**Chapter 84 – ZONING ORDINANCE**

**ATRTICLE XI. – ZONING AMENDMENTS, TEXT, MAP, SPECIAL USE PERMIT**

**PART 1100. – GENERAL**

**Sec. 84-1100.01. - Zoning amendments generally.**

1. Changes in the zoning restrictions applicable to any parcel of land in town may be affected in accordance with the provisions of this chapter through approval by the Town Council in any of the following ways:
	1. Zoning text amendments; or
	2. Rezoning, including modification of proffers; or
	3. Special Use Permit approval.
2. Special Use Permit validity
	1. Upon approval is a Special Use Permit, a site plan shall be submitted within one year, and occupancy shall be obtained within five years of the Special Use Permit approval.

**Sec. 84-1100.02. – Notice requirements for Amendments and Special Use Permits**

Prior to a public hearing on a zoning text amendment before the Planning Commission or Town Council, notice as required by this section shall be given. The Planning Commission shall not recommend, nor the Town Council approve any zoning text amendment until such notice is given. Notices and public hearings shall comply with Article XV of this Chapter.

**Sec. 84-1100.03. – Applications for modification or waiver of requirements.**

For those minimum development standards specifically permitted by any provision of this chapter or other Town ordinance that may be waived or modified by proffer approved by the Town Council, an application for such waiver or modification shall be made in accordance with the provisions of this Article XI and may constitute the whole of or a part of such application.

**Sec. 84-1100.04. - Preapplication conference.**

1. A preapplication conference shall be requested by any person planning to seek a zoning map change or Special Use Permit pursuant to the provisions of this chapter, except that a preapplication conference shall be required for all proposals for planned districts.
2. The purpose of a preapplication conference shall be for a property owner to outline for planning staff a proposed development of his property and to seek a determination from the Planning and Zoning Administrator as to the submission requirements applicable to the application in accordance with the provisions of sections 84-1100.05 through 84-1100.07.
3. At or following the preapplication conference, the Planning and Zoning Administrator or designee shall notify the applicant detailing the submission requirements that must be satisfied in order for the application to be deemed complete.

**Sec. 84-1100.05. – Landowner initiated amendment, mandatory submission requirements.**

An application by an individual property owner shall be made to the Planning and Zoning Department and shall include the items listed in sections 84-1100.05 through 84-1100.07. Except for the filing fee, and unless otherwise determined at a preapplication conference, the following information, shall be submitted:

1. A fully completed application form (which shall be supplied by the Planning and Zoning Administrator) signed by the property owner (or duly authorized agent). The application form shall include the name and current mailing address of the applicant and all record owners of the property with a ten percent or greater interest, the zoning classification sought, and any other information as may be reasonably required by the Planning Director on the application.
2. The latest deed for the property and an accurate plat of the property of a scale of one-inch equals 100 feet or less prepared by a certified land surveyor, which shall show:
3. Bearings and distances of a scale of one inch represents 100 feet or less for all property lines and existing and proposed zoning district lines;
4. Area of land proposed for consideration, in square feet or acres;
5. Scale and north point;
6. Names of boundary roads or streets and widths of existing rights-of-way;
7. Each area of requested map amendment is outlined in red.
8. A written boundary description of the land which is the subject of the application, which must conform to the plat information.
9. A general development plan, as set forth by section 84-1100.06.
10. A development analysis, pursuant to section 84-1100.07.
11. The names and mailing addresses, as listed in the current real estate tax assessment books or current real estate tax assessment records, of all property owners, in all directions, within 500 feet of the perimeter of the property to be rezoned. Even if less than the entire record parcel is to be rezoned, then the names and addresses of all property owners within 500 feet of the parcel boundaries shall be provided. When a proposed rezoning includes a proposal to exceed the maximum height permitted within the subject zoning district, the names and mailing addresses required herein shall be provided for all property owners within 1,320 feet in all directions of the land involved.
12. A filing fee, in the amount established by the Town Council pursuant to resolution.
13. Traffic impact analysis when required under the criteria established in the Technical Design Manual.
14. A narrative description analyzing the consistency of the application responding to the intent, goals, policies and action strategies for each element of the Comprehensive Plan.
15. If proposed, provisions for affordable housing units for any development on which a residential component is to be constructed.

**Sec. 84-1100.06. -** **General development plan (GDP).**

The elements required in the general development plan shall be determined by the Planning and Zoning Administrator or designee following the preapplication conference required by section 84-1100.04 based upon the size, scale, complexity, and impact of the proposed rezoning. When required, each element of the general development plan shall conform to the standards set forth hereafter unless specifically waived or modified by the Planning and Zoning Administrator or designee:

