

# ADOPTED

MAY 25 1999

ORDINANCE NO. 31A-197

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VI, OVERLAY DISTRICTS, DIVISION 1, RESIDENTIAL CLUSTER DEVELOPMENT, SECTION 24-538, STATEMENT OF INTENT; SECTION 24-539, RESIDENTIAL CLUSTER DEVELOPMENT DEFINED; SECTION 24-540, WHERE PERMITTED; SECTION 24-541, MINIMUM SITE SIZE; SECTION 24-542, PERMITTED USES; BY AMENDING AND RENUMBERING SECTION 24-544, SETBACK REQUIREMENTS WITH NEW NUMBER 24-545; BY ADDING NEW SECTION 24-544, BUFFER REQUIREMENTS; BY RENUMBERING SECTION 24-545, MINIMUM LOT WIDTH AND AREA REQUIREMENTS WITH NEW NUMBER 24-546; BY AMENDING AND RENUMBERING SECTION 24-546, YARD REGULATIONS WITH NEW NUMBER 24-547; BY AMENDING AND RENUMBERING SECTION 24-547, DENSITY WITH NEW NUMBER 24-548; BY DELETING OLD SECTION 24-548, DENSITY BONUSES; BY AMENDING, RENUMBERING AND RENAMING SECTION 24-549, DENSITY BONUSES - PERFORMANCE ASSURANCE WITH NEW NUMBER 24-551, AND NEW NAME, PERFORMANCE ASSURANCE; BY ADDING NEW SECTION 24-549, DENSITY STANDARDS; BY ADDING NEW SECTION 24-550, BMP REQUIREMENTS; BY AMENDING AND RENUMBERING SECTION 24-550, AMOUNT OF OPEN SPACE REQUIRED WITH NEW NUMBER 24-552; BY AMENDING AND RENUMBERING SECTION 24-551, OWNERSHIP OF OPEN SPACE WITH NEW NUMBER 24-553; AND BY AMENDING AND RENUMBERING SECTION 24-552, REVIEW AND APPROVAL PROCESS WITH NEW NUMBER 24-554.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article VI, Overlay Districts, Division 1, Residential Cluster Development, Section 24-538, Statement of intent; Section 24-539, Residential cluster development defined; Section

---

24-540, Where permitted; Section 24-541, Minimum site size; Section 24-542, Permitted uses; Section 24-544, Buffer requirements; Section 24-545, Setback requirements; Section 24-546, Minimum lot width and area requirements; Section 24-547, Yard regulations; Section 24-548, Density; Section 24-549, Density standards; Section 24-550, BMP requirements; Section 24-551, Performance assurance; Section 24-552, Amount of open space required; Section 24-553, Ownership of open space; and Section 24-554, Review and approval process.

Chapter 24. Zoning

Article VI. Overlay Districts

Division 1. Residential Cluster Development

**Sec. 24-538. Statement of intent.**

The purpose and intent of this article is to promote the efficient and well-planned use of land in residential areas and to encourage the provision and conservation of open space and the establishment of recreational uses to serve specific developments, to promote affordable housing and to implement the goals, objectives, strategies and standards in the Comprehensive Plan. Residential cluster developments shall preserve the integrity of their sites by protecting and promoting the preservation of features such as wetlands, steep slopes, stream valleys, natural vegetation, farmland or open space, and in doing so produce a more efficient and practicable development. *achieve innovative and quality designs of residential developments above one dwelling unit per acre that provide avenues for affordable housing, minimize environmental impacts, provide for usable and meaningful open space, and provide recreation amenities within a more practical and efficient development. Recognizing that greater variety and affordability are more obtainable with higher densities, developers have the flexibility to provide this product and still provide reasonable amenities within variously priced residential cluster communities. Hand in hand with the opportunities offered in higher density development is the expectation that the development will provide certain benefits to the community. As stated in the comprehensive plan, examples of these benefits include mixed-cost housing, affordable housing, unusual environmental protection or development that adheres to the principles of open space development design. Such design may include maintaining open fields; preserving scenic vistas; protecting wildlife habitats and corridors; retaining natural vegetative buffers around water bodies, wetlands, and along roads; preserving historic sites; creating adequate recreational areas; designing efficient pedestrian circulation to include trail systems; and ensuring that common land adjoins protected open space on adjacent parcels.*

---

**Sec. 24-539. Residential cluster development defined.**

A "residential cluster development," for purposes of this article, shall be a planned development of land consisting of predominantly residential uses together with their ~~its~~ recreational facilities, supporting roads, utilities and other public facilities.

