

**ADOPTED**

NOV 27 2012

Board of Supervisors  
James City County, VA

**ORDINANCE NO. 31A-279**

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, BY AMENDING SECTION 24-538, STATEMENT OF INTENT; SECTION 24-540, WHERE PERMITTED; SECTION 24-541, MINIMUM SITE SIZE; SECTION 24-542, PERMITTED USES; SECTION 24-544, BUFFER REQUIREMENTS; AND SECTION 24-545, SETBACK REQUIREMENTS; BY AMENDING AND RENAMING SECTION 24-547, YARD REGULATIONS WITH NEW NAME YARD REQUIREMENTS; BY AMENDING SECTION 24-548, DENSITY; AND SECTION 24-549, DENSITY STANDARDS; BY RENUMBERING SECTION 24-550, BMP REQUIREMENTS TO NEW NUMBER 24-553; BY RENUMBERING SECTION 24-551, PERFORMANCE ASSURANCE TO NEW NUMBER 24-554; BY ADDING NEW SECTION 24-551, OPEN SPACE DEVELOPMENT DESIGN ELEMENTS; BY AMENDING, RENUMBERING AND RENAMING SECTION 24-552, AMOUNT OF OPEN SPACE REQUIRED TO NEW NUMBER AND NAME SECTION 24-550, OPEN SPACE; BY AMENDING, RENUMBERING AND RENAMING SECTION 24-553, OWNERSHIP OF OPEN SPACE TO NEW NUMBER AND NAME SECTION 24-552, ESTABLISHMENT OF HOMEOWNERS ASSOCIATION; BY AMENDING AND RENUMBERING SECTION 24-554, REVIEW AND APPROVAL PROCESS TO NEW NUMBER SECTION 24-556, AND BY ADDING NEW SECTION 24-555, PEDESTRIAN ACCOMODATIONS.

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, Cluster Overlay District, by amending Section 24-538, Statement of intent; 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 24-547, Yard requirements; Section 24-548, Density; Section 24-549, Density standards; Section 24-550, Open space; Section 24-551, Open space development design elements;

Section 24-552, Establishment of homeowners association; Section 24-553, BMP requirements; Section 24-554, Performance assurance; Section 24-255, Pedestrian accommodations; and Section 24-256 Review and approval process.

## Chapter 24

### ARTICLE VI. OVERLAY DISTRICTS

#### DIVISION 1. RESIDENTIAL CLUSTER DEVELOPMENT

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

The purpose and intent of this article is to achieve innovative and quality designs of residential developments above one dwelling unit per acre that provide avenues for affordable *and workforce* 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 *and workforce* 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 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, *and R-2, and R-5* zoning districts *inside the primary service area*. 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 less than five acres. The planning director may waive the minimum site size requirements for residential cluster developments which provide affordable *and workforce* 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 *and workforce* 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 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 *land use description and development standards*.

**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~~ *residential cluster* approved under this ~~article~~ *division*, 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. The right-of-way buffer shall be planted in accordance with section 24-96, General landscape area standards. Buffers along community character corridor roads shall also adhere to the community character corridor buffer treatment guidelines and map.~~

(b) *Perimeter buffers.* Within any ~~major subdivision residential cluster~~ approved under this ~~article division~~, 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 24-94(a)96 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~~ *director* may reduce the buffer depth requirements *specified in (a) and (b)* 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 *and workforce* 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~~ *director* 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~~ *director* 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) *Requirements for buffers.* 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~~ *director* 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~~ *director* 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~~ *shall* 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.
- (6) *Stockpiling shall conform with any applicable requirements of the Virginia erosion and sediment control regulations, the Virginia Erosion and Sediment Control Handbook and county erosion and sediment control program policies.*
- (f) *Limitations on buffers. Wet ponds, dry detention basins, and other Structural BMPs such as wet and dry ponds shall not generally be permitted in the buffers, except that the planning ~~commission~~ director 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) *Improvements allowable within buffers. 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~~ director. 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 a different angle to the property line upon ~~the recommendation of the environmental director and the~~ approval of the planning ~~commission~~ director.*
- (h) *Roads within buffers. 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~~ director.*