1. A general development plan meeting the requirements of this section shall be submitted as part of an application for a zoning map amendment requested by a landowner.
2. The general development plan shall be a written, graphic, and/or visual statement of the uses intended for the subject property, justification for the proposed zoning map amendment, and other information necessary for an orderly and expeditious review of the application. All data and other information shall be submitted in writing or by use of demonstrative materials.
3. All statements, plans, profiles, elevations, and other demonstrative materials comprising the general development plan shall become part of the record of the hearing on the application for an amendment. Any model must be accompanied by eight-by-ten-inch clear photographs showing a top view, an isometric view, and each side view of the model.
4. All written statements and all plans, profiles, elevations and other illustrative or demonstrative materials shall be presented on a sheet or sheets having a size of no larger than 24 by 36 inches. If prepared on more than one sheet, match lines shall clearly indicate where the several sheets join. All sheets shall be folded to a size not greater than nine by 12 inches.
5. Topography shall be shown by contour lines. The contour interval shall not be more than five feet. The contours shall be shaded in a graphic technique showing slope conditions of 15 to 25 percent and another distinguishing graphic technique showing greater than 25 percent slope.
6. An environmental constraints analysis showing slopes shaded as required by subsection (e) above and a proposed limits of disturbance line. The analysis shall include a written description and generalized mapping of natural site conditions, with an emphasis on those significant environmental features that could be affected by the proposed development and those that will be retained upon completion of the project. The analysis shall also describe avoidance efforts and/or mitigation techniques to minimize the environmental impacts of the proposal. The mapped information shall show the following:
7. Approximate delineation of all wetland areas and Riparian Protection Areas;
8. Areas of 15 percent slope and greater;
9. Impervious and proposed pervious surfaces;
10. Areas that will remain in a natural or undisturbed state upon completion of a project (including woodland conservation areas);
11. Potential habitat for or actual occurrence of, endangered or threatened plant and animal species and species of special concern;
12. One-hundred-year floodplain boundary, as approved by the Federal Emergency Management Agency and/or the Town;
13. Areas of highly erodible, highly permeable, and marine clay soils; and
14. Vegetative cover types.
15. A schematic land use plan, at a scale of one inch equals 100 feet or less shall be provided showing the proposed traffic circulation plan including major streets, connection to existing public roads and major pedestrian, or bike paths; all proposed major open space areas; the approximate location of all proposed community and public facilities and the proposed plan for all major sanitary sewers, water systems and storm water management and drainage improvements and the location of all buildings and other structures. The plan shall describe with specificity the means of transportation access to and from the property, and adjacent properties if appropriate, and shall include an estimate, prepared by an appropriate expert, of the traffic that will be generated by the property and its use if rezoned.
16. A written statement setting forth the following shall also be included:
17. All use(s) proposed for the property, including a detailed description of the operation(s) and any special processes, conditions, hazards, safety concerns or impacts on public facilities or the public health, safety and welfare associated with the proposal.
18. The method by which adjacent and neighboring properties shall be protected from the adverse effects of the proposed development, including vehicular access plans, proposed measures and types of landscaping and buffering, and peripheral setback and yard requirements.
19. The maximum height of all proposed structures in the development.
20. The maximum number of dwelling units proposed, maximum lot coverage, and/or maximum floor area ratio (F.A.R.) as appropriate.
21. Proposed general land use areas shall be designated by land bays. The general sizes of land bays proposed for consideration shall be determined by the Planning and Zoning Administrator as part of the preapplication conference required by section 84-1100.04. Designation of uses within each land bay shall be consistent with the Comprehensive Plan land use designation, in accordance with the provisions within Article VII of this chapter. Minimum and maximum development densities for residential uses or floor area ratios for nonresidential uses shall be established for each land bay and tabulated in accordance with the requirements of subsection 6 below.
22. A table which shows, for each land bay designated in accordance with subsection 5 above, range of the uses, number of dwelling units for residential areas or square feet of floor space for commercial, office or industrial areas and their respective acreage, which are proposed for the site.
23. The special amenities to be provided within the development, including a statement of commitment to landscaping with indigenous, drought tolerant species listed in the Technical Design Manual.
24. All off-site improvements that are proposed, such as roads, water, and sewer and drainage facilities.
25. The proposed development phasing plan and its relationship to the applicant's provision of supportive utilities, facilities, roads and other services, including the projected wastewater flows for each phase.
26. Any proposed signs that will not meet the standards of Part 302, et seq of this chapter. of this chapter when signage proposed for the project is specified in a proffer statement.
27. Additional information as desired by the applicant.
28. Any modifications or waivers proposed pursuant to section 84-1100.04.