**Sec. 24-540. Where permitted.**

A residential cluster development is permitted in the R-1, R-2, and R-5 zoning districts. Residential cluster developments shall only be permitted on land designated moderate-density residential on the Comprehensive Plan when such land is zoned R-5, Multifamily Residential. The requirements of this article shall govern where there is a conflict with the requirements of the underlying district.

**Sec. 24-541. Minimum site size.**

The minimum site size for a residential cluster development is five acres, except that extensions to an existing cluster development may be smaller. ~~less than five acres. The planning director may waive the minimum site size requirements for residential cluster developments which provide affordable housing set forth in section 24-549 below. However, in no case shall such development be less than two acres. Such a waiver may be considered upon the applicant providing a written request to the planning director to waive the minimum acreage requirement demonstrating to the satisfaction of the planning director that:~~

- ~~(1) The proposed development is consistent with the comprehensive plan; and~~
- ~~(2) Verification of affordable housing is provided; and~~
- ~~(3) Evidence that the property can be subdivided as proposed.~~

~~Upon receipt of the request, the planning director shall, within thirty days of the request, either grant or deny the waiver with reasons to that effect.~~

**Sec. 24-542. Permitted uses.**

Uses permitted in a residential cluster development shall be the same as those permitted in the zoning district in which the residential cluster development is located. In the event that the individual units within attached dwellings are proposed to be sold as separate living units, the attached dwelling may be divided to permit separate deed descriptions for conveyance purposes. A limited amount of commercial development ~~will~~ *may* be allowed within residential clusters as permitted in the zoning district in which the development is located. Commercial uses shall be shown on the master plan and be consistent with the Comprehensive Plan.

**Sec. 24-543. Utilities.**

Lots in a residential cluster development shall be served by a public sewage disposal system and a public water system.

**Sec. 24-544. Buffer requirements.**

(a) *Right-of-way buffer.* Within any major subdivision approved under this article, there shall be planned and maintained buffers along all external existing and planned arterial road rights-of-way, as follows:

(1) *The minimum right-of-way buffer on Community Character Corridor roads as defined in the Comprehensive Plan shall be 150 feet, except when the average lot depth of the parent parcel is less than 600 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.*

(2) *The minimum right-of-way buffer on all non-Community Character Corridor roads shall be 75 feet, except when the average lot depth of the parent parcel is less than 300 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.*

(3) *If the buffer is non-wooded as defined for the purpose of this article as having no mature trees, then a minimum of two trees per 400 square feet of area shall be planted with a minimum 50 percent of said trees being evergreen. Otherwise, the buffer shall remain undisturbed or supplemented with additional plantings to achieve the planting ratio stated above.*

(b) *Perimeter buffers.* Within any major subdivision approved under this article, there shall be planned and maintained a perimeter buffer along the perimeter property lines of the development, except for areas adjacent to road rights-of-way. The minimum perimeter buffer shall be 35 feet. Landscaping guidelines for perimeter buffers shall follow the requirements in section 24-86(c) of this chapter.

(c) *Waiver Provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning commission may reduce the buffer depth requirements of this section for residential developments when:

(1) *The development is less than five acres and a majority of the development's units are dedicated to affordable housing; or*

(2) *The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or*

(3) *The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.*

*In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning commission may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.*

*(d) Modifications to the landscape requirements. The planning commission may modify, permit substitutions, or permit transfer of required landscaping in accordance with the provisions set forth in article II, division 4 of this chapter.*

*(e) All required buffers shall be exclusive of lots, remain free of structures and parking, and remain undisturbed, except for additional plantings and selective clearing approved by the director of planning or his designee. Soil stockpiles and staging areas shall not be permitted within any buffer, except that temporary soil stockpiles may be allowed upon approval by the planning commission under the following circumstances:*

*(1) The buffer in which the temporary stockpile is to occur is non-wooded, defined as having no mature trees.*

