

Zoning Ordinance & Subdivision Regulations Rewrite

HENRICO COUNTY, VIRGINIA



Module 2

Article 19-1: General Provisions

Article 19-2: Administration

Article 19-6: Enforcement

Article 19-7: Definitions

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CLARION

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ARTICLE 19-1. GENERAL PROVISIONS

Commentary

Article 19-1: General Provisions, contains important general provisions that are relevant to the entire subdivision ordinance.

Specifically, this article includes sections that:

- Establish the title, or official name, of the document;
- Identify the statutory authority of the county to adopt the subdivision ordinance;
- Identify the general purpose and intent of the Board of Supervisors in adopting the ordinance;
- Identify who is subject to the subdivision ordinance;
- Clarify that the stricter provision applies if ordinance provisions conflict with other regulations;
- Establish rules governing the rights of subdivisions approved under the previous subdivision ordinance and pending subdivision applications submitted before the effective date of the new subdivision ordinance; and
- Provide a severability provision.

This commentary will be removed from the Public Hearing Draft of the subdivision ordinance.

SEC. 19-1.1. TITLE¹

This chapter shall be officially known as the “Subdivision Ordinance of the County of Henrico, Virginia” or “Henrico County Subdivision Ordinance,” and may be referred to as “the Subdivision Ordinance” or “this Ordinance.”

SEC. 19-1.2. AUTHORITY²

(a) General Authority to Adopt Subdivision Ordinance

The Subdivision Ordinance establishes the county's subdivision regulatory authority as authorized by the Code of Virginia, and is adopted in accordance with the enabling authority contained in Title 15.2, Chapter 22 of the Code of Virginia, and all other relevant laws of the Commonwealth of Virginia.

(b) References to the Code of Virginia and Federal Law

Whenever any provision of this Ordinance refers to or cites a section of the Code of Virginia or federal laws or statutes, and that section is later amended or superseded, this Ordinance shall be deemed to refer to the amended section or the section that corresponds to the superseded section.

¹ This is a new section that sets forth the official name of the subdivision ordinance as well as acceptable shortened references.

² This is a new section that contains references to the statutory authority for the county's adoption of the subdivision ordinance under the Code of Virginia. It includes a provision to address situations where the ordinance cites a provision of the Code of Virginia or federal law that is amended or superseded.

SEC. 19-1.3. GENERAL PURPOSE AND INTENT³

The Board of Supervisors adopts this Ordinance to establish procedures and standards relating to the subdivision of land within the county, and to establish standards for access, circulation, streets, and other infrastructure provided as part of subdivisions in order to assure the orderly subdivision of land and its development. This Ordinance is intended to promote the health, safety, and general welfare of the present and future residents, businesses, and landowners of the county and accomplish the objectives of the Code of Virginia, consistent with the County's zoning ordinance and comprehensive plan. More specifically, this Ordinance is intended to:⁴

- (a)** Promote public health, safety, and welfare;
- (b)** Ensure the orderly layout and use of land;
- (c)** Establish reasonable standards of design and development for the subdivision of land;⁵
- (d)** Establish reasonable procedures for the review of the subdivision of land and the resubdivision of lots or parcels of land;⁶
- (e)** Ensure proper legal description and monumenting of subdivided land;
- (f)** Avoid undue concentration of population and overcrowding of land;
- (g)** Lessen congestion in streets and highways;
- (h)** Provide for proper ingress and egress, efficient circulation of traffic, and safe and comfortable pedestrian movements;⁷
- (i)** Provide for adequate light and air;
- (j)** Increase safety from fire, flood, and other dangers;
- (k)** Provide for transportation, water, sewage facilities, drainage, schools, parks, playgrounds, and other public needs;
- (l)** Preserve outstanding natural or cultural features and historic sites and structures;
- (m)** Provide for open space through the efficient design and layout of land;⁸
- (n)** Encourage creative subdivision design that accomplishes these purposes in an efficient, attractive, and environmentally sensitive manner;⁹
- (o)** Protect and improve the water quality of the Chesapeake Bay and its tributaries; and
- (p)** Promote development in accordance with the County's zoning ordinance and comprehensive plan.

³ This section carries forward Section 19-1, Purpose, of the current subdivision ordinance, with refinements and additions as noted below.

⁴ This first general paragraph is new.

⁵ New paragraph.

⁶ Builds on existing language: "Facilitate proper resubdivision of lots or parcels of land."

⁷ Expands the current purpose that is limited to ingress and egress to include circulation and pedestrian movements.

⁸ New paragraph.

⁹ New paragraph.

SEC. 19-1.4. APPLICABILITY¹⁰

Any subdivision of land, as defined in Article 19-7: Definitions, that is situated wholly or partly within the county shall comply with this Ordinance. No person shall subdivide land without making and recording a plat of the subdivision in accordance with the requirements of this Ordinance and the Code of Virginia. Resubdivisions, lot combinations, and line adjustments shall follow the minor subdivision procedure.

SEC. 19-1.5. RELATIONSHIP WITH OTHER LAWS, COVENANTS OR DEED RESTRICTIONS¹¹

(a) Conflicts Between Provisions of this Ordinance

If a provision of this Ordinance is inconsistent with another provision of this Ordinance, the provision that imposes greater restrictions or more stringent controls shall govern.

(b) Conflicts with State or Federal Law

If a provision of this Ordinance is inconsistent with a provision found in the law or regulations of the State or Federal government, the more restrictive provision shall control, to the extent permitted by law.

(c) Vested Rights

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any vested rights, provided such rights are lawfully established and remain in effect.

SEC. 19-1.6. TRANSITIONAL PROVISIONS¹²

(a) Effective Date

This Ordinance shall become effective on [redacted] [insert effective date of this Ordinance], and repeals and replaces the [insert name of current subdivision regulations], as originally adopted on [redacted] [insert date of original adoption of subdivision regulations] and subsequently amended.

¹⁰ This section states that all subdivisions of land must comply with this Ordinance. The definition of subdivision (see Article 7: Definitions) establishes what constitutes a subdivision and what divisions of land are not subdivisions, and therefore not subject to this Ordinance (see Code of Virginia § 15.2-2201).

¹¹ This is a new section that provides in case of conflict between the regulations and other legislative enactments of the commonwealth or county, the stricter provision applies. The section also clarifies the county will not be responsible for monitoring or enforcing private easements, covenants, and restrictions, though it may inquire into private easements and restrictions in reviewing development plans for the purpose of ensuring consistency with county requirements.

¹² This is a new section that establishes the effective date of the subdivision ordinance, sets forth rules for subdivisions under review or already approved on that date, and states that violations of the current subdivision ordinance on that date continue to be violations under this Ordinance, unless the development complies with this Ordinance.

(b) *Violations Continue*

Any violation of the previous subdivision regulations shall continue to be a violation under this Ordinance, unless the subdivision complies with the express terms of this Ordinance.

(c) *Applications Pending Prior to ___ [insert effective date of this Ordinance]*

- (1) Any subdivision application submitted and accepted as complete before [redacted] [insert effective date of this Ordinance], but still pending final action as of that date, shall be reviewed and decided in accordance with the subdivision regulations in effect at the time of the submission and acceptance of the application.
- (2) If the subdivision application is approved, the approval shall remain valid for the period of time specified in the subdivision regulations under which the application was reviewed and approved. Extensions of time available under those old subdivision regulations remain available.
- (3) Unless the subdivision approval expires, the project may proceed through the approval process and continue to be reviewed.
- (4) Once constructed, the project shall be “deemed conforming” and shall be subject to the same rules as other conforming uses, structures, and site features under Chapter 24 of the County Code.
- (5) An applicant may elect at any stage of the development review process to have the proposed development reviewed under this Ordinance.

(d) *Projects Which Received Subdivision Approval Under the Prior Subdivision Regulations*

- (1) Subdivision approvals of any type remain valid for the period of time specified in the subdivision regulations under which the subdivision was approved. Extensions of time which were available under those subdivision regulations shall remain available.
- (2) Unless the subdivision approval expires, the project may proceed through the approval process and continue to be reviewed.
- (3) If the subdivision approval expires or is revoked (i.e., for failure to comply with the terms and conditions of approval), any subsequent subdivision of the land shall be subject to the procedures and standards of this Ordinance.
- (4) Once constructed, the project shall be “deemed conforming” and shall be subject to the same rules as other conforming uses, structures, and site features under Chapter 24 of the County Code.
- (5) An applicant may elect at any stage of the development review process to have the proposed subdivision reviewed under this Ordinance.
- (6) Notwithstanding the time limits for validity set out in Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications, any approved subdivision plat valid and outstanding as of January 1, 2017, together with any associated plans or permits, shall remain valid until July 1, 2020, provided any performance bonds and agreements or other financial guarantees of completion of public improvements associated with the proposed development are continued in force.

SEC. 19-1.7. SEVERABILITY¹³

It is the intent of the Board of Supervisors that the provisions of this Ordinance be liberally construed to carry out the purposes of this Ordinance and to avoid conflict with the Code of Virginia and any other limitations imposed by law. However, if any provision of this Ordinance is determined by a court to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

¹³ This standard provision declares that if any parts of the regulations are ruled invalid by a court of competent jurisdiction, the remainder of the regulations are not affected and remain in effect.