**Sec. 84-1100.07. - Format for the development analysis.**

1. A development analysis shall be prepared by the applicant to describe and analyze the probable effects of the proposed development upon the Town. The matters the applicant shall be required to address in the development analysis shall be determined by the Planning and Zoning Administrator, following a preapplication conference pursuant section 84-1100.04, based upon the size, intensity, scope and impacts of the proposed development.
2. The Planning and Zoning Administrator shall require the development analysis to address the following as applicable:
3. Land use proposal: The applicant shall submit a land use proposal which shall address, but not be limited to, the following:
4. Proposed mix of uses;
5. Methods of integrating and unifying architectural and site design within land bays;
6. Proposed landscaping features;
7. Proposed public amenities;
8. Proposed recreational facilities and other common open space; and
9. Relationships of proposed uses and site design within the district to the land use classifications of the Comprehensive Plan and existing zoning in areas adjacent to the proposed planned development.
10. Water and sanitary sewer: The applicant shall provide a plan to serve the proposed development adequately.
11. General open space plan: The applicant shall prepare a general open space plan. The plan shall identify proposed tree save areas, conservation areas, and buffer areas between potentially incompatible uses and along the boundaries of the proposed planned development. The proposed method of buffering shall be clearly articulated and shown on the master zoning plan. The general boundaries of the proposed open space areas shall also be shown on the master zoning plan.
12. The Planning and Zoning Administrator may require the development analysis to address any or all of the following:
13. Transportation system analysis and plan: The applicant shall prepare a transportation study and plan, which shall include at a minimum the information required by sections 84-1100.05 through 84-1100.07 of this chapter and the Technical Design Manual.
14. Development phasing plan: The applicant shall prepare a development phasing plan which identifies in what order and how proposed public utilities, public facilities and other improvements and amenities necessary to support the project will be constructed, dedicated or reserved.
15. Architectural plan: The applicant shall submit an architectural plan that addresses building materials, building heights, site design amenities, parking, landscaping, etc. The plan shall also address any means by which the applicant will ensure that such architectural plan would continue to govern development through its completion.
16. Special or unique landscape treatments: The applicant shall submit plans and/or elevations of entry features and streetscapes proposed within the development.
17. Additional conditions: The applicant shall also address other topics that may be deemed appropriate by the applicant or Planning and Zoning Administrator. These may include but not be limited to proposals for affordable housing, pedestrian and bikeway systems, road improvements beyond those necessary to serve the project, park facilities and other improvements.
18. The development analysis shall be considered by the Planning Commission in its decision whether to recommend and the Town Council whether to grant or deny an application for rezoning or a planned development district. To the extent that the general design plan makes specific reference to one or more features of the development analysis, such features shall be deemed incorporated into the general design plan unless such reference clearly notes it is made only for illustrative purposes or exception to such incorporation is otherwise clearly and specifically taken.

**Sec. 84-1100.08. – Conditional zoning.**

1. Any applicant for a Rezoning or Special Use permit, as a part of his application, may proffer reasonable conditions concerning the use and development of his property, including also off-site improvements that may serve or benefit his property and the public welfare. Proffers shall be signed and acknowledged by the owner of the property, or any agent authorized by a power of attorney meeting the requirements of subsection 84-102.01(a)3.
2. Every proffer statement shall state that the applicant proffers that use and development of the property shall be in strict accordance with the proffered conditions. Any revised proffer statements shall state that it supersedes any proffer statements previously submitted and shall either show the revisions by appropriate annotation on its face or by reference to a narrative description of changes submitted at the same time. In the event the applicant proffers to develop and use his property in accordance with the schematic land use plan, or other plans, proffers, elevations, demonstrative materials and written statements submitted as part of the general development plan, the proffer statement shall so state and each copy of such materials shall so provide, in accordance with the provisions of the adopted proffer policy. In the event of an inconsistency between a specific written proffer and a depiction upon a proffered general development plan, the proffered text shall control.
3. The Town Council, when acting on an application for a Rezoning or Special Use Permit, may adopt as a part of the zoning map the proffered conditions, in whole or in part, set forth by the applicant. Once adopted by the Town Council, such proffered conditions shall be binding on the use and development of the property, and shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions; provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance and/or zoning map.
4. Proffered conditions adopted by the Town Council shall be in addition to the regulations provided for the zoning district by the text of this chapter. Except as standards that are specifically permitted to be modified or waived by the Town Council, as part of a Rezoning or Special Use Permit approval, development shall conform to mandatory standards in effect at the time of final plan approval if such standards exceed proffered conditions accepted at the time of rezoning.
5. The zoning map, and other appropriate files maintained by the Planning and Zoning Administrator, shall reference the existence of adopted proffered conditions attached to various properties. Any site plan, subdivision plan, development plat or permit application thereafter submitted for development of property to which proffered conditions have attached shall conform with all such conditions and shall not be approved by any Town official in the absence of such conformity. For the purpose of this section, conformity shall mean such conformity which leaves a reasonable margin of adjustment due to final engineering data but conforms with the general nature and intent of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant.
6. Minor Modifications. In addition to those determinations the Planning and Zoning Administrator may make pursuant to Sec. 32-200.11 and 32-700.57, the Planning and Zoning Administrator may make minor modifications as follows:
7. At the request of an applicant, minor modifications of adopted proffers shall be approved by the Planning and Zoning Administrator or designee without requiring a subsequent amendment to the zoning of the property or the adopted proffered conditions. The Planning and Zoning Administrator shall only approve a minor modification when the modification meets the definition of conformity specified in Paragraph 5 of this section.
8. Minor modifications shall not be approved when the modification would exceed minimum or maximum standards prescribed by this chapter. Subsequent minor modifications of adopted proffers which have already been modified shall be permitted in accordance with the provisions of this paragraph, provided that the cumulative degree of modification does not exceed minimum or maximum standards prescribed by this chapter.
9. For the purpose of this section, minor modifications shall be determined to conform with the adopted proffers when the modification meets one or more of the following criteria:
10. An increase in the maximum number of children approved for a child-care facility, so long as the approved number does not exceed (1) 5% of the maximum number of children listed in the adopted proffered conditions; or (2) additional children, whichever is greater. The approval of a minor modification shall not increase the maximum number of children permitted for a child-care facility beyond a maximum prescribed by the Code of Virginia or any other applicable law or regulation.
11. An increase in the permitted number of adults for an adult day-care facility, so long as the approved number does not exceed (1) 5% of the maximum, number of adults listed in the adopted proffers; or (2) one additional adult, whichever is greater, and so long as the minimum off-street parking requirement can be attained.
12. An increase in the maximum number of students approved for a private school, so long as the approved number does not exceed 5% of the maximum number of students listed in the adopted proffered conditions.
13. A modification to the approved building materials, architectural style, or color of building design features, so long as the overall intent as depicted in the approved proffers is maintained.
14. An increase in the permitted number of employees, so long as the approved number does not exceed (1) 5% of the maximum employees listed in the adopted proffered conditions; or (2) one additional employee, whichever is greater and so long as the minimum off-street parking requirement can be attained.
15. An increase in the number of rooms or units at an assisted living facility, so long as the approved increase does not exceed (1) 5% of the maximum number listed in the adopted proffered conditions; or (2) additional rooms, whichever is greater.
16. Changes in a building's minimum floor area ratio (FAR) specified in an adopted proffered condition, so long as the building's gross floor area is increased or reduced by no more than 0.1 FAR and so long as the maximum gross floor area is not increased beyond the maximum gross floor area prescribed in the zoning district standards.
17. Changes in a building's minimum or maximum height specified in an adopted proffered condition, so long as the building's height is increased or reduced by no more than 10 feet and so long as the height is not increased beyond the maximum height prescribed in the zoning district standards.
18. Changes to a stormwater management facility as depicted on an approved master zoning plan or approved generalized development plan, so long as no additional land disturbance would be required beyond that shown in the plan's limits of clearing and grading to the satisfaction of the Public Works Director, or designee.
19. Minor changes to the site layout or configuration, provided impacts to adjacent properties are mitigated.
20. Minor modifications to mobile and land-based telecommunications facilities shall be subject to the standards specified in Part 309.