*(2) The stockpile should not be visible from a Community Character Corridor or Community Character Area, unless the soil stockpiling is needed for approved berming in that buffer.*

*(3) Stockpiles shall not exceed 35 feet in height.*

*(4) Stockpiles shall be temporary, with a time limit of six months.*

*(5) Once the use of the temporary soil stockpiles is completed, the ground must be adequately prepared for planting and revegetated in a manner that meets or exceeds the amount and quality of vegetation on the site previously.*

*(f) Wet ponds, dry detention basins, and other structural BMPs shall not generally be permitted in the buffers, except that the planning commission may approve them under the following circumstances:*

*(1) The need is necessitated by site conditions rather than economic factors; and*

*(2) The screening/buffering effect of the buffer has been retained by the design of the BMP and any degradation has been mitigated with additional plantings or berms as necessary.*

*(g) An entrance road, community and directional signage, bicycle and/or pedestrian paths, and utility connections and drainage improvements shall be permitted within the buffer with approval of the planning commission. Permitted utilities and constructed drainage conveyance systems shall cross the buffer at or near a perpendicular angle to the property line, with clearing kept to a minimum necessary to accommodate the utilities, except that minor improvements to natural drainage channels may be permitted at different angle to the property line upon the recommendation of the Environmental Director and the approval of the planning commission.*

*(h) Entrance roads through these buffers shall be built to the narrowest cross-section possible. Roads and open space shall be located and designed in a manner that minimizes views of structures within the development from the adjoining primary or secondary road as determined by the planning commission.*

**Sec. 24-544 545. Setback requirements.**

The minimum setback from the right-of-way of internal streets shall be shown on the plan of development and on the recorded subdivision plat. The minimum setback from external streets shall be the same as that required by the zoning district in which the lot is located. The approved setback lines shall be shown on the recorded subdivision plat, except as superceded by section 24-544. The minimum setback from internal streets may be reduced to zero, provided that no building in a residential cluster shall be closer than 35 feet to the internal edge of perimeter buffers. Off-street parking shall not be permitted within the required setbacks, except that parking spaces for single-family and two-family dwellings may be located within the required setback.

**Sec. 24-545 546. Minimum lot width and area requirements.**

There are no lot width or area requirements.

**Sec. 24-546 547. Yard regulations.**

The rear and side yards may be reduced to zero, provided that easements or covenants establish the rights of two abutting properties where main buildings are to be constructed on or within five feet of a property line. Such easements or covenants shall establish the rights of each affected owner to gain access to each owner's building for purposes of essential maintenance and service. Reductions of rear or side yards made under this provision shall also be subject to the following conditions:

- (a) The minimum distance between any two buildings within the residential cluster development shall be governed by the State of Virginia Building Code.
- (b) No building in a residential cluster development in an R-1, R-2, or R-5 district shall be closer than 35 feet to property outside the residential cluster development *the internal edge of perimeter buffers.*

**Sec. 24-547 548. Density.**

In a residential cluster development, the minimum and maximum number of dwelling units per acre of gross acreage as calculated below shall be as follows:

<i>Comprehensive Plan Designation</i>	<i>Minimum</i>	<i>Maximum</i>
Low-Density Residential	0	4.0
Moderate-Density Residential	4.0	12.0

In areas designated as low-density residential by the Comprehensive Plan, the gross density may be as high as one unit per acre. In areas designated as moderate-density residential by the Comprehensive Plan the gross density shall be four units per acre without accumulating density bonuses.

For the purpose of calculating gross density, gross acreage shall equal the sum of total developable area and up to 35 percent of the total area as ~~be~~ calculated ~~as shown~~ below:

<i>Gross Acreage</i>	
<i>Percentage of Nondevelopable Area</i>	<i>Gross Acreage Shall Equal:</i>
Less than 35	Total area of parcel
35 or More than 35	Developable land plus 35% of the parcel's land

Developable area shall consist of the total land area of the site minus stream beds, areas subject to flooding ~~under the 100-year storm event~~, wetlands and areas with slopes exceeding 25 percent gradient. If the cluster development lies in more than one Comprehensive Plan Land Use Designation, the number of dwelling units shall be calculated separately for each district ~~designation~~.