(i) *Appeals. In the event the planning director disapproves the items specified in (c), (d), (e), (f), (g), and (h) in this section or recommends conditions or modifications that are unacceptable to the applicant, the applicant may appeal the decision of the planning director to the development review committee which shall forward a recommendation to the planning commission. Any appeal shall be in writing and may be subject to fees as specified in Article I of this chapter.*

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

The minimum setback from the right-of-way 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, 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~~ 25 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. 24-546. Minimum lot width and area requirements.**

There are no lot width or area requirements.

**Sec. 24-547. Yard ~~regulations~~ requirements.**

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~~ *feet* 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~~ *Uniform Statewide Building Code*.
- (b) No building in a residential cluster development shall be closer than ~~35~~ 25 feet to the internal edge of perimeter buffers.
- (c) *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. Documents establishing such easements or covenants shall be satisfactory to the county attorney and submitted prior to approval of the development plan.*

**Sec. 24-548. 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

For the purpose of calculating gross density, gross acreage shall 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	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 designation.

The density of a proposed subdivision shall be calculated as the number of units divided by the gross acreage. For the purposes of this section, the gross acreage shall be calculated as follows:

<i>Percent non-developable</i>	<i>Percent of gross acreage added to the developable land</i>
0 – 20 percent	Use total parcel acreage
21 – 40 percent	20
41 – 70 percent	15
71 – 100 percent	10

Illustration of Gross Acreage Calculation

(a) If a 50-acre parcel has seven acres of non-developable land, then the non-developable area of the site is 14 percent. Because 14 percent is less than 20 percent, the total area of the parcel is used to calculate allowed density.

(b) If a 50-acre parcel has 14 acres of non-developable land, then the non-developable area of the site is 28 percent. Because 28 percent is between 21 percent and 40 percent, the total developable area of the parcel (36 acres) and 20 percent of the total parcel acreage (ten acres) are added together to obtain the total acreage used to calculate allowed density (46 acres).

*In this example, if an applicant sought a density of two dwelling units per acre, they would yield a maximum of 100 units in (a) and 92 units in (b).*

**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.~~

*No project shall have a density (including bonuses) of more than four units per acre. In order to achieve the densities listed below, the developer shall provide at least the minimum amount of open space, and shall make assurances in a master plan, proffers, or other document approved by the county attorney, for the density bonus items. The approval process for cluster development shall be as stated in section 24-556.*

<i>Density</i>	<i>Percent of developable acreage as open space</i>	<i>Required density bonus points from list below</i>
<i>Up to 1</i>	<i>25 percent</i>	<i>None</i>
<i>More than 1, but no more than 2</i>	<i>25 percent</i>	<i>2</i>
<i>More than 2, but no more than 3</i>	<i>30 percent</i>	<i>4</i>
<i>More than 3, but no more than 4</i>	<i>35 percent</i>	<i>6</i>

	<i>Bonus Item Options</i>	<i>Bonus Points</i>
<i>A.</i>	<i>For every 10 percent of the units committed to provision of affordable and workforce housing (starting above the threshold set in the county's housing opportunities policy, as amended)</i>	<i>2, up to a max of 4</i>