ARTICLE 19-2: ADMINISTRATION

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ARTICLE 19-2. ADMINISTRATION

Commentary

Article 19-2: Administration, consolidates and streamlines all matters related to the procedural review of applications for subdivision approval. As discussed in the Assessment, this article is intended to improve the efficiency and transparency of the development review processes by clarifying and standardizing the procedures and by streamlining development review in some cases. The article is organized into three sections, which are summarized below.

Sec. 19-2.1, Administrative and Decision-Making Bodies, identifies and clarifies the roles of the different boards, commissions, and staff responsible for review, advice, and decision-making on development applications. The section identifies what responsibilities staff and each of the review bodies has in the subdivision review process and includes a summary table of review responsibilities.

Sec. 19-2.2, Common Subdivision Procedures, establishes a standard set of review procedures that apply to all applications for permits and development approvals, unless stated otherwise in Section 2-3. It provides the framework on which the county's basic development review procedures are made uniform to the greatest degree possible.

Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications, supplements the standard procedures with specific rules focusing on review standards and variations or additions to the standard procedures that are unique to each type of subdivision application. Flow charts are added to further contribute to the section's user-friendliness.

This commentary will be removed from the Public Hearing Draft of the subdivision ordinance.

SEC. 19-2.1. ADMINISTRATIVE AND DECISION-MAKING BODIES¹⁴

(a) Summary Table of Review Responsibilities

Table 2-1(a): Summary of Review Responsibilities, identifies the bodies and persons responsible for making advisory recommendations or decisions on subdivision applications reviewed under this Ordinance. The table also identifies development applications that require a public hearing. Specific requirements and procedures are set forth in Sec. 19-2.2, Common Subdivision Review Procedures, and Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications.

¹⁴ This section builds on Sec. 19-27 of current Chapter 19. It identifies the advisory and decision-making entities and persons responsible for the review of subdivision applications. It identifies the specific responsibilities of each review board or staff person in the review and approval of subdivision applications. The table in this section provides an overview of the review structure.

Table 2-1(a): Summary of Review Responsibilities			
S = Staff Review; R = Recommendation; D = Decision; A = Appeal; <> = Public Hearing			
PROCEDURE	PLANNING DIRECTOR	PLANNING COMMISSION	BOARD OF SUPERVISORS
Text Amendment	S	<R>	<D>
Preliminary Plat	S	<D> [1]	
Final Plat	D		
Minor Subdivision	D		
Vacation of Plat	In accordance with Code of Virginia § 15.2-2271 <i>et seq.</i>		
NOTES:			
[1] The Planning Commission shall hold a public hearing on the application if the applicant requests an exception (see Sec. 19-2.3(b)(3)e.3).			

(b) Board of Supervisors¹⁵

To exercise the authority granted to the Board of Supervisors by the Code of Virginia, the Board of Supervisors has the following powers and duties under this Ordinance:

- (1) To review and decide text amendments (Sec. 19-2.3(a)).
- (2) To approve, by resolution after a public hearing, a schedule of fees governing subdivision applications reviewed under this Ordinance, to be contained in an Administrative Manual, a companion document to this Ordinance.
- (3) To take any other action not delegated to the Planning Commission, Planning Director, or other body within the Board of Supervisors’ authority, as the Board may deem desirable and necessary to implement the provisions of this Ordinance.

(c) Planning Commission

- (1) General
 - a. The Planning Commission is established by Chapter 2 of the County Code, which sets forth the Commission’s organization, including its membership, terms of members,

¹⁵ This section identifies the powers and duties of the Board of Supervisors, based on the authority granted by the Code of Virginia. It carries forward those powers identified in Article XXVI of current Chapter 24 and recommendations in the Assessment. Specific procedural requirements in Article XXVI are carried forward in Sections 2-2 and 2-3 below.

officers, and staff; rules of procedure; and powers and duties in addition to those identified in subsection (2) below.

- b.** The Planning Director serves as the secretary and supporting staff to the Planning Commission.

(2) Powers and Duties

The Planning Commission has the following powers and duties under this Ordinance:

- a.** To review and make recommendations to the Board of Supervisors on proposed text amendments (Sec. 19-2.3(a));
- b.** To review and decide preliminary plat applications (Sec. 19-2.3(b)); and
- c.** To carry out any other powers and duties delegated to it by the Board of Supervisors, consistent with the Code of Virginia, or as required by the Code of Virginia.

(d) Planning Director

(1) General

- a.** The Planning Director is designated by the County Manager.
- b.** Any act authorized by this Ordinance to be carried out by the Planning Director may be delegated by the Planning Director to professional-level staff under the Planning Director's direction.

(2) Powers and Duties

The Planning Director is responsible for the administration, interpretation, and enforcement of this Ordinance, except where otherwise stated in this Ordinance, in accordance with state law. The Planning Director has the following specific powers and duties under this Ordinance:

- a.** To review and decide applications for the following:
 - 1.** Final plats (Sec. 19-2.3(c)); and
 - 2.** Minor subdivisions (Sec. 19-2.3(d));
- b.** To provide staff review and recommendations on the following:
 - 1.** Text amendments (Sec. 19-2.3(a)); and
 - 2.** Preliminary/conditional plats (Sec. 19-2.3(b)); and
- c.** To prepare requirements for application contents and forms, submittal schedules, fees, and any additional information relevant to the submittal and review of subdivision applications, to be included in the Administrative Manual.

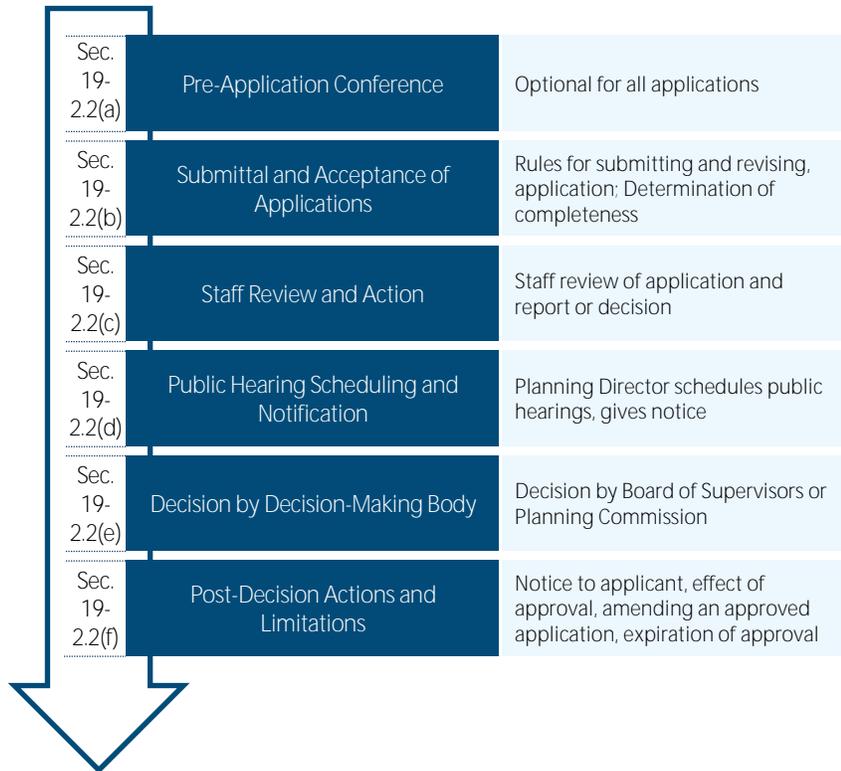
SEC. 19-2.2. COMMON SUBDIVISION REVIEW PROCEDURES¹⁶

This section sets forth common procedures that are generally applicable to the submittal and review of subdivision applications under this Ordinance. Not all procedures in this section are required for every type of application. Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications, identifies the applicability of each common procedure for each type of application, as well as any

¹⁶ As discussed on page 108, and pages 36-39, of the Assessment, This section guides the potential applicant through the rules governing who is authorized to submit applications, application content requirements and fees, the application submittal and review stage, scheduling the public hearing (if one is required) and public notification, and the advisory and decision-making process. See Pages 36-39 above for more information on the standard review procedures section.

modifications of the common procedure that apply. Figure 2-2 shows the common subdivision procedures in the format of a flowchart. A similar flowchart is provided for each type of application in Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications.

Figure 2-2: Common Subdivision Procedures in Flowchart Format



(a) Pre-Application Conference¹⁷

(1) Purpose

The purpose of a pre-application staff conference is to provide an opportunity for the applicant to understand the submittal requirements and the procedures and standards applicable to an anticipated subdivision application. A pre-application staff conference is also intended to provide an opportunity for Planning Department staff, and other county staff, to become familiar with, and offer the applicant preliminary comments about, the scope, features, and impacts of the proposed subdivision as it relates to the standards in this Ordinance.