**Sec. 24-548. Density bonuses.**

(a) ~~The allowable base density of four units per acre in moderate-density residential areas may be increased upon the granting of a density bonus by the planning commission. Upon application, the planning commission may grant density bonuses in accordance with part (b) hereunder upon finding that the increased density will not impair the character of the area or create unacceptable adverse off-site infrastructure impacts. A density bonus shall not be granted for any improvement, design or action otherwise required by county, state or federal law.~~

~~(b) A density bonus may be awarded for each condition, specified in (1) through (16) below, which is met by the cluster development; provided, however, that in no case shall the accumulated density bonus exceed the maximum gross units per acre as noted in section 24-547. The density bonus percentages shall always be calculated against the allowable base density of four units per acre in moderate-density residential areas.~~

~~(1) For the provision of sidewalks on all internal streets a 20 percent density bonus may be awarded.~~



- ~~(2) For the creation of a perpetual scenic easement dedicated to James City County or another group approved by the county a ten percent density bonus may be awarded. Such scenic easement shall be at least 50 feet wide as measured from the future road right-of-way for nongreenbelt roadways or an additional 50 feet in addition to the buffer area for roads designated as a greenbelt on the Comprehensive Plan.~~
  - ~~(3) For the creation of a buffer area around RMA wetlands a 15 percent density bonus may be awarded. This wetlands buffer shall be at least 100 feet wide as measured from the landward edge of the wetlands. The buffer area shall contain no structures or improvements of any kind, except that unpaved footpaths and water dependent facilities are permitted.~~
  - ~~(4) For the dedication of land accepted by the county a 15 percent density bonus may be awarded. Such land shall be dedicated for use as a school site, fire station site, park site or other public facility site, shall be suitable for the proposed use and shall be at least two acres in size.~~
  - ~~(5) For undertaking an archaeological survey of the site according to guidelines provided by the Virginia Historic Landmarks Commission a five percent density bonus may be awarded.~~
  - ~~(6) For preserving any archaeological or historic site or structure judged to be of significant value by the Virginia Historic Landmarks Commission a ten percent density bonus may be awarded.~~
  - ~~(7) For preserving in its natural state, any area demonstrated to be a habitat for any endangered, rare or threatened species of plant or wildlife so designated by the State of Virginia or the federal government, or listed in *Rare and Endangered Vascular Plant Species in Virginia*, (Duncan M. Porter, Virginia Polytechnic Institute and State University, 1979) a 15 percent density bonus may be awarded.~~
  - ~~(8) For the provision of sidewalks joining the cluster development with any arterial road or public facility excluding pump stations, fire stations and solid waste container sites, a 20 percent density bonus may be awarded. This density bonus will only be granted for those sidewalks that are not already required by chapters 19 and 24 of the James City County Code. Such sidewalks shall be at least one-half mile in length and shall meet the specifications of the division of code compliance.~~
  - ~~(9) For the provision of paved bicycle paths interconnecting sections of the development and/or significant recreational facilities a 20 percent density bonus may be awarded. For the provision of unpaved bicycle/walking paths interconnecting sections of the development a ten percent density bonus may be awarded.~~
  - ~~(10) For the construction within the project of any meaningful lake or wetlands area to be used for active or passive recreation or drainage regulation, provided that the lake is open and usable to the residents of the development for recreational purposes a 15 percent density bonus may be awarded.~~
  - ~~(11) For the provision of a community swimming pool, a community recreation building or other similar major recreation facility such as tennis courts a 30 percent density bonus may be awarded.~~
-



- ~~(12) For the provision of a mixture of housing types, where 60 percent or more of the residential units are other than single-family homes a ten percent density bonus may be awarded.~~
- ~~(13) For the preservation of existing wooded areas equal to ten percent to 19 percent of the site, a density bonus of ten percent may be granted; for 20 percent or greater of the site, a density bonus of 15 percent may be granted.~~
- ~~(14) A 40 percent density bonus may be granted if 30 or more percent of the residential units have actual sales prices at or below the maximum allowable sales prices for James City County as set by adjusting the 1991 Virginia Housing Development Authority's Home Mortgage Loan Program (\$81,500) base by the cumulative rate of inflation as measured by the consumer price index (CPI) annual average change. The annual increase shall not exceed 5 percent.~~
- ~~(15) A 50 percent density bonus may be granted if 30 or more percent of the residential units have sales prices at or below 80 percent of the maximum sales price for James City County as set by adjusting the 1991 Virginia Housing Development Authority's Home Mortgage Loan Program base (\$65,200) by the cumulative rate of inflation as measured by the consumer price index (CPI) annual average change. The annual increase shall not exceed 5 percent.~~
- ~~(16) A 25 percent density bonus may be granted at the discretion of the development review committee for development proposals that exhibit superior layout and quality design not generally found in other County developments. This density bonus will only be granted if the development proposal incorporates and meets other specific density bonus conditions listed in subparagraphs (1) through (15).~~

