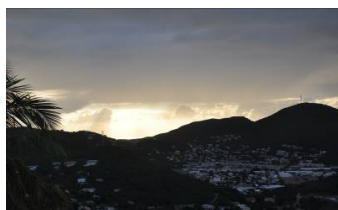


# AN ASSESSMENT OF THE ZONING AND SUBDIVISION CODE OF THE U.S. VIRGIN ISLANDS

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July 2009



Prepared by the Center for Government Services, Rutgers, The State University of New Jersey, and Duncan Associates, Chicago, Illinois, for the Department of Planning and Natural Resources, U.S. Virgin Islands

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**U.S. Virgin Islands**  
**Zoning and Subdivision Code Assessment**

July 2009

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## Executive Summary

This report is an assessment of the zoning and subdivision code of the U.S. Virgin Islands.

The current zoning code was adopted in 1972. Some sections have been updated in the interim, including the Table of Permitted Uses and Development Provisions, each of which has been amended at least 15 times since 1972. The subdivision regulations were first adopted in 1961 and have been amended several times since then, most recently in 2002. Much of the guidance on subdivision regulation is not in the law itself; rather it is provided in the *Subdivider's Handbook*, a guidance document published in 1985.

Zoning and subdivision regulations are the primary tools local governments have available to implement long-range comprehensive land use plans and policies. In the absence of a plan, these regulatory documents, however vague or out of date, become the only formally adopted policies governing land-use development and review procedures. The Virgin Islands do not have an updated comprehensive plan. The Comprehensive Land and Water Use Plan, along with a new Virgin Islands Development Law, were prepared over a period of several years and were last updated in 2003. Neither the plan nor the accompanying development law has been adopted by the Legislature.

According to the U.S.V.I. Department of Planning and Natural Resources (DPNR) website,

The lack of land and water use planning and/or insufficient planning can result in inappropriate development, land use conflicts, contamination of surface and ground water, erosion, increased flooding, gut and drainage fillings, uncontrolled and excessive exploitation of natural resources, destruction of plant and animal habitats, declines in productivity of the marine environment, pollution, etc.

There is general agreement among DPNR staff, community leaders, developers, environmental groups, and others that the current land development regulations are deficient, and that a plan is needed to establish policies to guide the Legislature's and the DPNR's decision making on development decisions. But the effort expended by stakeholders of all types to update the 2003 plan left people discouraged and unsure as to whether the planning process could ever succeed in this environment. There is, however, agreement that the zoning and subdivision laws need to be revised as soon as possible, which is how this assessment came to be.

This study was prepared under a contract with the U.S.V.I. Department of Planning and Natural Resources by Stuart Meck, FAICP/PP, of the Center for Government Services at Edward J. Bloustein School of Planning and Public Policy, Rutgers University, in New Brunswick, New Jersey, and Marya Morris, AICP, of Duncan Associates in Chicago. They were assisted by Swena Gulati, a second year graduate student in urban planning in the Bloustein School at Rutgers.

The purpose of this study is to assess the adequacy of the existing text of the zoning and subdivision law in terms of:

- Organization, format, and readability
- Development procedures
- Development standards (including area, height, and bulk, and densities and intensities)
- Zoning districts and uses
- Definitions
- Sign control
- Design and public facility standards (for subdivision and site plans)
- Enforcement

The analysis does not examine the appropriateness of existing zoning district boundaries or designations or review particular development decisions.

As part of this assessment, we prepared a summary of the existing code, reviewed case files and staff reports, and read minutes and decisions from the Coastal Zone Management Commission and Board of Land Use Appeals. We also visited the Islands and conducted stakeholder interviews using a standard questionnaire. We made presentations to the public on each island. After the trip we received numerous email communications and completed questionnaires from residents who were unable to attend the public presentations or participate in the interviews. The results of these interviews are summarized in this report.

## **Recommendations, by Topical Area**

Presented here is a summary of our major recommendations for each topical area of the code. This is followed by our full assessment of the existing code and complete recommendations on those sections.

### **Organization and Format**

We recommend reorganizing the code in a way that represents a significant departure from the current code. A proposed table of contents is provided in Section 2. We have retained most of the provisions that are included in the existing code to illustrate where those sections would be located if the code were reorganized. Where noted, we have also included new provisions that we recommend be added to bring the code up to date and to address community objectives. Such items would not be included until after a significant public participation effort had been undertaken as part of a comprehensive code revision.



## **Purposes and Scope of the Code**

The zoning code’s provisions on purpose and scope are adequate in some parts, awkward in others, and ambiguous or opaque in still others. The U.S.V.I. needs to revisit them collectively to determine if they represent the inspiring vision for development and conservation of the Islands. To that end, the following changes should be considered.

The provisions on purpose and scope should be reorganized to include a purpose statement, detailed objectives, and a description of the scope of entire code.

The current statement of purpose of the full code is drawn almost entirely from Sec. 2 of the *Standard State Zoning Enabling Act of 1926*, promulgated by the U.S. Department of Commerce under Commerce Secretary, and later President, Herbert Hoover. It includes boilerplate language that is inappropriate for the unique environment of the Virgin Islands. The current language in Sec. 221 referring to the “goals of a General Development Plan for the Virgin Islands” should be revised since the code itself states that the “[g]oals for development of the Islands are expressed in many ways through programs and policies on such matters as land use, taxation, capital improvements, urban renewal, public services and other matters which require public decision.” *However, it never declares what any of those goals are.*

Moreover, this section omits typical objectives on protecting the natural environment, protecting against manmade and natural disasters, promoting a desirable visual environment, promoting a community character conducive to tourism, and encouraging coordination of the various public and private procedures and activities shaping land development.

## **Definitions**

Sec. 225, Definitions, contains 116 separate definitions. There are many terms that are not defined and also regulatory and interpretational problems with some that are included, all of which need to be revised. Further, the definitions of “structure” and “height of building” in Sec. 225 differ from with the definitions of those terms found in Sec. 293 of the U.S.V.I building code.

## **General Provisions**

A number of provisions currently in Sec. 226, General Provisions, should be moved to a proposed chapter on development standards, including rules governing substandard lots, accessory uses, usable open space, definitions, and visibility at intersections. Other sections, including establishment of zoning districts (Sec. 223) and establishment of zoning maps (Sec. 224) should be moved into the General Provisions section.

A new section should be added that lists zoning map amendments. This section does not exist in the current code, although the online version does indicate which parts of the zoning text have been amended through references to ordinance numbers, dates of enactment, and page numbers. The full list could be included as an appendix to the code with a cross reference to it in the General Provisions.

### **Zoning Districts and Land Uses**

A new section dedicated to zoning districts should be added that would group the districts by the following functions: Residential; Commercial and Office; Public and Civic; Agriculture; Mixed Use and Other Special Districts. The purpose statements of the districts, currently located in Sec. 228, should be moved here.

The exhaustive Table of Permitted Uses should be reorganized into use groups and, within each group, into more narrowly tailored use categories. The table itself should be made into an actual table (i.e., matrix) in lieu of the repetitive list of uses by zoning district.

The new use tables would include cross references to a new Use Standards section, where any unique requirements or conditions applicable to specific uses would be provided.

A new intermediate density residential zoning district would be created that would bridge the gap in permitted density currently found between R-2 and R-3.