(2) Applicability

A pre-application staff conference may be held at the applicant's option for any subdivision application.

¹⁷ As discussed on pages 37 and 38 of the Assessment, this is a new section that establishes a procedure for meetings between potential applicants and county staff prior to application submittal. A pre-application conference can be an effective way to improve efficiency in the development review process, especially for more complex development proposals, by ensuring that applicants understand the procedural and substantive review requirements, and by familiarizing county staff with the proposed development.

(3) Scheduling

Upon receipt of the request for a pre-application staff conference, Planning Department staff shall schedule the pre-application staff conference and notify the applicant of the time and place. The conference may be held on a regular schedule, or may be scheduled individually, at the discretion of the Planning Director.

(4) Conference Proceedings

Planning Department staff shall review the materials submitted by the applicant prior to the conference. At the conference, staff shall ask the applicant questions about the proposed application and identify any concerns, problems, or other factors the applicant should consider about the application.

(5) Effect

The pre-application staff conference is intended to facilitate the review process. Discussions held in accordance with this section are not binding on the county. Processing times for review of subdivision applications do not begin until a formal application is submitted and determined to be complete in accordance with Sec. 19-2.2(b)(5), Determination of Application Completeness.

(b) Submittal and Acceptance of Applications¹⁸

(1) Authority to File Applications¹⁹

- a.** Unless expressly stated otherwise in this Ordinance, all subdivision applications reviewed under this Ordinance shall be submitted by:
 - 1.** The owner of the land proposed to be subdivided; or
 - 2.** A person authorized to submit the application on behalf of the owner, as evidenced by a power of attorney, a letter, or other document signed by the owner.
- b.** If there are multiple owners, contract purchasers, or other persons authorized to submit an application, all such persons shall sign the application or a letter or document granting their consent to the application.

(2) Required Content and Fees²⁰

a. Application Content

Requirements for the content and form of each type of subdivision application are set forth in the submission requirements checklist contained in the Administrative Manual. The Board of Supervisors may amend and update this checklist by resolution as necessary to ensure effective and efficient review. The applicant bears the burden of ensuring that an application contains sufficient information to demonstrate compliance with all applicable standards.

¹⁸ This new section establishes rules regarding who may submit development applications, to whom applications are submitted, and the general requirements for complete applications. It expands application submittal requirements scattered in multiple locations in current Chapter 19 (e.g., Sec. 19-60). Detailed submission requirements are not included in this section.

¹⁹ This section is new. Sec. 19-60 of current Chapter 19 limits preliminary plat submittal to “an owner or developer” of land.

²⁰ This new section references the Administrative Manual, which will consolidate detailed submission requirements for each type of application.

b. Application Fees

The Board of Supervisors is authorized to establish application fees, by resolution after public hearing, and may amend and update those fees as necessary. A schedule of application fees shall be included in the Administrative Manual.

(3) Schedule for Submittal and Review²¹

The Planning Director shall establish specific submittal instructions and a review schedule (including time frames for review, if appropriate, consistent with this Ordinance and the Code of Virginia) for the various types of development applications. The Planning Director may amend and update these rules, in accordance with the Code of Virginia, as determined necessary to ensure the effective and efficient administration of this Ordinance. Rules for application submittal and review schedules shall be included in the Administrative Manual.

(4) Application Submittal²²

Applications shall be submitted to the Planning Director in the form established by the Planning Director, along with the appropriate application fee.

(5) Determination of Application Completeness²³

a. Completeness Review

Upon receipt of an application, the Planning Director shall, within ten business days, determine whether the application is complete or incomplete. A complete application is one that:

1. Contains all information and materials required by this Ordinance and by the submission requirements checklist for the particular type of application in the Administrative Manual;
2. Is in the form required for submittal of the particular type of application;
3. Includes information in sufficient detail to evaluate the application to determine whether it complies with the applicable review standards of this Ordinance; and
4. Is accompanied by the fee established for the particular type of application.

b. Application Incomplete

1. On determining that an application is incomplete, the Planning Director shall provide the applicant written notice of the submission deficiencies.
2. If the applicant fails to resubmit an application within 45 calendar days after being first notified of submission deficiencies, the application shall be returned to the applicant.
3. The Planning Director shall not process an application for review until it is determined to be complete.

²¹ This section is new.

²² This section consolidates language from multiple locations in current Chapter 24 (e.g., paragraph (a) of Sec. 24-117) requiring applications and supporting material to be submitted to the director of planning.

²³ As discussed on page 38 of the Assessment, this procedure is included to improve the efficiency of the development review process by ensuring that sufficient information is included with the application to allow it to be reviewed and decided on.

c. Application Complete

If the Planning Director determines the application is complete, the application shall be considered submitted and the Planning Director shall accept the application for review in accordance with the procedures and standards of this Ordinance.

(c) Staff Review and Action²⁴

(1) Staff Review and Opportunity to Revise Application

- a.** When an application is determined complete, the Planning Director shall distribute it to all appropriate county staff and departments, and all relevant state and other review agencies for review and comment. If the application includes a plat that requires state agency review, the Planning Director shall forward the plat within ten business days of the date of submittal to each state agency which must review it under state law.
- b.** The Planning Department staff, or other county staff and departments, and all relevant state and other review agencies as deemed appropriate by the Planning Director, shall review the application, relevant support material, and any comments or recommendations from staff and review agencies.
- c.** If deficiencies in complying with applicable standards in this Ordinance are identified during staff review of the application, the Planning Director shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to revise the application to address the deficiencies. An applicant may revise an application after receiving notice of deficiencies from the Planning Director. Application revisions shall be limited to changes that directly respond to specific deficiencies identified by staff. The applicant shall submit the revised application to the Planning Director.

(2) Application Subject to Decision by Planning Director

If a final decision by the Planning Director is required for an application (see Sec. 19-2.1(a), Summary Table of Review Responsibilities), the following procedures apply.

- a.** After review of the application, and within 60 days after the date the application was submitted or within 35 days of receipt of any response from a state agency or public authority authorized by state law to review plats forwarded to it, whichever is later, the Planning Director shall approve or disapprove the application, based on the review standards in Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications, for the particular type of application. The time periods in this subsection may be extended if requested by the applicant.
- b.** If the application is denied, the specific reasons for denial shall be set forth in writing, along with a statement of what corrections or modifications will permit approval of the application. The applicant may resubmit a revised application in accordance with Sec. 19-2.2(f)(2), Revision and Resubmittal of Application after Disapproval.
- c.** The applicant may request, and the Planning Director may grant, exceptions to the standards in Article 19-3: Design Standards, and Article 19-4: Required Improvements, if the Planning Director finds that extraordinary hardship may result from strict compliance with those standards, and if the exception:²⁵
 - 1.** Substantially complies with the provisions of this Ordinance, does not defeat the purposes of this Ordinance, and protects the public interest;

²⁴ This section consolidates provisions from Sec. 19-92 and paragraph (1) of Sec. 19-62.

²⁵ This carries forward Sec. 19-4 of current Chapter 19, except paragraph (b) is addressed in the zoning ordinance.

2. Will not be detrimental to public safety, health, or welfare or injurious to surrounding property or improvements;
3. Is based only on conditions that are unique to the property, are not generally applicable to other property, and do not create mere inconvenience; and
4. Is not based exclusively on financial considerations.
5. Is the minimum exception that will relieve the hardship.

(3) Application Subject to Decision by Decision-Making Body

a. General

If staff review is required for an application (indicated by an "S" in Table 2-1(a), Summary Table of Review Responsibilities), staff shall review the application and prepare a recommendation. If a recommendation is to disapprove the application, staff shall provide a written explanation of why the application should not be approved, and the changes that are necessary for a recommendation of approval.

b. Distribution and Availability of Application and Staff Report

Upon completion of staff review and preparation of a recommendation, the Planning Director shall take all the following actions within a reasonable time period before the meeting or public hearing at which the application is scheduled for review:

1. Schedule and ensure notice (if appropriate) of any required public hearing on the application in accordance with Sec. 19-2.2(d), Public Hearing Scheduling and Notification;
2. Transmit the application, related materials, and the staff report to the appropriate advisory or decision-making body;
3. Transmit a copy of the staff report to the applicant; and
4. Make the application, related materials, and the staff report available for examination by the public in the Planning Department during normal business hours and make copies of such materials available at a reasonable cost.

(d) Public Hearing Scheduling and Notification²⁶

(1) Public Hearing Scheduling

a. Responsibility for Scheduling

When a subdivision application is subject to a public hearing (indicated by "<_>" in Table 2-1(a)), the Planning Director shall ensure that the public hearing on the application is scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the advisory or decision-making body reviewing the application (see Sec. 19-2.1(a), Summary Table of Review Responsibilities).

b. Timing

The Planning Director shall schedule a required public hearing on the application in accordance with requirements of the Code of Virginia.

²⁶ This new section states that all notices will be prepared by the Planning Director in accordance with the Code of Virginia.