~~In order to be awarded a density bonus under subparagraph (14) or (15), the developer must provide the director of planning confirmation of the initial sale price for the low or moderate cost units prior to the issuance of building permits for the bonus units. The developer shall also enter into an agreement with James City County which is approved by the county, restricting the initial sales prices of the low or moderate cost units for a period of five years and which controls the project phases in which such units shall be constructed.~~

***Sec. 24-549. Density Standards.***

***(a) Low Density Residential Cluster Development. Within any low density residential cluster development, the following standards shall apply:***

- (1) Residential cluster developments of one unit per acre or less may be permitted in areas designated low density residential on the comprehensive plan land use map upon the approval of a master plan by the planning commission in accordance with section 24-553.***
- (2) Residential cluster developments of more than one unit per acre, but of no more than two units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit from the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553.***

*In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:*

- a. *Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.*
  - b. *Implementation of the county's Archaeological Policy.*
  - c. *Provision of sidewalks on at least one side of all internal streets in the development, including the entrance road. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property. In addition, a sidewalk shall be provided as required in section 24-35.*
  - d. *Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the Board of Supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.*
  - e. *Implementation of the county's Natural Resources Policy.*
- (3) *Residential cluster developments of more than two units per acre, but of no more than three units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit by the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553. In addition to items (2)(a) through (e) above, the developer shall make assurances in a master plan or otherwise for the following:*
- a. *Provision of pedestrian and/or bicycle trails, where topographically feasible, which connect cul-de-sacs throughout the development to each other and to the recreation area; or provision of sidewalks on both sides of all internal streets in the development, including the entrance road; or a combination of trails and sidewalks as stated above. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property.*
  - b. *Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:*
    1. *The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or*

2. Along those segments of road, including the entrance road, where structures are not planned.

(4) At its discretion, the board of supervisors may award density bonuses to a gross allowable base density of two dwelling units per acre for the following items, provided that no total density exceeds four dwelling units per acre in areas designated low density residential on the comprehensive plan land use map. In addition, the board of supervisors may waive one or more of the requirements for standards (3)(a) and (b) above in approving these density bonuses; however, standards (2)(a) through (e) shall remain as requirements of the developments.

a. An additional 0.5 dwelling unit per acre may be awarded for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.

b. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, protection of wildlife habitat corridors, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in *The Sustainable Building Sourcebook* from the City of Austin's Green Building Program, or the *Sustainable Building Technical Manual* by the United States Department of Energy.

c. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.

No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.

(b) **Moderate Density Residential Cluster Development.** Within any moderate density residential cluster development, the following standards shall apply:

(1) Residential cluster developments of four units per acre but less than nine units per acre may be permitted in areas designated moderate density residential on the comprehensive plan land use map and zoned R-5 upon the approval of a master plan by the planning commission in

accordance with section 24-553. In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:

- a. Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.
  - b. Implementation of the county's Archaeological Policy.
  - c. Provision of sidewalks on both sides of all internal streets and drive aisles in the development, including the entrance road. This requirement may be waived or modified by the planning commission under the following circumstances:
    1. The development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property, or
    2. The planning director agrees with the applicant that there will be no practical destination point or route connected to the segment of sidewalk now or in the future.
  - d. Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the Board of Supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.
  - e. Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:
    1. The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or
    2. Along those segments of road, including the entrance road, where structures are not planned.
  - f. Implementation of the county's Natural Resources Policy.
- (2) At its discretion, the planning commission may award density bonuses to a gross allowable base density of nine dwelling units per acre for the following items, provided that no total density exceeds 12 dwelling units per acre in areas designated moderate density residential on the comprehensive plan land use map. Standards (1)(a) through (f) shall remain as requirements of the developments.