**Sec. 84-1100.09. – Conditional zoning enforcement.**

1. The Planning and Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to enforce conditions that have attached to Special Use Permits, or to rezonings (zoning map amendments) which have been proffered by an applicant for rezoning and accepted by the Town Council in accordance with the provisions of the chapter. Planning and Zoning Administrator may, in exercise of his discretion, issue a violation notice and correction order that orders the remedy of any noncompliance with any such conditions, or bring legal action to ensure compliance including injunction, abatement or other appropriate action or proceeding including the institution of criminal process; or any combination of the above deemed necessary to obtain compliance.
2. As part of the bonding procedures established in the Technical Design Manual, the Planning and Zoning Administrator may require with final plans of any owner a guarantee (bond, assurance, sanction) satisfactory to the Town Council in an amount sufficient for and conditioned upon the construction of any physical improvements required by such conditions or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Planning and Zoning Administrator upon the submission to Planning and Zoning Administrator or his designee of satisfactory evidence that the construction of such improvements has been completed in whole or in part, as appropriate.
3. Failure to meet or comply with any such condition shall be sufficient cause to deny the approval of site plans, subdivision plans, or the issuance of building permits, occupancy permits or other permits or licenses, as may be appropriate. Upon receipt by any public official of appropriate written notice of failure to meet such conditions, signed by the Planning and Zoning Administrator, said public official shall not issue any approvals, permits or licenses to the alleged violator until such official has received written notification from the Planning and Zoning Administrator that the applicant for approvals, permits or licenses has remedied all noncompliance with the such conditions.
4. Any applicant for approvals, permits or licenses who is aggrieved by a decision of the Planning and Zoning Administrator pursuant to the provisions of this section may petition either the Town Council or the Board of Zoning Appeals for a review thereof, by filing a written notice thereof with the clerk to the board and the Planning and Zoning Administrator within 30 days after notice of the decision has been received. Said 30-day period shall be deemed jurisdictional. Such notice shall set forth with reasonable specificity the basis for such appeal and shall include payment of such fee as may be set by the Town Council. The Town Council or the Board of Zoning Appeals shall act upon any appeal within 30 days unless there is no regular meeting scheduled, in which case the Town Council or the Board of Zoning Appeals shall act at its next regular meeting. The decision of the Town Council or the Board of Zoning Appeals on such an appeal shall be final.

**Sec. 84-1100.10. – Review of Amendments.**

Every proposed amendment to the text of this chapter or zoning map shall be reviewed as provided for in the sections 84-1100.11 through 84-1100.13.