(2) Notification of Public Hearing

a. Notice Requirements

1. The Planning Director is responsible for providing all public hearing notification in accordance with the Code of Virginia.
2. In addition to the public notice requirements of the Code of Virginia, the Planning Director shall also provide any notice required by Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications, as well as written notice to any person, neighborhood organization, or other organization in the county that registers with the Planning Director to receive written notice of all public hearings on all development applications subject to a public hearing. To be eligible, the person or organization shall provide the Planning Director information in a form established by the Planning Director, along with a fee to defray mailing costs. To continue to receive such notice, a person or organization shall re-register every two years. The written notice provided under this section shall be given by mail, a minimum of 14 days in advance of the public hearing, to the mailing address provided by the person or organization.

b. Constructive Notice

1. A person's actual notice of, or active participation in, the proceedings for which the written notice is required, waives the party's right to challenge the validity of the proceeding due to failure of the person to receive the required written notice.
2. If questions arise at the hearing regarding the adequacy of notice, the body conducting the hearing shall direct the Planning Director to determine whether there is compliance with the applicable public notification requirements and advise the review body before final action on the request.

(e) *Decision by Decision-Making Body*²⁷

- (1) If an application is subject to a final decision by the Board of Supervisors or Planning Commission, (see Sec. 19-2.1(a), Summary Table of Review Responsibilities), such decision-making body shall review and decide the application in accordance with the following procedure:
 - a. The decision-making body shall hold any required public hearing(s) and consider the application, relevant support materials, staff report, any advisory body recommendations, and any public comments. The decision-making body shall then make one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type and within any time requirements set forth in Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications.
 - b. If an application for subdivision approval is denied, the specific reasons for denial shall be set forth in writing, along with a statement of what corrections or modifications will permit approval of the application. The applicant may resubmit a revised application in

²⁷ This section consolidates provisions pertaining to review and final decision on an application by the Board of Supervisors, Planning Commission, or BZA.

accordance with Sec. 19-2.2(f)(2), Revision and Resubmittal of Application after Disapproval.

(f) *Post-Decision Actions and Limitations*²⁸

(1) Notice of Decision

Within ten calendar days after a final decision on an application, the Planning Director shall provide the applicant written notice of the decision and make a copy of the decision available to the public in the Planning Department. If the decision is to deny the application, the Planning Director shall provide the applicant the specific reasons for denial and a statement of what corrections or modifications will permit approval of the application.

(2) Revision and Resubmittal of Application after Disapproval²⁹

- a.** If the application is disapproved, the applicant may revise the application, in response to the specific reasons identified for the disapproval, and resubmit it to the Planning Director for reconsideration by the Planning Commission or the Planning Director, whichever disapproved the application. After review of the resubmitted application, the Planning Commission or the Planning Director, as applicable, shall review and either approve or disapprove the application. The Planning Commission or the Planning Director, as applicable, shall approve the resubmitted application only on finding the following:
 - 1.** All deficiencies identified in the previous review of the application have been corrected; and
 - 2.** The application does not contain new deficiencies, based on the review standards in Sec. 19-2.3, Specific Standards and Requirements for Subdivision Applications. If the application involves real property used for commercial or industrial purposes, only new deficiencies resulting from the following shall be considered:³⁰
 - (a)** Corrections made to address previously identified deficiencies;
 - (b)** Errors or omissions occurring after the initial submission of the application;
 - (c)** Material revisions of infrastructure or physical improvements from the earlier submission; or
 - (d)** Material revisions that create a new required review by the state Department of Transportation or other state agency.
- b.** The Planning Commission or the Planning Director, as applicable, shall approve or disapprove a resubmitted application within 45 days of the date it was resubmitted. If the Planning Commission or Planning Director, identifies deficiencies on the resubmission, the commission or Director, as applicable, shall refer to specific ordinances, regulations or policies and shall identify modifications or corrections that will permit approval. If the application involves real property used for commercial or industrial purposes and the Planning Commission or the Planning Director, as applicable, fails to approve or disapprove a resubmitted application within 45 days of the date it

²⁸ This new section establishes general rules and procedures that apply after a decision on an application.

²⁹ This section consolidates provisions for resubmittal of a plat after it has been disapproved in Sec. 19-62 and Sec. 19-92 of current Chapter 19.

³⁰ This carries forward the standards in paragraph (2) of Sec. 19-62 paragraph (a) of Sec. 19-92, revised for readability.

was resubmitted, the application shall be deemed approved; however, any deficiency in the proposed plat that, if left uncorrected, would violate local, state, or federal law or regulations, mandatory state Department of Transportation Engineering and Safety requirements, or other mandatory engineering and safety requirements, shall not be considered, treated, or deemed as having been approved.

(3) Petition to Circuit Court if Decision Not Made within Required Time³¹

If the Planning Commission or Planning Director, as applicable, fails to approve or disapprove the application within the time specified in this Ordinance for approval, the applicant may petition the Circuit Court to direct approval of the plat in accordance with the Code of Virginia, after giving ten-days' written notice to the Planning Commission or the Planning Director, as applicable.

SEC. 19-2.3. SPECIFIC STANDARDS AND REQUIREMENTS FOR SUBDIVISION APPLICATIONS³²

This section sets forth, for each type of subdivision application reviewed under this Ordinance, the purpose of the subdivision approval, when it is required or allowed, the specific procedure required for submitting and reviewing the application, and the criteria for making a decision on the application. The required procedure for each type of application identifies the applicability of each common procedure set forth in Sec. 19-2.2, Common Subdivision Review Procedures, and any modifications of the common procedures that apply.

(a) Text Amendment³³

(1) Purpose

The purpose of this section is to establish a uniform mechanism for amending the text of this Ordinance.

(2) Text Amendment Procedure

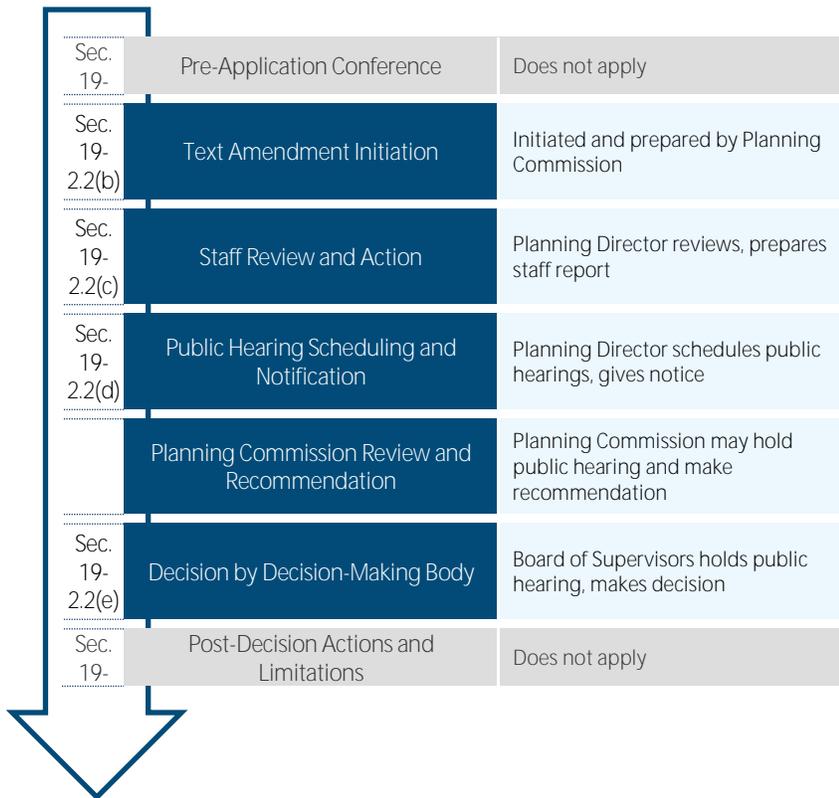
This section sets forth the required procedure for a text amendment. Figure 2-3(a) identifies the common procedures in Sec. 19-2.2, Common Subdivision Review Procedures, that apply to a text amendment. Additions or modifications to the common procedures are identified below.

³¹ This section is new. It allows for petition to the Circuit Court if a decision is not made on the proposed plat within the time required, in accordance with paragraph C of § 15.2-2259 and paragraph D of § 15.2-2260 of the Code of Virginia. **STAFF:** Appropriate?

³² This section includes the specific review standards that are applied to each type of subdivision application, other unique procedural review requirements for each individual application if there are additional or different procedures apart from the common review procedures, and the rules governing minor modifications and amendments. Each procedure includes a review process flowchart.

³³ This new section establishes a procedure for amending the subdivision ordinance. That procedure is set forth in Code of Virginia § 15.2-2253.