Finally home occupations standards should be moved to the Use Standards section and their treatment relative to accessory uses in residential districts should be clarified.

### **Development Standards**

Sec. 229, Development Provisions, in the current code should be reorganized with some portions being relocated to other parts of the code. All standards governing lots, building envelope, height, setbacks, and yards should be presented in a table or matrix listed by zoning district. Off-street parking regulations and sign regulations would be given their own section. Planning staff have created some of such tables for internal use but none are currently in the code.

### **Use Standards; Accessory Uses; Planned Area Developments**

A new section titled “Use Standards” would be created to include all uses permitted subject to conditions. The accessory uses and buildings provisions would be brought to together in this new section from the disparate sections of the code where they are currently located. Standards for planned area developments

would be modified and planned area developments for affordable housing would be strengthened to ensure the production of affordable housing and its preservation and ongoing monitoring after such housing was constructed.

### **Administration and Enforcement**

A number of substantial and minor, but important, changes are needed to the administration and enforcement provisions in the code. These include: (1) amending Sec. 235 to require the issuance of a zoning permit to allow the construction of a building or structure or change in use that would operate in conjunction with a building permit; (2) authorizing the Zoning Administrator to issue formal written interpretations of different provisions; (3) convening a review team for each application whose members are in direct communication with each other during the review and who would compile one response to the developer; and (4) requiring that all development be reviewed for zoning compliance and approval by the zoning office before the building permit is issued as is current done for group dwellings .

Additional recommended changes are proposed regarding training of Board of Land Use Appeals members; substantial reworking of the current system of use variances that may be granted by the Legislature; clarification of the role and responsibilities of the Planning Office, specifically regarding its duty in preparing a comprehensive land use plan; consideration of the creation of a territory-wide planning commission or island-based planning commissions; clarification of factors to be considered by the Planning Office in reviewing zoning text and map amendments; and establishment of a new rate schedule for fees and fines.

### **Subdivision Procedures and Standards**

The subdivision code needs complete redrafting and reorganization. At a minimum, such a redrafting would include: (1) A consolidation of the code with the regulations that currently appear in the 1985 *Subdivider's Handbook*; (2) Revisions to the definition of “subdivision” to eliminate ambiguities, and inclusion of definitions of a “preliminary plan” and “final plat”, “major” and “minor” subdivision, and “concept plan,” among others; (3) Inclusion of a three-step review process for large projects (concept plan, preliminary plan, and final plat) and a two-step process for smaller projects (preliminary plan and final plat); (4) Regulations dealing with development on steep slopes; (5) A new process of public notice and review of preliminary plans and final plans; and (6) Requirements, in written and graphic form, for public improvements, including streets and other infrastructure.

# Introduction

# 1

## Purpose of the Study

This report is an assessment of the zoning and subdivision code of the U.S. Virgin Islands. It was prepared by Stuart Meck, FAICP/PP, Associate Research Professor, Edward J. Bloustein School, Rutgers, The State University of New Jersey, New Brunswick, and Marya Morris, AICP, Duncan Associates, Chicago, Illinois. They were assisted by Swena Gulati, a second year graduate student in urban planning in the Bloustein School.

The purpose of the study is to assess the adequacy of the existing text of the zoning and subdivision law in terms of:

- Organization and format
- Readability
- Development procedures
- Development standards (including area, height, and bulk, and densities and intensities)
- Number and appropriateness of zoning districts
- Definitions
- Sign control
- Design and public facility standards (for subdivision and site plans)
- Provisions for performance bonds
- Enforcement

Specific issues to be addressed include:

- Hillside/steep slope development
- Environmental and aesthetic controls
- Mixed uses
- Conflicts among definitions, such as those for mezzanines
- Natural hazards

The analysis does not examine the appropriateness of existing zoning district boundaries or designations or review particular development decisions.

## Approach

This report was prepared using the following approach:

We began the assessment by reading the existing U.S. V.I. zoning and subdivision law, adopted in 1972 and as amended to 2007. We also reviewed approximately 20 case files and staff reports on development applications from the past three years that were provided to us on request by the U.S.V.I. DPNR staff. Other documents we reviewed included minutes from meetings of the Coastal Zone Management Commission and Board of Land Use Appeals in the past three years, as well as a variety of plans, proposed development regulations, and studies completed by the government in the last 10 years.

We worked with DPNR to develop a list of stakeholders who are involved closely with the land development process and are familiar with the current zoning and subdivision laws. These people were then invited to participate in a one-on-one interview with the consultants. Participants were provided with a copy of the questionnaire prior to their interview. The group included land use attorneys, experts in coastal zone protection and conservation, developers, engineers, land surveyors, realtors, housing specialists, and V.I. government agency representatives.

Based on the review of documents and discussions with DPNR staff, we prepared a questionnaire that was later used in stakeholder interviews (see Appendix A). Staff reviewed and provided comments on a draft of the survey prior to its distribution. The questions were intended to elicit participants' thoughts on the big picture of planning and land development on the islands and to get their feedback on technical aspects of the zoning and subdivision law.

We also prepared a complete summary of the zoning and subdivision code, including a digest of all of the use tables and sign regulations. This summary is used

in sections of this report, and was distributed to all persons with whom interviews were scheduled.

We visited the U.S. Virgin Islands from December 1 to 5, 2008, conducted more than 20 interviews, and made public presentations on St. Thomas, St. Croix, and St. John. In addition, the consultants received numerous email communications from residents who were unable to attend the public presentations or participate in the interviews.

### **Stakeholder Comments**

The following observations and concerns were raised by the persons interviewed by the consulting team. This is not an exhaustive list of every comment; rather it is representative of what was shared and of comments that were made by more than one person.

There was broad agreement among interviewees that the greatest problems with the zoning and subdivision laws are attributable to the absence of a comprehensive plan or vision to guide development in the Virgin Islands. Without a plan, rezoning decisions are made ad hoc and do not demonstrate the need to balance land development and conservation and environmental protection. Other major issues that arose include the loss of open space; loss of productive agricultural land and farming generally; the negative impacts of hillside development on coral reefs, beaches, and habitat; the lack of infrastructure to support future development; spot zoning; and vague and over-politicized development review procedures.

Asked to describe the policies—whether formal or informal—that are in place to address land development in the V.I., there was a general sentiment that the Coastal Zone Management laws are the closest the islands have to a current development policy. The existing zoning and subdivision law was acknowledged as policy, but many people said it was applied and enforced inconsistently. In terms of future

policies, many interviewees stressed the importance of tailoring plans and zoning and subdivision codes to the unique needs of the three islands in contrast to a one-size-fits-all approach that has always been in use. “Each island community has to have a discussion about the kinds of things we would like to see happen,” said one participant.



Figure 1. Land Development

We asked about the existing zoning districts and whether their specifications were meeting the needs of the islands. Several people said there are too few residential zoning district designations, specifically there need to be more intermediate residential density zones. It was also noted that the zoning does not account for the extra dwelling units that are commonly added to multi-family buildings (e.g., “lock-outs”) or the additional apartments (e.g., cellar apartments) that are built into single-family homes.