B.	<i>Designing a stormwater management plan that meets Chesapeake Bay Preservation Ordinance standards and requirements through extensive use of better site design/low impact development techniques, as approved by the engineering and resource protection division</i>	1.5
C.	<i>Undertaking or funding a stream restoration project or stormwater management facility retrofit within the same sub-watershed, as identified by an approved watershed management plan or by the engineering and resource protection division</i>	1.5
D.	<i>Meeting a majority of items (a) – (d) listed in section 24-551, Open space development design elements, as determined by the planning director</i>	1.5
E.	<i>Achieving green building certification using EarthCraft, LEED or equivalent program for all units</i>	1
F.	<i>Dedicating to the county a public use site, the developable portion of which is suitable for a public facility, as determined by the county administrator or designee</i>	1
G.	<i>Constructing a greenway trail and dedicating a public use easement in a location indicated by the approved greenway master plan, the Virginia outdoors plan, or such other useful and logical location as approved by the parks and recreation director or designee</i>	1
H.	<i>Preserving a single area of healthy, mature, mixed hardwood forestland at least two acres in size, within the developable portion of the site. The planning director may request that the developer provide confirmation, prepared by a certified horticulturalist, that these qualities are present</i>	1
I.	<i>Retaining a single area of agricultural land designated on the United States Department of Agriculture (USDA) maps to be of prime or statewide importance that is at least five acres in size</i>	1
J.	<i>Preserving one of the following underlined environmentally-related conservation features. The underlined item must constitute at least five percent of the developable area of the site.</i> <ol style="list-style-type: none"> <li><i>1. <u>100 foot buffers</u> around non-RPA wetland features (isolated wetlands), intermittent streams, or from floodplain zones A or AE (where not already part of the RPA), or from the edge of the RPA buffer;</i></li> <li><i>2. <u>Soils in hydrologic groups A and B, as defined by the USDA, and as verified on-site by a licensed geotechnical engineer (retain at least 50 percent of these soils on site);</u></i></li> <li><i>3. <u>Conservation area as identified by an approved watershed management plan;</u> or</i></li> <li><i>4. <u>Wildlife habitat corridors</u> that:</i> <ol style="list-style-type: none"> <li><i>a. Protect a corridor at least 100 feet in width from one protected area (on or off the cluster property) to another protected area, and</i></li> <li><i>b. Consist of mature forestland</i></li> </ol> </li> </ol>	1
K.	<i>Providing pedestrian accommodations on one side of all internal roadways, where this would exceed the requirements in set forth in section 24-35 of this chapter</i>	1
L.	<i>Developing binding design guidelines for the development that include superior architectural and design standards. Elements that the guidelines shall address include, but need not be limited to, provision of rear or side loading garages; use of universal design concepts; and attention to the quality of, and variation in, elements of the units such as facade materials and colors; windows, roof pitches, porches and entryways; and heights and setbacks from the right-of-way. Design guidelines shall be submitted concurrent with the master plan, and shall be reviewed and approved by the planning director</i>	0.5

M.	<i>Providing a 100-foot buffer from the internal edge of a right-of-way buffer and/or perimeter buffer (must constitute at least five percent of the developable area of the site)</i>	0.5
N.	<i>Preserving and rehabilitating an on-site structure identified in the document entitled Historical Structures Survey, prepared by Virginia Department of Historic Resources, and dated May 2008. The structure may be re-used as a community clubhouse or private residence with appropriate deed restrictions. If the proposed cluster is within a community character area (CCA) designated by the comprehensive plan, this bonus would also be available for rehabilitation and legal preservation of a structure elsewhere within that CCA</i>	0.5

**Sec. 24-5520. Amount of open space required-Open space.**

(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:~~

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

~~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 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 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.~~

~~*Within every residential cluster development approved under this division, there shall be planned and set aside permanently an amount of open space to be maintained exclusively for conservation and recreation purposes.*~~

~~(a) Non-developable areas shall be maintained as open space and shall not be included on any private lot, and should be protected through a conservation easement dedicated to the county or other legal entity approved by the county attorney.~~

~~(b) In addition, a percentage of the developable area shall also be set aside as open space, as specified in section 24-549. The developable area open space may include, but is not limited to:~~

~~(1) Areas on site necessary to meet county policies pertaining to natural resources, archaeology, and parks and recreation;~~

~~(2) Areas on site used to achieve density bonus points in accordance with section 24-549;~~

~~(3) The following areas, up to the percent specified:~~

~~a. Golf courses cannot exceed 30 percent of the developable open space required~~

~~b. Required right-of-way and perimeter buffers cannot exceed 50 percent of the developable open space required, and~~

c. Stormwater management facilities cannot exceed 20 percent of the developable open space required (this limitation applies to structural best management practices such as wet and dry ponds, but does not apply to bioretention or other low impact design measures).

