



**PUBLIC NOTICE
WILLIAMSBURG CITY COUNCIL**

The Williamsburg City Council will hold a public hearing on Thursday, October 8, 2015, 2:00 p.m. in the Third Floor Conference Room at the Williamsburg Municipal Building, 401 Lafayette Street, to consider the following:

PCR #15-019: Amend the Conditional Zoning section of the Zoning Ordinance to remove the July 1, 2017, sunset date for the requirement that payments of cash proffers be made only after completion of the final inspection and prior to the issuance of the certificate of occupancy.

PCR #15-020: Amend the Board of Zoning Appeals section of the Zoning Ordinance [Article II, Division 5] to make revisions to the provisions for the granting of variances by the Board of Zoning Appeals, primarily by eliminating the requirement for an “unnecessary or unreasonable hardship” to be found before granting a variance, and to add new restrictions for ex parte communications between staff, board members and applicants.

PCR #15-021: Amend the site plan section of the Zoning Ordinance [Article VII] to add provisions for a 60-day time limit for site plan approval, with additional requirements for site plans that solely involve commercial real estate [Sec. 21-777(a) and (b)(4)].

Additional information is available at www.williamsburgva.gov/publicnotice or at the Planning Department [(757) 220-6130], 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to the Council.

If you are disabled and need accommodation in order to participate in the public hearing, please call the City Manager's office at (757) 220-6100, (TTY) 220-6108, no later than 12:00 noon, Thursday, October 1, 2015.

Gerry S. Walton
Deputy Clerk



CITY OF WILLIAMSBURG
MEMORANDUM

DATE: September 17, 2015

SUBJECT: Zoning Text Revisions based on General Assembly Actions

Several revisions to the Zoning Ordinance need to be made to incorporate revisions to the Virginia Code that were approved in the last session of the General Assembly, and effective on July 1.

PCR #15-019: Cash Proffers for Residential Construction Sunset Date

Senate Bill 1257 removes the July 1, 2017, sunset date of a current law that delays the payment of certain per-dwelling-unit cash proffers until after the final inspection of the subject property and prior to the issuance of any certificate of occupancy. The removal of the sunset date also extends existing provisions protecting a right to delayed payment of cash proffers and allowing a court to award fees and costs to a party that prevails in a legal challenge to a conflicting ordinance. This sunset date needs to be removed from the Conditional Zoning section of the Zoning Ordinance [Sec. 21-77], and is detailed in the attached ordinance.

PCR #15-020: Provisions for granting of variances by the Board of Zoning Appeals

House Bill 1849 makes major revisions to the provisions for the granting of variances by the Board of Zoning Appeals, primarily by eliminating the requirement for an “unnecessary or unreasonable hardship” to be found before granting a variance. This has been replaced by an “unreasonable restriction.” In addition, new restrictions have been added for ex parte communications between staff, board members and applicants. The changes are detailed in the attached ordinance.

PCR #15-021: Action on Proposed Plats and Site Plans

Senate Bill 1355 applies certain provisions, including a 60-day time limit, to the process of approval of site plans that solely involves commercial real estate. This change needs to be incorporated into the City’s Zoning Ordinance, and is detailed in the attached ordinance.

STAFF RECOMMENDATION

These are mandatory changes based on recently approved revisions to the Virginia Code. For this reason, staff recommended that Planning Commission recommend to City Council that the changes proposed by PCR #15-019, #15-020 and #15-021 be approved as detailed in the attached ordinances.

PCR #15-019, -020, -021

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PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on these cases on September 16, and no one spoke at the public hearing. Planning Commission recommended to City Council, by a vote of 7-0, that the changes proposed by PCR #15-019, #15-020 and #15-021 be approved as detailed in the attached ordinances.

CITY COUNCIL PUBLIC HEARING

The City Council public hearing is scheduled for October 8, 2015 at 2:00 p.m. in the Third Floor Conference Room at the Williamsburg Municipal Building, 401 Lafayette Street.