In terms of where higher density development would be appropriate, one participant suggested that the presence of infrastructure should be a criterion in determining where high-density residential development can occur and that the zoning and subdivision laws must place greater emphasis on conservation of naturally, culturally, historically, and environmentally sensitive lands. Several people on St. John said that the current residential zoning districts

are inappropriate for on that island, where special considerations such as the national park and overall terrain restrict the amount of developable lands considerably

Regarding development review procedures and code administration, a number of participants said that the politics needs to be taken out of the decision making—that is, the responsibility for rezoning decisions should not be with the Legislature. Several people used the phrase “seat-of-the-pants” decision making to describe the prevailing development review process. Enforcement is also a big problem in many of the participants’ point of view. One example several people mentioned is the additional residential units—surpassing what is allowed by the zoning district—that are added to a primary dwelling after a certificate of occupancy has been issued.

Several interviewees noted that the standards for granting variances are unclear. The Legislature should not have the authority to grant use variances because the decisions get politicized, they said. On the other hand, some said use variances are needed as a way of accommodating new uses.

In terms of specific technical changes or modifications that need to be made to the laws, almost everyone agreed that the definitions of certain terms and concepts, including building height, how height is measured, story, grade, and mezzanine need to be clarified. A number of people said the earth change (grading) regulations need to be fixed to address development on steep slopes, which is all too common.



Figure 2. Hillside Grading

One person noted that, since 2000, roads have been allowed to be cut regardless of steepness of topography and in areas previously viewed as undevelopable. The lot coverage requirements in the law also contain a loophole making it ineffective; while 50 percent of the residential lots are required to be left as open space, the footprint calculation does not include driveways or outbuildings. The result has been very large houses constructed on very small lots. Part of the problem is that property owners often can not afford (or are unwilling to pay for) engineering studies and there is little enforcement of the engineering requirement.

The vagaries of the zoning code leave it vulnerable to “willful misrepresentation” by some developers, e.g., definitions of stories, mezzanine, etc.; what constitutes a dwelling unit. It is sorely lacking diagrams, flowcharts, tables, etc., all of which would make it easier to understand and administer. Several people commented that the laws aren’t that difficult to read or understand but that is because they are lacking in sufficient detail to adequately guide development.

The subdivision law contains very little of the actual information a person would need to know what rules apply to a particular development. Several people commented specifically on the lack of clarity

regarding which agencies and departments need to issue permits and in what order they need to be received by a developer.

We heard from many interviewees that the Sirenusa and Grande Bay projects are examples of how current zoning regulations can be ignored by the Legislature and how overwhelming public opposition to a project had no effect on the Legislature's decision.

There is general uncertainty about how much and by what means the public (e.g., neighbors) is allowed to comment on pending land-use decisions and development projects. As is common in other jurisdictions, developers in the V.I. believe that the public and neighbors have too much input on development projects while community groups and neighbors often feel intentionally excluded from the process.

A majority of interviewees said the Virgin Islands would benefit from the establishment of a planning commission that would be given responsibility for preparing long range plans and reviewing major development proposals. The CZM committee is regarded as a good model for such a commission.

### **Organization of this Assessment**

This assessment includes an analysis of the code's organization and format, along with our recommendations on how it could be improved, as well as our findings and a critique of the actual substantive regulations contained in the code sections. This includes:

(1) **Regulatory Purpose.** We briefly describe what such a code section is typically intended to accomplish and comment on whether the current U.S.V.I. code adequately describes the purpose of the section.

- (2) **Findings.** In this part we describe, in the order that they appear in the current code, all sections and provisions that have problematic aspects. Such problems include vague standards, inconsistent use of terms or application of the rules, contradictions with other code sections, incomplete language, and general ineffectiveness as described by code users. The findings are based on our independent review of the code, stakeholder comments, staff comments, or a combination of all three.
- (3) **Recommendations.** For each section and any provision we found to be problematic, we provide recommendations on how the code should be revised to better address the objectives of that section or provision. Indeed in several cases the problem with some sections is that there is no clear objective for the regulations. In some cases, for ease of comprehension, we combine the discussion of findings and recommendations.

Note that the substantive critique addresses only those sections and provisions that are regarded as inadequate and in need of revision. We identified many of these problematic sections in our independent reading of the code. Many more, however, were brought to our attention during the on-site interviews and discussions with staff. Those one-on-one discussions were invaluable in putting our independent analysis into perspective and to focus the assessment on those things that are real stumbling blocks to good planning and development review.

# Organization and Format of the Code

## 2

### a. Regulatory Purpose

A zoning and subdivision code should be presented in a manner that effectively communicates the government's policies, in written and mapped form, for the use and development of land. There is no single organizational framework that will work for every government. In drafting a new code or redrafting an existing code, one may begin with an outline that has a coherent structure, identifying parts of the existing code that are duplicative or conflicting and eliminating or reconciling them, and drafting the provisions in a consistent style, format, and tone.

Although the sequence of subject matter will differ among zoning as well as subdivision codes, the logical progression of a regulatory instrument and ease of use usually result in the zoning code being structured in terms of the following sequence of categories, which goes from general to specific.

1. General Provisions
2. District Regulations of General Applicability
3. Specific District Regulations
4. Amendments and Special Approvals
5. Zoning Administration and Enforcement
6. Reference material, including definitions.

A subdivision code will be similarly organized.

1. General Provisions
2. Subdivision Application Procedure and Approval Process
3. Assurance for Completion and Maintenance of Improvements
4. Requirements for Improvements, Reservations, and Design
5. Specifications for Documents to be Submitted
6. Reference material, including definitions

The zoning and subdivision code should have a table of contents and an index, although today most codes are published and searchable electronically, making an index less critical.

The most up-to-date codes use charts to summarize complex information, such as permitted and conditional uses in use districts, and the development standards that apply to them. This helps the code's users quickly determine how the code's provisions will affect a proposed development. Some codes also use graphics, for example, when demonstrating the various area and yard standards that affect the construction of a building or when the code is aimed at regulating the design of buildings.

Current practice is to join the zoning, subdivision, and related codes such as signage and specialized environmental regulations into a single unified development code, bringing together all the components that affect the use and development of land.

### b. Findings

The current Zoning and Subdivision Code is organized into the following subchapters in Chapter 3 (Virgin Islands Zoning and Subdivision Law), of Title 29 (Public Planning and Development) in the Virgin Islands Code, which is online.

#### Subchapter I. Zoning Law

- § 221. Objectives and intent
- § 222. Purpose and scope
- § 223. Establishment of zoning districts
- § 224. Establishment of zoning maps
- § 225. Definitions
- § 226. General provisions
- § 227. Land use regulations and table of permitted uses
- § 228. Table of permitted uses
- § 228a. Repealed. Mar. 26, 1997, No. 6132, § 3, Sess. L. 1997, p. 6.



