

ARTICLE I
TITLE, EFFECTIVE DATE, PURPOSE, AND INTERPRETATION

Section 1-1 Title

This ordinance shall be known as and may be cited as the Zoning Ordinance of Smyth County, Virginia, when officially codified by the governing body.

Section 1-2 Effective Date and Application

This ordinance became effective on January 1, 2002. The provisions contained in this ordinance shall apply to the unincorporated territory of Smyth County, Virginia.

Section 1-3 Purpose

This ordinance is established pursuant to Chapter 22 of Title 15.2 of the Code of Virginia, 1950, as amended, and is for the general purpose of promoting the health, safety, and general welfare of the public and of further accomplishing the objectives of Section 15.2-2200 et seq of the Code of Virginia, 1950, as amended. This ordinance is intended to classify the unincorporated territory of Smyth County, Virginia into zoning districts to carry out the purposes of Chapter 22 of Title 15.2 of the Code of Virginia, as amended.

The ordinance is designed to give reasonable consideration to each of the following purposes, where applicable:

- 1) To provide for adequate light, air, convenience of access and safety from fire, flood and other dangers;
- 2) To reduce or prevent congestion in the public streets;
- 3) To facilitate the creation of a convenient, attractive and harmonious community;
- 4) To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
- 5) To protect against destruction of or encroachment upon historic areas;
- 6) To protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other dangers;
- 7) To encourage economic development activities that provide desirable employment and enlarge the tax base;
- 8) To provide for the preservation of agricultural and forestal lands and other land of significance for the protection of the natural environment;
- 9) To protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities
- 10) To promote affordable housing; and
- 11) To protect surface water and groundwater

It is further intended that this ordinance provide a careful balance between the fundamental property rights and interests of private citizens with the needs of the community as a whole. The development of this ordinance is intended to be in harmony with the Smyth County Comprehensive Plan.

Section 1-4 Interpretation

1-4.1 Provisions are Minimum Requirements. In their interpretation and application, the provisions in this ordinance shall be construed to be minimum requirements. The provisions of this ordinance shall be interpreted and applied in accordance with the definitions of words and terms found in Article X of this ordinance and the general rules of interpretation set forth in Article II and Article VIII of this ordinance.

1-4.2 Conflict with Other Provisions. Where a requirement imposed by any provision of this ordinance is at variance with any other provision thereof or with the requirements of any other lawfully adopted regulation, the most restrictive requirement, or that which imposes the higher standard, shall govern.

1-4.3 Private Covenants and Restrictions. The provisions of this ordinance shall not be construed to affect, interfere with, or abrogate any condition, covenant, limitation, or restriction contained in any deed, contract or other private agreement relating to the use of any land or buildings; provided that whenever the provisions of the ordinance impose greater restrictions on the use of land or buildings than are imposed by any such condition, covenant, limitation, restriction, the provisions of this Ordinance shall govern.

1-4.4 Vested Rights. Nothing in this ordinance shall be construed to authorize the impairment of any vested right. All uses and structures existing upon the date of adoption of this ordinance which do not conform to the zoning prescribed for the district in which they are situated may be continued, in accordance with Article V of this Ordinance, pertaining to Non-Conforming Uses and Features.

1-4.5 Severability. Should any section, subsection, paragraph, phrase, definition or provision of this Ordinance be declared by the courts to be invalid or unconstitutional, such decision shall not affect the validity of this Ordinance, as a whole or any part thereof, other than the part so declared to be invalid or unconstitutional.

**ARTICLE II
ZONING DISTRICT AND ZONING DISTRICT MAP**

Section 2-1 Establishment of Districts

In order to carry out the purpose of this Ordinance and to further the objectives of the Smyth County Comprehensive Plan, the following zoning districts are established:

<u>District Name</u>	<u>District Code</u>	<u>Section</u>
Agricultural District	A	3-1
Agricultural/Rural District	A/R	3-2
Residential District	R	3-3
Commercial District	C	3-4
Industrial District	I	3-5
Conservation/Recreation	C/R	3-6
Conservation/Recreation - PUBLIC	C/R – P	3-7
Floodplain Management District	FM	3-8
Airport Safety District	AS	3-9

Section 2-2 Zoning District Map; Flood Boundary and Floodway Map; Airport Zone Map

2-2.1 Establishment of Official Zoning District Map. The locations and the boundaries of the zoning districts, other than Floodplain Management District and the Airport Safety District, established by this Ordinance shall be shown on a map or series of maps designated as the "Official Zoning Map of Smyth County, Virginia" which, together with all approved notations and explanatory matter shown thereon, is incorporated herein as a part of this Ordinance.

2-2.2 Flood Boundary and Floodway Map. The locations and boundaries of the Floodplain Management District shall be as described in the Smyth County Flood Management Ordinance and shown on the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Agency, which Ordinance and Map are incorporated herein as a part of this Ordinance.

2-2.3 Airport Safety District Map. The locations and boundaries of the Airport Safety District shall be as described in the Smyth County Airport Safety Zoning Ordinance and shown on the official map accompanying said Ordinance, which Ordinance and map are incorporated herein as a part of this Ordinance.

Section 2-3 Identification of the Official Zoning Map

The Official Zoning Map shall be identified by the County Seal and the signature of the Chairman of the Board of Supervisors under the following words, "This is to certify that this map is the Official Zoning Map of the County of Smyth," together with the adoption date of the map and ordinance.

Section 2-4 Amendments to the Official Zoning Map

Any changes made in district boundaries or other matters shown on the official Zoning Map must be in accordance with the provisions of this ordinance and the Code of Virginia, 1950, as amended, and shall be entered on the official zoning map within seven (7) days after the amendment has been approved by the Smyth County Board of Supervisors. Any amendments to this ordinance that involve a change on the Official Zoning Map shall become effective immediately upon action of the Smyth County Board of Supervisors. A brief statement shall be included describing the nature of the change, date of adoption, and signed by the Chairman of the Board of Supervisors.

No changes of any kind shall be made on the Official Zoning Map, or matters shown thereon, except in conformity with procedures set forth in this ordinance. Any unauthorized change shall be considered a violation of this ordinance and punishable as a Class 2 misdemeanor.

Section 2-5 Location of Official Zoning Map

The Official Zoning Map shall be located in the office of the Zoning Administrator and shall be the final authority as to the current zoning status of areas within the unincorporated territory of Smyth County, Virginia, regardless of other purported copies of the Official Zoning Map which may be in existence. An official copy shall also be kept in the County Administrator's Office.

Section 2-6 Rules of Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

2-6.1 Boundaries indicated as approximately following the centerlines of roads, streets, or alleys shall be interpreted as following such centerlines.

2-6.2 Boundaries indicated as approximately following platted lot lines shall be interpreted as following such lot lines and the extension of lot lines in the event that the boundary extends across un-platted tracts.

2-6.3 Boundaries indicated as approximately following corporate limits shall be interpreted as following such corporate limits

2-6.4 Boundaries indicated as approximately following the centerlines of streams, rivers, lakes, or other bodies of water shall be interpreted as following such centerlines, and in the event of a change in the course of the body of water, shall be interpreted as moving with the actual centerline.

2-6.5 Where natural or man-made features actually existing differ with those shown on the Official Zoning Map, the Board of Zoning Appeals shall determine the district boundary.

2-6.6 Where a district boundary line divides a lot that was in single ownership at the time of passage of this ordinance, the Board of Zoning Appeals may permit an extension

of the regulations for either portion of the lot into the remaining portion of the lot, not to exceed fifty (50) feet beyond the district line.

2-6.7 If it is necessary to determine a distance which is not indicated on the Official Zoning Map, the scale of the map may be used for that purpose.

ARTICLE III DISTRICT REGULATIONS

Section 3-1 Agricultural District (A)

The intent of the Agricultural District is to facilitate existing and future forest or agricultural operations in areas where population density is low due to location, terrain, and lack of existing or proposed public water and sewer services, and where agriculture is the predominant land use. Due to these constraints, land development potential is limited, except for very low density residential uses (single-family) and certain small and farm-related commercial uses. A limited number of more intensive uses are permitted by special use permit. The intent of the district is to preserve and protect existing agricultural land resources.

3-1.1 Uses Permitted by Right in the A District. Uses permitted by right in the Agricultural district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinances. Uses permitted by right are limited to one or more of the following uses:

- a) Agriculture
- b) Single-Family dwelling
- c) Manufactured home
- d) Accessory dwelling
- e) Home occupation
- f) Recreational dwelling
- g) Temporary Forestry operations, including necessary temporary uses or buildings such as temporary sawmill, but not stationary sawmill
- h) Public and semi-public uses including:
 - 1) Cemetery
 - 2) Church
 - 3) Community Center
 - 4) Fire department and rescue squad establishments
 - 5) Park, playground, or ball field
 - 6) Public school
 - 7) Recreational trail, including hiking, riding, or bicycling
- i) Public utility facilities, including water and sewer lines, tanks, pump stations; electric, telephone and cable television facilities, but excluding communications towers and electric generating or booster facilities.
- j) General country store or convenience store
- k) Personal service business
- l) Professional office
- m) Lodge or country inn
- n) Bed and breakfast establishment
- o) Animal clinic
- p) Antique and/or craft shop
- q) Vineyard and/or winery
- r) Hunting club

- s) Commercial greenhouse or nurseries
- t) Group homes

3-1.2 Uses Permitted with Special Use Permit in the A District. Special uses in the Agricultural district may be permitted following a public hearing and approval as set forth in Article VI. Special Uses are limited to one or more of the following uses:

- a) Restaurant
- b) Retail store and shop, other than antique or craft shop
- c) Agricultural equipment sales and service
- d) Kennel
- e) Fruit and vegetable packing plant
- f) Commercial stables
- g) Campground or recreational vehicle park
- h) Communication tower
- i) Electric generating or booster facilities
- j) Roadside market
- k) Mining, quarrying, and mineral extraction
- l) Solid waste/recycling convenience station, excluding landfills and transfer stations
- m) Recreation facilities, including, game room, summer camp, fairgrounds, and other similar uses
- n) Service business
- o) Emergency Communication Network (ECN) Towers
- p) Commercial rodeo rings or arenas
- q) Accessory buildings above one hundred fifty (150) square feet in size, without a main building
- r) Auction House
- s) Permanent Forestry Operations
- t) Group Care Facility

3-1.3 Minimum Lot Sizes and Relationship to Subdivision Ordinance in the A District.

- a) The minimum lot size in the Agricultural District shall be two (2) acres, with the exception of lots on record as allowed in Section 4-3.1 of this ordinance; and
- b) A subdivision of land, as defined in Section 4.3.23 of the Smyth County Subdivision Ordinance, is not permitted in this district. Any division of less than four lots and/or one that meets the exceptions to the definition of subdivision in Section 4.3.23 of the Smyth County Subdivision Ordinance, is permitted.

3-1.4 Setback Requirements in the A District. No building or accessory structure is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or

street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

- a) **Front lot set-back minimum distances for both principal and accessory buildings in the A District:**
 - 1) Thirty-five (35) feet from nearest edge of the right-of-way of major highways, i.e. Highway 11, 16, 42, 81, and 91.
 - 2) Forty (40) feet from the center line of all other roads and streets. This includes corner lots fronting on the road or street.

- b) **Side lot set-back minimum distances in the A District:**
 - 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
 - 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.

- c) **Rear lot set-back minimum distance in the A District:** Fifteen (15) feet for principal building, five (5) feet for accessory building.

Section 3-2 Agricultural /Rural (A/R)

The intent of the Agricultural/Rural District is to preserve and protect the existing rural character and agricultural base in the county, as well as allow non-farm dwellings and small commercial and community establishments serving the rural residents. The district regulations allow more intensive uses by special use permit. Areas in the Agricultural/Rural District could have development potential due to the presence of or planned provision of water and sewer services, particularly in the Growth areas and Rural Service areas as recognized in the Comprehensive Plan.