Reed T. Nester, AICP
Planning Director

ORDINANCE #15-__
PROPOSED ORDINANCE #15-21

**AN ORDINANCE TO AMEND ARTICLE II, DIVISION 4. SEC. 21-77 OF
THE WILLIAMSBURG CODE TO REMOVE THE JULY 1, 2017 SUNSET
PROVISION PROVIDED THEREIN AND NOT INVALIDATED BY
SENATE BILL 1257 ENACTED AT THE 2015 SESSION OF THE
VIRGINIA GENERAL ASSEMBLY
(PCR #15-019)**

WHEREAS, at its 2015 Session the Virginia General Assembly enacted Senate Bill 1257 that removes the July 1, 2017 sunset clause that was included in Va. Code § 15.2-2303.1:1 upon its enactment; and

WHEREAS, Subparagraph (a) (7) of Sec. 21-77, Chapter 21, Article II, Division 4 of the Williamsburg Code contains such July 1, 2017 sunset clause which must now be deleted in order to conform to the modification mandated by Senate Bill 1257;

NOW, THEREFORE, BE IT ORDAINED that subparagraph (a) (7) of said Section 21-77 of the Williamsburg Code is hereby amended to read:

ARTICLE II. ADMINISTRATION
DIVISION 4. CONDITIONAL ZONING

Sec. 21-77. - Proffer of conditions.

- (a)
- (7) Payments of cash proffered on a per-dwelling unit or per-home basis for residential construction shall be collected or accepted only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property. ~~In accordance with Virginia Code § 15.2-2303.1:1 C, this paragraph (7) shall expire on July 1, 2017.~~

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

Adopted: October 8, 2015

Clyde A. Haulman, Mayor

Attest: _____
Gerry S. Walton, Deputy Clerk

ORDINANCE #15-__
PROPOSED ORDINANCE #15-22

**AN ORDINANCE TO AMEND ARTICLE I, SEC. 21-2 DEFINITIONS AND
ARTICLE II, DIVISION 5. BOARD OF ZONING APPEALS OF THE
WILLIAMSBURG CODE TO REVISE THE PROVISIONS PERTAINING
TO THE GRANTING OF VARIANCES BY THE BOARD OF ZONING
APPEALS, AS MANDATED BY HOUSE BILL 1849 ENACTED AT THE
2015 SESSION OF THE VIRGINIA GENERAL ASSEMBLY
(PCR #15-020)**

WHEREAS, at its 2015 Session the Virginia General Assembly enacted House Bill 1849 that makes substantial revisions pertaining to the granting of variances by the Board of Zoning Appeals; and

WHEREAS, the Board of Zoning Appeals section of the Zoning Ordinance must be revised in order to conform to the modifications mandated by House Bill 1849;

NOW, THEREFORE, BE IT ORDAINED that Article I, Sec. 21-2 Definitions and Article II, Division 5. Board of Zoning Appeals of the Williamsburg Code is hereby amended to read:

ARTICLE I. IN GENERAL

Sec. 21-2. Definitions.

Variance means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

ARTICLE II. ADMINISTRATION

DIVISION 5. BOARD OF ZONING APPEALS

Sec. 21-96. Composition, appointment and organization.

(a) There shall be created a board of zoning appeals, which shall consist of five residents of the city, appointed by the city council (the Charter, chapter IX, section 62). Their terms of office shall be five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the city except that one may be a member of the planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

(b) With the exception of its secretary, the board shall elect from its membership a chairperson and vice-chairperson, who shall serve annual terms and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the city and general laws of the commonwealth. The board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under section 21-101, and the staff of the city. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an 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 variance from the ordinance. On all other matters, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the city council at least once a year.

(c) Within the limits of funds appropriated by the city council, the board may employ or contract for secretaries, clerks, legal consultants and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the city council.

Sec. 21-96.1. Boards of zoning appeals, ex parte communications, proceedings.

(a) The non-legal staff of the city may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For the purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which city staff, the applicant, landowner or his agent or attorney are all invited.

(b) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board shall be made available without cost to such applicant, appellant or other person aggrieved under section 21-101, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under section 21-101 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to Code of Virginia § 2.2-3704 [FOIA]. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of Code of Virginia § 2.2-3707.