- § 229. Development provisions
- § 229a. Repealed. Mar. 26, 1997, No. 6132, § 3, Sess. L. 1997, p. 6.
- § 230. Off-street parking and loading regulations
- § 230a. Use of subdivision roadways or streets
- § 231. Uses permitted subject to conditions
- § 232. Planned area development
- § 232a. Development of affordable housing; applications for planned area affordable housing development permits
- § 233. Accessory uses
- § 234. Nonconforming uses
- § 235. Administration and enforcement
- § 236. The Board of Land Use Appeals
- § 237. The Virgin Islands Planning Office
- § 238. Amendments
- § 238a. Variances by the Legislature
- § 239. Public hearings
- § 240. Penalty for violation
- § 241. Interpretation of regulations
- § 242. Fees

- of the Virgin Islands Historic Preservation Commission; Advisory Commission on Historic Landmarks
- § 282. Registry of Historic Buildings, Sites, and Places
- § 283. Historic and Architectural Control Districts
- § 284. Approval of Registry and Historic and Architectural Control Districts; authentication
- § 285. Building permits in Historic and Architectural Control Districts and Registry
- § 286. Coordination of other departments and agencies with the Virgin Islands Historic Preservation Commission
- § 287. Appeals; enforcement; penalties
- § 288. Construction

The zoning and subdivision code references the Coastal Zone Management Program, which appears instead in Chapter 21 of Title 12 (Conservation), of the Virgin Islands Code under the following organization,

**Subchapter II. Subdivision**

- § 272. Purposes
- § 273. Definitions
- § 274. Subdivision regulations
- § 275. Subdivision plans
- § 275a. Fees
- § 276. Variances
- § 277. Appeals
- § 278. Subdivisions in the Coastal Zone

In addition, this part of the code also includes a Subchapter on conservation and preservation of historic and cultural assets, which governs historic preservation controls.

**Subchapter III. Conservation and Preservation of Historic and Cultural Assets**

- § 280. Declaration of policy
- § 281. Administration of subchapter, functions

**Chapter 21. Virgin Islands Coastal Zone Management**

- § 901 Common name
- § 902 Definitions
- § 903 Findings and goals
- § 904 Coastal Zone Management Commission
- § 905 General Provisions
- § 906 Specific policies applicable to the first tier of the coastal zone
- § 907 The Coastal Land and Water Use Plan
- § 908 Coastal zone boundary maps
- § 909 Areas of particular concern
- § 910 Coastal zone permit
- § 911 Additional requirements for development or occupancy of trust lands or other submerged or filled lands
- § 912 Planning program
- § 913 Enforcement of penalties and judicial review
- § 914 Board of Land Use Appeals

The Coastal Zone program is a permit program. A CZM permit is required for any development activity in the first tier of the coastal zone. A CZM permit must be obtained prior to commencement of the following:

- Alteration of the shoreline or submerged lands;
- Construction of new structures for commercial or private use;
- Discharge or disposal of waste materials;
- Enlargement or expansion of existing structures;
- Land clearing, grading or excavations; and
- Placement of permanent or temporary structures on submerged lands (e.g. moorings, docks, etc.).

The CZM program divides the permit system into two categories: major and minor permits, both with different requirements and procedures. The distinction between major and minor projects allows DPNR to concentrate on minor projects such as single family dwellings or small piers that have a less significant effect on the coastal environment and the community.

Major projects, such as large resort hotels or multifamily dwellings, docks, and dredging, all require an extensive application form, an Environmental Assessment Report (EAR), public notices/hearings and a decision by the appropriate committee of the CZM Commission (a citizen board appointed by the Governor and confirmed by the Legislature).

The Coastal Zone Management Act makes clear the relationship to the zoning code, in Sec. 905 (General Provisions):

(a) Nothing in this chapter shall be construed as amending or altering in any way the existing zoning designations of lands within the United States Virgin Islands or the Zoning District Maps adopted pursuant to Title 29, chapter 3, of this code.

(b) Every use permitted under an existing zoning designation of lands pursuant to [S]ections 227 and 228, Title 29, chapter 3, of this code shall be permitted provided the use is consistent with the provisions of [S]ections 903, 906 and 910 of this chapter.

Similarly, the zoning and subdivision code refers to Chapters 5 (Airport Zoning in St. Croix) and 7 (Airport Zoning in St. Thomas) of Title 6 (Aeronautics) of the Virgin Islands Code. (Sec. 235(a)).

The zoning and subdivision code contains a numbering system that extends below the section level, but it is not used consistently. Individual paragraphs do not always receive some type of number/letter designation. This feature is critical since it helps identify the exact location of code language.

The numbering system, for a hypothetical section, would be:

- Sec. or § (Section Number)
- (a) (Subsection Number)
- 1.(Paragraph Number)
- A (Subparagraph Number)

An example of this is Sec. 231, Uses Permitted Subject to Conditions. Here the first paragraph in the subsection--but not the title, which is "Required conditions for permitted uses"—is preceded by the letter "(a)", followed by a list of uses such as "1. Amusement parks" with the condition "A. A permit for their construction" following it.

An example of where this numbering system is not used consistently is in Sec. 233, Accessory Uses, where, after a subsection title (“General limitations upon accessory uses”), the first paragraph, which is a statement of a condition (“An accessory use shall be located upon the same lot with the principal use. . .”) is given a subsection number “(a)”. However, subsequent paragraphs, each of which addresses a different condition, are not.

The code does not always group common provisions together. For example, all of Secs. 221 to 226 could be placed under a heading of “general provisions,” because they apply to the ordinance as a whole.

Similarly, the zoning code (Subchapter I) and the subdivision code (Subchapter II) do not share common definitions as evidenced by the two sections in each subchapter that contain definitions. At the same time, certain terms are defined in Sec. 901 of the Coastal Zone Management Regulations, such as “shoreline,” “development,” and “structure,” that are also used in the zoning and subdivision code. While the overlap is not extensive, the different codes could benefit from the use of common terms.

In one case, the code buries a key set of regulations, those dealing with signs, in Sec. 231 (Uses permitted subject to conditions), when a typical code would give the topic its own section.

The zoning and subdivision code does not contain charts or tables that could summarize essential provisions of zoning district such as permitted uses and use district development standards. Similarly, the subdivision regulations do not contain any graphic standards, although graphics appear in the 1985 *Subdivider’s Handbook*, a guidance document issued by the Virgin Islands Planning Office.

The entire code is available at: [www.michie.com/virginislands/lpext.dll?f=templates&fn=main-h](http://www.michie.com/virginislands/lpext.dll?f=templates&fn=main-h).

htm&cp=) and can be searched electronically. Thus, an index is less critical.

### **c. Recommendations**

This proposed table of contents, below, represents a significant departure from the current code. We have included most of the provisions that are included in the existing code to illustrate where those standards would be located if the code were reorganized. Where noted we have also included new provisions that we recommend be added to bring the code up to date and to address recent community objectives. Such items would not be included until after a significant public participation effort had been undertaken as part of a comprehensive code revision.