Figure 2-3(a): Text Amendment



a. Initiation of Text Amendment

The common procedures in Sec. 19-2.2(b), Submittal and Acceptance of Applications, do not apply. Instead, a text amendment shall be initiated and prepared by the Planning Commission, either on its own initiative or at the request of the Board of Supervisors.

b. Staff Review and Action

The common procedures in Sec. 19-2.2(c) apply.

c. Public Hearing Scheduling and Notification

The common procedures in Sec. 19-2.2(d) apply.

d. Planning Commission Review and Recommendation

The Planning Commission shall hold a public hearing on the proposed text amendment in accordance with the Code of Virginia and shall make a recommendation to the Board of Supervisors in accordance with Sec. 19-2.3(a)(3), Text Amendment Decision Standards.

e. Decision by Decision-Making Body

The common procedures in Sec. 19-2.2(e) apply. After receipt of the Planning Commission’s recommendation, or, if the Planning Commission does not make a recommendation on the proposed amendment within 60 days after the receipt of the proposed amendment by the Commission, the Board of Supervisors shall hold a public hearing on the proposed amendment in accordance with the Code of Virginia. After the close of the public hearing on the proposed amendment, the Board shall make a decision on the application in accordance with Sec. 19-2.3(a)(3), Text Amendment Decision Standards. The decision shall be one of the following:

- (a) Adoption of the amendment as proposed;
- (b) Adoption of a revised amendment (which may require a new public hearing);
- (c) Disapproval of the amendment as proposed;
- (d) No action (this does not constitute approval); or
- (e) Other action consistent with the Code of Virginia.

f. Common Procedures that do not Apply

The common procedures in Sec. 19-2.2(a), Pre-Application Conference, Sec. 19-2.2(b), Submittal and Acceptance of Applications, and Sec. 19-2.2(f), Post-Decision Actions and Limitations, do not apply to text amendments.

(3) Text Amendment Decision Standards

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Board of Supervisors within the authority granted to the Board of Supervisors by the Code of Virginia.

(b) Preliminary Plat

(1) Purpose

The purpose of this section is to provide a uniform mechanism for the submittal and review of preliminary plats in accordance with the Code of Virginia and this Ordinance.

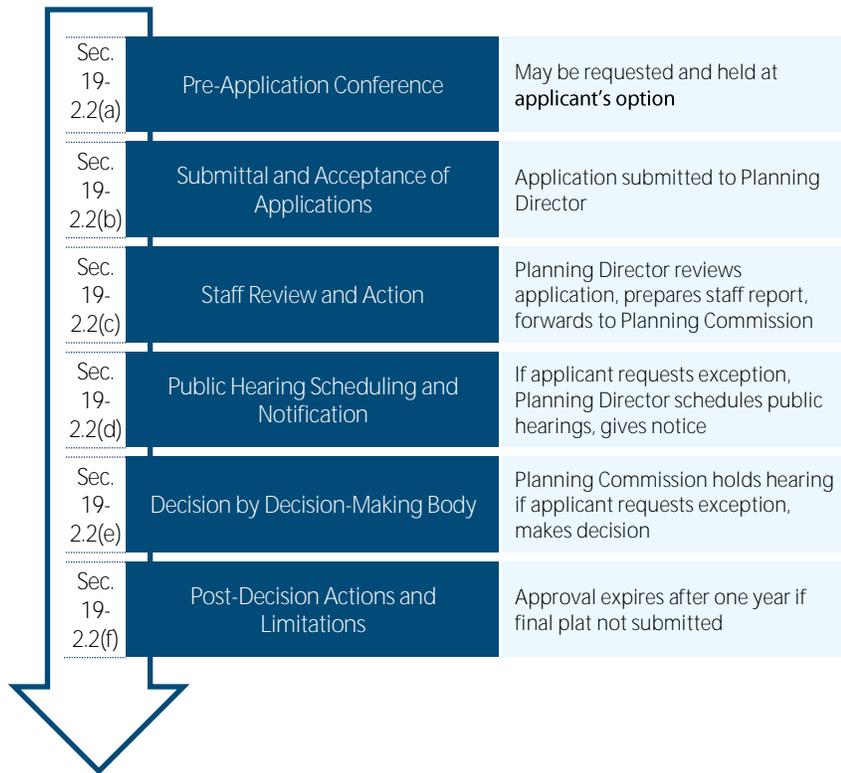
(2) Applicability

- a. Approval of a preliminary plat in accordance with the procedure and standards in this section is required prior to any subdivision of land into more than 50 lots, unless minor subdivision approval is obtained for the subdivision in accordance with Sec. 19-2.3(d), Minor Subdivision.
- b. Approval of a preliminary plat in accordance with the procedure and standards in this section may be requested by an applicant, at the applicant's option, for any subdivision of land into 50 or fewer lots.
- c. Approval of a preliminary plat constitutes conditional approval of the proposed subdivision and allows the applicant to submit final plat applications for the proposed subdivision.

(3) Preliminary Plat Procedure

This section sets forth the required procedure for a preliminary plat. Figure 2-3(b) identifies the common procedures in Sec. 19-2.2, Common Subdivision Review Procedures, that apply to a preliminary plat. Additions or modifications to the common procedures are identified below.

Figure 2-3(b): Preliminary Plat



a. Pre-Application Conference

A pre-application conference may be requested and held at the applicant's option in accordance with Sec. 19-2.2(a).

b. Submittal and Acceptance of Applications

The common procedures in Sec. 19-2.2(b) apply. The application shall include a vicinity map, a preliminary plat, and a traffic study, in accordance with the submission requirements checklist in the Administrative Manual.³⁴

c. Staff Review and Action

The common procedures in Sec. 19-2.2(c) apply.

d. Public Hearing Scheduling and Notification

If the applicant requests an exception in accordance with subsection e.3 below, the Planning Director shall schedule a public hearing and provide notification in accordance with Sec. 19-2.2(d), Public Hearing Scheduling and Notification. Notification of the hearing shall be sent by certified mail, return receipt requested, to all owners of property abutting and immediately across the street from the parcel(s) to be subdivided, using the addresses listed on the County's tax records. Such notice shall be sent a minimum of 30 days prior to the hearing date.

³⁴ The application completeness review standards in the common procedures of this document reference the submission requirements checklist for the application in the Administrative Manual. Additional detailed requirements in Sec. 19-61 of current Chapter 19 will be included in the Administrative Manual.

e. Decision by Decision-Making Body

The common procedures in Sec. 19-2.2(e) apply, subject to the following additions or modifications:

- 1.** If the applicant requests and exception in accordance with subsection 3 below, the Planning Commission shall hold a public hearing on the application. After the close of the public hearing, if applicable, the Planning Commission shall make a decision on the application in accordance with Sec. 19-2.3(b)(4), Preliminary Plat Decision Standards. The Planning Commission's decision on a preliminary subdivision application shall be one of the following:
 - (a)** Approve the application; or
 - (b)** Deny the application.
- 2.** The Planning Commission shall make a decision on the application within 60 days of submission, unless state agency review is required. If state agency review is required, the Planning Commission shall make a decision on the application within 45 days of receipt of approvals from all reviewing state agencies or within 90 days, whichever is earlier, provided the Planning Commission is not required to make a decision less than 60 days from the date of submittal. The time periods in this subsection may be extended if requested by the applicant.
- 3.** The applicant may request, and the Planning Commission may grant, exceptions to the standards in Article 19-3: Design Standards, and Article 19-4: Required Improvements, if the Planning Commission finds that extraordinary hardship may result from strict compliance with those standards, and if the exception:³⁵
 - (a)** Substantially complies with the provisions of this Ordinance, does not defeat the purposes of this Ordinance, and protects the public interest;
 - (b)** Will not be detrimental to public safety, health, or welfare or injurious to surrounding property or improvements;
 - (c)** Is based only on conditions that are unique to the property, are not generally applicable to other property, and do not create mere inconvenience; and
 - (d)** Is not based exclusively on financial considerations.
- 4.** The Planning Commission may approve double frontage lots on minor streets of less than 60 feet of right-of-way or stem lots which do not meet the minimum lot width and frontage requirements in Chapter 24 of the County Code, if the requirements in subsection 3 above are met and the lots comply with all other requirements of this Ordinance and Chapter 24 of the County Code.

f. Post-Decision Actions and Limitations

The common procedures in Sec. 19-2.2(f) apply, subject to the following additions or modifications:

³⁵ This carries forward Sec. 19-4 of current Chapter 19, except paragraph (b) of Sec. 19-4 is addressed in the zoning ordinance.

1. Notation of Decision on Plat³⁶

The decision of the Planning Commission on the application shall be noted as outlined in the Administrative manual.³⁷

2. Effect of Approval

Approval of a preliminary plat approves the layout of the preliminary plat for use in preparation of the final plat and allows the applicant to submit a final plat applications for the proposed subdivision. Approval of a preliminary plat does not constitute or guarantee approval of the final plat.³⁸

3. Period of Validity³⁹

(a) Approval of a preliminary plat shall automatically expire one year after the date of its approval if a final subdivision plat has not been approved for all or a portion of the land proposed to be subdivided on the preliminary plat. The applicant may submit an extension request along with a fee, and the Planning Director may grant one-year extensions of this time period, provided:

- (1) The applicant requests the extension prior to the expiration of the approval;
- (2) The Planning Director shall not grant extensions totaling more than five years; and
- (3) The applicant diligently pursues approval of a final subdivision plat.

