

Sec. 4.2 - Critical slopes.

The provisions in this section through section 4.2.5 implement the comprehensive plan by protecting and conserving steep hillsides together with public drinking water supplies and flood plain areas because of the increased potential for soil erosion, sedimentation, water pollution and sewage disposal problems associated with the disturbance of critical slopes. The disturbance of critical slopes may result in: rapid and/or large-scale movement of soil and rock; excessive stormwater run-off; siltation of natural and man-made bodies of water; loss of aesthetic resource; and in the event of onsite sewage system failure, a greater travel distance of septic effluent, all of which constitute potential dangers to the public health, safety and/or welfare. The regulations in sections 4.2.1, 4.2.2, 4.2.3 and 4.2.4 are intended to direct building and onsite sewage system locations to terrain more suitable to development and to discourage development on critical slopes, and to supplement other regulations regarding the protection of public water supplies and encroachment of development into flood plains.

Each request to waive or modify any requirement of sections 4.2.1, 4.2.2, 4.2.3 or 4.2.4 under section 4.2.5 shall be by special exception under section 33.5.

(§ 20-4.2, 12-10-80; 11-15-89; § 18-4.2, Ord. 98-A(1), 8-5-98; Ord. 12-18(4), 7-11-12; Ord. 21-18(5), 12-1-21)

Sec. 4.2.1 - Building site required.

No lot other than a special lot shall have less than one building site, subject to the following:

- a. *Composition of building site.* A building site shall be composed of a contiguous area of land and may not contain any area of land that is: (i) in critical or preserved slopes; (ii) within the flood hazard overlay district; (iii) under water during normal hydrological conditions; (iv) within 200 horizontal feet of the 100-year flood plain of any public water supply reservoir; and (v) within a stream buffer under chapter 17 of the Code, provided that nothing contained herein shall be deemed to prohibit or impair the program authority from exercising its discretion as authorized in chapter 17.
- b. *Special exception.* Notwithstanding section 4.2.5, any requirement of section 4.2.1(a) may be waived or modified by special exception under section 33.5 upon the board of supervisors' consideration of whether (i) the parcel has an unusual size, topography, shape, location or other unusual physical condition; or (ii) development in a stream buffer on the parcel was authorized as provided in section 17-321 of the Code.

(§ 20-4.2.1, 12-10-80; 11-11-87; 9-9-92; § 18-4.2.1, Ord. 98-A(1), 8-5-98; Ord. 11-18(6), 6-1-11; Ord. 12-18(4), 7-11-12; Ord. 14-18(2), 3-5-14)

State Law reference— Va. Code §§ 15.2-2280, 15.2-2286(A)(3)**Sec. 4.2.2 - Building site area and dimensions.**

Each building site shall be subject to the following minimum area and dimension requirements:

- a. *Uses not served by a public or central sewage system.* Building sites for uses not served by a public or central sewage system shall be subject to the following:
 1. *Dwelling units.* Each building site for a dwelling unit shall have an area of 30,000 square feet or greater and shall be of such dimensions that no one dimension exceeds any other by a ratio of more than five to one as described by a rectangle inscribed within the building site. The building site shall have adequate area for locating two subsurface drainfields approved by the Virginia Department of Health if the lot will be served by a conventional onsite sewage system.
 2. *Development subject to section 32 of this chapter.* Each building site in a development subject to section 32 of this chapter shall have an area of 30,000 square feet or greater and shall be of such dimensions that no one dimension exceeds any other by a ratio of more than five to one as described by a rectangle inscribed within the building site. The building site shall have adequate area for all buildings and structures, two subsurface drainfields approved by the Virginia Department of Health if the lot will be served by a conventional onsite sewage system, parking and loading areas, storage yards and other improvements, and all earth disturbing activity related to the improvements.
 3. *Special exception.* Notwithstanding section 4.2.5, the rectangular shape required by subsections (1) and (2) may be waived or modified by special exception under section 33.5 upon the board of supervisors' consideration of the recommendation from the Virginia Department of Health and information provided by the developer showing that: (i) the parcel has an unusual size, topography, shape, location or other unusual physical condition; (ii) no reasonable alternative building site exists; and (iii) modifying or waiving the rectangular shape would result in less degradation of the parcel or adjacent parcels than if those dimensions were adhered to.
- b. *Uses served by a central sewage system.* Building sites for uses served by a central sewage system shall be demonstrated by the applicant to have adequate area, as follows:
 1. *Residential development.* Each building site in a residential development shall have adequate area for all dwelling unit(s) together with an area equivalent to the sum of the applicable required yard areas for the applicable zoning district and, if parking is provided in bays, the parking area.
 - 2.