**Sec. 1100.11. – Review and interpretation by the Planning and Zoning Administrator.**

1. When an amendment to the text of this chapter has been proposed, and when an amendment to the zoning map has been initiated, Planning and Zoning Administrator shall cause the amendment to be expeditiously reviewed by such staff, departments, offices, agencies, or other personnel as he finds appropriate.
2. In the case of an application for a zoning map amendment, the review shall include an examination of the applicant's proffer statement, if any. The Planning and Zoning Administrator, or his designee, may suggest revisions to the proffer statement in order to clarify the proffers volunteered by the applicant. In addition, before the application is scheduled for a public hearing before the planning commission, the Planning and Zoning Administrator or his designee shall present to the applicant a summary of the findings of the review in order that the applicant may make modifications of his application should he desire to do so. No substantial change shall be made in any proffered condition after the public hearing commences before the Town Council, unless it is readvertised in accordance with the provisions of this chapter.
3. Reviewing agencies shall evaluate the application for accordance with elements required in section 84-1100.06. A written summary of their findings and recommendations shall be forwarded to the Planning and Zoning Administrator in accordance with the schedule established for the application.
4. After the Planning and Zoning Administrator shall have presented a summary of the review findings to the applicant, the application shall be referred to the planning commission for public hearing. The Planning and Zoning Administrator shall not be required to refer such application immediately, but shall consider the applicant's preference, the planning commission's schedule, and the appropriate use of Town staff.
5. When referring an application to the planning commission, the Planning and Zoning Administrator shall cause a report to be prepared for the commission's review, and such report shall include a recommendation on the application.
6. Amendments to the zoning map not initiated by an application of a property owner, and amendments to the text of this chapter, shall be referred to the planning commission in a timely fashion after a report, including recommendation, shall have been prepared by the Planning and Zoning Administrator.

**Sec. 84-1100.12. – Consideration by the Planning Commission with Special Use Permit, Zoning Text Amendments and Rezonings.**

1. The planning commission shall hold at least one (but may hold more than one) public hearing on all applications. The commission may continue a public hearing until another date; or close a public hearing but continue consideration of the amendment until another date; or it may make its recommendation following the first public hearing. In addition, the commission may reopen a closed public hearing to receive additional public comment, provided notice of such a reopened hearing shall be given in accordance with the provisions of this chapter. At the first public hearing (and at subsequent hearings as is necessary) the Planning and Zoning Administrator, or his designee, shall present to the commission the report and recommendation of Planning and Zoning Administration.
2. The planning commission shall have 90 days from the date of the first public hearing to consider an application. Failure of the commission to make a recommendation within the 90-day time period shall be deemed a recommendation of approval. However, if at any time after the date of the first public hearing an applicant shall make a change in the application, the commission shall have 90 days from the date the change is presented to the Planning and Zoning Administrator within which to consider and make a recommendation on the amendment.
3. An applicant for a zoning map amendment may request that consideration of (and the recommendation on) his application be deferred past the 90-day time period established in subsection (b). above. Such request shall be submitted in writing to the chairman of the planning commission and the Planning Director before the public hearing, or, if such a request is made at the public hearing, it shall be reduced to a written request within five days. Such request, and the commission's resolution of deferral, shall contain a date certain for holding or resuming the public hearing. The commission shall then have 90 days from the date to which the application was deferred to consider and make a recommendation on the application, and failure to do so within that time period shall be deemed a recommendation for approval.
4. In making its recommendation to the Town Council, the commission may recommend approval or denial of an application, or any part thereof as the public necessity, convenience, general welfare or good zoning practice may require. The commission may also recommend modifications to an application, including, in the case of a zoning map amendment, a different zoning classification than requested, provided that if the zoning classification recommended is a more intense, or higher, classification than that requested, at least one additional public hearing, with notice given in accordance with the provisions of this chapter, shall be held. The commission may also, in the case of a zoning map amendment, recommend reducing the area of the proposed amendment; or may recommend increasing the area of the proposed amendment provided at least one additional public hearing, with notice given in accordance with the provisions of this chapter, is held.

**Sec. 1100.13. – Consideration by the Town Council.**

1. Following the planning commission's recommendation on an application, the Town Council shall hold at least one (but may hold more than one) public hearing on such application, with notice given in accordance with the provisions of this chapter. At such hearing(s) the Planning and Zoning Administrator, or his designee, shall present to the Town Council the report and recommendation of the planning commission and the Planning and Zoning Administration.
2. The Town Council may continue a public hearing until another date; or close a public hearing but continue consideration of the application until another date; or it may take action following the first public hearing. The Town Council shall have one year from the date an application is deemed to be complete by the Zoning Administrator to act on the amendment, unless the applicant requests or consents to action beyond such period. This time period shall not include any length of time an application for a zoning map amendment was deferred at the request of the applicant. In addition, whenever an applicant shall make a change in his application, the one-year time period shall run from the date the change is received by the Planning and Zoning Administrator.
3. Once notice of a public hearing before the Town Council on an application is given in accordance with the provisions of this chapter, the applicant may make a substantial change in his application only if the application is referred back to the planning commission for further consideration and recommendation. In such a case, the process described in section 84-1100.12 of this chapter shall apply. The Town Council shall determine whether a change is substantial.
4. In considering an application, the Town Council may approve or deny the application, or any part thereof as the public necessity, convenience, general welfare or good zoning practice may require. In the case of an amendment to the zoning map, the Town Council may approve an amendment to a lesser area than initiated, and may approve a less intense, or lower, zoning classification than initiated. If the Town Council desires to consider a zoning map amendment for a greater area, or to a more intense, or higher, zoning classification than initiated, the amendment shall be referred back to the Planning Commission for further consideration and recommendation. In such a case, the process described in section 84-1100.12 of this chapter shall apply.