3-2.1 Uses Permitted by Right in the A/R District. Uses permitted by right in the Agricultural/Rural district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinances. Uses permitted by right are limited to one or more of the following uses:

- a) Agriculture
- b) Single-Family dwelling
- c) Manufactured home
- d) Accessory dwelling
- e) Two-family dwelling
- f) Home occupation
- g) Recreational dwelling
- h) Temporary Forestry operations, including necessary temporary uses or buildings such as temporary sawmill, but not stationary sawmill
- i) Public and semi-public uses including:
 - 1) Cemetery
 - 2) Church
 - 3) Community Center
 - 4) Fire department and rescue squad establishments
 - 5) Library
 - 6) Museum
 - 7) Park, playground, or ball field
 - 8) Post office
 - 9) Public school
 - 10) Recreational trail, including hiking, riding, or bicycling
- j) Public utility facilities, including water and sewer lines, tanks, pump stations; electric, telephone and cable television facilities, but excluding communications towers and electric generating or booster facilities
- k) General country store or convenience store
- l) Personal service business
- m) Professional office
- n) Lodge or country inn
- o) Bed and breakfast establishment
- p) Animal clinic
- q) Fruit packing plant
- r) Vineyard and/or winery operation

- s) Hunting club
- t) Antique or craft shop
- u) Commercial greenhouse or nursery
- v) Group homes

3-2.2 Uses Permitted with Special Use Permit in the A/R District. Special uses in the Agricultural/Rural district may be permitted following a public hearing and approval as set forth in Article VI. Special Uses are limited to one or more of the following uses:

- a) Private school, childcare center or eldercare center
- b) Restaurant
- c) Retail stores and shops, other than antique or craft shop
- d) Flea market or roadside market
- e) Automotive sales and service
- f) Agricultural equipment sales and service
- g) Kennel
- h) Commercial slaughterhouse
- i) Commercial stables
- j) Campground or recreational vehicle park
- k) Communication tower
- l) Electric generating or booster facilities
- m) Group home
- n) Rest home
- o) Multi-family dwelling
- p) Townhouses, in accordance with the applicable provisions in the Smyth County Subdivision Ordinance
- q) Manufactured home park, in accordance with Chapter 50 of the Smyth County Code
- r) Mining, quarrying, and mineral extraction
- s) Solid waste/recycling convenience station, excluding landfills and transfer stations
- t) Recreation facilities, including golf course, game room, summer camp, fairgrounds, and other similar uses
- (u) Junkyards and automobile graveyards, as defined in Article X and regulated in Article IV.
- (v) Service business
- (w) Emergency Communication Network (ECN) Towers
- (x) Commercial rodeo rings or arenas
- (y) Accessory buildings above one hundred fifty (150) square feet in size, without a main building
- (z) Auction House
- (aa) Permanent Forestry Operations
- (bb) Mini-warehouse
- (cc) Group Care Facility

3-2.3 Minimum Lot Sizes and Relationship to Subdivision Ordinance in the A/R District.

a) The following minimum lot sizes apply in this district with the exception of lots on record as allowed in Section 4-3.1. Greater lot areas may be required where individual septic systems or individual wells are used if the health department determines that there are factors of drainage, soil conditions or other conditions that cause potential health problems.

- 1) Lots with both public water and sewer: 10,000 square feet in area with a minimum lot width of 100 feet.
- 2) Lots with public water only: 15,000 square feet in area, with a minimum lot width of 100 feet.
- 3) Lots with neither public water or sewer: 25,000 square feet in area, with a minimum lot width of 100 feet.

b) A subdivision of land, as defined in Section 4.3.23 of the Smyth County Subdivision Ordinance, requires rezoning to the Residential District. Any division of less than four lots and/or one that meets the exceptions to the definition of subdivision in Section 4.3.23 of the Smyth County Subdivision Ordinance, is permitted in this district.

3-2.4 Setback Requirements in the A/R District. No building or accessory structure is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

- a) **Front lot set-back minimum distances for both principal and accessory buildings in the A/R District:**
 - 1) Thirty-five (35) feet from nearest edge of the right-of-way of major highways, i.e. Highway 11, 16, 42, 81, and 91.
 - 2) Forty (40) feet from the center line of all other roads and streets. This includes corner lots fronting on the road or street.
- b) **Side lot set-back minimum distances in the A/R District:**
 - 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
 - 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.
- c) **Rear lot set-back minimum distance in the A/R District:** Fifteen (15) feet for principal building, five (5) feet for accessory building.

Section 3-3 Residential District (R)

The intent of the Residential District is to provide quality, well-planned areas for single-family residential development, and allow for higher density residential development only if appropriate to the area. The district is designed to preserve the essential character of existing low-density residential areas, encourage new residential development in accordance with modern subdivision standards, protect single-family residential areas from encroachment by potentially incompatible commercial land uses, maintain a low density of development to avoid undue burden on utilities and other public services, and allow for higher density residential development, if compatible with the surrounding neighborhood and if suitable public services are available.

3-3.1 Uses Permitted by Right in the R District. Uses permitted by right in the Residential district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinances. Uses permitted by right are limited to one or more of the following uses:

- a) Single-family dwelling
- b) Manufactured home, if doublewide in width or larger, and with a masonry type skirting.
- c) Home Occupation
- d) Church
- e) Group homes

3-3.2 Uses Permitted with Special Use Permit in the R District. Special uses in the Residential district may be permitted following a public hearing and approval as set forth in Article VI. Special Uses are limited to one or more of the following uses:

- a) Schools (public and private), Childcare, or Elder Care Center
- b) Public recreational facilities (parks, playgrounds, ball fields)
- c) Community centers
- d) Townhouse, as defined in the Smyth County Subdivision Ordinance
- e) Two-family or multi-family dwelling units
- f) Bed and breakfast
- g) Emergency Communication Network (ECN) Towers
- h) Accessory buildings above one hundred fifty (150) square feet in size, without a main building
- i) Group Care Facility

3-3.3 Minimum Lot Sizes in the R District

a) The following minimum lot sizes apply in this district with the exception of lots on record as allowed in Section 4-3.1 and with an exception for townhouses, as defined and regulated in the Smyth County Subdivision Ordinance. Greater lot areas may be required where individual septic systems or individual wells are used if the health department determines that there are factors of drainage, soil conditions or other conditions that cause potential health problems.

- 1) Lots with both public water and sewer: 10,000 square feet in area, with a minimum lot width of 100 feet.
- 2) Lots with public water only: 15,000 square feet in area, with a minimum lot width of 100 feet.
- 3) Lots with neither public water or sewer: 25,000 square feet in area, with a minimum lot width of 100 feet.

b) Any division of property, including that meeting the definition of subdivision, as defined in Section 4.3.23 of the Smyth County Subdivision Ordinance, except 4-3.23 (5) Recreational Development, is permitted in this district, subject to the provisions of the Subdivision Ordinance.

3-3.4 Setback Requirements in the R District. No building or accessory structure is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

- a) **Front lot set-back minimum distances for both principal and accessory buildings in the R District:**
 - 1) Thirty-five (35) feet from nearest edge of the right-of-way of major highways, i.e. Highway 11, 16, 42, 81, and 91.
 - 2) Forty (40) feet from the center line of all other roads and streets. This includes corner lots fronting on the road or street.
- b) **Side lot set-back minimum distances in the R District:**
 - 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
 - 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.
- c) **Rear lot set-back minimum distance in the R District:** Fifteen (15) feet for principal building, five (5) feet for accessory building.

Section 3-4. Commercial District (C)

The Commercial District is designed to provide a general range of retail, office, and service businesses with business uses taking priority over any other type of use. The district is intended to promote business opportunities, economic development, and the provision of services for nearby residential neighborhoods and the community as a whole. The activities may generate relatively large volumes of customer traffic and have frequent delivery of goods and services.

3-4.1 Uses Permitted by Right in the C District. Uses permitted by right in the Commercial district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinances. Uses permitted by right are limited to one or more of the following uses:

- a) Personal service businesses
- b) Professional office
- c) Retail stores
- d) Dry cleaners and laundromat
- e) Banks and other financial institutions
- f) Restaurants
- g) Furniture, home appliance, and home decorating stores
- h) Automobile sales and service
- i) Feed and seed store
- j) Commercial greenhouse, garden supply and plant sales
- k) Convenience stores and gasoline sales
- l) Hotels and motels and bed and breakfast inns
- m) Theaters
- n) Health/fitness clubs
- o) Recreation facilities, including bowling, miniature golf course, and game room
- p) Mini-warehouse
- q) Funeral home
- r) Roadside market
- s) Fire department and rescue squad facilities
- t) Medical services and supply sales
- u) Service business
- v) Accessory dwelling
- w) Construction sales and service
- x) Animal clinic
- y) Automobile body shop with inside vehicle storage
- z) Machinery sales and service including farm and construction machinery
- aa) Call center and/or data processing facility
- bb) Public and semi-public uses including:
 - 1) Cemetery
 - 2) Church
 - 3) Community Center
 - 4) Fire department and rescue squad establishments

- 5) Library
- 6) Museum
- 7) Park, playground, or ball field
- 8) Post office
- 9) School
- 10) Recreational trail, including hiking, riding, or bicycling
- cc) Flea Market
- dd) Antique/Craft Shop
- ee) Auction House
- ff) Garage
- gg) Private School

3-4.2 Uses Permitted with Special Use Permit in the C District. Special uses in the Commercial district may be permitted following a public hearing and approval as set forth in Article VI. Special Uses are limited to one or more of the following uses:

- a) Kennels
- b) Amusement or entertainment establishments
- c) Sales of major recreational equipment
- d) Sales of manufactured or modular housing
- e) Storage warehouses
- f) Wholesale distribution and sales
- g) Truck stops
- h) Communications tower
- i) Electric generating or booster station
- j) Childcare or eldercare center
- k) Light manufacturing
- l) Petroleum, fuel oil, or propane storage for purposes of distribution
- m) Medical Care Facility
- n) Emergency Communication Network (ECN) Towers
- o) Accessory buildings above one hundred fifty (150) square feet in size, without a main building
- p) Adult bookstore or adult video store
- q) Adult drive-in theater
- r) Adult entertainment establishment
- s) Adult mini-motion picture theater
- t) Adult model studio
- u) Adult motion picture arcade
- v) Adult motion picture theater
- w) Adult retail store
- x) Massage parlor
- y) Group Care Facility

3-4.3 Minimum Lot Size in the C District. The following minimum lot sizes apply in this district with the exception of lots on record as allowed in Section 4-3.1. Greater lot areas may be required where individual septic systems or individual wells are used if the

health department determines that there are factors of drainage, soil conditions or other conditions that cause potential health problems. Greater lot areas may also be required to meet any parking requirements contained in Article IV.

- 1) Lots with both public water and sewer: 10,000 square feet in area with a minimum lot width of 100 feet.
- 2) Lots with public water only: 15,000 square feet in area with a minimum lot width of 100 feet.
- 3) Lots with neither public water or sewer: 25,000 square feet in area with a minimum lot width of 100 feet.

3-4.4 Setback Requirements in the C District. No building or accessory structure is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

- a) **Front lot set-back minimum distances for both principal and accessory buildings in the C District:**
 - 1) Thirty-five (35) feet from nearest edge of the right-of-way of major highways, i.e. Highway 11, 16, 42, 81, and 91.
 - 2) Forty (40) feet from the center line of all other roads and streets. This includes corner lots fronting on the road or street.
- b) **Side lot set-back minimum distances in the C District:**
 - 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
 - 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.
- c) **Rear lot set-back minimum distance in the C District:** Fifteen (15) feet for principal building, five (5) feet for accessory building.

Section 3-5 Industrial District (I)

This district is designed to provide areas suitable for industrial land uses and to allow for economic and employment growth. The primary activity in the industrial district is the manufacturing of new products, including processing, packaging, treatment and assembly of components for new products. The intent of the district is to promote land uses that are as compatible as possible with adjacent commercial and residential areas.

