

CHAPTER 106

ARTICLE II DISTRICT REGULATIONS SECTION 106-200 AGRICULTURE DISTRICT

Sec. 106-200.2. - Permitted uses.

(A) The following uses are permitted by right in the AG Agricultural District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

1. *Agricultural Use Types*
 - Agriculture *
 - Agritourism**
 - Farm Stand *
 - Forestry Operation

ARTICLE II DISTRICT REGULATIONS SECTION 106-210 DOWNTOWN BUSINESS DISTRICT.

Sec. 106-210.2. - Permitted uses.

(A) The following uses are permitted by right in the DBD Downtown Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

3. *Civic Use Types*
 - Assisted Care Residence
 - Clubs
 - Educational Facilities, College/University***
 - Guidance Services
 - Life Care Facility
 - Nursing Home
 - Post Office
 - Public Parks and Recreation Areas
 - Religious Assembly
 - Safety Services

5. *Commercial Use Types*
 - Antique Shops
 - Automobile Parts/Supply, Retail
 - Business or Trade School

Business Support Services
Commercial Indoor Entertainment
Communication Services
Consumer Repair Services
Convenience Store
Day Care Center *
Funeral Services
Homestay Inn *
Hotel/Motel/Motor Lodge
Microbrewery*
Microdistillery*
Pawn Shop
Personal Improvement Services
Personal Services
Restaurant
Retail Sales
Studio, Fine Arts
Veterinary Hospital/Clinic

7. *Miscellaneous Use Types*
~~Mixed Use Structure~~ *
Utility Service, Minor

(B) The following uses are permitted by special exception in the DBD Downtown Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

3. *Civic Use Types*
Administrative Services
Correction Facilities
Crises Center
Cultural Services
~~Educational Facilities, College/University~~ *
Educational Facilities, Primary/Secondary
Halfway House
Public Assembly
Public Maintenance and Service Facilities

SECTION 106-212 TRANSITIONAL BUSINESS DISTRICT.

Sec. 106-212.1. - Statement of intent.

The TBD Transitional Business District has been created in recognition that there are commercial areas near downtown Salem that exhibit patterns of development similar, but less intensive than, the Downtown Business District. These areas are suitable for future downtown-type uses and development patterns. The Transitional Business District allows a mixture of professional offices, financial services, government functions and specialty retail. Upper floor residential uses similarly are encouraged. Automobile related uses are limited in the district. Overall, setbacks and development standards are designed to allow a downtown urban character

Sec. 106-212.2. - Permitted uses.

(B) The following uses are permitted by special exception in the TBD Transitional Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

3. *Civic Use Types*

- Administrative Services
- Correction Facilities
- Crises Center
- Cultural Services
- ~~Educational Facilities, College/University *~~
- Educational Facilities, Primary/Secondary
- Halfway House
- Public Assembly
- Public Maintenance and Service Facilities

5. *Commercial Use Types*

- Assembly Hall
- Commercial Indoor Amusement
- Hospital
- Microbrewery*
- Microdistillery*

SECTION 106-213 COMMUNITY BUSINESS DISTRICT

Sec. 106-213.1. Statement of intent.

The CBD Community Business District has been created to allow a variety of commercial and service uses to coexist with residences in a transitional, mixed-use environment. This district provides development standards for uses which are more intensive than Residential Business (RB) Districts, but less intensive than Highway Business District (HBD). CBD districts are typically transitional areas, often corridors, on the edges between commercial and residential zones.

Sec. 106-213.2. Permitted uses.