**Sec. 1100.14. – Refilling following denial; withdraw; deferral**

1. Upon denial of any application by a property owner for an amendment or Special Use Permit, no further application concerning any or all of the same property that is substantially the same as the application denied shall be made within one year from the date of such denial.
2. An application for an amendment or Special Use Permit may be withdrawn at any time; provided, that if the request for withdrawal is made after publication of the notice of any public hearing, no application for substantially the same amendment or Special Use Permit on all or any part of the same property may be filed within six months of the withdrawal date.
3. In no event shall there be any refund of fees in the case of withdrawal after publication of the notice of any public hearing.
4. Whenever consideration of an amendment or Special Use Permit is deferred after notice of any public hearing has been first published, the applicant shall bear the additional advertising costs.

**Sec. 1100.15. – Dismissal of applications.**

If an applicant refuses or neglects to pursue his application for an amendment or a Special Use Permit, the Town Council may by resolution declare the application dismissed. Notice of intent to dismiss an application shall be sent certified mail, return receipt requested, to the applicant at the address listed on his application at least 15 days prior to the date the Town Council has scheduled action on the proposed dismissal. If an application is dismissed, no fees shall be refunded, and for an application for a map amendment no other application substantially the same as the one dismissed shall be filed within one year of the date of dismissal.

**Sec. 84-1100.16. – Appeals.**

Every action contesting a decision of the Town Council adopting or failing to adopt a proposed zoning ordinance or amendment thereto affecting the map or text of this chapter or granting or failing to grant a special exception shall be filed within 30 days of such decision with the Circuit Court having jurisdiction of the land affected by the decision.

**Sec. 84-1100.17. – Interpretation of site/subdivision plan conformance with zoning map amendments and special use permits.**

1. This chapter 84.
2. The Technical Design Manual and any other applicable federal, state or local law, ordinance or regulation.
3. The applicant's proffer statement, if any.
4. The master zoning plan, if any.
5. The development analysis, if any.
6. The staff report prepared for consideration by the Town Council at the time of rezoning or special use permit.

**PART 1101. – COMPREHENSIVE PLAN AND ZONING TEXT AMENDMENT**

**Sec. 1101.01. – General**

1. Whenever the public necessity, convenience, general welfare or good zoning practice require, amendments to the text of this chapter and the Comprehensive Plan may be proposed by resolution of the Town Council, or by resolution of the Planning Commission stating the public purposes therefor.
2. Amendments may be proposed using either specific language, or as a narrative, descriptive request.
3. When proposed, amendments shall be reviewed, considered and acted upon as set forth in sections 84-1100.10 et seq., of this chapter.
4. Zoning text amendments that decrease the allowed dwelling unit density of more than 25 parcels of land shall give written notice of such amendments per Article XV.

**Sec. 1101.02. – Applications for modification or waiver of requirements.**

For those minimum development standards specifically permitted by any provision of this chapter or other Town ordinance that may be waived or modified by Special Use Permit or proffer approved by the Town Council, an application for such waiver or modification shall be made in accordance with the provisions of this Part 1101 and may constitute the whole of or a part of such application.

**PART 1102. - ZONING MAP AMENDMENT**

**Sec. 1102.01. - Zoning map amendments.**

1. Amendments to the zoning map, including amendments to any conditions previously proffered by an applicant and accepted by the Town Council, may be initiated as follows:
2. By resolution of the Town Council; or
3. By resolution of the Planning Commission; or
4. By application of the property owner for his property. An agent for a property owner, or a contract purchaser (with the owner's written consent), may make an application on the owner's behalf, provided a legally sufficient power of attorney, as approved by the Town Attorney, has been executed by the owner. Such power of attorney shall provide that the Town may rely upon signature of the agent as constituting that of the owner for all purposes of this chapter unless the owner shall serve notice of revocation by registered or certified mail, upon the Planning and Zoning Administrator. The signatures to such power of attorney or notice of revocation shall be attested. Such an application shall be deemed to have initiated a zoning map amendment only when made in proper and complete form, as set forth by this part, as applicable. In order for proffered conditions to be considered part of an application, they shall be prepared in accordance with the requirements of section 84-1100.08.
5. When initiated, amendments to the zoning map shall be reviewed, considered and acted upon as set forth in sections 84.1100.10, et seq. of this chapter. The Town shall be under no obligation to consider a property owner's application for a zoning map amendment that does not meet the standards set forth in sections 84-1100.05 et seq. of this chapter.
6. An amendment to any planned district or proffered condition shall be considered as an amendment to the zoning map.

**PART 1103. – SPECIAL USE PERMIT**

**Sec. 1103.01. - Purpose.**

It is recognized that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district. Such uses require consideration of their impact upon neighboring land and of the public need for the particular use in a given location. Special Uses require;

1. review by the Zoning Administrator for compliance with applicable regulations,
2. review by the Planning Commission to make recommendation to the Town Council based on their consideration of the impacts the proposed use imposes,
3. review and consideration by Town Council of the impacts on the proposed,
4. Town Council approval, approval with conditions, or denial of a Special Use application.

