

**ARTICLE V. ZONING, SPECIAL USE, COMMISSION PERMITS AND
CERTIFICATES OF APPROPRIATENESS**

Section 55: Zoning Permits

- (a) A zoning permit shall be required before any use may be substantially changed; substantial clearing, grading, or excavation may be commenced; and buildings or other substantial structures may be constructed, erected, moved or substantially altered.
- (b) Zoning permits shall be issued only when a review of the application submitted, including any plans required, indicates that the development will comply with the provisions of this ordinance. Such plans and applications as finally approved shall be incorporated into any permit issued and all development shall occur strictly in accordance with such approved plans and applications.
- (c) A zoning permit shall be issued in the name of the applicant, shall identify the property involved and the proposed use, shall incorporate by reference any plans submitted and shall contain any special conditions or requirements lawfully imposed.
- (d) A completed application for a zoning permit shall be submitted to the administrator.
- (e) The council shall issue the zoning permit for any use requiring a site plan. The zoning permit for all other uses shall be issued by the administrator.
- (f) The council or administrator shall issue the zoning permit unless finding, after review of the application, that:
 - (1) The application is incomplete; or,
 - (2) The development will not comply with one or more requirements of this ordinance if completed as proposed in the application.
- (g) The council or administrator may issue a zoning permit authorizing commencement of the intended use or occupancy of buildings prior to the fulfillment of all the requirements of this ordinance, if weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship) make it unreasonable to require the recipient to comply with all of the requirements. The permit recipient shall provide a performance bond or other security satisfactory to the administrator to ensure that all requirements of this ordinance will be fulfilled within six months after issuance of the zoning permit.

- (h) A zoning permit shall expire automatically within one year of the date of issuance if the use authorized or work required has not commenced. If, after work is begun, such work is suspended for a period of one year, the zoning permit shall automatically expire. The administrator may extend a permit without charge for additional periods not to exceed six months, if:
 - (1) The permit has not yet expired;
 - (2) The permit recipient has proceeded with due diligence and in good faith; and,
 - (3) Conditions have not substantially changed.

Section 56: Special Use Permits

An application for a special use permit shall be submitted to the administrator on a form provided by the administrator. The application shall include all information required to allow the commission and council to fully consider the request.

Section 57: Special Use Permits; Recommendation by Planning Commission

The application, when complete, shall be forwarded to the commission for its review and recommendation. The commission shall hold a public hearing in conformity with Title 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI, and submit its recommendation to the council within 30 days of the public hearing.

Section 58: Special Use Permits; Council Action

The council shall hold a public hearing in conformity with Title 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI, and shall approve the special use permit within 60 days if it concludes that: (Amended 5/14/98)

- (a) The requested use is permitted by special use permit in the zoning district where proposed.
- (b) The development will comply with all requirements of this ordinance.
- (c) The development, if completed, will:
 - (1) not materially endanger the public health or safety; and
 - (2) not substantially injure the value of adjoining or abutting property; and
 - (3) be in harmony with the area in which it is to be located; and
 - (4) be in general conformity with the Middleburg Comprehensive Plan or other plans adopted by the council.

Section 59: Special Use Permits; Conditions of Approval

- (a) The council may, when approving a special use permit, impose reasonable conditions to insure that the development in its proposed location will:
 - (1) not endanger the public health or safety;
 - (2) not injure the value of adjoining or abutting property;
 - (3) be in harmony with the area in which it is located; and,
 - (4) be in conformity with the Middleburg Comprehensive Plan or other plans adopted by the council.
- (b) Conditions may apply, inter alia, to the method and hours of operation of the proposed use and may include provisions for fencing, planting or landscaping and other reasonable requirements necessary to protect public health and safety. In addition, the council may limit a special use permit to a specified duration.
- (c) All conditions imposed by the council shall be listed on the special use permit.
- (d) All additional conditions or requirements authorized by this section shall be enforceable in the same manner and to the same extent as any other applicable requirements of this ordinance.

Section 60: Special Use Permits; Special Uses of Older Structures

In addition to the criteria above, special uses of older structures shall meet the following requirements:

- (a) Any such use shall be established only in a dwelling unit that:
 - (1) Was in existence before 1875; and,
 - (2) Is located on Washington Street; and,
 - (3) Is the principal residence of the proprietor.
- (b) No structural alteration shall be made in connection with such special use unless the change does not exceed 25 percent of the total floor area of the building and will produce an exterior appearance that is residential in character.
- (c) No more than one-third of the total floor area shall be used for the special use.
- (d) No goods shall be displayed outdoors.
- (e) No sign shall be displayed in connection with any such use other than one identification sign not exceeding six square feet in area.
- (f) No automobile parking space shall be located in any required setback area.