3-5.1 Uses Permitted by Right in the Industrial District. Uses permitted by right in the Industrial district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinances. Uses permitted by right are limited to one or more of the following uses:

- a) Food, tobacco, and beverage products manufacturing, excluding animal slaughtering and processing
- b) Textile mills, knitting mills, and apparel manufacturing
- c) Leather and associated product manufacturing
- d) Wood products manufacturing, excluding stationary sawmills
- e) Paper products manufacturing, excluding pulp, paper, and paperboard mills
- f) Printing establishments
- g) Pharmaceutical and medicine manufacturing
- h) Plastics and rubber products manufacturing
- i) Non-metallic mineral product manufacturing, excluding concrete, cement, lime, or gypsum manufacturing or processing
- j) Fabricated metal products
- k) Machinery manufacturing
- l) Computer and electronic products
- m) Electrical equipment, appliance, and component manufacturing
- n) Transportation equipment, including assembly of automotive components
- o) Furniture and related product manufacturing
- p) Construction sales and service
- q) Contractor equipment storage yards
- r) Storage warehouses
- s) Wholesale distribution and sales
- t) Truck terminal
- u) Call center and/or data processing facility
- w) Church

3-5.2 Uses Permitted with Special Use Permit in the Industrial District. Special uses in the Industrial district shall be permitted following a public hearing and approval as set forth in Article VI. Special Uses are limited to one or more of the following uses:

- a) Paper, pulp, and paperboard mills
- b) Stationary sawmills
- c) Petroleum and coal products manufacturing, including asphalt materials
- d) Chemical manufacturing, including processing and storage
- e) Concrete, cement, lime, or gypsum manufacturing or processing

- f) Primary metal manufacturing, including steel mills, foundries, and smelting activities
- g) Commercial slaughterhouse
- h) Mining, quarrying, mineral extraction and processing
- i) Electric generating and booster facilities
- j) Communication towers
- k) Childcare or eldercare center
- l) Incineration facility
- m) Emergency Communication Network (ECN) Towers
- n) Accessory buildings above one hundred fifty (150) square feet in size, without a main building

3-5.3 Minimum Lot Size in the Industrial District. The following minimum lot sizes apply in this district with the exception of lots on record as allowed in Section 4-3.1. Greater lot areas may be required where individual septic systems or individual wells are used if the health department determines that there are factors of drainage, soil conditions or other conditions that cause potential health problems. Greater lot areas may also be required to meet any parking requirements contained in Article IV.

- 1) Lots with both public water and sewer: 10,000 square feet in area with a minimum lot width of 100 feet.
- 2) Lots with public water only: 15,000 square feet in area with a minimum lot width of 100 feet.
- 3) Lots with neither public water or sewer: 25,000 square feet in area with a minimum lot width of 100 feet.

3-5.4 Setback Requirements in the Industrial District. No building or accessory structure is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

(a)Front lot set-back minimum distances for both principal and accessory buildings in the Industrial District: Thirty-five (35) feet from any road or street right-of-way if the right-of-way is fifty (50) feet or greater in width, or sixty (60) feet from any road or street centerline if the right-of-way is less than fifty (50) feet) in width.

(b)Side lot set-back minimum distances in the Industrial District:

- 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
- 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.

(c)Rear lot set-back minimum distance in the Industrial District: Fifteen (15) feet for principal building, five (5) feet for accessory building

Section 3-6 Conservation/Recreation District (C/R)

This district is designed to protect the natural environment and scenic quality of the county from inappropriate development. This district could allow for low-density recreational development compatible with the Jefferson National Forest, Mount Rogers National Recreation Area, Hungry Mother State Park, and the Appalachian Trail.

3-6.1 Uses Permitted by Right in the C/R District. Uses permitted by right in the Conservation/Recreation district shall be established in compliance with this article, Article IV, supplementary regulations, and other applicable Smyth County Ordinance. Uses permitted by right are limited to the following uses:

- a) Agriculture
- b) Single-family dwelling
- c) Recreational dwelling
- d) Wildlife refuges and conservation areas
- e) Home occupation, as defined
- f) Church
- g) Recreational trail
- h) Group homes

3-6.2 Uses Permitted with Special Use Permit in the C/R District. Special uses in the Conservation/Recreation district shall be permitted following a public hearing and approval as set forth in Article VII. Special Uses are limited to one or more of the following uses:

- a) Recreational facilities, such as parks, campgrounds, golf courses
- b) Bed and Breakfast establishments
- c) Lodges and inns
- d) Commercial stables
- e) Community centers
- f) Recreational developments in accordance with the definition and provisions contained in the Smyth County Subdivision Ordinance
- g) Restaurant
- h) Emergency Communication Network (ECN) Towers
- i) Accessory buildings above one hundred fifty (150) square feet in size, without a main building
- j) Group Care Facility

3-6.3 Minimum Lot Sizes in the C/R District. The minimum lot size in the Conservation/Recreation District shall be two (2) acres, with the exception of lots on record as allowed in Section 4-3.1 of this ordinance, and with the exception of lots which are created under Section 4.3.23 (1) and (4) of the Smyth County Subdivision Ordinance.

3-6.4 Setback Requirements in the C/R District. No building or accessory structure

is permitted to be located closer to property or lot lines than the following distances. For the purpose of this section in determining front lot setback distances along road or street frontages, no lot line will be considered to extend beyond the nearest edge of the road or street right-of-way. Setback distances are measured from the lot line to the nearest point of the building or structure excluding any unenclosed porch, stoop, deck, or patio.

- a) **Front lot set-back minimum distances for both principal and accessory buildings in the C/R District:**
 - 1) Thirty-five (35) feet from nearest edge of the right-of-way of major highways, i.e. Highway 11, 16, 42, 81, and 91.
 - 2) Forty (40) feet from the center line of all other roads and streets. This includes corner lots fronting on the road or street,

- b) **Side lot set-back minimum distances in the C/R District:**
 - 1) Fifteen (15) feet for principal building, five (5) feet for accessory building
 - 2) Forty (40) feet from the center line of road or street for principal and accessory building when side lot is abutting to a road or street.

- c) **Rear lot set-back minimum distance in the C/R District:** Fifteen (15) feet for principal building, five (5) feet for accessory building.

Section 3-7 Conservation/Recreation – PUBLIC (C/R-P)

The purpose of the Conservation/Recreation –Public district is to delineate on the zoning map, as amended from time to time, the lands in Smyth County that are publicly owned and managed by the state and federal government for conservation and recreation purposes. These lands include primarily the Jefferson National Forest (including the Mount Rogers National Recreation Area), the Hungry Mother State Park, and the Clinch Mountain Wildlife Management Area. It is understood that all land use regulations in such district are dictated by the agency that owns the property

Section 3-8 Floodplain Management District (FM)

The intent of the Floodplain Management District (FM) is to accomplish the purposes of the Smyth County Floodplain Management Ordinance as set forth in the Smyth County Code, adopted on May 15, 1980 and as thereafter amended.

3-8.1 Application of District. The Floodplain Management district shall be in addition to, and shall construed to overlay, overlap, and be superimposed on other zoning districts established by this Ordinance and shown on the Official Zoning District Map. Any property lying within the Floodplain district shall also be considered to lie within and be subject to the regulations of one or more of the other zoning districts established by this Ordinance. Those districts shall be known as underlying districts.

3-8.2 District Regulations and Boundaries. The locations and boundaries of the Floodplain Management district shall be as described in the Smyth County Floodplain Management Ordinance and shown on the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Agency. The regulations applicable within the FM District shall be as set forth in the Smyth County Floodplain Management Ordinance adopted by the Board of Supervisors on May 15, 1980, and as hereafter amended. The regulations and other provisions of said Ordinance and the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Agency and hereafter amended, are supplemental requirements for the land affected herein.

Section 3-9 Airport Safety District (AS)

The intent of the Airport Safety District (AS) is to accomplish the purposes of the Smyth County Airport Safety Zoning Ordinance as set forth in the Smyth County Code, adopted January 8, 1991, and as hereafter amended.

3-9.1 Application of District. The Airport Safety district shall be in addition to, and shall be construed to overlay, overlap, and be superimposed on other zoning districts established by this Ordinance and shown on the Official Zoning District Map. Any property lying within the Airport Safety district shall also lie within and be subject to the regulations of one or more of the other zoning districts established by this Ordinance. Those districts shall be known as underlying districts.

3-9.2 District Regulations and Boundaries. The locations and boundaries of the Airport Safety district shall be as described in the Smyth County Airport Safety Zoning

Ordinance and shown on the Airport Safety Zoning Map. The regulations applicable within the AS District shall be as set forth in the Smyth County Airport Safety Zoning Ordinance adopted by the Board of Supervisors on January 8, 1991, and as hereafter amended. The regulations and other provisions of said Ordinance and the Airport Safety Zoning Map, adopted January 8, 1991, and hereafter amended, are supplemental zoning requirements for the land affected therein.

**ARTICLE IV
GENERAL PROVISIONS AND SUPPLEMENTARY REGULATIONS**

Section 4-1 Transitional Provisions

4-1.1 Permits Issued Prior to Ordinance. Nothing contained in this Ordinance shall be construed to require any change in the plans, construction, or intended use of any building or structure for which a permit was issued by the County prior to the effective date of this Ordinance or subsequent amendment thereto, provided that such construction is commenced prior to the expiration of the permit as specified by the provision of this Ordinance or other applicable laws. In any case where a permit expires or ceases to be valid, or where construction is abandoned for a period of 12 months or greater, further construction and use shall conform with the applicable provisions of this Ordinance.

4-1.2 Existing Uses, Buildings, and Structures. Uses, buildings, and structures existing at the effective date of this Ordinance or subsequent amendment thereto may be continued subject to the provisions of Article V of this Ordinance pertaining to Nonconforming Uses and Features and Section 1-4.4, vested rights.

Section 4-2 Compliance with provisions

4-2.1 After the effective date of this ordinance, no building, structure or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, converted or structurally altered except in conformity with all of the regulations specified for the district in which such building, structure or land is located and with all other applicable provisions of this Ordinance, except as provided in Section 4-1.2 and Article V of this Ordinance.

4-2.2 No part of any lot, yard, open space or other feature required for a building, structure or use shall be encroached upon, reduced or eliminated, or considered as lot, yard, open space or other feature for any other building, structure or use, except as may be specifically permitted by the provisions of this Ordinance.

Section 4-3 Lots recorded prior to this Ordinance

4-3.1 Any lot of record which was lawfully established prior to the effective date of this Ordinance or subsequent amendment thereto and which does not conform with the requirements for minimum lot area or lot width applicable in the district in which such lot is situated, may be devoted to any use permitted in the district, provided that all other applicable provisions of this Ordinance and applicable health regulations shall be met.

4-3.2 If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of the parcel shall be used or sold in a manner

which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements of this ordinance.

Section 4-4 More than one dwelling unit on a lot

4-4.1 Two dwelling units on a lot: Only one dwelling unit and its accessory buildings, including one accessory dwelling if permitted in the district, shall be located on a single lot, except where the lot width and size is at least twice that of the amount required. A second dwelling unit may be added as long as the second dwelling unit complies with the ordinance yard and lot width requirements as if it were on an individual lot.

4-4.2 More than two dwelling units on a lot: For a development to contain more than two dwelling units on a lot, a site development plan shall be required and approved by the Planning Commission. The site plan may be an owner-prepared sketch if structure dimensions are clearly shown. The site plan shall include the following items, but the Zoning Administrator may waive any of the information required if it is determined that such information is not necessary to insure conformance with county ordinances or standards.