**Sec. 1103.02. - Application for a Special Use Permit.**

1. An application for a Special Use Permit may be made by a property owner, for his property, for any Special Use Permitted in the zoning district in which his property is located. A duly authorized agent for an owner may make an application, provided a legally sufficient power of attorney, meeting the requirements of subsection 1102.01.(a)3 as approved by the Town Attorney, has been executed.
2. In addition to an application by a property owner, a Special Use Permit application may be initiated by resolution of the Town Council, or by resolution of the planning commission.
3. An application for a Special Use Permit shall be made to the Planning and Zoning Administrator and shall include the items listed in this section. Except for the filing fee, and unless otherwise determined at a preapplication conference by the Planning and Zoning Administrator, 25 collated sets of the following information shall be submitted:
4. Those items listed by subsections 84-1100.05.(a), 84-1100.05.(b), 84-1100.05.(c) and 84-1100.05.(f)through 84-1100.05.(j).
5. A Special Use Permit plan consistent with the Technical Design Manual for sketch plans. The elements required in the Special Use Permit plan shall be determined by the Planning and Zoning Administrator or his designee following the preapplication conference required by section 84-1100.04 based upon the size, scale, complexity and impact of the proposed request. When required, each element of the Special Use Permit plan shall conform to the standards set forth hereafter unless specifically waived or modified by the Planning and Zoning Administrator or his designee:
6. An environmental constraints analysis in accordance with section 84-1100.06.(f).
7. Phasing plan, if applicable.
8. Special signage proposals, if desired, in accordance with the provisions of Part 302 of this chapter.
9. General site grading plan.
10. Other information as desired by the applicant.
11. Such additional information as may be reasonably required by the Town in order for the Planning and Zoning Administration, the planning commission, or the Town Council to make a proper evaluation of the proposal, such as but not limited to:
12. Hours of operation.
13. Estimated number of patrons, clients, patients, pupils, etc.
14. Estimate of distribution of traffic by mode and time of day.
15. Except for the filing fee, the Planning and Zoning Administrator may waive the submission requirements, or any portion thereof, set forth in subsection 3. above, provided such information is not necessary for the proper review of the application.
16. The Town shall be under no obligation to accept an application for a Special Use Permit if it does not meet all of the requirements of section 84-1103.01.

**Sec. 1103.03. - Review process for an application for a Special Use Permit.**

An application for a Special Use Permit shall be reviewed in a manner similar to an application for a zoning map amendment, as set forth by sections 84-1100.11 through 84-1100.13 of this chapter.

**Sec. 1103.04. – Concurrent processing with site or subdivision plans**

Site and subdivision plans can be concurrently processed with a Special Use Permit application consistent with the long-range land use designation of the Comprehensive Plan upon the request of the applicant if the applicant acknowledges responsibility for costs related to site and subdivision plan submittal regardless of whether the Special Use Permit application is approved or denied. The submission of plans may not be accepted until the first round of comments have been received from Special Use Permit application review agencies.

**Sec. 1103.05. - Matters to be considered in reviewing an application for a Special Use Permit.**

The Planning Commission, in considering its recommendation on an application for a Special Use Permit, and the Town Council, in considering what action to take on an application for a Special Use Permit, shall review such an application with consideration for the following factors:

1. The nature of the proposed use, including factors such as traffic, noise, light, hours of operation, and number of employees involved.
2. The character of the existing area, including existing structures and structures under construction, existing public facilities and public facilities under construction, and private, commercial and/or service facilities available within the existing area.
3. The area's designation on the Town’s Comprehensive Plan, and relevant text provisions of the plan.
4. The minimum off-street parking area required, and the amount of space needed for the loading and unloading of trucks.
5. Whether the public health, safety and welfare will be preserved, and any reasonable conditions necessary for such preservation.
6. Any other factors relating to the purposes of zoning that the Planning Commission and/or Town Council, in its legislative discretion, shall consider as relevant.

**Sec. 1103.06. - Special Use Permit general provisions.**

1. After approval of a Special Use Permit by the Town Council, the applicant shall have one year to submit site or subdivision plans for the approved use and shall occupy the site and commence the use within five years of approval of the site plan, provided that the Town Council may allow, at the time and as part of approval, a longer period. If the use has not begun as provided above, the Special Use Permit shall be void, and the use may not thereafter be begun except upon approval of another Special Use Permit.
2. After approval of a Special Use Permit by the Town Council, the use approved may intensify and/or expand, provided that any conditions attached to the approval shall not be violated. If intensification and/or expansion violates any attached conditions, the intensification and/or expansion may be reviewed and approved as a minor modification or minor deviation pursuant to Sec. 84-1103.06. Intensifications and/or expansions which cannot be authorized as described herein and which are ineligible for review as a minor modification or minor deviation shall not be approved unless a subsequent Special Use Permit application is approved that reflects the intensification and/or expansion.
3. Except for childcare, as a secondary use in residential districts, all uses permitted by a Special Use Permit shall require site plan approval in accordance with the provisions of Article X of this chapter.
4. If an approved special use ceases operation for a period of one year, for any reason, the Special Use Permit shall become void, and thereafter the use may only be conducted after another Special Use Permit has been approved.
5. If a by-right development application is proposed that would supersede a valid special use permit, the property owner shall submit a letter with the development application that requests the special use permit to be void upon site development permit or zoning permit issuance. The special use shall cease at the time the development permit or zoning permit is issued.
6. A Special Use Permit shall be transferable with the land, provided that the use for which it was obtained does not change.
7. Unless otherwise provided in the permit, a Special Use Permit shall have an indeterminate duration provided that the use for which it was obtained is commenced as required in subsection (b). and continues without abandonment as provided in subsection (e). in accordance with its terms.