(A) The following uses are permitted by right in the CBD Community Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

1. *Agricultural Use Types*
(None)
2. *Residential Use Types*
Home Occupation *
Manufactured Home, Emergency *
3. *Civic Use Types*
Cultural Services
Guidance Services
Public Parks and Recreation Areas
Religious Assembly
4. *Office Use Types*
Financial Institutions
General Offices
Medical Offices
5. *Commercial Use Types*
Antique Shops
Business Support Services
Consumer Repair Services
Convenience Store
Day Care Center *
Homestay Inn *
Laundry
Personal Improvement Services
Personal Services
Restaurant
Retail Sales
Studio, Fine Arts
6. *Industrial Use Types*
(None)
7. *Miscellaneous Use Types*
Mixed Use*

(B) The following uses are permitted by special exception in the CBD Community Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*)

indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

1. *Agricultural Use Types*
(None)
2. *Residential Use Types*
Family Day Care Home *
Residential Human Care Facility
Single Family Dwelling, Attached
Single Family Dwelling, Detached
Townhouse *
3. *Civic Use Types*
Clubs
Educational Facilities, Primary/Secondary
Post Office
4. *Office Use Types*
(None)
5. *Commercial Use Types*
Assembly Hall
Gasoline Station
Kennel, Commercial
Microbrewery*
Veterinary Hospital/Clinic
6. *Industrial Use Types*
(None)
7. *Miscellaneous Use Types*
Amateur Radio Tower
Outdoor Gathering*

Sec. 106-213.3. Site development regulations.

The following are general development standards for the CBD Community Business District. For additional, modified or more stringent standards see Article III, Use and Design Standards.

- (A) *Minimum Lot Requirements.*
 1. Area: 7,200 square feet
 2. Frontage: 60 feet on a public street
- (B) *Minimum Setback Requirements.*
 1. Principal Structure:
Front Yard: 30 feet from street centerline

Side Yard: No Minimum

Rear Yard: No Minimum

2. Accessory Structures:

Front Yard: Behind the rear building line of the principal structure.

Outdoor dining areas may be located in the front yard area, provided they are properly screened from adjoining residential property.

Side Yard: Five Feet

Rear Yard: Five Feet

(C) *Maximum Height of Structures.*

1. Principal Structures: 45 feet

2. Accessory Structures: Less than height of principal structure.

(D) *Maximum Building Size.*

1. Principal Structures: No Maximum

2. Accessory Structures: 30 percent of rear yard area. Accessory structures larger than 1,000 square feet shall require a special exception permit in accordance with section 106-524 of this chapter.

(E) *Other Requirements.*

1. Drive-through facilities in which a person, who remains in a motor vehicle, conducts business or exchanges through a window or exterior opening in a structure shall require a special exception permit in accordance with section 106-524 of this chapter.

2. Residential Uses shall conform to the site development regulations of RB, Residential Business District.

Sec. 106-214.2. - Permitted uses.

(B) The following uses are permitted by special exception in the HBD Highway Business District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards

1. *Agricultural Use Types*
(None)

2. *Residential Use Types*
(None)

3. *Civic Use Types*
Cemetery *
Correction Facilities
Crises Center
Educational Facilities, Primary/Secondary
Halfway House

4. *Office Use Types*
Outpatient Mental Health and Substance Abuse Clinic*
Short-term Lender

SECTION 106-218 LIGHT MANUFACTURING DISTRICT.

Sec. 106-218.2. - Permitted uses.

(B) The following uses are permitted by special exception in the LM Light Manufacturing District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards.

6. *Industrial Use Types*
Asphalt Plant *
Brewery*
Distillery*
Industry Type II
Landfill, Construction Debris
Landfill, Rubble
Landfill, Sanitary
Meat Packing and Related Industries
Railroad Facilities
Resource Extraction
Scrap and Salvage Services

SECTION 106-220 HEAVY MANUFACTURING DISTRICT.

Sec. 106-220.2. - Permitted uses.

(B) The following uses are permitted by special exception in the HM Heavy Manufacturing District, subject to all other applicable requirements contained in this chapter. An asterisk (*) indicates that the use is subject to additional, modified or more stringent standards as listed in Article III, Use and Design Standards.

6. *Industrial Use Types*
Brewery*
Distillery*
Industry Type III
Landfill, Construction Debris
Landfill, Rubble
Landfill, Sanitary
Resource Extraction
Scrap and Salvage Services

ARTICLE III. - USE AND DESIGN STANDARDS
SECTION 106-300. - USE AND DESIGN STANDARDS

Sec. 106-306.5. - Educational facilities, college/university.