- 1) Dimensions of site, including length, width, and total size.
- 2) Location of the lot or parcel by vicinity map. Site development plans shall also contain a north arrow, original date, revision dates, and graphical scale.
- 3) Property lines of the parcel proposed for development. If only a portion of a parcel is proposed for development, a "Limits of Development" shall also be shown.
- 4) The name and address of the property owner and/or developer of the site, if different than the owner.
- 5) The tax parcel number(s) of parcels proposed for development.
- 6) The name of adjacent property owners and the owners of any property on which any utility or drainage easement may be required in conjunction with the development. Tax parcel numbers, existing land use, and zoning for each of these properties shall also be provided.
- 7) The proposed use(s) for the site.
- 8) The names, route numbers, locations, and dimensions of existing and proposed public or private streets, alleys, easements on, or adjacent to the site, and rights-of-way shall also be shown.
- 9) The location, type, and size of site access points such as driveways, curb openings, and crossovers. If existing cuts will serve the site they shall be shown. If new median cuts are proposed, their locations shall also be shown.
- 10) The location of buildings or structures existing or proposed for the site, including their setbacks from property lines, and the distance between buildings or structures.
- 11) Location and design of all existing and proposed utilities, including water, sewer, gas, and electric service.
- 12) The location of the one hundred (100)-year floodplain on the site.

- 13) The location of proposed buffer yards, screening, and fencing.
- 14) A statement by the owner or developer that the project will be built according to the plan.
- 15) Any additional information requested by the Zoning Administrator.

Section 4-5 Accessory buildings and uses

4-5.1 Accessory buildings and uses, as defined in Article X, are allowed for any permitted use in each district.

4-5.2 All accessory uses shall meet the front setback requirements for the district in which they are located, and shall be located at least five (5) feet from any property line.

Section 4-6 Temporary buildings and construction trailers.

When used only in conjunction with construction work taking place on the site, temporary buildings and construction trailers shall be permitted in any district during the period when construction work is in progress as evidenced by a valid building permit. Such temporary facilities shall be removed immediately upon completion of the construction work.

Section 4-7 Junkyards and Automobile Graveyards

No junkyard or automobile graveyard shall be established, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of any primary highway, or within five hundred (500) feet of the nearest edge of the right-of-way of any other highway or street, except junkyards or automobile graveyards which are screened by natural objects, plantings, fences, or other appropriate means; so as not to be visible from the main-traveled way of the highway, street, or adjoining property owners, or otherwise removed from sight.

Section 4-8 Public Utilities

Any public utilities used solely for local distribution such as water, sewer, cable TV, electric, telephone and natural gas lines shall not be subject to restrictions in this ordinance. Major public utility installations such as electric generating and booster stations, high voltage electric towers, and communications towers are subject to compliance with Article III - District Regulations.

Section 4-9 Manufactured Homes

All manufactured homes to be placed or relocated in the county must comply with the Smyth County Manufactured Home Ordinance.

Section 4-10 Parking Requirements

Minimum off-street parking shall be provided at the time of construction of any of the following buildings, or at the time the building is converted or expanded, with adequate provision for access from a public street, as follows:

4-10.1 Multi-family dwellings, including townhouses: Two spaces for every dwelling unit

4-10.2 Group homes, motels, hotels, bed and breakfast establishments, country inns and lodges, rest homes: One space for each guest bedroom

4-10.3 Churches, auditoriums, theatres, stadiums or other places of assembly: One space for every five (5) fixed seats

4-10.4 Retail stores selling directly to the public and personal service establishments: One space for every 250 square feet of retail floor space.

4-10.5 Restaurants: One space for each four seats provided for customers.

4-10.6 Manufacturing, wholesale distribution, or call center/data processing facility: One space for every employee, with modifications allowed for shift employment.

4-10.7 Other commercial buildings not listed above and hereafter erected or converted, excluding storage warehouses: One parking space for each 250 square feet of business floor space in the building.

Section 4-11 Regulations on Communication Towers

4-11.1 All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the federal government with authority to regulate towers and antennas.

4-11.2 Information required for special use permit application: Each applicant requesting a special use permit for a communication tower shall submit a scaled plan and elevation view and supporting drawings, calculations, and other documentation, signed by appropriate licensed professionals, showing the location and dimensions of all proposed improvements. The application shall also be accompanied by a certification that: 1) the proposed tower is compatible for co-location with a minimum of three (3) users including the primary user, and 2) there is no existing tower space suitable to reasonably meet the applicant's engineering requirements.

4-11.3 The tower shall be located no less than 400 feet from any off-site residential dwelling.

4-11.4 All towers and accessory facilities must satisfy the minimum zoning district setback requirements for structures.

4-11.5 Owners of towers shall provide the county co-location opportunities as a community benefit to improve radio communication for county departments and emergency services.

Section 4-12 Regulations for an Emergency Communications Network (ECN) Tower

4-12.1 All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the federal government with authority to regulate towers and antennas.

4-12.2 Information required for special use permit application: Each applicant requesting a special use permit for a communication tower shall submit a scaled plan and elevation view and supporting drawings, calculations, and other documentation, signed by appropriate licensed professionals, showing the location and dimensions of all proposed improvements.

4-12.3 The height of Emergency Communications Network (ECN) towers shall be dictated by the final engineering design. In a district where ECN towers are permitted, any tower of two hundred (200) feet in height or greater shall be properly lighted.

4-12.4 The location of an ECN tower shall be no less than 200 feet from any residential dwelling or structure.

4-12.5 No equipment shall be located on an ECN tower unless such equipment is used solely for emergency services communications by a governmental entity.

4-12.6 In addition to the provisions of Section 4-12.4, all ECN towers and accessory facilities must satisfy the minimum zoning district setback requirements for structures.

4-12.7 Except in District 3.3 (Residential), ECN towers may be installed in any other zoning district with special use permit as defined in Section 10-66 of this ordinance.

4-12.8 If any provision of Section 4.11 shall conflict with Section 4.12, Section 4.12 shall control for the erection of an ECN tower.

4-13 Requirements and Standards for Adult Uses: It is recognized that there are some uses in the county that, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or located in direct proximity to residential neighborhoods, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section and defined in Section 10. The primary control or regulation is for the purpose of preventing the concentration or location of these used in a manner that would create such adverse effects. Uses subject to these controls are itemized in Section 3-4.2(p) through (x).

- 4-13.1** No adult use may be established within one thousand (1,000) feet of any other such adult use in any zoning district.
- 4-13.2** No adult use may be established within one thousand (1,000) feet of a residentially zoned district, or a school, educational institution, church, public park, playground, playfield, public library or day care center.
- 4-13.3** The “establishment” of an adult use as referred to herein shall include the opening of such business as a new business, the relocation of such business, the enlargement of such business in either scope or area, or the conversion, in whole or part, of an existing business to any adult use.
- 4-13.4** In addition to the requirements set forth in this section, all adult uses shall be required to comply with any other ordinances applicable to the same.
- 4-13.5 Measurements of distance:** All distances specified in this section shall be measured from the property line of one use to another. The distance between an adult use and a residentially zoned district shall be measured from the property line of the use to the nearest point of the boundary line of the residentially zoned district.
- 4-13.6 Exemptions:** The following are not considered “Adult Uses”:
- (a) A legitimate theatrical performance where nudity or semi-nudity is only incidental to the primary purpose of the performance.
 - (b) A school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Code of Virginia (1950), as amended, for the issuance or conferring of, and is in fact authorized there under to issue and confer, a diploma.
 - (c) A licensed physical therapy establishment.
 - (d) Massage therapists, nail technicians, and cosmetologists licensed by the state of Virginia.

ARTICLE V NONCONFORMING USES AND FEATURES

Section 5-1 Nonconforming Uses and Features May Continue

Subject to the limitations and restrictions set forth in this Article, nonconforming uses and nonconforming features of buildings are allowed to continue. The terms “nonconforming use” and “nonconforming feature” shall have such meaning as defined in Article X of this Ordinance. If any change of ownership or lease occurs involving land or buildings with nonconforming uses or features, the existing use and building is allowed to continue.

Section 5-2 Expansion of Nonconforming Uses

No nonconforming use shall be expanded or moved so as to occupy a different or greater area of land or buildings than was occupied by and actively devoted to such use at the time it became nonconforming, except by issuance of a special use permit. A minor expansion of a non-conforming use that does not entail more than ten (10) percent of the square footage of the existing space is allowed without a special use permit.

Section 5-3 Change of Nonconforming Uses

5-3.1 A nonconforming use of land or a nonconforming use of a building may be changed to another use that is of the same or more restricted classification under the terms of this Ordinance or may be changed to any use which conforms with the use regulations of this Ordinance. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed back to the original nonconforming use or to any less restricted use without compliance with the provisions of this Ordinance.

5-3.2 Removal and replacement of a manufactured home which constitutes a nonconforming use on an individual lot in the Residential, Commercial, Industrial, or Conservation/Recreation District shall be permitted as long as the replacement unit conforms to current Federal Manufactured Housing and Construction Standards (HUD), subject to Section 5.4 regarding discontinuance of nonconforming uses.

5-3.3 Removal or replacement of a manufactured home within an existing manufactured home park shall be permitted so long as the replacement unit conforms to current Federal Manufactured Housing Construction and Safety Standards (HUD).

Section 5-4 Discontinuance of Nonconforming Uses

Whenever a nonconforming use of land or of a building is discontinued for a period of more than twenty-four (24) consecutive months, whether or not equipment or fixtures intended for such use are removed, any subsequent use shall conform with the use regulations of the district in which the property is located. A seasonal nonconforming use that has been in continual operation for a two-year period or more would not be considered as discontinued.

Section 5-5 Alterations or Repairs to Buildings Devoted to Nonconforming Uses

No building or portion of a building devoted to a nonconforming use shall be enlarged, extended, reconstructed or moved on the premises such that the building is increased by more than ten (10) percent of its existing square footage in size, unless such building or portion of a building is thereafter devoted to a use which conforms with the use regulations of this Ordinance or to a use approved by issuance of a special use permit. Nothing in this Article shall be construed to prohibit normal repair, maintenance or structural alteration, or strengthening or restoring of a building to a safe condition.

Section 5-6 Alterations or Repairs to Buildings Having Nonconforming Features

A building which is devoted to a conforming use and is nonconforming with respect to the yard, height, bulk or area regulations of this Ordinance or other feature required by this Ordinance may be repaired, enlarged, extended or structurally altered, provided that such enlargement, extension or structural alteration does not increase the degree or extent of any nonconforming feature of the building with respect to height, bulk or area. In regard to established set-back distances, an extension or expansion of up to 50% of the existing building or structure square footage may be constructed provided the existing front lot line set-back distance is not decreased and provided the expansion or extension complies with minimum side and rear lot set-back requirements.

Section 5-7 Damage to Buildings Devoted to Nonconforming Uses

Any building that is devoted to a nonconforming use under the provisions of this Ordinance but is damaged by fire, explosion, or act of God may be maintained, repaired, reconstructed, improved, or structurally altered, provided it is not enlarged from its original size before the damage occurred, except as provided in Section 5-2, allowing up to an additional ten (10) percent of the square footage before the damage occurred.

Section 5-8 Damages to Buildings with Non-Conforming Features

Any building with non-conforming features that is damaged by fire, explosion, or act of God, may be maintained, repaired, reconstructed, improved, or structurally altered provided that any new construction does not increase the degree or extent of any non-conforming feature of the original structure, and provided that the repair or reconstruction is started within twelve (12) months of the date the damage occurred.

Section 5-9 Intermittent or Illegal Uses

Intermittent, temporary or illegal use of land or buildings shall not be construed to establish the existence of a nonconforming use upon adoption of this Ordinance.

Section 5-10 Existence of Nonconforming Uses and Features

The Zoning Administrator shall have the authority to determine whether a nonconforming use or a nonconforming feature of a use or building exists in accordance with the provisions of this Ordinance. An appeal from any decision of the Zoning Administrator regarding such determination may be taken to the Board of Zoning Appeals by any person aggrieved by such decision pursuant to the provisions of Article VII of this Ordinance.