#### **Chapter 1 | Introductory Provisions**

Legal Framework

Short title

Purposes

Objectives and Policies

Scope

Severability Clause

General Rules of Language and Interpretation

Written Interpretations

Transitional Provisions\*

#### **Chapter 2 | General Provisions**

Establishment of Zoning Districts

Establishment of Zoning Map

#### **Chapter 3 | Zoning Districts**

Residential Districts

R-1 Residence—Low Density

R-2 Residence—Low Density

R-3 Residence—Medium Density

R-4 Residence—Medium Density

R-5 Residence—High Density

Commercial Districts

B-1 Central Business Districts

B-2 Secondary

B-3 Scattered

B-4 Business—Residential Areas

C—Commercial

W-1 Waterfront, Pleasure

Industrial Districts

- I-1 Industry, Heavy
- I-2 Industry, Light
- W-2 Waterfront Commercial -- Industrial

Other Districts

- P-Public
- S-Special
- A-Agricultural

**Chapter 4 | Development Standards**

General Provisions for Lots and Buildings

- Floor area ratio
- Density
- Required lot area
- Permitted lot occupancy
- Front yard
- Side and rear yards
- Usable open space
- Height limit
- Substandard Lots
- Intersection Visibility

Parking and Loading\*\*\*

Sign Regulations\*\*\*

Steep Slopes\*

Landscaping, Bufferyards and Screening\*

Outdoor Lighting\*

**Chapter 5 | Parking and Loading\*\*\***

**Chapter 6 | Sign Regulations\*\*\***

**Chapter 7 | Use Regulations**

- Would include all uses currently listed in Sec. 231. Uses Permitted Subject to Conditions and other uses we've identified in this assessment as appropriate to this chapter.
- Accessory Uses and Structures
- Airports
- Heliports
- Home Occupations

**Chapter 8 | Subdivision Design and Improvements**

- Definitions
- Subdivision Design and Layout\*\*
- Lots and Blocks\*\*
- Streets\*\*
- Easements and Utilities\*\*
- Monuments\*\*
- Stormwater Management and Guts\*\*

Open Space Dedication\*\*

- Open Space and Conservation Developments
- Subdivisions in the Coastal Zone\*\*

**Chapter 9 | Review and Approval Procedures**

- Text and Zoning Map Amendments
- Planned Area Developments
- Planned Affordable Housing Developments
- Zoning Variances
- Conditional uses
- Appeals of Administrative Decisions\*
- Subdivision Procedures
  - Preliminary plan review
  - Final plan review

**Chapter 10 | Nonconformities**

**Chapter 11 | Administration and Enforcement**

- Boards, Commissions, and Other Decision-Making Bodies\*
- Enforcement, Violations, Penalties, and Fees

**Chapter 12 | Virgin Islands Coastal Zone Management**

- Common Name
- Definitions
- Findings and Goals
- Coastal Zone Management Commission
- General Provisions
- Specific Policies Applicable to the First Tier of the Coastal Zone
- The Coastal Land and Water Use Plan
- Coastal Zone Boundary Maps
- Areas of Particular Concern
- Coastal Zone Permit
- Additional Requirements for Development or Occupancy of Trust Lands or Other Submerged or Filled Lands
- Planning Program
- Enforcement of Penalties and Judicial Review
- Board of Land Use Appeals

**Chapter 13 | Airport Zoning on St. Thomas and St. Croix**

- Purpose of chapter
- Definitions
- Zones
- Height Limits
- Use Restrictions
- Nonconforming Uses
- Hazard Marking and Lighting
- Administrative Provisions, Appeals and Judicial Review
- Variances

Building Permits  
Enforcement  
Penalties

### **Appendix 1 | Terminology and Measurements**

Use Groups and Categories  
General Terms  
Rules of Measurement

### **Appendix 2 | Zoning Map Amendments**

#### **Index**

\* Denotes a new code provision that should be considered for inclusion in a comprehensive update and revision.

\*\* Denotes provisions that would be added to the subdivision regulations that are currently in other documents (i.e., the Handbook)

\*\*\*Parking standards and sign regulations often have their own chapter in a zoning ordinance and we have provided that here. The other option would be to include them in another section of the U.S. Virgin Islands Code.

# Purposes and Scope of the Code

## 3

### a. Regulatory Purpose

A zoning code should contain a statement of purpose that declares what the government seeks to accomplish in carrying it out. Typically, the purpose statement refers to the protection of the public health, safety, morals, and general welfare, consistency with and implementation of the comprehensive plan, and more specific objectives that are related to the government unit's view of the conditions that the code is attempting to bring about. The public health, safety, and general welfare are the standard police power goals. A zoning code will typically contain language that indicates it is being enacted to carry out a comprehensive plan. Sometimes the code will include, as objectives, language from the plan itself. Language on the code's scope will describe the discrete topics covered by the code, such as dividing the territory of the government unit into districts, defining terms, and regulating lot size and density.

The sections on the zoning code's broad purposes should be distinguished from the purpose statements that are incorporated into individual use districts. The latter describe the planning rationale for the use districts and are intended to describe the kind of development that the use district is ideally attempting to bring about, and where such development should and should not be located. Such purpose statements are discussed in Section 6 of this report.

### b. Findings

The zoning code contains language on objectives and intent, and purpose and scope. According to Sec. 221, the zoning code's objective is to establish standards and policies for land development that may be used to achieve the goals of a General Development Plan for the Virgin Islands. These standards and policies are to reflect and express community values toward the physical environment of the Virgin Islands,

including the "value appearance [sic] and congenial arrangement for conduct of trade, industry, residence and other uses of land. . . ."

The code's purpose (Sec. 222) is "the promotion of the health, safety, morals and general welfare of the community." The language of this section draws heavily from Sec. 2 of the *Standard State Zoning Enabling Act* (1926) prepared by an advisory committee of the U.S. Department of Commerce. In addition, this section declares that it is a further purpose to encourage and facilitate the development of housing affordable to persons of low- and moderate- income by providing incentives for private persons to produce residential housing developments that include affordable housing units. The provisions on scope list the particular topics contained in the zoning code, such as defining the functions of the Virgin Islands Planning Office.

### c. Recommendations

The zoning code's provisions on purpose and scope are adequate in some parts, awkward in others, and ambiguous or opaque in still others. The U.S.V.I. needs to revisit them collectively to determine if they represent the inspiring vision for development and conservation of the Islands. To that end, the following changes should be considered.

- (1) Reorganize the provisions on purpose and scope. A more logical sequence would be:
  - a) Purpose (the customary police power goals);
  - b) Objectives and policies (a more detailed discussion of planning objectives derived from a comprehensive plan); and
  - c) Scope (a description of the major topics the zoning code is addressing).

(2) Reexamine and update the language on purpose. As noted, Sec. 222 draws almost entirely on Sec. 2 of the Standard State Zoning Enabling Act, and includes boilerplate language that may need to be redrafted to more appropriately address an island environment. For example, this section speaks of “avoid[ing] undue congestion of land.” For an island environment, it may be more apt to state that the zoning code is intended “to promote the establishment of appropriate residential densities and concentrations that will contribute to the well-being of persons and the preservation of the Island environment.” Further, language on the development of affordable housing should be relocated to the section on objectives on intent because it is concerned with specific planning outcomes. Finally, there is obsolete language in Sec. 222; it refers to “continuing a Board of Zoning, Subdivision, and Building Appeals,” but the code itself describes a “Board of Land Use Appeals.”

(3) Reexamine and revise the language on objectives and intent. Sec. 221 refers to the “goals of a General Development Plan for the Virgin Islands,” which does not currently exist. This section states that the “[g]oals for development of the Islands are expressed in many ways through programs and policies on such matters as land use, taxation, capital improvements, urban renewal, public services and other matters which require public decision.” However, it never declares what any of those goals are.

Sec. 221 then states “that standards and policies established by the Zoning Law reflect and express a sense of community value toward its physical environment including the value [sic] appearance and congenial arrangement for conduct of trade, industry, residence and other uses of the land necessary to the community’s well-being, insofar as such values can be related to the broadest goals of the general

community development plan.” It is simply not clear to the reader what “appearance and congenial arrangement” mean.