(b) The Planning Commission may grant one year extensions of the time period established in subsection (a) above, if the Planning Director requests that the Planning Commission make a decision on an extension request submitted in accordance with subsection (a) above, because of changes in conditions affecting the proposed subdivision or if the Planning Director denies an extension request and the applicant appeals the Director's decision to the Planning Commission.

(c) Approval of a preliminary plat that has not expired in accordance with subsection (a) above shall be automatically extended for five years from the date of the latest recorded plat for all of a portion of the land proposed to be subdivided on the latest plat. The preliminary plat shall automatically expire after five years from the latest recorded plat, unless:

- (1) The applicant pays a fee and requests an extension of time; and
- (2) The extension of time is approved by the Planning Commission.

(d) The Planning Commission may revoke approval of a preliminary/conditional plat at any time after three years have passed from the date of approval of the plat, and upon 90 days' written notice by certified mail to the applicant, if the commission finds that the applicant has not diligently pursued approval of the final subdivision plat. For purposes of this subsection, "diligently pursued approval" means that the applicant has incurred extensive obligations or

³⁶ This carries forward Sec. 19-63 of current Chapter 19.

³⁷ The current requirement that one plat be returned to the applicant is not carried forward, based on current practices.

³⁸ This provision is carried forward from Sec. 19-64 of current Chapter 19.

³⁹ This carries forward Sec. 19-64 of current Chapter 19, with modifications for clarity and to improve consistency with the Code of Virginia.

substantial expenses relating to the submitted final subdivision plat or modifications to it.

(4) Preliminary Plat Decision Standards

The Planning Commission shall approve a preliminary plat application on finding the proposed subdivision is consistent with all applicable standards in this Ordinance, including Article 19-3: Design Standards, Article 19-4: Required Improvements, and Article 19-5: Cluster Subdivision, and the County Code.

(c) Final Plat

(1) Purpose

The purpose of this section is to establish a uniform mechanism for the submittal and review of final plats in accordance with the Code of Virginia.

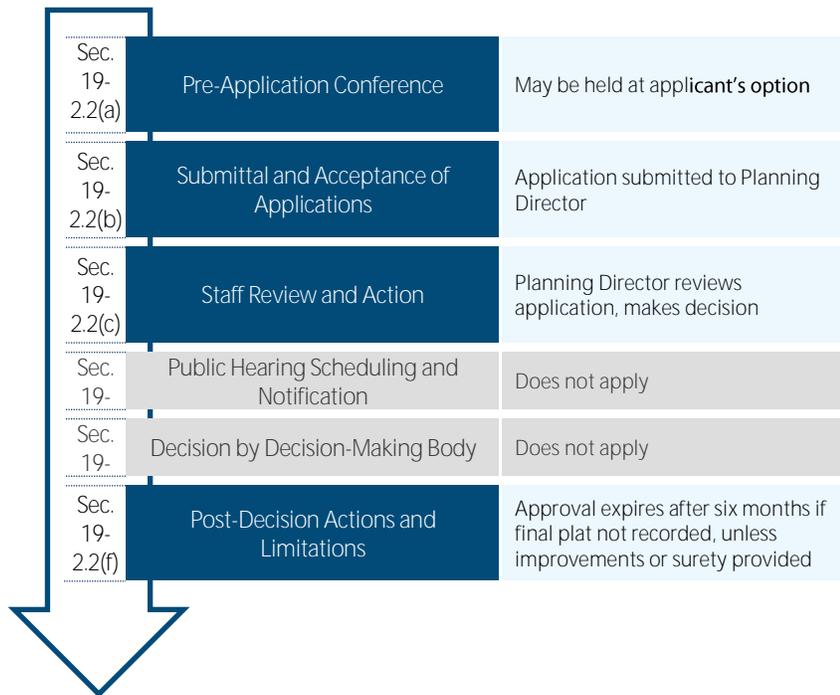
(2) Applicability

- a.** Approval of a final subdivision plat by the Planning Director in accordance with the procedure and standards in this section is required prior to the recording of a subdivision plat in the Circuit Court, unless minor subdivision approval is obtained for the subdivision in accordance with Sec. 19-2.3(d), Minor Subdivision.
- b.** An applicant may submit an application for a final plat for a portion of the land proposed to be subdivided on an approved preliminary plat.

(3) Final Plat Procedure

This section sets forth the required procedure for a final plat. Figure 2-3(c) identifies the common procedures in Sec. 19-2.2, Common Subdivision Review Procedures, that apply to a final plat. Additions or modifications to the common procedures are identified below.

Figure 2-3(c): Final Plat



a. Pre-Application Conference

A pre-application conference may be held at the applicant's option in accordance with Sec. 19-2.2(a).

b. Submittal and Acceptance of Applications

The common procedures in Sec. 19-2.2(b) apply, subject to the following additions or modifications:

1. The application shall include construction plans and a final plat, in accordance with the submission requirements checklist in the Administrative Manual.⁴⁰

c. Staff Review and Action

1. The common procedures in Sec. 19-2.2(c) apply.
2. The Planning Director shall review and make a decision on the application in accordance with Sec. 19-2.3(c)(4), Final Plat Decision Standards. The Planning Director's decision on a final plat application shall be to approve or deny the application.
3. If the final plat application is approved and upon the completion of all required improvements or the provision of a guarantees for such in accordance with Sec. 19-2.3(c)(3)d.2, Completion of Required Public Improvements, the Planning Director shall approve the final plat for recordation. If the Planning Director approves the final plat for recordation, the Planning Director shall sign two opaque prints and one

⁴⁰ The application completeness review standards in the common procedures of this document reference the submission requirements checklist for the application in the Administrative Manual. Additional detailed requirements in Sections 19-89 and 19-90 of current Chapter 19 will be included in the Administrative Manual.

transparent copy of the final plat provided by the applicant in accordance with the recording medium and inscription standards specified in the Administrative Manual.

d. Post-Decision Actions and Limitations

The common procedures in Sec. 19-2.2(f) apply, subject to the following additions or modifications:

1. Notice if Application Disapproved

If the Planning Director disapproves the application, the reasons for disapproval shall be given to the applicant in a separate document or written on the plat itself. The reasons for disapproval shall identify deficiencies in the plat by reference to specific duly adopted ordinances, regulations, or policies and shall identify the modifications or corrections necessary for approval.

2. Completion of Required Public Improvements⁴¹

Prior to final approval of a plat for recordation, the subdivider shall complete all required public improvements or provide for their completion by providing a guarantee to the Planning Director in the form of a certified check, cash escrow, surety bond, or bank or savings and loan association's letter of credit approved by the County Attorney, in accordance with subsections (a) through (c) below.

(a) Amount of Guarantee

The amount of the guarantee shall include the estimated cost of construction of all required improvements based on unit prices for new public or private sector construction in the County, plus a reasonable allowance of up to ten percent of the estimated construction cost for estimated administrative costs, inflation, and potential damage to existing roads or utilities.

(b) Completion of Improvements by Subdivider

(1) Upon the subdivider's written request and in accordance with subsection (2) below, the Planning Director shall make periodic partial releases of guarantees based upon the percentage of facilities completed and approved by the County department or state agency having jurisdiction. Such periodic partial releases shall not:

- a.** Occur before the completion of at least 30 percent of the facilities covered by the guarantees;
- b.** Exceed cumulatively 90 percent of the original amount for which the guarantees were taken; or
- c.** Be required in a number exceeding three in any 12-month period.

(2) The subdivider's written request for partial release of guarantees shall be in the form of a letter to the Planning Director requesting reduction or release of the guarantee along with a set of as-built plans and a certificate of completion by a duly licensed engineer. Within 30 days of receipt of such a request, the Planning Director shall notify the subdivider of any specified defects or deficiencies in construction and suggested corrective measures. If no action is taken by the Planning Director within the 30-day period, the subdivider may send an additional request in writing sent by certified mail, return receipt requested, to the County Manager. The Planning Director

⁴¹ This carries forward Sec. 19-93 of the current subdivision regulations. These provisions may be relocated to Sec. 19-4.2, Installation of Improvements or Surety, when Module 3 is drafted.

shall have ten working days after receipt of the second request for partial release to act, and, if no action is taken, the request shall be deemed approved and partial release granted to the subdivider.

- (3)** Upon final completion and acceptance of the required improvements, the Planning Director shall release any remaining bond, escrow, letter of credit, or other guarantee to the subdivider. For the purpose of release, the term "acceptance" means when the improvements are accepted for maintenance by the state agency, local government department or other public authority responsible for maintaining and operating the improvements upon acceptance.

(c) Completion of Improvements by County

The Planning Director shall establish the time period for completion of required improvements based on the subdivider's reasonable estimate. The Planning Director may subsequently extend such period of time on receiving a written request from the subdivider. If required improvements are not completed within the established time period and any extension of that period by the Planning Director, the Planning Director shall arrange for completion of the improvements using the certified check, cash escrow, or letter of credit or by calling on the surety on the bond. If the owner or developer defaults on construction of required improvements and the improvements are constructed with funding from the certified check, cash escrow, or letter of credit, the County shall retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative costs.