Section 5-11 Manufactured Homes Having Nonconforming Features

A manufactured home which is an allowed use and has nonconforming features may be replaced within ninety (90) days provided the replacement home does not increase the degree or extent of nonconforming features except as provided for in Section 5-6.

ARTICLE VI SPECIAL USE PERMITS

Section 6-1 Special Use Provisions

Certain uses of land and buildings, designated in Article III District Regulations as special uses, may be permitted in one or more of the various districts. Such special uses are deemed to be generally appropriate to the district or districts to which they are assigned under this ordinance, and reasonably harmonious with the uses permitted in said districts as a matter of right, provided that the location and design of the site in each case is determined by the Planning Commission to be in accord with standards herein set forth in Section 6-2.3. It is the intent of this section that the designation of certain uses as conditional for certain districts, and the procedures set forth for the review and approval or disapproval of such uses, be administered so as to further the purposes of this ordinance and facilitate the creation of a convenient, attractive and harmonious community.

Section 6-2 Procedures for Review and Approval of Special Uses

6-2.1 Application for Special Use Permits. Any person desiring to use any land or building in a manner classed by this ordinance as a special use for the district in which said land is located shall make application to the Zoning Administrator for a special use permit, pay the required application fee, and shall submit supporting maps and other documents as required by the Zoning Administrator. The required information for a special use permit application shall be consistent with the requirements for a zoning permit application in Section 8-3.3. The special use permit application shall also require an oath regarding property interest of local officials as allowed in Section 15.2-2287 of the Code of Virginia and complete disclosure of ownership as allowed in Section 15.2-2289.

6-2.2 Public Hearing and Report to Board of Supervisors

a) The Zoning Administrator shall forward the application to the Planning Commission members. After a public hearing is held in accordance with Section 15.2-2204 of the Code of Virginia, 1950, as amended, and after receiving a report from the Zoning Administrator, the Planning Commission shall either recommends approval as submitted, recommends approval with modifications, or recommends disapproval of the application for a special use permit. The Planning Commission shall recommend the granting of the permit if it determines the proposed use is in full compliance with the standards set forth in Section 6.2-3 and shall record its findings concerning such compliance. The Planning Commission shall give their recommendation(s) to the Board of Supervisors for review at their next meeting. The Board shall move to accept or deny the Commission's recommendation within ninety (90) days, unless extended for an additional ninety (90) days for good cause.

b) The Commission may recommend and the Board of Supervisors may impose such other conditions and restrictions as may be necessary to reduce or minimize the injurious effect of the special use and insure compatibility with surrounding property.

The Commission may recommend and the Board of Supervisors may establish expiration dates for any special use permit as a condition of approval.

c) If a special use permit is approved, then a final site plan shall be submitted to the Zoning Administrator within six (6) months of date of approval.

d) Any significant change (as determined by the Zoning Administrator) of the preliminary site plan approved by the Board of Supervisors shall nullify the special use permit and require re-submittal for Planning Commission review and Board action.

6-2.3 General Standards. A special use permit may be recommended provided the Planning Commission finds that the proposed special use meets the following standards:

- a) It is designed, located and operated so as the public health, safety and welfare will be protected;
- b) It will not adversely affect other property in the area which it is located;
- c) It is within the listing of items requiring a special use permit as set forth in this ordinance;
- d) It conforms to all applicable provisions of this ordinance for the district in which it is to be located;
- e) It must have direct access on a public road which can safely and adequately handle the automobile and truck traffic generated.
- f) There must be adequate safeguards to prevent soil erosion on the site and erosion and sedimentation on neighboring downhill and downstream properties during and after development;
- g) There is a satisfactory plan and methods for sewage disposal as approved by state regulatory agencies.
- h) There is suitable provision for the protection of privacy on adjoining property which is now in residential use or which may develop in residential use under the provisions of this ordinance. In this section protection of privacy shall mean effective screening against visual intrusion.
- i) In the case of manufacturing, there shall be a satisfactory plan proposed to eliminate the adverse impact on any adjoining residential uses from any dust, smoke, odor, or glare that results from the operation of the manufacturing use; and
- j) In the case of quarry and mining operations, where permitted as a special use, there must be a satisfactory plan for reclamation of the land and restoration of the natural landscape and all mining activities must be conducted in accordance with

the applicable regulations of the Virginia Department of Mines, Minerals, and Energy.

- k) In the case of junkyards and graveyards, the operation must be a legitimate business involved in buying and selling of discarded materials or used vehicle parts, and is subject to the requirements of Section 4.7.

6-2.4 Conditions. In authorizing a permit for any special use provided for in this ordinance, the Board of Supervisors, after report and recommendation by the Planning Commission, may impose specific conditions on the development and use of land as necessary to assure compliance with the standards set forth in Section 6.2-3. Such conditions may include, but are not limited to: dimensional requirements for front, side, and rear yards greater than those specified elsewhere in this ordinance; screening by planting or fences or other devices; landscaping for appearance; dedication of land for street purposes; construction of turning lanes on public roads; prohibition and/or regulations of signs; requirement of additional parking spaces, and limiting hours of operation.

Section 6.3 Right of Appeal

Any action taken by the Board of Supervisors on a decision regarding the granting or denial of a special use permit may be contested by filing within thirty (30) days of the decision with the Circuit Court of the County as provided for in Section 15.2-2285 (F) of the Code of Virginia, as amended.

ARTICLE VII
BOARD OF ZONING APPEALS AND ADMINISTRATION OF VARIANCES

Section 7-1 Creation, Membership and Appointment of the Board

The Board of Zoning Appeals is hereby established which may be referred to in this Article as the "Board" or "Board of Zoning Appeals." The Board shall have jurisdiction within the boundary limits of the County of Smyth, and it shall consist of seven (7) primary members and three (3) alternates, all of which must be residents of the County, appointed by the Circuit Court of the County. Members of the Board shall hold no other public office in the County except that one (1) may be a member of the Planning Commission.

7-1.1 Terms of Office of Board Members, Vacancies, Removals. The members of the Board shall serve for a five-year term, except that original appointments shall be made for such terms that the term of at least one member shall expire each year. The secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen (15) days notice.

7-1.2 Staff of Board and Compensation of Board Members. Within the limits of funds appropriated by the County Board of Supervisors, the Board may employ or contract for legal counsel, consultants and other technical and clerical services. Members of the Board may receive such compensation as may be authorized by the Board of Supervisors.

7-1.3 Powers of the Board

a) Hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or an administrative officer in carrying out the administration or enforcement of the ordinance;

b) Hear and act upon application for variances in accordance with this Article to alleviate hardships by virtue of the inability of the land owner to comply with the provisions of this ordinance by reason of unique shape, topography or physical features of the lot;

c) Hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary; in accordance with the provisions of 15.2-2309 (4) of the Code of Virginia.

d) No provision of this section shall be construed as granting the Board of Zoning Appeals the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

(e) **Rules of Interpretation of District Boundaries:** Where uncertainty exists with respect to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- (1) Boundaries indicated as approximately following the centerlines of roads, streets, or alleys shall be interpreted as following such centerlines.
- (2) Boundaries indicated as approximately following platted lot lines shall be interpreted as following such lot lines and the extension of lot lines in the event that the boundary extends across un-platted tracts.
- (3) Boundaries indicated as approximately following corporate limits shall be interpreted as following such corporate limits
- (4) Boundaries indicated as approximately following the centerlines of streams, rivers, lakes, or other bodies of water shall be interpreted as following such centerlines, and in the event of a change in the course of the body of water, shall be interpreted as moving with the actual centerline.
- (5) Where natural or man-made features actually existing differ with those shown on the Official Zoning Map, the Board of Zoning Appeals shall determine the district boundary.
- (6) Where a district boundary line divides a lot that was in single ownership at the time of passage of this ordinance, the Board of Zoning Appeals may permit an extension of the regulations for either portion of the lot into the remaining portion of the lot, not to exceed fifty (50) feet beyond the district line.
- (7) If it is necessary to determine a distance which is not indicated on the Official Zoning Map, the scale of the map may be used for that purpose.

7-1.4 Election of Officers. The board shall elect from its members its own chairman, vice chairman and secretary who shall serve for one year and may upon election serve succeeding terms.

7-1.5 Stay of Proceedings. An appeal shall stay all proceedings related to the action appealed from, unless the Zoning Administrator certifies to the Board, after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause imminent threat to life or property. In such instance the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board

or by a court of record on application and on notice to the Zoning Administrator and for good cause shown.

7-1.6 Rules and Proceedings of the Board. The Board shall also adopt rules for the conduct of its meetings. Such rules shall at the minimum require that:

- a) The presence of a majority of seven members of the Board shall constitute a quorum;
- b) No action shall be taken by the Board on any case until after a public hearing and notice thereof shall be published and mailed in accordance with Section 15.2-2204 Code of Virginia, 1950, as amended;
- c) Appeals to the Board shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, a notice of appeal specifying the grounds of the appeal. The Zoning Administrator shall then transmit to the Board all the papers constituting the record upon which the action was taken;
- d) The Board shall fix a reasonable time for hearing the application or appeal, give public notice thereof as well as notify interested parties, and decide the same within sixty (60) days;
- e) The Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variances from the ordinance;
- f) The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the County Administrator and shall be public records. The chairman of the Board, or in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses;
- g) The Board may call upon any other officer or agency of the County for information in the performance of its duties; and it shall be the duty of such other agencies to render the information to the Board as may be reasonably required;
- h) In decisions on variances, the Board shall indicate the specific section of this ordinance under which the variance is being considered, and shall state its findings beyond such generalities as "in the interest of public health, safety and general welfare." The Board shall state clearly the specific conditions imposed in granting the variance.
- i) At the public hearing of the case before the Board, the appellant shall appear on his own behalf or be represented by counsel or agent. The appellant's side of the case

shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other; and

j) The Smyth County Planning Commission shall be permitted to submit an advisory opinion on any matter before the Board, and such opinion shall be made part of the record of the public hearing.

Section 7-2 Variance

7-2.1 Application for Zoning Variance. The application for a zoning variance as defined in Article X may be made by any property owner, agent, or legal counsel of the owner, government official, department, board, or bureau. The application shall be made to the Zoning Administrator in accordance with rules adopted by the Board of Zoning Appeals. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Board. The required information for a variance application shall be consistent with the requirements for a zoning permit application in Section 8-3.3, and shall also include the applicant's reason for requesting a variance and shall clearly state what specific provision or provisions of the ordinance to which the applicant is requesting a variance. The variance application shall also require an oath regarding property interest of local officials as allowed in Section 15.2-2287 of the Code of Virginia, and complete disclosure of ownership as allowed in Section 15.2-2289

7-2.2 Notice to Affected Property Owners. Notice to affected property owners and public agencies including the Smyth County Planning Commission and Board of Supervisors shall be given in accordance with notice and hearing procedures of Section 15.2-2204 of Code of Virginia, 1950, amended.

7-2.3 Standards for Variance: The Board may authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done.

(a) When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

(b) No such variance shall be authorized by the Board unless it finds:

- (1) That the strict application of the ordinance would produce undue hardship;
- (2) That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (3) That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- (4) No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

(c) In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

7-2.4 Non-conforming Does Not Constitute Grounds for Granting a Variance. No permitted or non-conforming use of neighboring lands, structures or buildings in the same district, or in other districts shall be considered grounds for the issuance of a variance.

7-2.5 Prohibition of Use Variances. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permitted under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

7-2.6 Conditions and Restrictions by the Board. The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the provisions set out in Section 7.2-3 to reduce or minimize the injurious effect of such variance upon surrounding property and to better carry out the general intent of this ordinance. The Board may establish expiration dates as a condition or as a part of the variance. The Board may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

Section 7-3 Right of Appeal

Any person, including any agency, office or department of the County government, aggrieved by a decision of the Board of Zoning Appeals, including on a variance application, may appeal any decision of the Board within thirty (30) days of the Board's decision to the Circuit Court of the County as provided for in Section 15.2-2314 of the Code of Virginia, 1950, as amended.