Moreover, this section omits typical objectives on protecting the natural environment, protecting against manmade and natural disasters, promoting a desirable visual environment, promoting a community character conducive to tourism, and encouraging coordination of the various public and private procedures and activities shaping land development.

It is not the intent of this report to identify all of the objectives and policies that should be listed here. That is a discussion that the Government needs to have with its citizens; however, a revision of this section should serve as a basis for defining and stating them unambiguously.

# Definitions

# 4

## a. Regulatory Purpose

The definition section should explain commonly used terms and specific meanings that are used in the zoning and subdivision code.

## b. & c. Findings and Recommendations

Sec. 225, Definitions, contains 116 separate definitions, with a base number of 105 entries numbered consecutively, and another 11 definitions that are listed with an alphabetical extension (e.g., 3A, 3B, etc.) that signifies they are amendments. Sec. 225 contains the basics of what such a district should be, but there are many terms that are not defined and also regulatory and interpretational problems with some that are included. Definitions should not contain regulatory language, that is, they should not include substantive standards on the conduct or operation of the use. Several definitions in Sec. 225 have standards in them that should be removed and relocated.

We flagged definitions that we regard as problematic or that were mentioned by stakeholders or staff as being problematic. The most egregious of those are listed here with notes on the problem and how it should be corrected.

A common problem with definitions that can be fixed rather easily is to identify definitions that contain regulatory standards and move the regulatory language to an appropriate section of the code. A parking space, for example, is defined as: “An area of not less than nine (9) feet wide by eighteen (18) feet long, for each automobile or motor vehicle...” There are many circumstances in which smaller spaces are practical if not necessary given a site’s topography and layout. This definition inadvertently excludes all other parking spaces of different sizes.

We also recommend that a definition of mezzanine be added. It is currently embedded in the definition

of story. Exactly what constitutes a mezzanine was an issue of great concern to the stakeholders and, we learned, was at the center of some of the most disputed land use cases in the Islands in recent years.

What follows is a list of definitions in Sec. 225(b) that we consider or we heard are the most problematic, followed by our findings and recommended changes for each.

**(24A) Cellar.** A portion of a building having more than one half (1/2) of its height below ground level.

*Findings:* This definition affects and may be affected by any changes to definitions of story, grade, and building height. The definition of story, below, contains criteria for determining when a cellar is counted as a story.

*Recommendations:* (1) This definition may need to be modified to ensure it is consistent with any changes made to definitions of building height and story. (2) The development standards that are currently included in the definition of story, below, should be moved to a new use standard for residential development. (3) A new use standard for residential development should be added that describes the circumstances under which a cellar counts as a story. (4) Neither the relationship of the person to the owners of the building who may occupy a cellar apartment nor that person’s vocation should have any bearing on whether a cellar is to be regulated as a building story.

**(29) Density.** The number of persons residing on, or family units developed on an acre of land. In determining the number of person occupying a particular unit, the following table of persons per unit shall be used:

Efficiency apartment	1½ persons
1 bedroom apartment	2 persons
2 bedroom apartment	3 persons



3 or more bedrooms	4 persons
Hotel rooms	1½ persons

*Findings:* The code uses two standards to measure density—persons per acre and family or dwelling units per acre. This definition only addresses persons per acre. Jurisdictions throughout the U.S. overwhelmingly use a dwelling-units-per-acre standard. The U.S.V.I. may have adopted this approach as a means of categorizing hotels as a residential use. That is also a very unusual way of regulating them. Typically hotels are controlled using building envelope standards, e.g., height (or stories), building footprint or lot coverage, and setbacks.

*Recommendations:* We suggest that all density standards be expressed as dwelling units per acre. We have provided the conversion in the sample development standards table that appears in this report.

**(53) Grade.** The established grade of the street or sidewalk as prescribed by the Department of Public Works. Where no such grade has been established, the grade shall be the average computed by a licensed land surveyor at the sidewalk at the property line. Where no sidewalk exists, the grade shall be established in the same manner on the street adjacent to the property line.

**(55C) Height of building.** The vertical distance from the established grade of the center of the front of the building to the highest point of the roof surface of a flat roof, to the deck line for a mansard roof, to the mean height level between the eaves and ridge for hip, gabled and gambrel roofs.

**(96) Structure.** Anything constructed or erected which requires permanent location on the ground or attachment to something having location.

*Findings.* These definitions are not problematic on their face. But numerous stakeholders commented that many the buildings constructed on hillsides are simply too tall and too obtrusive in appearance. The core problem is that the definition of height, and the definition of story (see discussion below) create open-ended possibilities of how tall a building may be. We also heard from stakeholders that the way in which the established grade on an applicants’ property—from which building height is measured—varies depending on who is doing the review. Also the current code measures residential building height in stories rather than feet, which means a 3-story building could conceivably be 30 feet high (if it had 10-foot stories) or much higher if each story is 15 or 20 feet high or more. The definition of “height of building” in Sec. 225 differs from the definition of that term found in Sec. 293 of the building code, which states:

*Height of building* —In the case of buildings with flat roofs, the vertical distance from the lowest adjacent grade level to the highest point of any roof, excluding cornices, parapet walls, or railings and, in the case of sloping roofs, the vertical distance from the lowest adjacent grade level to the highest point of the highest roof.



Figure 3. Hillside Development

Similarly, the definition of structure in Sec. 293 of the building code, below, is slightly different from the definition in the zoning code, above:

*Structure* —Anything constructed or erected, the use of which requires location on or in the ground, but not including a trailer or tent.

*Recommendations:* (1) Definitions of height, story, grade, mezzanine, and structure each need a thorough review and revision. (2) To ensure predictability regarding the size, appearance and density of future development we recommend that building height be measured in feet rather than stories. (3) Depending on the number of stories permitted in a district, the height limit could assume a minimum height of 10 feet and a maximum height of 15 feet per story. The precise figure should be based on an evaluation of the prevailing height of existing buildings of each number of stories and, if possible, some visual modeling of what various proposed heights would look like in future development.



Figure 4. Hilltop Development

**(92) Story.** That portion of a building, other than a cellar or mezzanine, included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling

next above it. A mezzanine shall be deemed a full story when it covers more than thirty-three (33) percent of the area of the story underneath said mezzanine, or if the vertical distance from the floor next below it to the floor next above it is twenty-four (24) feet or more.

For the purpose of this subchapter, a basement or cellar shall be counted as a story if its ceiling is over five (5) feet above the level from which the height of the building is measured or if it is used for business purposes or if it is used for dwelling purposes by other than a janitor or domestic servants employed in the same building, including the family of same.

*Findings:* As explained in several sections of this report, the issue of what constitutes a story arose numerous times in our discussions with staff and stakeholders, as did the definitions of building height, mezzanine, and grade. The current definition above is problematic because it also includes standards for mezzanines and cellars that may or may not be considered floors.