(c) For the purposes of this section, "non-legal staff of the city" means any staff who are not in the office of the city attorney, or for the board, or who is appointed by special law or pursuant to Code of Virginia § 15.2-1542 [Creation of office of city attorney] . Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney were such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

(d) This section shall not apply to cases where an application for a special exception has been filed pursuant to section 21-97(f) and (g).

Sec. 21-97. Powers and duties of the board of zoning appeals.

The board of zoning appeals shall have the following powers and duties:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider ~~the purpose and intent~~ of any applicable ordinances, laws and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
- (b) ~~To authorize~~ Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases ~~such a~~ variance (as defined in Code of Virginia, § 15.2-2201 in section 21-2) from the terms of this chapter ~~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 chapter shall be observed and substantial justice done, as follows:~~ provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in section 21-2 and the criteria set out in this section.
 - (1) ~~When a property owner can show that his~~ Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance and (i) the property interest for which the variance is being requested was acquired in good faith ~~and where by~~

~~reason of the exceptional~~ and any hardship was not created by the applicant for the variance; narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property immediately adjacent thereto, the strict application of the terms of the applicable provisions of this chapter 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 such variance will alleviate a clearly demonstrable hardship, 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 this chapter. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through the special exception process that is authorized in the ordinance pursuant to section 21-97(f) or the process for modification of a zoning ordinance pursuant to Article II, Division 3, Amendments at the time of the filing of the variance application.

(2) No such variance shall be authorized by the board unless it finds:

- a. ~~That the strict application of this chapter would produce undue hardship relating to the property.~~
- b. ~~That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~
- c. ~~That the authorization of such 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.~~

~~(3)~~(2) No such variance shall be authorized considered except after notice and hearings as required by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

- a. In addition to the notices required, there shall be posted upon the affected parcel or parcels, clearly visible from a public street, a sign containing the heading "PUBLIC NOTICE" prominently displayed in bold print. Such sign shall state the board of zoning appeals case number and the telephone number of the planning department. Such notice shall be posted at least 14 days prior to the board of zoning

appeals public hearing. Failure to constantly maintain such sign on the property until the date of the board of zoning appeals public hearing shall not invalidate any resulting approval of a special exception. An affidavit by the zoning administrator or his agent stating that the required sign was properly posted shall be prima facie evidence that the posting requirement was complied with.

- (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 chapter.~~
- (5)(3) In authorizing granting 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. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.
- (c) To hear and decide appeals from the decision of the zoning administrator. No such appeal shall be heard except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
- (d) To hear and decide applications for interpretation of the official zoning map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by such question, and after public hearing with notice as required by Code of Virginia, § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the chapter for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by this chapter.
- (e) No provision of this section shall be construed as granting the board 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.

- (f) To hear and decide applications for such special exceptions as may be authorized by this chapter.
 - (1) In reaching a decision on the authorization of a special exception, the board of zoning appeals shall consider, where applicable, the following:
 - a. Stated intent of the zoning district in which the property is located;
 - b. Uses in the area immediately surrounding the property in question;
 - c. Amount of traffic to be generated;
 - d. Number of people to be employed;
 - e. Hardship that would result from the denial of the special exception; and
 - f. Such other criteria as may be prescribed for a particular special exception under other sections of this chapter.
 - (2) A special exception shall not be approved by the board of zoning appeals unless it is found that:
 - a. It is designed, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;
 - b. It does not unreasonably impair an adequate supply of light and air to adjacent property;
 - c. It does not increase public danger from fire or otherwise unreasonably restrict public safety; and
 - d. It does not impair the established property values in surrounding areas.
 - (3) The board may impose such conditions relating to the use for which a permit is granted as it deems necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
 - (4) No such special exception may be granted except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
 - a. In addition to the notices required, there shall be posted upon the affected parcel or parcels, clearly visible from a public street, a sign containing the heading "PUBLIC NOTICE" prominently displayed in bold print. Such sign shall state the board of zoning appeals case number and the telephone number of the planning department. Such notice shall be posted at least 14 days prior to the board of zoning appeals public hearing. Failure to constantly maintain such sign on the property until the date of the board of zoning appeals public hearing

shall not invalidate any resulting approval of a special exception. An affidavit by the zoning administrator or his agent stating that the required sign was properly posted shall be prima facie evidence that the posting requirement was complied with.