ARTICLE VIII ADMINISTRATION AND ENFORCEMENT

Section 8-1 Appointment of Zoning Administrator

The provisions of this Ordinance shall be administered and enforced by the zoning administrator, who shall be designated by the Board of Supervisors, and who may be provided with the assistance of other persons at the direction of the Board of Supervisors. The zoning administrator shall have all necessary authority to carry out the duties prescribed in this Ordinance on behalf of the Board of Supervisors. It shall be the responsibility of all other appointed officers and employees of the County to cooperate with the zoning administrator in the execution of his or her duties.

Section 8-2 Duties of Zoning Administrator

The zoning administrator shall be responsible for the administration and enforcement of this ordinance and shall have all necessary authority on behalf of the Board of Supervisors to carry out the following duties:

8-2.1 Interpretation. Subject to appeal to the Board of Zoning Appeals pursuant to the provisions of Article VII of this Ordinance, the zoning administrator shall be the final authority as to the interpretation of the provisions of this Ordinance.

8-2.2 Review and Approval of Applications. The zoning administrator shall review all applications for zoning permits, and shall approve or disapprove in writing the applications based on compliance or noncompliance with the provisions of this Ordinance.

8-2.3 Violations. The zoning administrator shall use his or her best effort to prevent violations of the provisions of this Ordinance and to secure the correction of violations. The zoning administrator shall order in writing the remedy of conditions found to be in violation, including discontinuance of illegal uses of land and buildings, the removal or bringing into compliance of illegal buildings, structures, additions and alterations. The zoning administrator shall have the authority to bring such legal action to ensure compliance and prevent violations, as authorized by the laws of the Commonwealth of Virginia.

8-2.4 Other Duties. The zoning administrator shall have such other duties with respect to the administration of this Ordinance as are specifically set forth elsewhere in the Ordinance.

8-2.5 Records. The zoning administrator shall maintain records of all official actions taken with respect to the administration and enforcement of this Ordinance.

Section 8-3 Zoning Permits

No building permit required by the provisions of the Virginia Uniform Statewide Building Code for new construction, building expansion, moving a building, change of building use, or a manufactured home shall be issued by the Building official until the

Zoning Administrator has approved a zoning permit. The Zoning Administrator shall review each application for a zoning permit and may require any other information which he or she may deem necessary for the consideration of the application.

8-3.1 Zoning Permits Required. No building or other structure shall be erected, moved, added to, or structurally altered or any land used, or occupied, without a zoning permit issued by the Office of the Zoning Administrator. Accessory buildings that do not require a building permit due to size are excluded from the requirement to have a zoning permit, however accessory buildings shall meet the setback requirement in Section 4-5.2. The following uses are not regulated by this chapter:

- a) Fences less than twelve (12) feet in height
- b) Retaining walls
- c) Landscape walls
- d) Signs
- e) Gardens
- f) Animal shelters less than sixteen (16) square feet in area
- g) Campers or recreational vehicles located and used on real property by the owner or occupant of the real property, except that these vehicles may not be used as a permanent residence
- h) Private garage and yard sales

8-3.2 Permits Not to be Issued. No zoning permit shall be issued for any land use, building, structure, or part thereof which is not in accordance with the provisions of this ordinance.

8-3.3 Application for Zoning Permits. The Zoning Administrator shall provide zoning permit application forms and instructions for the applicant which clearly facilitates timely review of the application. No permit shall be issued without a map number, and if available, a 911 street address.

a) Each application for a zoning permit shall be accompanied by a plan showing the following: 1) the shape and dimensions of the plot to be built upon, 2) the existing structures on the property, 3) the dimensions and locations of all proposed buildings or structures, including alterations or additions, 4) the existing and intended uses of the land and of each building or part of a building, 5) significant natural features of the property, including wooded areas and streams, 6) existing and proposed roads and driveways; and 7) existing public water and sewer lines.

b) The following information shall also be included: 911 street address (or state route number and approximate location if 911 address is not available), and map number;

c) The site plan shall be accompanied by plans and/or written description explaining the source of water supply, and means of sewage disposal.

d) The Administrator may accept an owner-prepared sketch for plans, as long as structure dimensions are clearly shown.

e) The Zoning Administrator may require other necessary information, as he or she deems necessary, including a topographic map of the site.

Any other information that the Administrator may deem necessary for consideration of the application may be required.

8-3.4 Procedures for Approval or Disapproval

a) If the proposed building or use is found to conform to the provisions of this ordinance, the Administrator shall issue a zoning permit to the applicant. Three copies shall be made of the approved permit and plan with one for the applicant, one given to the Building Inspection Office and one for the Zoning Administrator's files.

b) If the proposed building or use is not in compliance, the Administrator shall disapprove the zoning permit and advise the applicant in writing as to why the proposed building or use does not meet the provisions of the Ordinance. An applicant shall have right of appeal as permitted in Article VII of this Ordinance.

8-3.5 Zoning Permit Expiration Date: A zoning permit shall expire if use of the site authorized by the permit is not commenced within twelve months after issuance of the permit and completed within another twelve months.

Section 8-4 Review and Approval of Certificate of Occupancy

The Zoning Administrator shall review all certificates of occupancy for compliance with this Ordinance before approval by the Building Official.

8-4.1 Required for New and Altered Buildings. The Zoning Administrator shall review and either approve or disapprove all certificates of occupancy for buildings that are erected, constructed, reconstructed, enlarged, converted or moved.

8-4.2 Change in Use. The Zoning Administrator shall review and either approve or disapprove all certificates of occupancy for buildings that are changed to a different use.

Section 8-5 Duties of Administrator Regarding Enforcement and Remedies

8-5.1 Complaints Regarding Violations. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint that shall be signed and dated. The complaint shall state fully the causes and basis of such complaint and shall be filed with the Zoning Administrator. The Zoning Administrator shall properly record the complaint, and shall promptly investigate and take such action as provided for in this ordinance. The County Attorney shall be immediately advised of

all violations of this ordinance. The Zoning Administrator shall report to the Board of Supervisors any violations not abated through orders issued by the Zoning Administrator.

8-5.2 Enforcement Provisions and Penalties for Violation. The following enforcement actions may be taken by the zoning administrator:

a) The Zoning Administrator shall enforce the ordinance in accordance with Section 15.2-2286 (4) which includes ordering in writing the remedying of any condition in violation of the ordinance, and insuring compliance with the ordinance through legal action; and

b) The Zoning Administrator may seek penalties in accordance with Section 15.2-2286 (5) of the Code of Virginia.

8-5.3 Remedies. Upon finding that any provision of this ordinance is being violated, the Zoning Administrator shall notify in writing by certified mail the person responsible for such violation which shall be the Owner, as defined by Article X of this Ordinance, and order the discontinuance of an illegal building, structures, illegal additions, alterations or structural changes, uses, and the discontinuance of any illegal work being done.

Should such notice fail to force compliance within thirty (30) days of the date of the notice, the Zoning Administrator may take the following actions

- a) In case any building or other structure is proposed to be erected, constructed, reconstructed, altered, extended or converted, or any building, other structure or land is or is proposed to be used in violation of this ordinance, the Zoning Administrator, Deputy Zoning Administrator, or administrative officer shall, in addition to other remedies, institute an injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, extension, conversion or use, to correct or abate such violation, or to prevent the occupancy of such building or other structure or land, or
- b) The Zoning Administrator may request that the County Administrator or Board of Supervisors authorize the County Attorney to bring legal action to insure compliance with the ordinance, including injunction, abatement or other appropriate action or proceeding.

8-5.4 Appeal. An appeal of the Zoning Administrator's decision shall be filed within thirty (30) days by filing a letter with the Zoning Administrator. Appeals shall go to the Board of Zoning Appeals.

Section 8-6 Duties of Administrator on Zoning Amendments, Zone Map Changes (Rezoning), Special Use Permits, Variances, and Appeals

8-6.1 Applications and procedure. The Zoning Administrator is responsible for receiving each application for a zoning amendment, including a change to the zoning map (rezoning), special use permit, variance, or appeal, and processing those requests as provided for in other Articles of this Chapter, including meeting the public notice requirements contained in 15.2-2204 of the Code of Virginia.

8-6.2 Filing Fees. Filing fees for the above applications shall be based upon reasonable costs to pay for the expenses involved. The fees shall be as follows:

Zoning Permit	No Fee
Zoning Amendment (Text Change)	\$75.00
Rezoning (Change to Zoning Map)	\$75.00
Special Use Permit	\$75.00
Variance	\$75.00
Appeal	\$75.00

If the decision of the Board of Zoning Appeals is substantially in favor of the appellant, the \$75.00 fee shall be refunded to the appellant.

ARTICLE IX AMENDMENTS

Section 9-1 General

Whenever public necessity, convenience, general welfare or good zoning practice require, and subject to the procedures and requirements set forth in Section 15.2-2285 and 15.2-2286 of the Code of Virginia, 1950, as amended, the regulations, restrictions and district boundaries established by the Ordinance may be amended, supplemented, changed or repealed by ordinance adopted by the Board of Supervisors. Any ordinance to amend the provisions of this Ordinance shall be enacted consistent with state law and the requirements for adoption of ordinances.

Section 9-2 Procedure for Amendment

9-2.1 Board or Commission Action. The Board of Supervisors may from time to time, on its own or upon motion of the Planning Commission, or on petition as hereinafter provided, after public hearing(s) as required by law, and after report by the Planning Commission, amend, supplement, change or repeal the district boundaries on the official zoning map or any of the provisions of this Ordinance contained herein or subsequently established.

9-2.2 Owner Amendment. A petition to amend this Ordinance or change the zoning district boundaries herein or subsequently established may be filed with the Zoning Administrator by the owner(s) or representative agent of the owner(s) of an area proposed to be rezoned. Such petition shall be filed with the Zoning Administrator on forms provided by the Zoning Administrator for such purpose. The petition shall be accompanied by the required filing fee and a certified plat, legal description, or such other documentation as prescribed by written policy established by the Planning Commission. The information for a zoning map amendment application shall be consistent with the requirements for a zoning permit application in Section 8-3.3. The amendment application shall also require an oath regarding property interest of local officials as allowed in Section 15.2-2287 of the Code of Virginia, and complete disclosure of ownership as allowed in Section 15.2-2289.

9-2.3 Hearing and Notice Required. A joint or separate public hearing of the Planning Commission and Board of Supervisors shall be held on any proposed amendment to the provisions of this Ordinance, including amendments to zoning district boundaries, subject to public notice requirements of Section 15.2-2204 of the Code of Virginia, 1950, as amended. Nothing in this article shall require two public hearings if a joint public hearing is held.

9-2.4 Report of Planning Commission. No action shall be taken by the County Board of Supervisors upon any motion or petition to amend this ordinance until such motion or petition has been referred to the Planning Commission for a report thereon and until such report has been received from the Planning Commission.

9-2.5 Final Action by Board of Supervisors. After receiving a report from the Planning Commission and after giving public notice and holding a public hearing, if the Board of Supervisors did not attend a joint public hearing with the Planning Commission, the Board of Supervisors may adopt or reject the proposed amendment, or may make appropriate changes or corrections to the amendment, provided that no land may be zoned to a more intensive use classification nor shall a greater area of land be rezoned than was described in the public notice without referral to the Planning Commission and an additional public hearing after public notice as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended.

9-2.6 Continuance or Withdrawal. Final action on any proposed amendment may be continued by the Board of Supervisors for good cause, provided that all resolutions, motions or petitions for amendments to the provisions of this ordinance shall be acted upon and a decision made by the Board within one year of the date of such resolution, motion or petition. This provision shall not apply if the petitioner requests or consents in writing to action beyond such period or if the resolution, motion or petition initiating the amendment is withdrawn by providing written notice to the Clerk for the Board of Supervisors. In the case of withdrawal, no further action on the amendment is necessary.