(c) For the purpose of meeting the developable open space requirements specified in (b), open space area may not include:

- (1) Area on any individual private lots, or in the case of condominiums, within 15 feet of the units, or
- (2) Land within public road rights-of-way and utility or drainage easements.

(d) Conceptual and/or master plans shall include a table with the open space information as follows:

<b>Open space</b>	
<b>Nondevelopable open space, as defined</b>	<b>Acreage</b>
<b>Developable open space required</b>	<b>Acreage</b>
<b>Developable open space provided</b>	<b>Acreage</b>
<ul style="list-style-type: none"> <li>● Area(s) used to meet county policies pertaining to natural resources, archaeology, and parks and recreation (provide subtotals if applicable)</li> </ul>	
<ul style="list-style-type: none"> <li>● Area(s) on site used to achieve density bonus points in accordance with section 24-549</li> </ul>	
<ul style="list-style-type: none"> <li>● Area of golf courses</li> </ul>	
<ul style="list-style-type: none"> <li>● Area in required right-of-way and perimeter buffers</li> </ul>	
<ul style="list-style-type: none"> <li>● Area in stormwater management facilities</li> </ul>	
<ul style="list-style-type: none"> <li>● Other qualifying open space area</li> </ul>	
<b>Total nondevelopable and developable open space</b>	

(e) Open space shall be arranged on the site in a manner that coordinates with section 24-551, Open space development design elements. While every site is different, the applicant, as part of the conceptual and/or master plan review process, shall demonstrate through a narrative document or exhibits that the following were considered in designing the open space.

(1) Conservation/general open space:

- a. Located to preserve existing significant natural and historic features and scenic viewsheds such as ponds and views to open water, particularly those than can be seen from public roads;

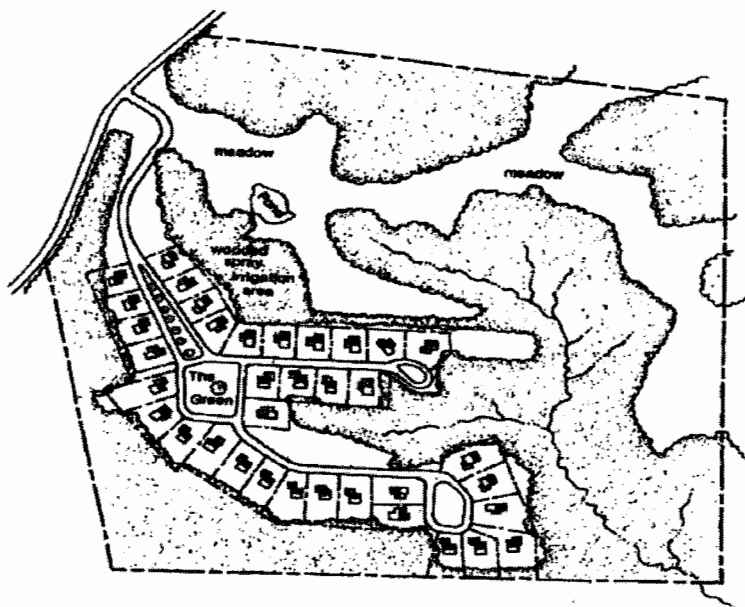


Figure 1  
(Graphic provided by Natural Lands Trust with permission)

- b. Located to adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future protected open space;