- (g) No more than two employees (other than the proprietor) shall be engaged in the special use.
- (h) Automobile parking spaces shall be provided on the site in sufficient number to accommodate all employees and persons who may be expected to visit the establishment.
- (i) The town council shall not issue a special use permit if the special use proposed will create a vehicular or pedestrian traffic hazard in the opinion of the town council.

Section 61: Commission Permits

- (a) Unless the administrator determines that they are features shown on the comprehensive plan or part thereof or are deemed so under subsection (d), no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than railroad facility, or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of §56-265.1 within its certified service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the planning commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination the commission may, and at the direction of the council shall, hold a public hearing, after notice as required by Title 15.2-2204, Code of Virginia, 1950 (as amended).

(Amended 5/14/98; Amended 11-08-07)

- (b) The commission shall communicate its findings to the council, indicating its approval or disapproval with written reasons therefor. The council may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within 60 days of such submission, unless such time shall be extended by the council, shall be deemed approval. In case of disapproval, the owners or their agents may appeal the decision of the commission to the council within ten days after the decision of the commission. The appeal shall be by written petition to the council setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the council shall overrule the commission.
- (c) Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area. (Amended 11-08-07)

- (d) Any public area, facility or use as set forth in subsection (a) which is identified within, but not the entire subject of, a subdivision or site plan application or both may be deemed a feature already shown on the adopted comprehensive plan, and, therefore, excepted from the requirement for submission to and approval by the commission or council; provided that the council has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through the acceptance of a proffer made pursuant to Section 257.
- (e) Approval and funding of a public telecommunications facility by the Virginia Public Telecommunications Board pursuant to Article 6 of Chapter 35.2 of Title 2.1, Code of Virginia, 1950 (as amended) shall be deemed to satisfy the requirements of this section with the exception of television and radio towers and structures not necessary to house electronic apparatus, provided the provisions of Title 15.2-2232E, Code of Virginia, 1950 (as amended) have been met. The exemption provided in this paragraph shall not apply to facilities existing or approved by the Telecommunications Board prior to July 1, 1990. (Amended 5/14/98)
- (f) The administrator shall issue a commission permit following approval by the commission or council.

Section 62: Certificate of Appropriateness Required in Certain Instances.

In addition to any other permit or approval required by this ordinance, no building or structure, including signs, within the historic district may be demolished, erected, reconstructed, altered, relocated or restored except in conformity with the provisions of a certificate of appropriateness issued in accordance with the provisions of Article XVII.

Section 63: Applications to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications as expeditiously as practicable, consistent with the need to ensure that all development conforms to the requirements of this ordinance.

Section 64: Temporary Uses/Zoning Permits [added 4-9-09]

These uses are permitted in all zoning districts, subject to the following.

(A) Construction Related Temporary Uses

- (1) **Construction and Sales Trailers:** Temporary buildings, including but not limited to, construction and sales trailers, and storage of materials are permitted in conjunction with the construction of a building, buildings, subdivision, infrastructure, or development when limited to the duration of the construction. Temporary buildings may be erected after preliminary subdivision plat or site plan approval so long as zoning requirements are met for the lot on which the temporary buildings are placed. All trailers must obtain an annual zoning permit valid for a period of one year from the administrator and all appropriate permits from the county must be obtained. Upon reapplication for continuance of a zoning permit, the administrator shall perform an inspection of the progress of the project associated with the temporary building(s) for evidence of sufficient progress. If the administrator finds that the project has not made sufficient progress towards completion, the applicant shall be required to obtain a new zoning permit from the Middleburg Town Council. Such temporary construction trailers for new construction shall be allowed for as long as construction is taking place and shall be removed as a condition of final occupancy.
- (2) **Portable Restrooms:** One portable or temporary restroom facility is allowed on an approved construction site for duration of the project. The placement of this type of structure is limited to the lot on which the actual construction was occurring and must be properly screened as to not impact the surrounding neighborhood.
- (3) **Model Homes:** Single family detached model homes are permitted in all districts where residential uses are allowed. Single family detached model homes may be constructed prior to record plat approval so long as zoning requirements are met for the lot on which the home is constructed and appropriate building permits have been obtained. If a model home has been constructed prior to record plat approval, it shall be depicted on the record plat. Single family attached model homes, multifamily model units, and model home courts are permitted subject to first obtaining record plat or site plan approval. In addition, if any model home incorporates features that are atypical to the ultimate residential use of the home, such as, but not limited to, utilization of the garage for a sales office without the provision of adequate on-site parking, or provision of a centralized parking area for a model court, then the use is also subject to review and approval through a site plan amendment process. Alternatively, the model unit or model court may be incorporated in the construction plans and profiles of the applicable development subdivision or site plan. The town may require a bond as appropriate to ensure that the atypical features including temporary parking lots will be removed or brought into conformance prior to conversion of the unit for residential occupancy. Notwithstanding, nothing herein shall be construed so as to require a garage in a model home to be utilized for parking, if the unit or lot otherwise meets the parking requirements of this ordinance. A model home shall obtain an occupancy permit prior to residential occupancy. Model homes are required to renew their permit every 24 months and convert the structure to a single family detached home once all of the homes on the site have been sold.