9-2-7 Filing of New Petition After Rejection. When any petition for a proposed change in this ordinance has been denied by the County Board of Supervisors, no subsequent petition for the same, or substantially the same change, in whole or in part, shall be filed with or accepted by the Zoning Administrator, or any proceeding therefore commenced or maintained, within twelve months of the date of the action of the County Board of Supervisors denying said proposed change.

Section 9-3 Conditional zoning amendments

9-3.1 Conditions for rezoning. Any owner of property making application for a change in zoning or amendment to the zoning map as part of the application may voluntarily proffer in writing reasonable conditions, prior to a public hearing before the Board of Supervisors. These conditions, which would be in addition to the regulations and requirements for the zoning district or zone by this chapter, would become a part of the rezoning or amendment to a zoning map; provided that:

- a) The rezoning itself must give rise for the need for the conditions;
- b) Such conditions shall have reasonable relation to the rezoning;
- c) The conditions shall not include a cash contribution to the locality;
- d) The conditions shall not include a requirement that the applicant create a property owners association, as specified in 15.2-2297

- e) Such conditions shall not include mandatory dedication of real or personal property for open space, park, schools, fire departments or other public facilities not otherwise provided for in the Code of Virginia.
- f) Such conditions shall not include payment for construction of off-site improvements except those provided for in 15.2-2241 of the Code of Virginia;
- g) No condition shall be proffered that is not related to the physical development or physical operation of the property; and
- h) All such conditions shall be in conformity with the comprehensive plan as defined in the Code of Virginia

9-3.2 Effect of conditions. Upon the approval of any such rezoning or amendment to this chapter all conditions proffered and accepted by the Board of Supervisors shall be deemed part thereof and nonseverable therefrom and shall remain in force and continue in effect until amended or modified by the Board of Supervisors in accordance with Code of Virginia, however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance. All such conditions shall be in addition to the regulations provided for by this Chapter for the zoning district.

9-3.3 Zoning Map Notation and Records. Each conditional rezoning shall be designated on the zoning map by an appropriate symbol determined by the zoning administrator. In addition, the zoning administrator shall keep and maintain a conditional zoning index which shall be available for public inspection and which shall provide ready access to the Board of Supervisors action creating such conditions.

9-3.4 Submittal Requirements. Each application for rezoning which proposes conditions to be applied to the written request shall be accompanied by the following items beyond those required by conventional rezoning requests:

- a) A statement detailing the nature and location of any proffered conditions and those proposed circumstances that prompted the proffering of such conditions.
- b) A signed statement by both the applicant and owner in the following form:

I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission.

9-3.5 Enforcement and guarantees. The zoning administrator shall be vested with all necessary authority on behalf of the county to administer and enforce conditions attached to the rezoning or amendment to a zoning map including:

- a) The order in writing of the remedy of any noncompliance with such conditions;
- b) The bringing of legal action to ensure compliance with such conditions including injunction, abatement or other appropriate action or proceeding; and
- c) Requiring a guarantee in an amount sufficient for or conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the guarantee, in like amount and so conditioned, which guarantee may be reduced and /or released by the zoning administrator upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided further that failure to meet all conditions shall constitute cause to deny the issuance of any required use, occupancy or building permits as may be appropriate.

Section 9-4 Right of Appeal

Every action contesting a decision of the Board of Supervisors adopting or failing to adopt a proposed amendment to the zoning ordinance shall be filed within thirty days of the decision with the Smyth County Circuit Court as provided in Section 15.2-2285(f) of the Code of Virginia, as amended. However, nothing in this section shall be construed to create any new right to contest the action of a local governing body.

ARTICLE X DEFINITIONS

10-1 Accessory building or structure. A building used for purposes customarily incidental to and clearly subordinate to the use of the lot on which it is located. Size may not be greater than the residence in the residential zone.

10-2 Accessory use. A use of land or use of a building for purposes customarily incidental to and clearly subordinate to the use of the lot on which it is located

10-2.1 Adult book store and adult video store. An establishment which has more than fifteen (15) percent of the total floor area utilized for the display of books, magazines, periodicals, films, videos or similar printed materials and which, with respect to the entire premises or a portion or a section of the premises, limits its customers to persons over 18 years of age, or as one of its principal business purposes offers for sale, rental, or viewing for any form of consideration any one or more of the following: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”; or instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities” as defined in Article 10.

10-2.2 Adult drive-in-theater. An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons.

10-2.3 Adult entertainment establishment. A restaurant, nightclub, private club, or similar establishment which features, on a regular basis, live performances involving persons who are nude or seminude. Seminude shall mean less than completely and opaquely covered pubic region, buttocks, or female breasts below a point immediately above the top of the areolae, excepting any portion of the cleavage of the female breast exhibited by a dress, shirt, leotard, bathing suit, or other wearing apparel, provided the areolae are not exposed, but under no circumstances less than completely covered genitals, anus, or areolae of the female breast. Any establishment that features such performances more than one day in a thirty (30) day period shall be deemed to be an adult entertainment establishment.

10-2.4 Adult mini-motion picture theatre. An establishment, with a capacity of more than five (5) but less than fifty (50) persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or

description of “specified sexual activities” or “specified anatomical areas” for observation by patrons.

10-2.5 Adult model studio. Any establishment open to the public where, for any form of consideration or gratuity, figure models who display “specified anatomical areas” are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity.

10-2.6 Adult motion-picture arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing “specified sexual activities” or specified “anatomical areas”.

10-2.7 Adult motion picture theater: An establishment, with a capacity of fifty (50) or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown; and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas” for observation by patrons.

10-2.8 Adult retail store: An establishment that sells instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

10-2.9 Adult use. Any adult bookstore, adult video store, adult entertainment establishment, adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, adult model studio, adult drive-in theater, or massage parlor as defined herein. Also included are establishments that sell instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

10-3 Agricultural equipment sales and service. Any establishment with the primary purpose of selling, cleaning, or repairing farm machinery.

10-4 Agriculture. Any use of the land, involving the following activities: the tilling of soil, the cultivation of crops, keeping and raising of livestock, animal and fowl husbandry, groves and nurseries for growing trees and other plants, horticulture, floriculture, viticulture, aquaculture, and forestry; and including incidental processing, storing and selling of products raised and produced on the premises, and including all structures, machinery and activities necessary to support such uses. Excludes commercial greenhouse, commercial slaughterhouse, commercial stables, and fruit packing operations which are defined separately.

10-5 Animal clinic. An establishment where animals such as dogs, cats, other small

pets, and livestock are provided medical or surgical treatment. Includes the terms animal and veterinary hospital.

10-5.1 Antique/Craft Shop: A retail business dealing in the sale of items of antique furniture, pottery, paintings or similar items and locally produced or imported hand crafted items.

10-5.2 Arena. A privately owned compound or complex where spectator events or competitions are staged.

10-5.3 Auction House: A building where objects of art, furniture, and other goods are offered for sale to persons who bid on the object in competition with each other. Open-air auctions are not included in this definition.

10-6 Auto body shop. An establishment in which damaged vehicles are repaired or painted for a fee.

10-7 Automobile graveyard. Any area outside of a completely enclosed building used for the storage, keeping, or parking of three (3) or more motor vehicles, unlicensed or incapable of being operated. Farm use vehicles are excluded.

10-8 Automotive sales and service. Any establishment with primary purpose of selling, cleaning, servicing, or repairing motor vehicles, excluding auto body shop.

10-9 Bed and breakfast inn. A dwelling, or portion thereof, where short-term lodging rooms and meals are provided. The operator of the inn shall live on the premises or in adjacent premises.

10-10 Building. A combination of any materials, whether portable or fixed, having a roof or other cover to form a structure for the use or occupancy by persons or property.

10-10.1 Building, Principal . A building in which is conducted the principal use of the lot on which it is located.

10-11 Call center and/or data processing facility. An establishment in which office space is used for in-bound and out-bound telephone calls and/or computer data records related to sales or customer service information for private business or government operations.

10-12 Campground. An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and recreational vehicles, and which is primarily used for recreational purposes.

10-13 Childcare center. Any facility operated for the purpose of providing care, protection and guidance to a group of more than five (5) children separated from their parents or guardians during a portion of the day, and meeting the licensing requirements

for childcare centers in the Code of Virginia, 1950, as amended. The term shall not include family day care home that is considered a home occupation in this Ordinance

10-14 Commercial greenhouse. A commercial establishment where a glassed or transparent enclosure is used for the cultivation of plants for on-site retail sales to the general public. Definition excludes greenhouses that are associated with active farm operations that are under the definition of agriculture.

10-15 Commercial slaughterhouse. A commercial establishment in which livestock is slaughtered and the meat is processed for sale and which meets federal or state standards.

10-16 Commercial stables. An establishment where horses are kept for commercial use; including boarding, show, and hire or sale.

10-17 Communication Tower. A structure, which is primarily intended to support communication equipment for telephone, radio, and similar communication purposes. The term does not include towers utilized by amateur radio operators not licensed by the Federal Communications Commission (FCC).

10-17.1 Emergency Communications Network Tower (ECN). A communications tower which support(s) an Emergency Communications Network operated by a Governmental Entity.

10-18 Community center. A structure or area used for fraternal, social, cultural, and/or recreational programs generally open to the public and designed to serve significant segments of the local community.

10-19 Construction sales and service. Any establishment involved in the sale of building materials including hardware, plumbing, and lumber supplies, or the sale of building construction services for the erection or repair of structures.

10-20 Convenience store or general country store. Any retail establishment offering for sale food products, beverages, household items, and other goods commonly associated with the same, including gasoline sales as a secondary activity, and having a gross floor area of less than 5,000 square feet.

10-21 Country inn. See definition under "lodge".

10-22 Dwelling, accessory. A second dwelling unit attached or detached on a premise occupied by a single-family residence such as a garage apartment; or a dwelling unit on a premise occupied by a commercial establishment when the commercial building is the primary use. The accessory dwelling unit shall not be in excess of 1,000 square feet in size. A manufactured home is not an accessory dwelling unit.

10-23 Dwelling, multi-family. A building which contains three (3) or more dwelling units. Also known as apartment building, but term does not include townhouse which is

defined separately.

10-24 Dwelling, single-family. A building that is completely separated from any other main building and which contains only one dwelling unit.

10-25 Dwelling, two-family. A building that contains two dwelling units. Also known as a "duplex."

10-26 Dwelling, unit. A room or group of rooms within a building and constituting a separate and independent housekeeping unit occupied or intended for occupancy by one family and containing kitchen, sleeping and sanitary facilities.

10-27 Eldercare center. A facility operated for providing care to a group of elderly persons during part of the day only and meeting the licensing requirements under the Code of Virginia, 1950, as amended.

10-28 Electric generating or booster facilities. A major public utility structure with associated equipment that generates electrical power or assists in the transmission of power, including power substations and high voltage electric towers. Does not include public utility lines for local distribution.

10-28.1 Entertainment Establishment. Privately owned facilities designed for entertainment such as a dinner theatre, opera, symphony or musical groups.

10-29 Family. One or more persons related by blood, marriage, or adoption, including foster children, or not more than five unrelated persons occupying a single dwelling unit. The term does not include a fraternity, sorority, club, or group of persons occupying a hotel, motel, boardinghouse, or institution of any kind.

10-29.1 Feed and seed store. A facility engaged in storing and processing for retail sales of livestock food items and agricultural seed items used for production of food items for both human and animal consumption.

10-30 Flea market. An occasional or periodic sales activity held within a building, structure, or open area where groups of individual sellers offer goods, new and used for sale to the public.

10-30.1 Forestry Operations, Permanent. The use of land for planting, management and harvesting of timber resources, which includes but is not limited to log yards, mulch production, and composting.