3. Recordation

The applicant may file the signed plat for recordation in the clerk's office of the Circuit Court only while the approval is valid (see Sec. 19-2.3(c)(3)d.4, Period of Validity).

4. Period of Validity

- (a)** If the approved final plat is not recorded within one year of the date of approval, the approval shall automatically expire and shall be null and void, unless one of the following occurs:⁴²
 - (1)** The applicant may request and the Planning Director may grant an extension of this time period; or
 - (2)** If construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the County, or if the applicant has furnished surety to the County by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to the time limit specified in the surety agreement approved by the County if greater than one year after the date of approval of the final plat.
- (b)** If the approved plat expires in accordance with subsection (a) above, the plat shall be marked void and returned by the Planning Director to the applicant.

⁴² This changes the current expiration period from 12 months to six months, except if construction has been started on certain facilities or surety has been provided for the facilities, consistent with paragraph A.8 of Code of Virginia § 15.2-2241.

e. Common Procedures that do not Apply

The common procedures in Sec. 19-2.2(d), Public Hearing Scheduling and Notification, and Sec. 19-2.2(e), Decision by Decision-Making Body, do not apply to final plat applications.

(4) Final Plat Decision Standards

- a.** The Planning Director shall approve a final plat application only on finding the following:
 - 1.** The final plat is in substantial conformity with the approved preliminary plat, as applicable; and
 - 2.** The final plat is consistent with all applicable standards in this Ordinance, including Article 19-3: Design Standards, Article 19-4: Required Improvements, and Article 19-5: Cluster Subdivision, and the County Code.
- b.** The Planning Director shall approve a final plat for recordation on determining all required public improvements have been completed and accepted, or a guarantee has been accepted by the Planning Director, in accordance with Sec. 19-2.3(c)(3)d.2, Completion of Required Public Improvements.

(d) Minor Subdivision⁴³

(1) Purpose

The purpose of this section is to establish a uniform mechanism for the submittal and review of minor subdivisions in accordance with the Code of Virginia.

(2) Applicability

- a.** Approval of a minor subdivision in accordance with the procedure and standards in this section is allowed in-lieu of approval of a preliminary plat (see Sec. 19-2.3(b)), if applicable, and a final plat (see Sec. 19-2.3(c)), prior to the recording of a plat of subdivision in the Circuit Court for any of the following:
 - 1.** Family subdivision;
 - 2.** Division of a lot or parcel of land pursuant to a plan of development approved in accordance with the requirements of Chapter 24 of the County Code, if the division does not involve a new public street or an extension of an existing public street; and
 - 3.** Vacation, relocation, or other alteration of a lot boundary line, if no relocation or alteration of streets, alleys, easements for public passage, or public utilities, or other public areas is involved.
- b.** An application for a minor subdivision may be submitted and reviewed concurrently with an application for a plan of development in accordance with Chapter 24 of the County Code.

(3) Minor Subdivision Procedure

This section sets forth the required procedure for a minor subdivision. Figure 2-3(d) identifies the common procedures in Sec. 19-2.2, Common Subdivision Review Procedures, that apply

⁴³ As discussed on pages 20, 107, and 108 of the Assessment, this new procedure supersedes the family subdivision procedure in current Chapter 19. It establishes a procedure for administrative approval by the Planning Director for family subdivisions, subdivisions for commercial or industrial uses pursuant to an approved plan of development, and relocations or vacations of lot boundary lines. The current provisions for Planning Commission review of family subdivisions if minimum street frontage requirements are not met is not carried forward.

to a minor subdivision. Additions or modifications to the common procedures are identified below.

Figure 2-3(d): Minor Subdivision

Sec. 19-2.2(a)	Pre-Application Conference	May be requested and held at applicant's option
Sec. 19-2.2(b)	Submittal and Acceptance of Applications	Application submitted to Planning Director
Sec. 19-2.2(c)	Staff Review and Action	Planning Director reviews application, makes decision
Sec. 19-	Public Hearing Scheduling and Notification	Does not apply
Sec. 19-	Decision by Decision-Making Body	Does not apply
Sec. 19-2.2(f)	Post-Decision Actions and Limitations	Approval expires after six months if final plat not recorded, unless improvements or surety provided

a. Pre-Application Conference

A pre-application conference may be requested and held at the applicant's option in accordance with Sec. 19-2.2(a).

b. Submittal and Acceptance of Applications

The common procedures in Sec. 19-2.2(b) apply.

c. Staff Review and Action⁴⁴

The common procedures in Sec. 19-2.2(c) apply. The Planning Director shall review and make a decision on the application in accordance with Sec. 19-2.3(d)(4), Minor Subdivision Decision Standards. The Planning Director's decision on a minor subdivision application shall be to approve or deny the application.

d. Post-Decision Actions and Limitations

The common procedures in Sec. 19-2.2(f) do not apply to minor subdivisions. Instead, the follow requirements apply:

1. Notice if Application Disapproved

If the Planning Director disapproves the application, the reasons for disapproval shall be given to the applicant in a separate document or written on the minor subdivision plat itself. The reasons for disapproval shall identify deficiencies in the plat by

⁴⁴ This applies the time for review in the common procedures (also applicable to final plats). Paragraph (b) of Sec. 19-99 of current Chapter 19, which establishes a time for review only for the Planning Commission, is not carried forward.

reference to specific duly adopted ordinances, regulations, or policies, and shall identify the modifications or corrections necessary for approval.

2. Recordation

If the Planning Director approves the application, the Planning Director shall sign two opaque prints and one transparent copy of the minor subdivision plat provided by the applicant in accordance with the recording medium and inscription standards specified in the Administrative Manual. The applicant may file the signed plat for recordation in the clerk's office of the Circuit Court only while the approval is valid (see Sec. 19-2.3(d)(3)d.3, Period of Validity). The minor plat does not require approval of construction plans.

3. Period of Validity

(a) If the approved minor subdivision plat is not recorded within six months of the date of approval, the approval shall automatically expire, unless one of the following occurs:⁴⁵

(1) The applicant may request and the Planning Director may grant an extension of this time period; or

(2) If construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the county, or if the applicant has furnished surety to the County by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after date of the plat approval or to the time limit specified in the surety agreement approved by the County, whichever is greater.

(b) If the approved minor subdivision plat expires in accordance with subsection (c)(3)d.4(a) above, the plat shall be marked void and returned by the Planning Director to the applicant.

e. Common Procedures that do not Apply

The common procedures in Sec. 19-2.2(d), Public Hearing Scheduling and Notification, Sec. 19-2.2(e), Decision by Decision-Making Body, and Sec. 19-2.2(f), Post-Decision Actions and Limitations, do not apply to final plat applications.

(4) Minor Subdivision Decision Standards

The Planning Director shall approve a minor subdivision application only on finding the following:

a. The minor subdivision plat is consistent with all applicable standards in this Ordinance, including Article 19-3: Design Standards, Article 19-4: Required Improvements, and

⁴⁵ These time requirements for recording are new. They are consistent with the time periods for recording final plats.

Article 19-5: Cluster Subdivision, and all other applicable provisions of the County Code;⁴⁶

- b.** The minor subdivision plat is consistent with any valid plan of development approved for the land in accordance with Chapter 24 of the County Code;⁴⁷
- c.** If the minor subdivision involves the relocation or alteration of any easements or utility rights-of-way, express consent to the relocation has been provided by all persons holding any interest therein;⁴⁸ and
- d.** If the minor subdivision is a family subdivision:⁴⁹
 - 1.** The minor subdivision is not for the purpose of circumventing this Ordinance;
 - 2.** Only one such division shall be allowed for each family member; and
 - 3.** The owner of the land has placed a restrictive covenant on that portion of the original lot which is to be transferred by sale or gift pursuant to the family subdivision that prohibits subsequent transfer of ownership except to a member of the immediate family for a period of five years.

⁴⁶ This standard is new.

⁴⁷ This standard is new. It is included to address subdivisions that are currently exempted from review because a plan of development is required and the land is to be divided for a commercial or industrial use.

⁴⁸ This standard is from Code of Virginia § 15.2-2275.

⁴⁹ Other standards in Sec. 19-100 of current Chapter 19 are not carried forward here, but will be carried forward, and potentially modified, in Article 3:Design Standards.

ARTICLE 19-6:
ENFORCEMENT

**SEC. 19-6.1. ROLE OF PLANNING
DIRECTOR _____ 6-1**

**SEC. 19-6.2. COMPLIANCE
REQUIRED _____ 6-1**

SEC. 19-6.3. PENALTIES _____ 6-1

(a) Fine _____ 6-1

(b) Civil Enforcement _____ 6-2

6

ARTICLE 19-6. ENFORCEMENT

Commentary

Article 19-6: Enforcement, includes all provisions related to the enforcement of the subdivision ordinance, including:

- The role of the Planning Director in enforcing the subdivision ordinance;
- The general requirements for compliance with the subdivision ordinance; and
- The penalties available to the county when there are violations of the subdivision ordinance.