(A) General Standards:

1. A site plan as required by this chapter shall be submitted and approved prior to the commencement of any new construction or enlargement of an educational facility. The administrator may waive this site plan requirement if the total increase in the impervious area resulting from this construction or enlargement is less than 3,000 square feet.
2. Screening and buffering for educational facilities shall be provided as required by the provisions found in section 106-402 of this chapter.

(B) Standards in the DBD District:

1. Educational facilities, college/university shall be allowed only on floors above the ground floor and in the same structure as a commercial use type except for parcels fronting Clay Street between Thompson Memorial Avenue and North Market Street. These parcels may allow educational facilities, college/university on any floor.
2. The commercial use type must occupy at least the first floor of the structure, and should be configured to be pedestrian friendly.

(BC) Standards in the CUD District:

1. Educational facility buildings shall be setback a minimum of 30 feet from any street, and shall be setback a minimum of ten feet from adjoining property lines.
2. Educational facility buildings shall have a maximum height of 45 feet. However, this maximum height may be increased up to a maximum height of 70 feet provided the minimum setback of the building is increased by one foot for each foot of additional height above 45 feet.

SECTION 106-310 COMMERCIAL USES.

Sec. 106-310.21. - Microdistillery.

(A) General standards:

1. Such establishments shall include a tasting area, and may include restaurant, retail, and live entertainment uses.
2. First floor frontage shall have at least 50% transparency from the street, and shall be primarily occupied by non-industrial uses.

SECTION 106-312 INDUSTRIAL USES.

Sec. 106-312.5. - Distilleries.

(A) General standards:

1. Such establishments may also include restaurants, tasting rooms, and retail related to the beverage being produced.

SECTION 106-314. - MISCELLANEOUS USES

Sec. 106-314.2. - Mixed use ~~structure~~.

A. Intent: The following minimum standards are established in recognition that mixed use, often multi-floor, structures, ~~are is~~ desirable within the downtown and community business districts. Mixed use ~~structures~~ allows maximum flexibility in the designation of different areas of a single ~~structure~~ parcel for different uses. Uses coexisting ~~within the same building~~ include, but are not limited to, loft apartments, condos, retail, office space, and restaurants. Generally non-residential uses should be designated for the first floor of multi-floor buildings to encourage pedestrian traffic and to avoid the creation of dead zones. When available the facades and characteristics of existing and surrounding buildings should be maintained.

B. General standards:

1. Applicants for mixed use ~~structure~~ development shall submit a site plan in accordance with section 106-400 of this chapter, along with sufficiently detailed layouts for each building and each floor of the building, designating the specific areas dedicated to each different use. The submitted site plan shall be approved by the city prior to commencing development of the site.
2. Major revisions to the final site plan shall be reviewed and approved following the procedures and requirements for site plan review contained in section 106-400 of this chapter. Major revisions include, but are not limited to changes such as:
 - a. Any increase in the density of the development;
 - b. Substantial change in circulation or access;
 - c. Substantial change in the mixture of dwelling unit types included in the project;
 - d. Substantial changes in the mixture of uses or an increase in the amount of space devoted to non-residential purposes;
 - e. Reduction in the approved open space, landscaping or buffering;
 - f. Substantial change in architectural or site design features of the development;
 - g. Any other change that the administrator finds is a major divergence from the approved final master plan.
3. All other changes in the final site plan shall be considered minor amendments. The administrator, upon receipt of a written request of the owner, may approve such minor amendments. A request which is disapproved by the administrator shall be considered a major amendment and shall be subject to the approval process outlined above for such amendments.

C. Standards in the DBD District:

1. Residential uses shall be allowed only in the same structure as an office or commercial use type. Common entrances are encouraged.