10-30.2 Forestry Operations, Temporary. The use of land for planting, management and harvesting of timber resources, but does not include a stationary sawmill as defined herein. This may include the use of portable sawmills and chippers on site as a temporary use.

10-31 Fruit and/or vegetable packing plant. A building used for the preparation and process of fruits and vegetables for shipment or storage and sales.

10-31.1 Game room. A facility containing a variety of lawful arcade components for pinball, air hockey, billiards, checkers and similar games.

10-31.2 Garage. A deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

10-32 General country store. See definition under "convenience store".

10-32.1 Group care facility: A residential facility or dwelling unit housing persons unrelated by blood, marriage, adoption, or guardianship, including congregate homes and group care homes,

- (a) Congregate home: A group care facility providing accommodation and supervision to more than five individuals where medical care is not a major element and including homes for orphans, foster children, veterans, the elderly, pregnant teenagers, nonresident families of hospitalized patients, mentally handicapped, or similar uses.
- (b) Group care home: A group care facility in which more than eight mentally ill, mentally retarded, or developmentally disabled persons reside with one (1) or more resident counselors or other staff persons.

10-33 Group Home—A residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Virginia State Code § [54.1-3401](#). No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to State Code.

10-34 Health/Fitness club. An indoor facility including uses such as game courts, exercise equipment, locker rooms, jacuzzi, and/or sauna or pro shop. Health club means, but is not limited to, gymnasiums, private clubs, and weight control establishments.

10-35 Home Occupation. An occupation, profession, activity, or use that is clearly an incidental and secondary use of a residence, and shall meet the following requirements:

- a) No person other than members of the family residing on the premises shall be engaged in such occupation;
- b) A home occupation may be conducted in any accessory building located on the same lot if clearly incidental to the dwelling unit;
- c) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street or in a rear or side yard.

The term “home occupation” includes the operation of a family day care establishment, as defined by the Code of Virginia, 1950, as amended. The term does not include the repair, rebuilding, maintenance, sales or storage of motor vehicles, or similar activities.

10-36 Hunting Club. A parcel of land with or without a building used for the purpose of organized sportsmanship in the act or practice of pursuing and taking wild animals.

10-37 Incineration Facility. A permitted facility to reduce the volume of solid wastes, extracting in some cases energy in the form of steam, heat, or electricity, and disposing the remaining ash in solid waste land filling facility.

10-38 Junkyard. The use of any area of land for the location or the storage, keeping, or abandonment of discarded materials, including scrap metals, building materials, machinery, household appliances, furnishings, fixtures, or motor vehicles or parts thereof. The term “junkyard” includes automobile, mobile home, and manufactured home graveyard, but does not include landfill or garbage dump.

10-39 Kennel. An establishment prepared to house, board, breed, handle, or otherwise keep or care for dogs, cats, or other small animals for sale in return for compensation.

10-40 Landfill. A sanitary landfill, an industrial waste landfill, or a construction, demolition or debris landfill, as defined by the Virginia Waste Management Board, and which no event shall accept or be used for the disposal of any hazardous or infectious wastes, materials, or substances as defined under said regulations.

10-40.1 Library. A facility containing books and instruments of educational, historical and medical information available for public use.

10-40.2 Light Manufacturing. Manufacturing activities that do not occupy a building of more than 15,000 square feet, do not employ more than fifteen (15) employees, have no exterior storage outside of an enclosed screening, which screening prohibits visibility

from adjacent or neighboring properties, and do not require air pollution control emission or wastewater pre-treatment permits.

10-41 Lodge or country inns. A facility offering overnight accommodations as a destination point for visitors and providing additional services such as a restaurant, meeting rooms and recreational facilities.

10-42 Lot. A parcel of land occupied or intended for occupancy by buildings, or uses permitted by the provisions of this Ordinance, together with such area, yards and other open spaces as are required by this Ordinance. The term “lot” includes the terms “tract” and “parcel” and may consist of a single lot of record, a combination of contiguous lots of record, or a unit of land described by metes and bounds.

10-42.1 Lot line(s). The perimeter or connection(s) of datum lines which establish the boundary of a piece of property and are set out in an officially recorded deed of ownership.

10-43 Lot of Record. A lot that has been legally recorded in the Clerk’s Office of the Circuit Court with a surveyed plat, a written metes and bounds description, or an existing description of record.

10-43.1 Machinery sales and service. A facility engaged in the sale, repair and/or periodic maintenance of industrial or production related equipment such as boring machines, hydraulic presses, etc.

10-44 Manufactured home. Any structure complying with the Federal Manufactured Housing Construction and Safety Standards or meets the requirements of the Commonwealth of Virginia for non-certified industrialized buildings as set out in §13-VAC-5-91-120, or amendments thereto, and which is transportable in one or more sections; is eight body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is 320 or more square feet when erected onsite; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical system contained in the structure.

10-45 Manufactured home park. A site, lot, or tract of land equipped to accommodate four or more manufactured homes for dwelling purposes.

10-45(A) Massage parlor. Any establishment, whether private or public, operated as a massage salon, bath parlor or similar type of business where any physical or mechanical contact is made to a recipient’s body by another person or mechanical device for the purpose of massaging or stimulating the recipient’s body.

10-45.1 Medical Care Facility. Any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or

nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more non-related mentally or physically sick or injured persons, or for the care of two or more non-related persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical services plans.

10-45.2 Medical supplies and services. A facility engaged in the retail sale and/or Rental of medical related equipment for home use on a temporary or permanent basis as well as the providing of persona professional assistance. This category excludes any medicines, prescriptions, drugs or equipment requiring supervised administration by a licensed medical professional.

10-46 Mini-warehouse. A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods or contractors supplies.

10-46.1 Mining, quarrying and mineral extraction. Removal of naturally formed elements from the land for further processing into a form or product for energy, building supplies or similar uses.

10-46.2 Motel/hotel. A privately owned facility providing temporary lodging accommodations to the general public, with or without dining facilities, for a fee and consisting of at least ten separate units.

10-47 Manufactured home graveyard. Any site or tract of land used for the storage, keeping, or parking of two (2) or more used manufactured homes which are in an uninhabitable condition or do not comply with Federal Manufactured Housing Construction and Safety Standards.

10-47.1 Museum. A building or place devoted to the acquisition and exhibit of items or artifacts of historical interest and educational value accessible by the general public.

10-48 Non-conforming Feature. A characteristic of a building that was existing at the effective date of this ordinance or subsequent amendment thereto; but which does not meet the yard, height, or area regulations for the district in which the building is located.

10-49 Non-conforming Use. A principal or accessory use of land or of a building, which use was existing at the effective date of this ordinance or subsequent amendment thereto; but which is not a use permitted by right under the district regulations in Article III for the district in which it is located, or is a special use in the district in which it is located, but for which no special use permit has been approved.

10-49.1 Nursery. Property dedicated to growing, harvesting or sale of decorative plantings or consumable herbs and vegetables.

10-50 Owner. Means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

10-50.1 Park. An area open to the general public and reserved for recreational, educational, or scenic purposes.

10-51 Personal service business. Any establishment involved in the transaction of services, as opposed to goods, and which caters to the personal needs of individuals. The term includes, but is not limited to, the following types of businesses: beauty or barber shop, fitness center, shoe repair shop, dance studio, photography shop, tanning shop, home computer services, or travel agency.

10-52 Print shop. A retail establishment that provides duplicating services using photocopy, blueprint, and offset printing equipment, including collating of booklets and reports.

10-53 Printing establishment. A manufacturing facility in which large volume printing of books, magazines, and other like materials are processed for shipment.

10-53.1 Private school. A privately owned, privately operated facility providing general educational activities for a fee or by scholarship to its students.

10-54 Professional office. An office in which business is conducted by the following professions: medical-related professionals, including physicians, dentists, eye care specialists; lawyers, architects, engineers, surveyors, insurance agents, real estate agents, and other similar professions. Term does not include facilities for the care and treatment of persons suffering from alcohol or substance abuse (see “Medical Care Facility”).

10-55 Public utility. Poles, lines, distribution transformers, pipes, meters and other facilities necessary for the provision and/or maintenance of public utilities, including water and sewage facilities.

10-56 Recreation facilities. Facilities which are typically privately owned and operated for personal and/or family recreational uses, including golf course, game rooms, summer camps, and other similar uses.

10-57 Rest Home means a building or structure used or intended to be used as a rest home under conditions imposed by state law.

10-58 Retail Stores and Shops. Buildings for the display and retail sale of merchandise (but specifically exclusive of coal, wood and lumber yards), such as the following examples: drug stores, news stands, food stores, candy shops, department or discount stores, dry goods, and notions stores, antique stores, gift shops, hardware stores, household appliances stores, furniture stores, florist, optician, music, radio or computer stores, tailor shops, bakery shops, and craft shops.

10-59 Recreational dwelling. A cabin, tent, camper or similar unit used for hunting, fishing, camping or similar temporary recreational activities and occupied less than 180 days a year.

10-60 Recreational vehicle. A motor vehicle, as a camper or mobile home, used for traveling and recreational activities.

10-61 Recreational vehicle park. Any lot of land on which one or more recreational vehicle sites are located, established, and maintained for occupancy by recreational vehicles as temporary living quarters for recreation or vacation purposes. Does not include recreational vehicle sales lots.

10-62 Roadside market. A structure or area of land used for more than a three-day period for the sale of locally produced agricultural or horticultural products, antiques, and/or locally made craft items. Term does not include sales of farm products located on farm premises which comes under the term "agriculture."

10-62.1 Rodeo ring. A place for competition or exhibition of skills such as riding broncos or roping calves.

10-63 Sawmill, stationary. Any milling machine, and associated structures, used for changing raw timber into lumber products on an ongoing basis and processing timber brought from off premises

10-64 Sawmill, temporary. Any milling machine used for changing raw timber into lumber products on a temporary basis and processing only timber from the immediate premises.

10-65 Service business. An establishment providing domestic and business-related services, including but not limited to, the service, repair, and rental of home and office equipment such as radios, televisions, video equipment, computers, home appliances, furniture, yard and garden equipment, tools, bicycles, locks, office machines, and other similar equipment; and other home and office services such as package delivery services, telecommunications service, building repair and maintenance services, including janitorial, pest control, and carpet cleaning service.

10-66 Special use. A use that is not permitted by right in a particular district, but is

permitted if granted a special use permit. Defined as a “special exception” by the Code of Virginia and can also be termed a “conditional use”.

10-66.1 Specified anatomical areas: Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola, and human male genitals in discernibly turgid state, even if completely and opaquely covered.

10-66.2 Specified sexual activities. Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; and fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

10-67 Storage warehouse. A structure and business used for the purpose of storing manufactured goods, tooling, equipment, or raw goods for processing, distribution, or sale under contract, for more than thirty (30) days at a time.

10-68 Solid waste/recycling convenience station. A permitted facility to receive solid wastes for disposal in land filling operation or for storing or compacting for reshipment to another facility.

10-69 Street. A publicly maintained right-of-way which affords a primary means of access to abutting property.

10-70 Structure. Anything constructed or erected, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground.

10-71 Subdivision. As defined in the Smyth County Subdivision Ordinance.

10-71.1 Truck stop. A facility designed for primary use by the trucking industry with fuel, minor maintenance, food or rest facilities available.

10-71.2 Truck terminal. A facility used for staging, storing, loading and distribution of freight for delivery by truck. Long term parking and major maintenance activities may also be provided.

10-72 Townhouse. As defined in the Smyth County Subdivision Ordinance.

10-73 Variance. A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner.

10-73.1 Vested rights. Constitutionally protected rights of persons or property to continue to exist as they existed at a point in time and such use was in compliance with

regulations in effect at that time. Rights which may not be and have not been eliminated by subsequent regulation amendment(s).

10-73.2 Vineyard/winery. Property devoted to growing fruits for further processing into consumable wine products.

10-73.3 Wildlife refuge. Property used for the preservation and protection of game and non-game wildlife from hunting and taking.