*Recommendations:* (1) The definition of story should be modified to include permissible range of minimum and maximum vertical height with bright line maximum height limits for residential buildings (see Section 7 below; also see the findings and recommendations above regarding the definition of “height of building”). (2) The definitions for mezzanine and cellar need to be defined separately from the definition of story. (3) The issue of mezzanines needs to be resolved. We learned from staff and stakeholders that mezzanines are built into multi-unit buildings for the purpose of walling them off, providing a separate entrance, and renting or selling them as a separate dwelling unit. This practice is in effect an end run around density controls. This

matter needs to be discussed in a broader context of desired future development densities and appropriate location of higher density on the Islands. Further there is the issue of quality. Are these units, which are called “lock outs” a good product in the housing marketplace? Are they simply increasing the potential density of an area without consideration the availability to public services to support it?

The International Building Code (excerpted here) has a definition of mezzanine that would preclude its use or conversion to a separate dwelling unit.

505.4 Openness. A mezzanine shall be open and unobstructed to the room in which such mezzanine is located except for walls not more than 42 inches (1067 mm) high, columns and posts.

Exceptions:

1. Mezzanines or portions thereof are not required to be open to the room in which the mezzanines are located, provided that the occupant load of the aggregate area of the enclosed space does not exceed 10.
2. A mezzanine having two or more means of egress is not required to be open to the room in which the mezzanine is located if at least one of the means of egress provides direct access to an exit from the mezzanine level.
3. Mezzanines or portions thereof are not required to be open to the room in which the mezzanines are located, provided that the aggregate floor area of the enclosed space does not exceed 10 percent of the mezzanine area.
4. In industrial facilities, mezzanines used for control equipment are permitted to be glazed on all sides.
5. In other than Groups H and I occupancies no more than two stories in height above grade plane and equipped throughout with an automatic sprinkler system in accordance with Section

903.3.1.1, a mezzanine having two or more means of egress shall not be required to be open to the room in which the mezzanine is located.

Source: International Code Council. 2006. “Section 505.4 Openness,” in the 2006/2007 Proposed Changes to the International Building Code. Public Hearing Draft. September.

**(56) Home Occupation.** Any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly subordinate to the use of the dwelling for dwelling purposes, and does not change the character thereof. A home occupation includes the consultation by such professionals as a physician, dentist, lawyer, architect, engineer, clergyman or real estate broker, and excludes such uses as a cafe, and animal hospital. A home occupation will not display or advertise any commodity or service for sale on the premises, nor will it involve the employment of more than one (1) person, other than a member of the immediate household.

*Findings:* This definition contains development standards (e.g., prohibition on signs) and a limit on the number of employees permitted on the premises. It also requires that home occupations be conducted entirely within a dwelling. All of these standards should be included in a separate stand-alone section on this topic. Moreover the requirement that the activity take place inside a dwelling conflicts in principle with the very generous allowance of districts within which they are permitted. Finally the definition of accessory use (residential) precludes the use of such buildings for business purposes.

*Recommendations:* A thorough review of all provisions related to home occupations and accessory structures should be part of any comprehensive revision of this code.

**(67) Lot Coverage.** The maximum percentage of the lot that may be occupied by buildings or structures, including accessory buildings or structures.

*Findings:* This term and definition are the commonly accepted means of describing this concept. However, the existing code uses the less familiar phrase “lot occupancy” in lieu of lot coverage. Lot occupancy is not defined in the code.

*Recommendations:* We recommend converting all instances of the term lot occupancy to lot coverage.

## 5

## General Provisions

**a. Regulatory Purpose**

The General Provisions section, which sometimes goes by the title of “Supplemental District Regulations,” should contain operational provisions concerning the applicability, interpretation, and legal effect of the code. However, specific substantive provisions affecting particular uses or development standards are not included in this section. In addition, General Provisions may include the establishment of the official zoning map or series of maps, including where they may be obtained, and how, physically, the government may amend them; and a summary list of use districts and the specific abbreviations (e.g., “R-1,” “C-1”) that are used on the zoning maps.

**b. Findings**

The General Provisions section (Sec. 226) includes regulations that apply to the entire zoning code, and clarify the relationship between the zoning code and other ordinances.

Provisions include:

- A declaration that only permitted uses may be allowed in use districts, but allowing the continuation of existing uses (Sec. 226(c)).
- Clarification that special exceptions and variances granted prior to the adoption of the code may only be established within the period set by the Planning Office, but construction must be completed within two years of the subchapter’s enactment. (Sec. 226(e) to (f)).
- Requirements that airports and related aviation land uses must be developed in accordance with Federal Aviation Administration’s rules and the Virgin Islands Port Authority, which must approve preliminary plans. In addition, such plans must also be approved by the Legislature. (Sec. 226(g)).
- A provision that any lot in a single ownership, which ownership was of record at the time of the adoption of the subchapter, that does not meet the code’s requirements for yards, courts or other open space may be utilized for single residence purposes, provided the requirements for such yard or court area, width, depth or open space is within seventy-five (75) percent of that required by the terms of this subchapter. The purpose of this provision is to permit utilization of recorded lots that lack adequate width or depth as long as reasonable living standards can be provided. (Sec. 226(i)).
- Exceptions to district height regulations for penthouses and roof structures such as elevator enclosures, flag poles, water towers, chimneys, and similar structures, but with limitations on the height of such structures. (Sec. 226(l)).
- A requirement that a sloping grade be maintained so that water drains away from the walls of buildings, but in such a manner not to cause runoff of surface water that would result in injury to adjacent properties. (Sec. 226(o)).
- A provision that bars walks, fences, shrubbery, and similar items from interfering with sight distance or driver visibility at intersections. (Sec. 226 (q)).
- A requirement that an accessory building that is structurally attached to a main building must conform with all regulations applicable to main buildings. (Sec. 226(r)(1)).
- Authorization for an accessory building, not exceeding one (1) story of fifteen (15) feet in height, to occupy not more than twenty-five (25) percent of a required rear yard plus forty (40) percent of any non-required rear yard, provided that in no instance shall the accessory building exceed the ground floor area of the main building. (Sec. 226(r)(3)).
- Limitations on projections into yards by architectural features. (Sec. 226(v)).
- Rules for interpreting boundary lines of

zoning districts. (Sec. 226(w) to (x)).

- Requirements for “usable open space” that repeat language in definitions. Sec. 226 (y) states: “In addition to any and all other requirements set forth in this subchapter for the provision of front, side or rear yards, off-street parking and/or loading, there shall be provided in all multifamily residence districts such additional open space as is set forth herein which shall be used for landscaping and which may not be used for off-street parking or loading purposes.”

Sec. 226 (z) states: “ In addition to any and all other requirements set forth in this subchapter regarding the use of open space, there shall be provided in all multifamily residential developments of nine units or more, recreational facilities which shall occupy at least 5% of that area required for open space on the zoning lot.”

Two other sections that are typically part of a General Provisions section are located outside of it.

The first, Sec. 223, describes the establishment of the zoning code’s 18 zoning districts. There are two agricultural districts, five residential districts, four business districts, one commercial district, two industrial districts, two waterfront districts, a public district, and a special district.

The second, Sec. 224, provides for the maps showing the boundaries and identification of zoning districts. The code requires two identical copies, one an “original copy” that is not to be changed or altered in any manner, and the second an amendment copy.

This section contains rules for interpreting the boundaries of use districts. An interesting provision declares that when a zoning district boundary line divides a lot of record at the time of the original

adoption of the code, the regulations that permit the greater density or intensity of land use activity may be construed as extending to the entire lot. However, that extension cannot include any part of such lot more than 50 feet beyond the district boundary line.