Development subject to section 32 of this chapter. Each building site in a development subject to section 32 of this chapter shall have adequate area for all structures, parking and loading areas, storage yards and other improvements, and all earth disturbing activity related to the improvements.

(§ 20-4.2.2, 12-10-80; §§ 20-4.2.2, 20-4.2.2.1, 11-15-89; §§ 18-4.22, 18-4.2.2.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(7), 10-17-01; Ord. 12-18(4), 7-11-12; Ord. 21-18(5), 12-1-21)

Sec. 4.2.3 - Location of structures and improvements.

Except as otherwise provided in section 4.2.2, this section applies to the location of any structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to section 32 of this chapter or to the placement of clean earth fill or inert waste fill.

- a. No structure or improvement shall be located on any lot or parcel in any area other than a building site.
- b. No structure, improvement, land disturbing activity to establish a structure or improvement, or placement of clean earth fill or inert waste fill shall be located on critical or preserved slopes except as otherwise permitted under sections 4.2.5, 4.2.6, 4.3.1 and 30.7.4.

(§ 20-4.2.3, 12-10-80, 11-15-89; § 18-4.2.3, Ord. 98-A(1), 8-5-98; Ord. 01-18(7), 10-17-01; § 20-4.2.3.1, 12-10-80, 11-15-89, § 18-4.2.3.1, Ord. 98-A(1), 8-5-98; § 4.2.3.2, 12-10-80, § 18-4.2.3.2, Ord. 98-A(1), 8-5-98; § 18-4.2.3, Ord. 12-18(4), 7-11-12; Ord. 14-18(2), 3-5-14; Ord. 20-18(3), 9-16-20)

State Law reference— Va. Code § 15.2-2280.

Secs. 4.2.3.1, 4.2.3.2 - (Repealed 7-11-12)

Sec. 4.2.4 - Location of onsite sewage systems.

In the review for and issuance of a permit for the installation of an onsite sewage system, the Virginia Department of Health should be mindful of the intent of section 4.2, and particularly mindful of the intent to discourage onsite sewage systems on slopes of 20 percent or greater. Any onsite sewage system shall be located within a building site.

(§ 20-4.2.4, 12-10-80; 11-1-87; 9-9-92; § 18-4.2.4, Ord. 98-A(1), 8-5-98; Ord. 12-18(4), 7-11-12)

Sec. 4.2.5 - Modification or waiver.

Any requirement of section 4.2.1, 4.2.2, 4.2.3 or 4.2.4 may be modified or waived by special exception of the Board of Supervisors as provided in section 33.5 and herein:

- a.

Modification or waiver generally. The Board of Supervisors may modify or waive any requirement as provided in subsection (b), as follows:

1. *Request.* A developer or subdivider requesting a modification or waiver shall file a written request in accordance with section 32.3.5 of this chapter and identify and state how the request would satisfy one or more of the findings set forth in subsection 4.2.5(a)(3) . If the request pertains to a modification or waiver of the prohibition of disturbing slopes of 25 percent or greater (hereinafter, "critical slopes"), the request also shall state the reason for the modification or waiver, explaining how the modification or waiver, if granted, would address the rapid and/or large-scale movement of soil and rock, excessive stormwater run-off, siltation of natural and man-made bodies of water, loss of aesthetic resources, and, in the event of septic system failure, a greater travel distance of septic effluent (collectively referred to as the "public health, safety, and welfare factors") that might otherwise result from the disturbance of critical slopes.
2. *Consideration of recommendation; determination by county engineer.* In reviewing a request for a modification or waiver, the Board of Supervisors shall consider the recommendation of the agent as to whether any of the findings set forth in subsection 4.2.5(a)(3) can be made by the commission. If the request pertains to a modification or waiver of the prohibition of disturbing critical slopes, the Board of Supervisors shall consider the determination by the county engineer as to whether the developer or subdivider will address each of the public health, safety and welfare factors so that the disturbance of the critical slopes will not pose a threat to the public drinking water supplies and flood plain areas, and that soil erosion, sedimentation, water pollution and septic disposal issues will be mitigated to the satisfaction of the county engineer. The county engineer shall evaluate the potential for soil erosion, sedimentation and water pollution that might result from the disturbance of slopes of 25 percent or greater in accordance with the current provisions of the Virginia Department of Transportation Drainage Manual, the Commonwealth of Virginia Erosion and Sediment Control Handbook and Virginia State Water Control Board best management practices, and where applicable, Chapter 17, Water Protection, of the Code.
3. *Findings.* The Board of Supervisors may grant a modification or waiver under this subsection (a) if it finds that the modification or waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties; would not be contrary to sound engineering practices; and at least one of the following:
 - a. Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;
 - b. Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;