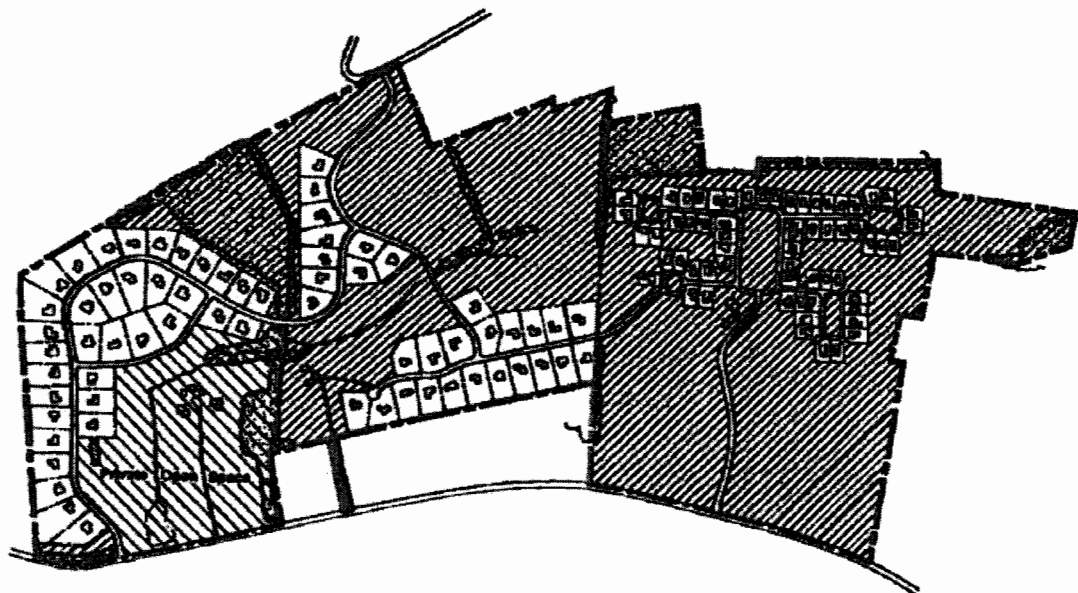


Figure 2  
(Graphic provided by Natural Lands Trust with permission)



- c. *Located to be interconnected and contiguous to the extent possible, and located to benefit and be accessible to the maximum number of units; and*
- d. *Prominently located within the development (for example, at the terminus of key views along roads, at the intersection of arterial or collector streets, at topographic high points or centrally located within the residential area).*

(2) *Recreation*

- a. *Cluster developments shall adhere to the parks and recreation master plan proffer guidelines. Any additional land intended for recreation shall be useable for the purpose intended, and also follow the design specifications in the parks and recreation master plan proffer guidelines.*

**Sec. 24-551. Open space development design elements.**

*While every site is different, the applicant, as part of the conceptual and/or master plan review process, shall demonstrate through a narrative document or exhibits that the following were considered in designing the development. These considerations shall be coordinated with the open space design.*

- (a) *The design should take advantage of the compact design by clustering development into a walkable scale neighborhood and preserving significant open space and natural features;*
- (b) *The development should be designed to complement existing topography and minimize the need for alteration of the landscape;*
- (c) *The development should use a mixture of diverse unit types, lot sizes, and/or unit prices; and*
- (d) *The design should use a creative layout. Examples include:*
  - (1) *Fronting on open space;*
  - (2) *Constructed with one side exterior wall along the side property line to allow side or rear yard garages;*
  - (3) *Detached or attached homes on loop lanes;*
  - (4) *Use of better site design techniques such as group or shared parking, and shared driveways; and*
  - (5) *Clear access from the units to the open space by abutting it, or via sidewalks or trails.*

**Sec. 24-5532. Ownership of open space. Establishment of homeowners association.**

~~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 a declaration of covenants and restrictions or other documents necessary to establishing a permanent homeowners organization has been approved by the county attorney 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.~~

~~A homeowners association shall be established in accordance with chapter 19 of the county code. The homeowners association documents shall set forth the nature (recreation or conservation) and location of the open space(s) either through illustration or through incorporation by reference of the development's master plan. The documents shall generally describe the use and maintenance standards necessary to adhere to the nature of the open space(s) as shown on the development's master plan.~~

**Sec. 24-5503. 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. 24-5514. Performance assurance.**

For all improvements proposed by the applicant pursuant to section 24-549, 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. 24-555. Pedestrian accommodations.**