2. The office or commercial use type must occupy at least the first floor of the structure, **except as allowed by Section 106-306.5** and should be configured so as to be pedestrian friendly.
3. New construction or construction involving the demolition of existing buildings shall be of scale and construction materials so as to be appropriate with existing surrounding buildings. Materials and types of construction that should be given consideration include, but are not limited to:
 - a. Brick facades;
 - b. Cornices, parapets, molding, lintels and other externally visible decorations;
 - c. Roof lines;
 - d. Windows.
4. A homeowner's/property owner's association shall be created for each mixed use structure development. The association shall be responsible for the perpetual maintenance of the property and any open space or common areas within the development.
5. Parking for residents ~~and employees~~ shall be located on-site and shall be provided ~~one (1) space per residential unit. according to the schedule listed in section 106-404.17~~ **one (1) space per residential unit.** ~~minimum parking required.~~

D. Standards in the CBD District:

1. Notwithstanding Section 106-402, Buffer yards, screening and landscaping, a type B buffer yard shall be planted between mixed use development and residential development prior to the commencement of any non-residential use.
2. Residential occupancy shall be contained to the primary structure only.
3. Development utilizing residential structures shall delineate on the required site plan which structure is the primary structure.
4. Non-residential uses in accessory structures shall require a special exception permit in accordance with Section 106-524 of this chapter.
5. Non-residential uses to occur out of doors shall require a special exception permit in accordance with Section 106-524 of this chapter.
6. Multi-family residential mixed use development shall require a special exception permit in accordance with Section 106-524 of this chapter.
7. Parking shall be required on site and in accordance with Section 106-404 of this chapter.

Sec. 106-314.5. - Towers.

- (F) Towers shall ~~either maintain a galvanized steel finish or,~~ **be monopole in design, and** subject to any applicable standards of the FCC or FAA, be painted a neutral color.
- (R) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the support buildings from adjacent property. The standard buffer shall consist of a landscaping strip of at least four feet wide outside the perimeter of the compound. Existing mature tree growth and natural land form on the site shall be preserved to the maximum extent

possible. **Antennas and other equipment located on the top or side of a building or structure shall be screened from public view.**

ARTICLE IV DEVELOPMENT STANDARDS

Sec. 106-400. - Site plan review.

- (A) A site plan shall be required and shall be submitted to the city for each of the following:
1. All new development in every zoning district except for single family and two family dwellings.
 2. The conversion of any single family or two family dwelling to any other use or to a higher intensity residential use.
 3. Additions or modifications to buildings or sites, except single family and two family dwellings, if said addition or modification results in a 5,000 square foot or greater increase in impervious surface area of the site.
 4. The conversion of any property from fee simple ownership to a condominium form of ownership.
 5. The conversion of any building or property to a different use category, e.g., commercial to industrial.
 6. **Additions or modifications that may increase the requirements of any development standard including but not limited to parking, landscaping, and stormwater management.**
- (B) All required site plans shall be prepared by a professional engineer, or land surveyor B, who is registered by the Commonwealth of Virginia. The city may waive this requirement if the type, scale or location of the proposed development does not necessitate such plans.
- (C) A plot plan, that meets the standards contained in section 106-406.3 shall be required for all uses or development not requiring a site plan.

Sec. 106-402.3. - Buffer yards.

Table 1	Adjoining Zoning													
	AG	RSF	RMF	MHP	RB	DBD	TBD	CBD	HBD	BCD	LM	HM	CUD	PUD
Site Zoning	Category of Buffer Yard Required													
RMF	B	B	*	*	*	*	*		*	*	*	*	*	B
MHP	B	B	B	*	B	*	*		*	*	*	*	B	B
RB	B	B	B	B	*	*	*		*	*	*	*	*	*
DBD	B	B	B	B	B	*	*		*	*	*	*	*	B
TBD	B	B	B	B	B	*	*		*	*	*	*	*	B
CBD	B	B	B	B	B			B						B
HBD	B	B	B	B	B	*	*		*	*	*	*	B	B
BCD	B	B	B	B	B	*	*		*	*	*	*	B	B
LM	C	C	C	C	A	A	A	A	A	A	*	*	C	C
HM	C	C	C	C	A	A	A	A	A	A	*	*	C	C
CUD	B	B	B	B	B	B	B	B	B	B	B	B	*	*
PUD	*	*	*	*	*	*	*		*	*	*	*	*	*

Sec. 106-404.11. - Construction standards.