- c. Due to the property's unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or
 - d. Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.
4. *Conditions.* In granting a modification or waiver, the Board of Supervisors may impose conditions deemed necessary to protect the public health, safety or welfare and to insure that the development will be consistent with the intent and purposes of section 4.2.
- b. *Waivers under specified circumstances.* The Board of Supervisors may waive the prohibition of disturbing critical slopes on any parcel not within the Rural Areas (RA), Monticello Historic District (MHD) or Village Residential (VR) zoning districts in the following circumstances: (i) the critical slopes were created during the development of the property pursuant to a site plan approved by the county; or (ii) the critical slopes will be disturbed to replace an existing structure located on the critical slopes and the extent of the disturbance is the minimum necessary to replace the existing structure with a new structure whose footprint does not exceed the footprint of the existing structure.

The Board of Supervisors may grant a waiver under this subsection (b) if it finds that:

- 1. The property is not identified in the open space plan as one having any protected resources and a field inspection has confirmed that there are no significant or critical features on the property identified for protection in the open space plan;
- 2. There is no reasonable alternative that would eliminate or reduce the disturbance of critical slopes;
- 3. The developer or subdivider submitted and obtained approval from the program authority of an erosion and sediment control plan, regardless of whether the area disturbed is less than 10,000 square feet; and
- 4. The developer or subdivider submitted and obtained approval from the county engineer of a plan that describes how the movement of soil and rock, stormwater runoff, siltation of natural and man-made bodies of water, the loss of aesthetic resources identified in the open space element of the comprehensive plan and, in the event of the failure of a treatment works and subsurface drainfield, a greater travel distance of septic effluent, will be mitigated through design, construction techniques, revegetation, stormwater management and other best management practices.

(§ 20-4.2.5, 12-10-80, 11-15-89; § 18-4.2.5, Ord. 98-A(1), 8-5-98; Ord. 01-18(4), 5-9-01; Ord. 09-18(1), 1-14-09; Ord. 21-18(5), 12-1-21)

Sec. 4.2.6 - Exemptions.

A lot, structure, or improvement may be exempt from the requirements of section 4.2 as provided herein: (Added 10-17-01)

- a. Any structure which was lawfully in existence prior to the effective date of this chapter and which is nonconforming solely on the basis of the requirements of section 4.2, may be expanded, enlarged, extended, modified and/or reconstructed as though such structure were a conforming structure. For the purposes of this section, the term "lawfully in existence" shall also apply to any structure for which a site development plan was approved or a building permit was issued prior to the effective date of this chapter, provided such plan or permit has not expired.
- b. Any lot or parcel of record which was lawfully a lot of record on the effective date of this chapter shall be exempt from the requirements of section 4.2 for the establishment of the first single-family detached dwelling unit on such lot or parcel; provided that section 4.2.3(b) shall apply to such lot or parcel if it contains adequate land area that is not in critical slopes for the location of such structure. For the purposes of this section a manufactured home shall be deemed a single-family detached dwelling unit.
- c. Accessways, public utility lines and appurtenances, stormwater management facilities, and any other public facilities necessary to allow the use of the parcel shall not be required to be located within a building site and shall not be subject to the requirements of this section 4.2.2, provided that the applicant demonstrates that no reasonable alternative location or alignment exists. The county engineer shall require that protective and restorative measures be installed and maintained as deemed necessary to insure that the development will be consistent with the intent of section 4.2 of this chapter.

(§ 20-4.2.6, 12-10-80; § 18-4.2.6, Ord. 98-A(1), 8-5-98; Ord. 01-18(7), 10-17-01; Ord. 14-18(2), 3-5-14)

State Law reference— Va. Code §§ 15.2-2280, 15.2-2286.