This commentary will be removed from the Public Hearing Draft of the subdivision ordinance.

SEC. 19-6.1. ROLE OF PLANNING DIRECTOR

The Planning Director is responsible for the enforcement of this Ordinance

SEC. 19-6.2. COMPLIANCE REQUIRED⁵⁰

- (a)** No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of this Ordinance and the Code of Virginia.
- (b)** No plat of any subdivision shall be recorded unless and until it has been submitted and approved in accordance with this Ordinance;
- (c)** No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided in this Ordinance, unless the subdivision was lawfully created prior to [enter effective date of this Ordinance]. However, this Ordinance shall not be construed to prevent the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.
- (d)** No subdivision shall be approved until the proposed subdivision complies with all procedures and standards of this Ordinance, all applicable requirements of Chapter 24 of the County Code, all other applicable requirements of the County Code, and all applicable requirements of state and federal law.
- (e)** No development approvals or permits in accordance with Chapter 24 of the County Code shall be approved unless the proposed development complies with this Ordinance.

SEC. 19-6.3. PENALTIES⁵¹

(a) Fine

The violation of any provision of this Ordinance shall be punished by a fine of not more than \$500.00 for each lot or parcel of land subdivided, transferred or sold.

⁵⁰ These provisions are new (see Code of Virginia § 15.2-2254).

⁵¹ This section builds on the enforcement provisions in Section 19-3 of current Chapter 19.

(b) *Civil Enforcement*

- (1) In addition to fines in accordance with subsection (a) above, the county may seek to:
 - a.** Enjoin the transfer, sale, or agreement to sell land in violation in any court of equity; or
 - b.** Recover the penalty by civil action in a court of competent jurisdiction.
- (2) In addition, appropriate actions may be taken by the county, and proceedings may be taken in equity to prevent any violation of this Ordinance and to prevent any unlawful construction; to recover damages; to restrain, correct, or abate a violation; or to prevent illegal occupancy of a building, structure, or premises. These remedies shall be in addition to the penalties described elsewhere in the County Code.

ARTICLE 19-7: DEFINITIONS

SEC. 19-7.1. GENERAL RULES FOR INTERPRETATION _____ 7-1

- (a) Meanings and Intent _____ 7-1
- (b) Headings, Illustrations, and Text _____ 7-1
- (c) Lists and Examples _____ 7-1
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SEC. 19-7.2. RULES FOR MEASUREMENT, CALCULATION, AND EXCEPTIONS _____ 7-3

SEC. 19-7.3. DEFINITIONS _____ 7-3

ARTICLE 19-7. DEFINITIONS AND RULES FOR INTERPRETATION

Commentary

Article 19-7: Definitions and Rules for Interpretation, consolidates definitions of terms used in the subdivision ordinance. It carries forward definitions in Sec. 19-2 of current Chapter 19, with modifications and refinements to improve clarity and consistency with the zoning ordinance. It also includes a new section establishing general rules for interpretation, consistent with the rules set forth in the current draft of rewritten Chapter 24.

This commentary will be removed from the Public Hearing Draft of the subdivision ordinance.

SEC. 19-7.1. GENERAL RULES FOR INTERPRETATION⁵²

The rules in this section shall apply for construing or interpreting the terms and provisions of this Ordinance.

(a) Meanings and Intent

All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Sec. 19-1.3, General Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance. When a specific section of these regulations gives a different meaning than the general definition provided in this article, the specific section's meaning and application of the term shall control.

(b) Headings, Illustrations, and Text

In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

(c) Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

(d) Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the

⁵² As discussed on page 104 of the Assessment, this section addresses general issues related to the interpretation of language in the revised ordinance.

county, the deadline or required date of action shall be the day subsequent that is not a Saturday, Sunday, or holiday observed by the county. References to days are calendar days unless otherwise stated.

Whenever a person has the right or is required to do some act within a prescribed period of time following the service of a notice or other document through mailed delivery, three days shall be added to the prescribed period, unless such an addition is contrary to the applicable provision in the Code of Virginia or Court rule or order.

(e) *References to Other Regulations or Publications*

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall mean a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

(f) *Delegation of Authority*

Any act authorized by this Ordinance to be carried out by the Planning Director may be delegated by the Planning Director to a professional-level county employee.

(g) *Public Officials and Agencies*

All public officials, bodies, and agencies to which references are made are those of the County of Henrico, Virginia, unless otherwise indicated.

(h) *Mandatory and Discretionary Terms*

The words "shall," "must," "should" and "will" are mandatory, establishing an obligation or duty to comply with the particular provision. The word "may" is permissive.

(i) *Conjunctions*

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
"And" indicates that all connected items, conditions, provisions or events apply; and
"Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

(j) *Tenses and Plurals*

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(k) *Term Not Defined*

If a term used in this Ordinance is not defined in this Ordinance, the Planning Director is authorized to interpret its meaning based on the definitions used in accepted sources, including A Planner's Dictionary and Merriam-Webster, American Heritage, Webster's New World, and New Oxford American dictionaries.

SEC. 19-7.2. RULES FOR MEASUREMENT, CALCULATION, AND EXCEPTIONS

The rules for measurement, calculation, and exceptions in Sec. 8.5 of Chapter 24 of the County Code are incorporated by reference into this section and apply to this Ordinance.

SEC. 19-7.3. DEFINITIONS

The following words, terms, and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section.

Administrative Manual⁵³

A document prepared by the Planning Director in accordance with the requirements in Chapter 24 of the County Code and this Ordinance, that contains requirements for application contents and forms, submittal schedules, and fees, and which may contain additional information relevant to the submittal and review of subdivision and other development applications.

Board of Supervisors⁵⁴

The Board of Supervisors of Henrico County, Virginia (see Sec. 19-2.1(b), Board of Supervisors).

Circuit Court⁵⁵

The Henrico Circuit Court of the 14th Judicial Circuit of Virginia.

County⁵⁶

Henrico County, Virginia, unless the term is used in conjunction with another county.

County Attorney⁵⁷

The County Attorney of Henrico County, Virginia.

County Code⁵⁸

The Code of Ordinances of the County of Henrico, Virginia.

Family subdivision⁵⁹

A single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the owner that does not require a new public street or extension of an existing public street, a new water distribution line, or a new sanitary sewer main. For the purpose of this chapter, the term "member of the immediate family" is defined as any person who is a natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the owner.

Final Plat⁶⁰

The final detailed drawing (to scale) of a tract of land, depicting the proposed division of the tract into lots, blocks, streets, or other areas within a proposed subdivision (see Sec. 19-2.3(c), Final Plat).

⁵³ New definition.

⁵⁴ New definition.

⁵⁵ New definition.

⁵⁶ New definition.

⁵⁷ New definition.

⁵⁸ New definition.

⁵⁹ This carries forward the definition of family subdivision in current Chapter 19, changed to include only those divisions that are addressed in Sections 19-97 through 19-101 of current Chapter 19.

⁶⁰ This definition is new.

Minor Subdivision⁶¹

A subdivision consisting of any of the following (see Sec. 19-2.3(d)), Minor Subdivision:

- Family subdivision;
- Division of a lot or parcel of land pursuant to a plan of development approved in accordance with the requirements of Chapter 24 of the County Code, if the division does not involve a new public street or an extension of an existing public street; or
- Vacation, relocation, or other alteration of a lot boundary line, if no relocation or alteration of streets, alleys, easements for public passage, or other public areas is involved.

Planning Commission⁶²

The Planning Commission of Henrico County, Virginia (see Sec. 19-2.1(c), Planning Commission).

Planning Director⁶³

The Planning Director of Henrico County, Virginia (see Sec. 19-2.1(d), Planning Director).

Preliminary Plat⁶⁴

The preliminary detailed drawing (to scale) of a tract of land, depicting its proposed division into lots, blocks, streets, or other designated areas within a proposed subdivision (see Sec. 19-2.3(b), Preliminary Plat). The approval of a preliminary plat constitutes conditional approval of the subdivision; however, the subdivision is not completed until an approved and valid final plat is recorded.

State⁶⁵

Of or referring to the Commonwealth of Virginia.

Text Amendment

See Sec. 19-2.3(a), Text Amendment.

Subdivision⁶⁶

A division of a lot or parcel of land situated wholly or partly within the county that (1) divides the lot or parcel of land into two or more lots or parcels for the purpose of transferring ownership or building development, or (2) involves a new street or an extension of an existing street.

⁶¹ New definition.

⁶² New definition.

⁶³ New definition.

⁶⁴ New definition.

⁶⁵ New definition.

⁶⁶ This carries forward the definition of subdivision in current Chapter 19, except for the following changes: (1) the reference to parcels created after July 28, 1987 is not carried forward, (2) the language is changed to include a division of land into two or more parcels, consistent with paragraph b of the current definition which references creating a parcel of land, and (3) deleting the two current exclusions of family subdivisions and divisions of a lot for commercial, business, industrial, or office development for which a plan of development has been approved. To clarify the regulations, these two exclusions are addressed in the new minor subdivision procedure.