

ZONING AND LAND USE

VIRGINIA MUNICIPAL LEAGUE
CONFERENCE FOR VIRGINIA'S LOCAL ELECTED OFFICIALS
THE PLACE AT INNSBROOK
JANUARY 8, 2025

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INTRODUCTION

- **Planning is the most important government authority**
- **Comprehensive approach is essential to success**
- **Role of local government is to reconcile individual economic interests with community concerns**
- **Zoning is a legislative and political process**
- **Zoning can only be changed by an affirmative act of the local governing body**



ROLES

- **Planning Commission:** established by Council. It is advisory to the governing body and makes recommendations to the Council. At the direction of the council or on its own initiative, can: (i) make the official map, (ii) annually prepare and revise the capital improvement plan based on the comprehensive plan every five years, (iii) prepare and recommend amendments to the subdivision ordinance, and (iv) prepare and recommend amendments to the zoning ordinance including maps.
 - **Although advisory, planning commission plays a vital role in legislative zoning ordinance adoption process because governing body cannot adopt zoning regulations until planning commission has held public hearing and made recommendation**
- **Council:** Governing body of locality. Council makes the final decision on land use matters that are legislative in nature such as comprehensive plan amendments, zoning text amendments, zoning map amendments, conditional use permits and the capital improvement plan.



ROLES

▪ **Zoning Administrator**

- Agent or representative of the governing body
- Authority on behalf of the governing body to administer and enforce the zoning ordinance
- Authority to order the remedying of zoning ordinance violations; bring legal action to ensure compliance with the ordinance; make factual findings and, with concurrence of the attorney for the governing body, conclusions of law regarding vested rights determinations

▪ **Board of Zoning Appeals**

- Recommended by governing body but appointed by court
- Empowered to hear and decide after notice and hearing, appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the zoning ordinance
- Hear and decide variances
- Interpret the district map (when there is uncertainty about the location of a district boundary)
- If authorized by local ordinance, can hear and decide applications for Conditional use (special use) permit and impose conditions



THE DILLON RULE

- A governing body has ***only*** those powers expressly granted by the General Assembly, those powers necessarily or fairly implied from the express powers, and powers that are essential and indispensable.
 - *Put simply: a locality's zoning powers are fixed by statute and are limited to those conferred expressly or by necessary implication.*
- Rule of strict construction—if the enabling statute does not allow it, the local governing body does not have the power. If the enabling statute or ordinance requires a certain procedure, and that procedure is not followed, the action is void.



DILLON RULE (CONTINUED)

- Legislative zoning decisions that do not follow all procedural requirements outlined in the enabling statutes are ultra vires, and therefore void ab initio
- Four actions that need to be taken before action can be taken on certain land use matters (*see section 15.2-2204*):
 - **First:** proposal must be initiated by (i) resolution of governing body, (ii) motion by planning commission, (iii) petition of owner, contract purchaser with owner's written consent, owner's agent
 - **Second:** proposal must be referred to planning commission for review (can be the same time as initiation or can less formally by Zoning Administrator)
 - **Third:** planning commission must give public notice in accordance with 15.2-2204 and conduct a public hearing.
 - Failure to present recommendation within 100 days or shorter period is deemed approval by planning commission
 - **Fourth:** Upon receipt of planning commission report/recommendation, governing body must give public notice and conduct its own public hearing
 - Note: A joint notice and public hearing by the planning commission and governing body is also authorized



ENABLING LEGISLATION

- **§ 15.2-2200 lists purposes for land use controls in general**
- **§15.2-2223 describes the scope and purpose of the comprehensive plan**
- **§ 15.2-2283 lists purposes for zoning ordinances in particular**
- **§ 15.2-2284 lists factors to consider in establishing district boundaries**



§ 15.2-2200

PURPOSE OF LAND USE CONTROLS

- **Improve the public health, safety, convenience and welfare**
- **Plan for the future development of communities**
- **Careful planning of transportation systems**
- **Adequate highway, utility, health, educational and recreational facilities**
- **Recognition of need for mineral resources, agriculture, industry and business**
- **Healthy surroundings for family life in residential areas**
- **Preservation of agricultural and forestal land**
- **Growth of community consistent with efficient and economical use of public funds**



§ 15.2-2223

COMPREHENSIVE PLAN - SCOPE AND PURPOSE

- Reviewed at least once every five years to determine whether it needs revisions
- The comprehensive plan is a **general guide** for the physical development of the locality and outlines long-term vision and goals for land use, development, and growth.
- Generally, serves as a “blueprint” for guiding land use, infrastructure updates, and overall community development. More specifically, it may help inform decisions on zoning text amendments, zoning map amendments (rezonings), conditional use permits, and other legislative decisions made by the governing body.
- **Does not have status of law like Zoning Ordinance**—but it is an important guide that supports zoning ordinance and zoning decisions



NARROW EXCEPTION (“2232 REVIEW”)

- **Comprehensive plan has more of a “legal effect” when it comes to the location of certain public facilities**
- **Once a comprehensive plan is adopted, unless the public feature is already shown on the comprehensive plan—no street or connection to an existing street, public building, public structure or public utility facility...shall be constructed, established or authorized unless , unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof**
 - **only applies to specifically-named public infrastructure and public utility improvements, and not to private features, uses and structures**



§ 15.2-2223

COMPREHENSIVE PLAN (CONTINUED) THE COMPREHENSIVE PLAN MAY INCLUDE:

- **Designation of areas for various types of development and use**
- **Designation of system of transportation facilities**
- **Designation of system of community services facilities**
- **Designation of historical areas**
- **Official map, capital improvements program, subdivision ordinance, zoning ordinance and maps**



§15.2-2283

PURPOSE OF ZONING ORDINANCES

- Accomplish the objectives of § 15.2-2200
- Provide for adequate light, air, convenience of access and safety
- Reduce congestion in public streets
- **Facilitate creation of convenient, attractive and harmonious community**
- Facilitate adequate fire and police protection, transportation, water, sewage, flood protection, schools, parks, etc.