- (A) All off-street parking areas shall be constructed of a hard surface consisting of bituminous concrete or concrete. Gravel parking areas shall not be permitted, unless the administrator determines that the use is of a temporary nature.

- (B) For sites or structures listed on the National Register of Historic Places, parking areas may be constructed using period correct materials as permitted by the Administrator. Such development shall require a site plan.
- (C) The City Engineer may require paving surfaces and/or construction techniques which minimize surface stormwater runoff in areas where it is deemed necessary. The developer may select precast interlocking blocks, porous-type asphalt paving, detention basins or other methods as approved by the City Engineer.
- (D) In no case shall there be allowed excessive dust or debris to be transferred onto the roadway system or onto neighboring properties. Violators shall be guilty of a misdemeanor and subject to Section 106-516, Penalties.

Sec. 106-404.17. - Minimum parking required.

- (A) *Agricultural Use Types*
Agritourism *Schedule B*
- (E) *Commercial Use Types*
Microdistillery *Schedule B*
- (F) *Industrial Use Types*
Distillery *Schedule B*

Sec. 106-406.25. - On-site storage and temporary mobile storage containers.

- (A) Storage containers shall be considered accessory structures and shall be located in accordance with the standards for accessory structures as described in article II of this chapter.
- (B) No vehicle, truck body, manufactured home, mobile home, bus, trailer, recreational vehicle, shipping container, portable storage unit, or similar equipment shall be used as a storage container or building in any zoning district, except that:
 - (1) Temporary mobile storage containers designed for site delivery and pickup may be placed and used on any property for a period not to exceed 30 days per calendar year. Such a container shall be placed in the driveway or rear yard of residentially zoned property.
 - (2) Commercial and industrial use types may use shipping containers for storage provided that:
 - a. All containers are maintained in suitable condition and be free of rust, deterioration, graffiti, etc.
 - b. All containers are placed in an approved location that does not utilize existing parking spaces, fire lines, etc.
 - c. All containers are placed in the rear of the property and shielded from public views.
 - d. Such containers shall not be allowed for more than 90 consecutive days in any one-year period.

- (C) A zoning permit shall be obtained prior to the placement of any storage container.
- (D) No stacking of storage containers shall be allowed.

ARTICLE V ADMINISTRATION
SECTION 106-528 BOARD OF ZONING APPEALS

Sec. 106-528.1. - Powers and duties.

- (A) The BZA shall have the power and duty to hear and decide appeals from any written order, requirement, decision, or determination made by any administrative officer in the administration or enforcement of this chapter. No such appeal shall be heard except after notice and hearing as provided by § 15.2-2204 of the Code of Virginia, as amended.
- (B) *Ex parte communications, proceedings.*
 - (1) The non-legal staff of the governing body may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.
 - (2) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to such applicant, appellant or other aggrieved person, under § 15.2-2314 of the Code of Virginia, as amended, as soon as practicable thereafter, but in no event more than three (3) business days of providing such materials to a member of the Board. If the applicant, appellant or other aggrieved person, under § 15.2-2314 of the Code of Virginia, as amended, requests additional documents or materials be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to Section 2.2-3704 of the Code of Virginia (1950), as amended. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to subsection F of Section 2.2-3707 of the Code of Virginia, (1950), as amended.
 - (3) For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the Office of the City Attorney for the City of Salem, or for the board, or who is appointed by special law or pursuant to Section 15.2-1542 of the Code of Virginia (1950), as amended. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any

attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

- (C) Notwithstanding any other provision of law, general or special the BZA shall have the power and duty to ~~authorize~~ **grant** upon appeal or original application in specific cases a variance, ~~as defined in Section 15.2-2201 of the Code of Virginia (1950), as amended, from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of this chapter will result in unnecessary hardship~~ provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Section 15.2-2201 of the Code of Virginia (1950), as amended, and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance. No such variance shall be granted unless the spirit of the chapter shall be observed and substantial justice done. To legally grant a variance, the BZA must be presented evidence and make a finding that:

- ~~1. A property owner acquired the property in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of the property at the time of the adoption of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the property, the strict application of this chapter would effectively prohibit, or unreasonably restrict the use of the property; or~~
- ~~2. Due to the condition, situation, or development of immediately adjacent property, the strict application of this chapter would effectively prohibit, or unreasonably restrict the use of the property; or~~
- ~~3. That the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.~~
1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
5. The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

~~All variances granted must be in harmony with the intended spirit and purpose of this chapter. Specifically, the BZA must find that the strict application of the chapter would produce undue hardship. This hardship must not be shared by other properties in the same zoning district and in the same vicinity. The BZA must find that the granting of the variance will not be of substantial detriment to adjacent property and that the~~

character of the district will not be changed by the granting of the variance. Finally, the BZA must not grant a variance unless it finds that the condition or situation of the property is not so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this chapter. No variance request shall be evaluated by the BZA until after notice and hearing as provided by § 15.2-2204 of the Code of Virginia, as amended. In addition, posting of the property shall be required as provided for in section 106-520.5 of this chapter. In granting a variance, the BZA may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Sec. 106-528.9. - Certiorari to review decision of BZA.

- (A) Any person jointly or separately aggrieved by any decision of the BZA, or any taxpayer or any officer, department, board or bureau of the city, may present to the circuit court of the city a petition specifying the grounds on which aggrieved. This petition must be filed within 30 days of the BZA's decision.
- (B) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the BZA and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the BZA and on due cause shown, grant a restraining order.
- (C) The BZA shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds appealed from and shall be verified.
- (D) If upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct, and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.
- (E) Costs shall not be allowed against the BZA, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the BZA is affirmed, and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.
- (A) In accordance with the provisions of Section 15.2-2314 of the 1950 Code of Virginia, as amended, any person or persons jointly or separately aggrieved by any decision of the BZA, or any aggrieved taxpayer or any officer, department, board or bureau of the city, may file with the circuit court of the city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of the City of Salem, Virginia" specifying the grounds on which aggrieved. This petition must be filed within 30 days of the BZA's decision.
- (B) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the BZA and shall prescribe therein the time within which a return thereto must be made and served upon the Secretary of the BZA or the Chairman of the BZA, which shall not

be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the BZA and on due cause shown, grant a restraining order.

- (C) The BZA shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds appealed from and shall be verified.
- (D) Any review of a decision of the BZA shall not be considered an action against the BZA and the BZA shall not be a party to the proceedings; however, the BZA shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the BZA shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the BZA. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- (E) In the case of an appeal from the BZA to the circuit court of an order, requirement, decision or determination of the zoning administrator in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to state law, the findings and conclusions of the BZA on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the BZA, that the BZA erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments or questions of law de novo.

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

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

ARTICLE VI DEFINITIONS AND USE TYPES

SECTION 106-602 USE TYPES.

Sec. 106-602.1. - Agricultural use types.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Agritourism: Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions.

Sec. 106-602.9. - Commercial use types.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Microdistillery. An establishment engaged in the production of spirits with a significant commercial component, such as a restaurant or retail store.

Short-term lender. Establishments primarily engaged in short-term lending such as payday loans, car title loans, and refund anticipation loans.

Sec. 106-602.11. - Industrial use types.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Distillery. An establishment primarily engaged in the production of spirits for distribution.

Sec. 106-602.13. - Miscellaneous use types.

Mixed use structure. A ~~Mixed use structure~~ mixed use structure is a single building or parcel wherein multiple uses such as residential and commercial share space.