*Pedestrian accommodations shall be provided in accordance with section 24-35.*

**Sec. 24-5546. Review and approval process.**

~~(a) Review required. A master plan 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 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, shall approve the master plan 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; 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.* The master plan shall identify proposed areas and uses of open space including the nondevelopable areas. The master plan 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 24-551(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) *Administrative consistency review.* The planning director may determine certain minor changes to a development plan are consistent with the master plan. A conceptual plan may be submitted to the planning director for this purpose in a form sufficient to illustrate the proposed deviations. For the purpose of this section, minor determinations of consistency include changes that meet all of the following:~~

- ~~(1) Do not significantly affect the general location or classification of housing units or buildings as shown on the master plan.~~
- ~~(2) Do not significantly alter the distribution of recreation or open space areas on the master plan.~~
- ~~(3) Do not significantly affect the road layout as shown on the master plan.~~
- ~~(4) Do not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the corresponding legislatively approved case associated with the master plan.~~

~~The planning director shall notify the chair of the development review committee when minor determinations of consistency are approved. Determinations of consistency that do not meet the criteria listed above shall follow the procedures for development plan review as outlined in section 24-554 (e) of the zoning ordinance.~~

~~(e) *Development plan review.* Development plans shall be submitted and reviewed in accordance with article III of this chapter or with the county's subdivision ordinance, whichever is applicable. Development plans may be submitted for review after approval of a master plan by the board of supervisors. All development plans shall be consistent with the master plan. Development plans may deviate from the master plan if the planning commission concludes, after reviewing written comments from the planning director, that the plan does not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the approval of rezoning. A conceptual plan may be submitted to the planning commission for this purpose in a form sufficient to illustrate the proposed deviations. If the planning commission determines that a proposed change would significantly deviate from the approved master plan, the applicant may submit alternative proposed development plans or proceed with amendment of a master plan in accordance with section 24-13.~~

~~(f) *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.~~

~~(g) *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 24-553(d).~~

~~(h) *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.

*(a) Conceptual plan and master plan. Any conceptual plan or master plan for a residential cluster development proposed under this division shall include the elements listed below. For master plans, these elements shall be in addition to meeting the requirements of section 24-23.*

- (1) Depiction and/or documentation of the items that the applicant plans to pursue when a bonus density above the base density is sought;*
- (2) Conceptual development design, including required setbacks and buffers, and illustration of the features listed above in the open space and open space development design sections;*
- (3) Marginal data and depiction which shows the gross acreage of the site, the nondevelopable area, the total number of dwelling units and/or lots, and, in the table format specified in section 24-550, the amount of open space required and the amount of open space provided; and*
- (4) Conceptual stormwater design, illustrating use of better site design and low impact development techniques, where possible.*


*(b) Approval process.*

*(1) In instances where a special use permit is not required by the residential district, a master plan shall be filed with the planning director who shall recommend action on the plan to the development review committee, which shall forward a recommendation to the planning commission. The planning commission shall approve the master plan upon finding that the proposed cluster development meets the requirements of this ordinance and is in accordance with the applicable residential designation description of the Comprehensive Plan.*

*(2) In instances where a special use permit is required by the residential district:*

*a. Prior to submission of a master plan for legislative action, the applicant is strongly encouraged to file a conceptual plan for review by the development review committee. The development review committee shall provide a recommendation on the conceptual plan based upon its findings regarding the extent that the proposed cluster development meets the requirements of this ordinance and is in accordance with the applicable residential designation description of the comprehensive plan.*

*b. A master plan in accordance with section 24-23 shall be submitted and shall follow the process established in that section. The recommendations and findings of the development review committee on any conceptual plan shall be presented to the planning commission.*

  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

  
Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	<u>X</u>	___	___
JONES	<u>X</u>	___	___
KENNEDY	<u>X</u>	___	___
ICENHOUR	<u>X</u>	___	___
KALE	<u>X</u>	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

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