**Sec. 84-1103.07. – Special Use deviation**

Minor deviations from an approved Special Use Permit plan are allowed without filing of a new Special Use Permit application provided all deviations are shown on a site or subdivision plan. The Planning and Zoning Administrator shall determine, prior to the approval of site or subdivision plans, that the deviation(s) do not substantially alter conditions of the approved Special Use Permit or the approved Special Use Permit master plan. If the Planning and Zoning Administrator cannot authorize a minor deviation as described herein, the deviation may be reviewed and approved as a minor modification pursuant to Paragraph (a) below. Minor deviations which cannot be authorized as described herein and which are ineligible for review as a minor modification may only be modified by a subsequent application for a Special Use Permit.

1. Minor Modifications. In addition to those determinations the Planning and Zoning Administrator may make pursuant to Sec. 84-201.02 and this section, the Planning and Zoning Administrator may make minor modifications as follows:
2. At the request of an applicant, minor modifications of adopted Special Use Permit conditions shall be approved by the Planning and Zoning Administrator without requiring a subsequent amendment to the Special Use Permit or the adopted conditions. The Planning and Zoning Administrator shall only approve a minor modification when the modification meets the definition of conformity specified in Paragraph (e) of Sec. 84-1100.08.
3. Minor modifications shall not be approved when the modification would exceed minimum or maximum standards prescribed by this chapter. Subsequent minor modifications of adopted Special Use Permit conditions which have already been modified shall be permitted in accordance with the provisions of this paragraph, provided that the cumulative degree of modification does not exceed minimum or maximum standards prescribed by this chapter.
4. For the purpose of this section, minor modifications shall be determined to conform with the adopted Special Use Permit conditions when the modification meets one or more of the following criteria:
5. An increase in the maximum number of children approved for a child-care facility, so long as the approved number does not exceed 5% of the maximum, or a minimum of one, whichever is greater, number of children listed in the adopted Special Use Permit conditions. The approval of a minor modification shall not increase the maximum number of children permitted for a child-care facility beyond a maximum prescribed by the Code of Virginia or any other applicable law or regulation.
6. An increase in the permitted number of adults for an adult day-care facility, so long as the approved number does not exceed (1) 5% of the maximum number of adults listed in the adopted Special Use Permit conditions; or (2), one additional adult, whichever is greater and so long as the minimum off-street parking requirement can be attained.
7. An increase in the maximum number of students approved for a private school, so long as the approved number does not exceed (1) 5% of the maximum number of adults listed in the adopted Special Use Permit conditions; or (2), one additional student, whichever is greater.
8. A modification to the approved building materials, architectural style, or color of building design features, so long as the overall intent as depicted in the approved Special Use Permit conditions shall be maintained.
9. An increase in the permitted number of employees, so long as the approved number does not exceed (1) 5% of the maximum employees listed in the adopted Special Use Permit conditions; or (2) one additional employee, whichever is greater and so long as the minimum off-street parking requirement can be attained.
10. An increase in the number of rooms or units at an assisted living facility, so long as the approved increase does not exceed (1) 5% of the maximum number listed in the adopted Special Use Permit conditions; or (2) one additional room, whichever is greater.
11. Changes in a building's minimum floor area ratio (FAR) specified in an adopted Special Use Permit condition, so long as the building's gross floor area is increased or reduced by no more than 0.1 FAR and so long as the maximum gross floor area is not increased beyond the maximum gross floor area prescribed in the zoning district standards.
12. Changes in a building's minimum or maximum height specified in an adopted Special Use Permit condition, so long as the building's height is increased or reduced by no more than 10 feet and so long as the height is not increased beyond the maximum height prescribed in the zoning district standards.
13. Changes to a stormwater management facility as depicted on an approved Special Use Permit plan, so long as no additional land disturbance would be required beyond that shown in the plan's limits of clearing and grading, to the satisfaction of the Public Works Director or designee.
14. Minor changes to the site layout or configuration, provided impacts to adjacent properties are mitigated.
15. Minor modifications to mobile and land-based telecommunications facilities shall be subject to the standards specified in Part 309.

**Sec. 84-1103.08. – Revocation of Special Use Permits**

1. The Town Council may, by resolution, initiate a revocation of a Special Use Permit. When initiated, the revocation process shall be handled as would a new application for a Special Use Permit, following the procedures set forth in section 84-1103.02 of this chapter.
2. After review by the Planning and Zoning Administration and consideration and recommendation by the planning commission, the Town Council shall act on the proposal to revoke the Special Use Permit. Grounds for revocation shall include (but not be limited to) the following:
3. A change in conditions affecting the public health, safety and welfare since adoption of the Special Use Permit; or
4. Repeated violations of this chapter, including any conditions attached to the Special Use Permit, by the owner/operator of the use; or
5. Fraudulent, false or misleading information supplied by the applicant (or his agent) for the Special Use Permit; or
6. Improper public notice of the Special Use Permit public hearing(s) when the permit was considered by the planning commission or the Town Council; or
7. An error or mistake in fact that led to an arbitrary and unreasonable decision made by the Town Council when approving the Special Use Permit.