- (g) To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by Code of Virginia § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
- (h) The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Code of Virginia § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Sec. 21-97.1. Administrative variances to reduce yard regulations based on errors in building location.

The zoning administrator shall have the authority, as qualified below, to grant an administrative variance to approve a reduction in yard requirements in the case of any existing or partially constructed building which does not comply with the yard requirements that were applicable at the time a building permit was issued for construction of such building. Such reduction may be approved by the zoning administrator, in writing, if the requirements of either subsection a. or b. below have been met; however, the zoning administrator shall have the authority to refer the request to the board of zoning appeals in lieu of making an administrative determination.

- (1) Criteria for approving an administrative variance to reduce yard regulations based on errors in building location:
 - a. Buildings for which a building permit was issued on or after March 12, 1987:
 - 1. The encroachment does not exceed one linear foot; and
 - 2. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a building permit for construction of such building, if such permit was required; and
 - 3. Compliance with the minimum setback and yard requirements would cause undue hardship upon the owner; and

4. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 5. The requested variance will not be of substantial detriment to adjacent property; and
 6. The character of the zoning district will not be changed by granting the variance; and
 7. The granting of the variance will not create an unsafe condition with respect to adjacent properties and public streets; and
 8. The reduction in yard requirements will not result in an increase in density or floor area ratio above that permitted by the applicable zoning district regulations in force at the time of the variance request.
- b. Buildings for which a building permit was issued prior to March 12, 1987:
1. No objection has been filed with the zoning administrator as regards such encroachment; and
 2. The encroachment does not exceed five linear feet; and
 3. The requested variance will not be of substantial detriment to the use and enjoyment of adjacent; and
 4. The character of the zoning district will not be changed by granting the variance.
- (2) In approving such a reduction under the provisions of this section, the zoning administrator shall allow only the reduction necessary to provide reasonable relief and may prescribe such conditions, including landscaping and screening measures, to assure compliance with the intent of this section.
- (3) Upon the approval of a reduction for a particular building in accordance with the provisions of this section, the same shall be deemed to be a conforming building.
- (4) Prior to the granting of a variance, the zoning administrator shall give all adjacent property owners written notice of the requested variance, and an opportunity to respond to the request within 21 days of the date of the notice. If any adjoining property owner objects in writing to said request within the time specified above, the request shall be referred to the board of zoning appeals for a decision. The applicant shall pay any required application fee.
- (5) In accordance with the provision set forth in section 21-97(c), the applicant shall have 30 days in which to appeal a decision made under section 21-97.1.

Sec. 21-98. Appeal to the board of zoning appeals.

(a) An appeal to the board may be taken by any person aggrieved or by an officer, department, board or bureau of the city affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter or any ordinance adopted pursuant thereto. Any written notice of a zoning violation or a written

order of the zoning administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. Such notice shall also include a statement of the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs.

(b) An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

(c) In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

Sec. 21-99. Procedure on appeal.

(a) All applications or appeals to the board shall be made to the zoning administrator, and shall be accompanied by a filing fee in the amount listed on the fee schedule adopted by city council.

(b) The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 90 days of the filing of the application or appeal. In exercising its powers 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 members of the board present and voting shall be necessary to reverse any

order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter to effect any variance from this chapter. The board shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the board and shall be public records. The chairperson of the board, or, if absent, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(c) In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

Sec. 21-100. Proceedings to prevent construction of building in violation of zoning ordinance.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of this chapter, by suit filed within 15 days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the zoning administrator to the board.

Sec. 21-101. - Judicial review of decisions of the board of zoning appeals.

~~Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board or bureau of the city, may file with the clerk of the circuit court of the city a petition that shall be styled "In Re: [date] Decision of the Board of Zoning Appeals of the City of Williamsburg" specifying the grounds on which aggrieved within 30 days after the filing of the final decision of the board. The proceedings before the circuit court shall be in accordance with applicable state law. Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by applicable state law. City Council, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.~~

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings in the circuit court. The court may permit

intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.

Secs. 21-102 – 21-120. Reserved.

