vested rights determination.

Sec. 84-901.03. – Consent agreement.

The following shall apply to a consent agreement:

- (a) At any time prior to a final decision relating to an application for a vested rights determination, the Applicant and the Town may enter into a voluntary consent agreement conferring vested rights.
- (b) A consent agreement shall be executed by the Town and the Applicant and shall include the following terms and conditions:
 - (1) A legal description of the subject property and the names of the legal and equitable owners;
 - (2) The duration of the consent agreement and the conditions that will result in revocation;
 - (3) The uses permitted on the property, including population densities and/or building intensities and height, yards, floor area ratio, setbacks, and other bulk regulation requirements;
 - (4) A description of the public facilities that will service the proposed development, including who shall provide such facilities; the date that any new facilities, if needed, will be constructed; and a schedule to assure that public facilities are available concurrent with the impacts of the development;
 - (5) A description of any reservation or dedication of land for public purposes;
 - (6) A description of all development approvals or other local, state, or federal approvals needed for the proposed development;
 - (7) A finding that the proposed development is consistent with the Comprehensive Plan and the relevant provisions of this ordinance;
 - (8) A description of any conditions, terms, restrictions, or other requirements determined to be necessary for the preservation and protection of the public health, safety, or welfare;
 - (9) A statement indicating that the omission of a limitation or restriction shall not relieve the Applicant of the necessity of complying with all applicable local, state, and federal laws;
 - (10) A phasing plan indicating the anticipated commencement and completion date of all phases of the proposed development;
 - (11) Provisions for remedies in the event of default; and
 - (12) Any other provisions as required by State law.
- (c) All consent agreements shall be reviewed and recommended for approval by the Town Attorney for form, content and legal sufficiency.

Sec. 84-901.04. – Failure to comply with consent agreement.

If the Board of Zoning Appeals finds, on the basis of substantial competent evidence, upon an application by the Applicant or the Town, that there has been a failure to comply with the terms of the consent agreement, the consent agreement may be revoked or modified by the Board of Zoning Appeals after a public hearing, which has been noticed by publication and for which notice has been expressly provided to the Applicant.

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Sec. 84-901.05. – Vested rights determination process.

The following process shall be followed through a vested rights determination:

- (a) Initiation. An application may be made to the Town Council for recognition of vested rights for a particular project by completion of a form provided by the Zoning Administrator that indicates which development approvals are being relied on by the Applicant for establishment of vested rights. The Applicant for a vested rights determination shall provide the Zoning Administrator with a completed application copies of any documents on which the Applicant is relying to establish vested rights.
- (b) Review and Approval. After receiving an application for a vested rights determination, the Town Council shall review the application and determine if the Applicant shall provide additional information for consideration of the application within 30 days. After the application is deemed complete, the Town Council shall hold a quasi-judicial hearing and, upon the evidence submitted and upon review of the application, if the Town Council finds that there is sufficient evidence to establish vested rights, shall issue a certificate to the Applicant recognizing vested rights for the project. The certificate shall set forth all terms and conditions required for the continuance of the vested rights being recognized.
- (c) Variance to Time Limits. An Applicant may request a variance from the time limit, required action, or term that otherwise would cause the vested rights to expire. The request for variance shall identify the specific provisions for which a variance is being requested and the reasons the Applicant feels will justify the granting of the variance. The Town Council shall review the application for variance and shall determine whether the variance is granted, conditionally granted, or denied. In granting a variance, the Town shall make written findings establishing that:
 - (1) The Applicant will suffer undue hardship in the absence of a variance that is not the result of the Applicant's own negligence;
 - (2) The Applicant has been actively attempting to pursue and complete development of the project that is the subject of the vested rights; and
 - (3) Compliance with rules and regulations passed after the recognition of vested rights will cause a substantial economic hardship to the Applicant, which precludes the capability of completing the project in a reasonable and prudent manner.

PART 902. -DETERMINATIONS OF DEVELOPMENT RIGHTS UNDER REPEALED ORDINANCES

Sec.84-902.01. – Determinations Generally.

- (a) Any person claiming the right to develop property under regulations repealed or superseded by amendment to this chapter or otherwise claiming development rights under Code of Virginia, §§ 15.2-2297.B. and D. or 15.2-2307, shall seek a determination from the Zoning Administrator pursuant to this section and Code of Virginia, §§ 15.2-2297.B. and D. or 15.2-2307.
- (b) Application shall be made on forms provided therefor by the Planning and Zoning Administration and shall include all information required by this section. The applicant shall

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swear or affirm to the accuracy and completeness of all information submitted and representations made in his application.

- (c) The decision of the Zoning Administrator shall be based upon information provided by the applicant, on information provided by other persons with knowledge of the property and the proposed development, and on any other information available to the Zoning Administrator as public record or public information. Such information may include but shall not be limited to, rezoning files, site development or subdivision files, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal information regarding the property and its development.
- (d) The decision of the Zoning Administrator shall be final after 30 days unless an appeal is filed with the Board of Zoning Appeals in accordance with section 84-1401.04 of this chapter.