- a. *An additional 0.5 dwelling unit per acre for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.*
- b. *An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in The Sustainable Building Sourcebook from the City of Austin's Green Building Program, or the Sustainable Building Technical Manual by the United States Department of Energy.*
- c. *An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.*
- d. *An additional one dwelling unit per acre for land dedicated and accepted by the county for a public use site. The site shall be suitable for the proposed use, and shall be a minimum of five acres.*

*No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.*

**Sec. 24-550. BMP requirements.**

*To assure an appearance and condition which is consistent with the purpose of the residential cluster development overlay district, structural BMPs serving the properties within the district shall comply with the landscaping regulations in article II, division 4 of this chapter.*

**Sec. 24-549. Density bonuses- 551. Performance assurance.**

For all improvements proposed by the applicant pursuant to section 24-548 ~~549~~, assurances shall be provided, satisfactory to the county attorney, that such improvements will be constructed and completed for use by project residents within a specific, reasonable period of time.



**Sec. 24-550 552. Amount of open space required.**

(a) Within every residential cluster development approved under this article, there shall be planned and set aside permanently an amount of open space to be maintained exclusively for conservation and recreation purposes. It is recommended that the open space be protected by establishing a permanent conservation easement. The amount of such open space shall include not less than 40 percent of the net developable area of the site in low-density residential areas and 35 percent of the net developable area in moderate-density residential areas. *These amounts may be reduced to the following percentages at the discretion of the planning commission if the proposed development dedicates the following percentage of its total units to affordable housing:*

<i>Percentage of Total Units Dedicated to Affordable Housing</i>	<i>Percentage of Open Space Required in Low Density Residential</i>	<i>Percentage of Open Space Required in Moderate Density Residential</i>
<i>10 to 55</i>	<i>30</i>	<i>25</i>
<i>More than 55 to 100</i>	<i>25</i>	<i>20</i>

Golf courses may be counted as open space for the purpose of meeting this requirement to a maximum of 30 percent of the required open space. *The developable area of right-of-way buffers and perimeter buffers may be counted as open space for the purpose of meeting this requirement to a maximum of 50 percent of the required open space.*

(b) In addition, all nondevelopable areas consisting of all stream beds, areas subject to flooding *under the 100-year storm event, and wetlands and areas with slopes exceeding 25 percent gradient shall be maintained as open space. Areas with slopes of 25 percent or more which are contiguous to the above-mentioned areas may be incorporated into individual lots provided that the sloped areas are placed in conservation easements approved by the county attorney.*

(c) Before accepting the open space as meeting the requirements of paragraph (a) of this section, the planning commission shall find that:

- (1) No land lying within a proposed or existing road right-of-way, utility easement or drainage facility is counted toward the minimum open space requirement; *and*
- (2) The land is suitable in its size, shape and location for the conservation and recreational uses *purposes for which it is intended, with adequate access for the entire development and served with adequate facilities for such purpose; and*
- (3) *No part of a private yard or area determined by the planning commission to be a part thereof, with the exception of easements for streetscapes, shall be counted as meeting the open space requirements of this chapter; and*

(d) Evidence shall be given that satisfactory arrangements will be made for the perpetual maintenance of designated open space areas to relieve the county of future maintenance.

**Sec. 24-551 553. Ownership of open space.**

Within any residential cluster development approved under this article on which a tract is intended to be used in common for recreational or other public or semipublic purposes, no lot shall be approved, recorded, sold or used within the development until appropriate documents in a form *a declaration of covenants and restrictions or other documents necessary to establishing a permanent homeowners organization has been* approved by the county attorney ~~shall have~~ *and has* been executed. Such documents shall set forth the following:

- (1) The nature of the permanent organization under which common ownership is to be established, including its purpose; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property including necessary bonds when required by the county; and the method of assessing the individual property for its share of the cost of adequately administering and maintaining and replacing such common property.
- (2) The extent of common interest held by the owner of each individual parcel in the tract held in common ~~with others~~.