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

Adopted: October 8, 2015

Clyde A. Haulman, Mayor

Attest: _____
Gerry S. Walton, Deputy Clerk

ORDINANCE #15-__
PROPOSED ORDINANCE #15-23

**AN ORDINANCE TO AMEND CHAPTER, 21 ARTICLE IIV, SEC. 21-777
(a) AND (b)(2) AND (4)(a) OF THE WILLIAMSBURG CODE TO
ESTABLISH A 60-DAY TIME LIMIT FOR APPROVAL, APPROVAL
WITH CONDITIONS OR DISAPPROVAL OF CERTAIN SITE PLANS
(PCR #15-021)**

WHEREAS, at its 2015 Session the Virginia General Assembly enacted Senate Bill 1355 that modifies Va. Code Sec. 15.2-2259 A 2 to require a 60-day time limit for the zoning administrator or planning commission to act on certain site plans; and

WHEREAS, it is necessary to amend City Code Sec. 21-777 (a) and (b)(2) and (4)a. to comply with such requirement;

NOW, THEREFORE, BE IT ORDAINED that sub-paragraphs (a) and (b)(2) and (4)a. of Williamsburg Code Sec. 21-777 are amended to read as follows:

ARTICLE VII. SITE PLANS

Sec. 21-777. In general.

(a) *Minor site plan administration.* The zoning administrator (or the zoning administrator's designee) shall review and approve or disapprove minor site plans. However, minor site plans may, at the discretion of the zoning administrator, be referred to the planning commission for a final decision.

- (1) A decision by the zoning administrator to approve, approve with conditions or disapprove a minor site plan shall be made within 60 days after a minor site plan that meets all the requirements of this article has been officially submitted for approval unless this requirement is waived by mutual consent between the applicant and the zoning administrator. A minor site plan is deemed officially submitted following delivery of the fully completed minor site plan to the zoning administrator. Approval, approval with conditions or disapproval shall be made in writing, with specific reasons given for disapproval.
- (2) The zoning administrator shall act on any minor site plan that has been previously disapproved within 45 days after the minor site plan has been modified, corrected and officially resubmitted for approval. A minor site plan is deemed officially resubmitted following delivery of the modified and corrected minor site plan to the zoning administrator.
- (3) In the case of a minor site plan solely involving parcels of commercial real estate, the failure of the zoning administrator to approve or disapprove a resubmitted plat or plan within the time periods required by this section shall cause the minor site plan to be deemed approved.
- (4) For the purposes of this section, the term "commercial" means all real property used for commercial or industrial uses.

(b) *Site plan administration.*

- (2) The site plan review committee shall advise the planning commission on issues pertaining to the review and approval or disapproval of site plans, and shall be composed of three or four members of the planning commission, who shall be appointed by the ~~chairman~~ chair of the planning commission for annual terms.
- (4) Approval of site plans.
- a. A decision to approve, approve with conditions or disapprove a site plan shall be made by the planning commission within 60 days after a site plan that meets all the requirements of this article has been officially submitted for approval unless this requirement is waived by mutual consent between the applicant and the zoning administrator. A site plan is deemed officially submitted as of the next site plan review schedule submittal deadline following delivery of the fully completed site plan to the zoning administrator. Approval, approval with conditions or disapproval shall be made in writing, with specific reasons given for disapproval.
1. The planning commission shall act on any site plan that has been previously disapproved within 45 days after the modified, corrected and resubmitted site plan has been officially submitted for approval unless this requirement is waived by mutual consent between the applicant and the zoning administrator. A site plan is deemed officially resubmitted as of the next site plan review schedule submittal deadline following delivery of the modified and corrected site plan to the zoning administrator. Approval, approval with conditions or disapproval shall be made in writing, with specific reasons given for disapproval.
2. In the case of a site plan solely involving parcels of commercial real estate, the failure of the planning commission to approve or disapprove a resubmitted site plan within the time periods required by this section shall cause the site plan to be deemed approved.
3. For the purposes of this section, the term “commercial” means all real property used for commercial or industrial uses.
- b. ~~When denying a site plan, the planning commission shall state specific reasons for the denial.~~ Reserved.

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

Adopted: October 8, 2015

Attest: _____
Gerry S. Walton, Deputy Clerk

Clyde A. Haulman, Mayor