§ 15.2-2283

PURPOSE OF ZONING ORDINANCES (CONTINUED)

- **Protect historic areas**
- **Protect against undue density of population in relation to community facilities**
- **Encourage economic development**
- **Preserve agricultural and forestal land and natural environment**
- **Protect safety areas of licensed airports**
- **Create affordable housing suitable for current and future needs of the community**



§ 15-2-2284

MATTERS TO BE CONSIDERED IN APPLYING ZONING DISTRICTS

- Existing use and character of the property
- Comprehensive Plan
- Suitability of property for various uses
- Trends of growth and change
- Current and future requirements of the community (transportation, airports, housing, schools, parks, playgrounds, recreation areas and other public services)
- Transportation requirements of the community
- Protection of life and property from impounding structure failures
- Conservation of natural resources, preservation of flood plains, preservation of agricultural and forestal land
- Conservation of properties and their values
- Encouragement of the most appropriate use of land throughout the locality



BY-RIGHT ZONING

- **By-right development refers to projects that are permitted under their current zoning and do not require public hearings or action by the governing body (no conditional use permit).**
- **By-right development projects must conform to zoning and building codes and are also required to obtain the appropriate permits and inspections.**



CONDITIONAL USE (SPECIAL USE) PERMIT

- Public hearing is necessary before the planning commission and governing body
- allow by permit a use on a property that is not already allowed by right
- Addresses potential impacts that a particular use may have on neighboring properties.
- Conditions must bear a reasonable relationship to a legitimate concern or problem generated by the use.



CONDITIONAL USE (SPECIAL USE) PERMIT

- Conditions do not have to be volunteered by applicant.
- Conditions may include the period of validity for the permit; however for residential projects, the period of validity shall be no less than three years.



§ 15-2-2284

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- Any standards or criteria provided in locality's zoning ordinance



POTENTIAL GROUNDS TO DENY V. UNREASONABLE GROUNDS TO DENY PERMIT

POTENTIAL GROUNDS

- the applicant fails to meet all of the requirements in the zoning ordinance for the granting of the permit.
- the proposed use is inconsistent with the comprehensive plan.
- the proposed use would have adverse impacts on the character of the neighborhood.
- the proposed use would have adverse impacts on roads or create a hazardous traffic situation.
- the proposed use would have an adverse impact on the abutting property.

**Note: in some cases, many such concerns could be addressed satisfactorily through permit conditions*

UNREASONABLE GROUNDS TO DENY

- not related to any zoning interest (ex: decisions based on an opinion, fear, or personal reasons and unsubstantiated by factors applicable to zoning regulations)
- not related to any zoning interest and based solely on heavy opposition of citizens not related to any zoning interest.



REZONING

- **Purpose:**

- **To change the zoning classification of a piece of property**, or properties, in order to develop or use the land for purposes other than what is permitted by the current zoning classification in the zoning ordinance.
- Public hearing is necessary before the planning commission and governing body



§ 15-2-2284

MATTERS TO BE CONSIDERED IN APPLYING ZONING DISTRICTS

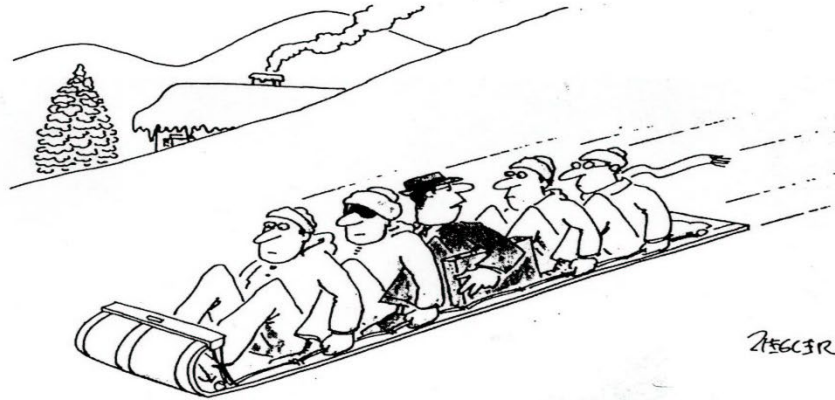
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VARIANCES

- Authority rests with Board of Zoning Appeals or the local governing body (read your zoning ordinance)
- Criteria
 - Property was acquired in good faith and hardship not created by applicant
 - Not generally shared
 - Issuance will not be detrimental to neighboring properties
 - Variance will not result in a use not otherwise permitted on the property
 - Relief sought by variance is not available by conditional use (special use) permit process





“Look, I’m not saying it’s going to be today.

**But someday – someday – you guys will be happy
that you’ve taken along a lawyer.”**