**Sec. 24-552 554. Review and approval process.**

(a) *Review required.* A master plan of development for a residential cluster development proposed under this article shall be filed with the planning director, who shall submit it to the *planning commission and board of supervisors in instances where a special use permit is required or to the* development review committee *in cases where a special use permit is not required.* The planning director ~~and the development review committee~~ shall recommend action on the plan to the planning commission, *and to the board of supervisors in instances where a special use permit is required.* ~~The planning commission and board of supervisors, where applicable,~~ which shall approve the plan of development upon finding that:

- (1) Such cluster development will preserve the environmental integrity of the site by protecting features such as wetlands, steep slopes, stream valleys, ~~or~~ natural vegetation or farmland; *and*
- (2) The cluster development will not impair the character of the area or create unacceptable adverse off-site infrastructure impacts; and
- (3) The proposed project is in accordance with the Comprehensive Plan of James City County; *and*
- (4) *The structures within the residential cluster development are sited in a way that preserves prominent open space features which are within or adjoin the site, such as open fields or farmland, scenic vistas, sight lines to historic areas or structures, and archaeological sites.*

(b) *Master plan of development.* The master plan of development shall identify proposed areas and uses of open space including the nondevelopable areas. The master plan of development shall be prepared by a licensed surveyor, engineer, architect, landscape architect or a planner. A scale shall be used so that the entire parcel can be shown on one piece of paper no larger than 36 inches by 48 inches. It shall include:

---



- (1) An inset map at a scale of not less than one inch to one mile, showing the property in relation to surrounding roads, subdivisions or landmarks.
- (2) A north arrow.
- (3) The location of existing property lines, ~~existing above and below ground utility easements, scenic easements,~~ watercourses or lakes, wooded areas and existing woods which are within or adjoin the property.
- (4) The boundaries of each section, topography and approximate location of proposed streets, proposed areas and uses of open space, ~~proposed parking areas,~~ proposed recreation areas, proposed lots and/or buildings, and phasing of development.
- (5) Marginal data which shows the gross acreage of the site, the net developable area, the proposed facilities qualifying for density bonuses ~~or required per the density standards,~~ the total number of dwelling units and/or lots, the number of bonus units and/or lots, the minimum amount of open space required by section 24-550 §51(a) and the total amount of open space.
- (6) Master water, sewer and drainage plans and schematic plans.
- (7) ~~All required setbacks, right-of-way buffers and perimeter buffers; all preserved tree areas, preserved slopes, open space areas and proposed bicycle/pedestrian access thereto; and proposed storm water management facilities.~~

(c) *Status of master plan.* The approval of the master plan under this section shall not be considered an approved preliminary plat as defined in the subdivision ordinance.

(d) *Amendment of master plan.* Upon application, an approved plan of development may be amended by the planning director; provided, however, that a proposed amendment does not:

- (1) Alter a recorded plat.
- (2) Conflict with the requirements of this article.
- (3) Change the general character or content of an approved master plan of development.
- (4) Impair the character of the surrounding area.
- (5) Result in any substantial change of major external access points.
- (6) Increase the approved number of dwelling units for any portion of the previously approved residential cluster development.

Proposed amendments that do not meet these criteria shall be referred to the planning commission ~~and board of supervisors, where applicable,~~ for review and action.

---

(e) *Master plan review fees.* Submittal of a master plan shall be accompanied by the fee charged for master plan review in accordance with section 24-7 of this chapter.

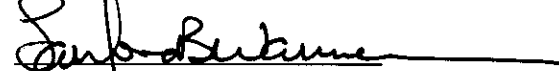
(f) *Master plan-Agreement.* Prior to final approval of the first sectional plan, an agreement shall be executed between the developer and the county which shall be binding upon the developer, his successors, assigns or heirs to the effect that the approved master plan shall govern the development of the total residential cluster development. This provision does not preclude the adjustment of the plan in accordance with section 24-552 ~~553~~(d).

(g) *Sectional plans-Action.* Sectional plans submitted in accordance with subsection (d) shall be reviewed in accordance with and shall meet the requirements of, article III of this chapter or the county's subdivision ordinance, whichever is appropriate. *However, all sectional plans submitted for moderate density cluster development shall be reviewed in accordance with and meet the requirements of article III of this chapter.*

Secs. 24-553 ~~553~~ - 24-563. Reserved.

  
\_\_\_\_\_  
Jack D. Edwards  
Chairman, Board of Supervisors

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of May, 1999.

rescluster.ord