(B) **Temporary Sales:** Temporary sales of food, produce, Christmas trees, and regional goods, may be permitted on application for a temporary zoning permit to the Middleburg Town Council. Such permit may impose conditions necessary to alleviate any adverse impacts such as provisions for hours of operation, adequate parking, traffic safety, fire safety, hours of operation, provision for sewage disposal, and other health and safety concerns the Zoning Administrator may deem necessary, and the posting of a bond to ensure timely removal of structures and materials and restoration of the area. A sketch plan shall be required to be submitted to the Zoning Administrator identifying what the vendor would offer, the equipment that would be placed on the temporary sales site, the access and site clearances. A temporary zoning permit for temporary sales shall be valid for a period not to exceed 15 days, unless extended, and shall require that all structures and materials be removed within such time period. At a minimum:

- (1) Structures for temporary sales shall not exceed 400 square feet in floor area nor be located in a right of way or prescriptive easement of a road.
- (2) Entrances and exits to roads shall be clearly marked.
- (3) Entrances and exits shall be so located as to provide safe ingress and egress from roads and shall be channeled to prevent unrestricted access to and from the premises.
- (4) No more than two (2) signs consistent with this Ordinance shall be permitted.

(C) **Itinerant Vendors:** Itinerant vendors may be permitted on commercially zoned lots on application for a temporary zoning permit to the Zoning Administrator. Such permit may impose conditions necessary to alleviate any adverse impacts such as provisions for hours of operation, adequate parking, traffic safety, fire safety, hours of operation, provision for sewage disposal, and other health and safety concerns the Zoning Administrator may deem necessary, and the posting of a bond to ensure timely removal of structures and materials and restoration of the area. Any temporary permit issued for an itinerant vendor must conform to the following:

- (1) The vendor must be an owner of a business within the corporate limits of the Town of Middleburg.
- (2) The vendor must obtain any and all licenses from the Town of Middleburg, the Virginia Health Department and the County of Loudoun and any other agency deemed necessary by the zoning administrator and present those permits as a part of the initial zoning permit application.
- (3) Permission from the property owner must be obtained, in writing, prior to any temporary permits being issued.
- (4) Any itinerant vendor wishing to operate within the Town of Middleburg on a lot that is not zoned commercial must apply and be granted a special exception.

(D) **Portable On Demand Storage:** Portable on demand storage (PODS) units shall be allowed on-site for up to 30 days, unless otherwise approved by the administrator. A property owner or tenant may rent and use a portable storage unit on residential property in accordance with provisions in this section when the following conditions are met:

- a. The unit is no larger than eight feet by eight feet by sixteen feet.

- b. There are no more than one portable storage units for any address at any one time and shall not be located in the front setback unless approved by the administrator.
 - c. The portable storage unit is used only for the temporary storage of household goods and related items. The portable storage unit may not be used for construction materials or waste.
 - d. The portable storage is not placed on the property as an accessory structure.
 - e. The portable storage unit is placed on an impervious surface.
 - f. On duplex, townhouse , or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.
 - g. The Zoning Administrator is notified at least three business days prior to placing the unit on the site.
- (E) Dumpsters:** Roll-off dumpster on residential property are allowed on-site for up to 30 days, unless otherwise approved by the administrator. A property owner or tenant may rent and use a roll-off dumpster on the property in accordance with provisions of this section when the following conditions are met:
- a. The Zoning Administrator is notified at least three business day prior to placing the unit on the site.
 - b. The unit has a maximum capacity of 30 cubic yards, or is no larger than eight feet by eight feet by sixteen feet and shall not be located in the front setback unless approved by the administrator.
 - c. The dumpster is used only for disposal of acceptable waste and shall not become a nuisance, attract vermin or produce offensive odors.
 - d. On duplex, townhouse, or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.
- (F) Right-of-way Prohibition:** Temporary uses in public rights-of-way and on other town property are prohibited. Retail sales or display of goods, products, or services and any associated signage not specifically authorized by this ordinance, within the public right-of-way or on other town property is prohibited except as part of a town-recognized event or as authorized by the zoning administrator. See also the Middleburg Town Code Section 91-3, Disturbance or interfering with public right-of-way.

Sections 66 through 69: Reserved