The language in Sec. 224 on interpreting the boundaries of use districts repeats much of the language in Sec. 226(w) to (x), which is part of the General Provisions section.

### c. Recommendations

The General Provisions section includes most of necessary elements for such a section and many elements that should be moved to other sections. The following changes need to be made to eliminate and correct ambiguities that make enforcement and interpretation difficult:

- (1) Add provisions on severability. A zoning code typically contains language that states that if a section or provision is declared unconstitutional or otherwise invalid, the remaining sections remain intact and in force.
- (2) Clarify Sec. 226(a) (Conflicting Provisions) and Sec. 241 (Interpretations of Regulations). Both sections state, in differing terms, that where there is a conflict between the provisions of Subchapter 29 and any other applicable regulations, the provisions of Subchapter 29 will prevail if they are more stringent than the other regulation. The two sections should be made consistent with one another. Further, the more common practice in zoning codes is to establish, in the event of a conflict between sections of a code or between the code and any other law, that the more restrictive provision will control. Such a statement is intended to ensure that a zoning permit is not be issued that inadvertently puts a property owner in violation of other laws. For example, the provision would read:

If the provisions of this development ordinance are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision will control. The more restrictive provision is the one that imposes greater restrictions or more stringent controls.

shall be construed as moving with the actual shore line.

The zoning code does not define what a “shore line” is, and therefore this section is ambiguous as to its application. Thus, Sec. 225 (definitions) needs to be amended to support this section. Alternately, the zoning, subdivision, and coastal zone management (which defines “shoreline”—see above) codes could share definitions.

- (3) Redraft Sec.226(c) to establish a separate provision on continuation of lawfully established existing uses.

- (5) Relocate Sec. 223 (Establishment of Zoning Districts) and Sec. 224 (Establishment of Zoning Maps) so they are part of General Provisions, and consolidate the rules for interpretation of the boundaries in the zoning map in Sec. 226.

This section, titled “Permitted Uses,” currently states:

No building or structure shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or structure or land be used, designed or arranged for any purpose other than is permitted in the district in which the building or structure or land is located, provided that such regulations shall not prohibit the continuance of an existing use.

- (6) Add a section that lists zoning map amendments. This section does not exist in the code, although the online version does indicate which parts of the zoning text have been amended through references to ordinance numbers, dates of enactment, and page numbers.

There are two concepts in this provision: (1) the requirement that uses, buildings, and structures, and changes or modifications to them must be in compliance with the zoning code; and (2) such regulations must not prohibit the continuation of an existing use. This section would be much clearer if the prohibition on continuations of existing uses was established separately, and amended to apply *lawfully* established existing uses.

There are a number of items currently included in the General Provisions section that should be moved to the proposed Development Standards chapter of the code or another section where the topic is addressed in greater detail.

- (4) Clarify the meaning of “shore line.” Sec. 226(w) (3) states:

Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line

- (7) Clarify regulations applying to substandard lots and move this provision to the Development Standards chapter. Sec. 226(i) states:

Any lot in a single ownership, which ownership was of record at the time of the adoption of this subchapter, that does not meet the requirements of this subchapter for yards, courts or other open space may be utilized for single residence purposes, provided the requirements for such yard or court area, width, depth or open space is within seventy-

five (75) percent of that required by the terms of this subchapter. The purpose of this provision is to permit utilization of recorded lots which lack adequate width or depth as long as reasonable living standards can be provided.

Under this language, a lot of record that has insufficient area, or less than 75 percent of that required for yards, courts or other open space, cannot be developed at all, and the owner would need to obtain a variance. For example, the R-1 District requires that “[e]very parcel of property to be utilized in the R-1 District *shall* have a minimum lot area of one-half acre.” (Sec. 229, R-1 Residential—low density; required lot areas),

To address this, there are a variety of regulatory options, including:

(a) allowing residential development on all lots of record, regardless of area, width, and yards;

(b) allowing residential development on narrow lots, with the alternatives of a required minimum side yard (say, 3 feet), a side yard that is a percentage of lot width, or a sliding scale for the side yard (i.e., allowing a reduction of 1 to 3 inches in the required side yard for each foot less from the width required of side yards for the zone, down to a minimum width in feet); or

(c) allowing residential development on shallow lots, with three types of exceptions: a percentage of lot depth, down to 10 percent of depth; an average of the principal buildings on one or both adjoining lots that have less than the required rear yard; or a fixed minimum rear yard of, perhaps, 3-5 feet from the rear lot line.

(8) Redraft provisions dealing with zoning lots and lots of record to ensure compliance with all bulk, area, and setback standards and move these provisions to the proposed Development Standards chapter. Sec. 236(j) states:

In all residential districts, only the permitted principal structures shall be placed on a zoning lot or lot of record, with the exception of parcels of record or excepted parcels which may be so arranged or subdivided as to provide for more principal structures when the land areas allocated to each structure is equal to or greater than the lot area required for the district, and structure and land complies with all other requirements of the district in which it is located. This requirement shall not apply to planned area or planned residential developments.

In zoning codes, a zoning lot is the unit of regulation and the lot of record is the unit of property ownership. When created, a lot of record becomes a zoning lot in most cases and not the other way around. People first create lots of record through subdivision and conveyances, and then they put uses on them; thus, lots of record become zoning lots.

The zoning code currently does not define a “lot of record” in Sec. 225(b)(66), and such a definition is needed. Further, Sec. 236(j) needs redrafting to ensure that no land in any zoning district may be subdivided or divided in any other way so as to create a new lot or parcel of land less than the minimum lot standard for the district or to prevent parcels from different use districts from being joined to make one larger lot.

(9) Clarify language ensuring visibility at intersections and move this section to the Development Standards chapter. Sec. 226(q) states:



No wall, fence, shrubbery or trees shall be erected, maintained or planted on any lot which unreasonably or dangerously obstructs or interferes with visibility of drivers of vehicles on a curve or at any street intersection.

(z) In addition to any and all other requirements set forth in this subchapter regarding the use of open space, there shall be provided in all multifamily residential developments of nine units or more, recreational facilities which shall occupy at least 5% of that area required for *open space* on the zoning lot. [emphasis supplied.]

The requirements in this section are unclear. It should be amended to establish minimum site triangle for each corner lot through which motors have reasonable unobstructed view. Such requirements should define the boundaries of the site triangle and the height at which the object is presumed to obstruct vision.

Note that Sec. 226(y) applies to all *multifamily residence districts* and repeats the terms of the definition of usable landscaped open space, while Sec. 226(z) applies to *multifamily residential developments*. In addition, Sec. 226(y) does not explain how to calculate the amount of landscaped open space that is required. Because Sec. 226(w) appears to depend on Sec. 226(y), it is impossible to calculate the area required for recreational facilities.

(10) Clarify Sec. 226(t) regarding the prohibition of additional dwelling units other than the principal residential structure on a single lot.

(11) Clarify regulations applying to “usable open space.” Sec. 225(b)(77) defines “usable landscaped open space” as:

Open space, usable landscaped. Usable landscaped open space shall consist of that space on the same lot as the principal building which is either landscaped with shrubs or planted with grass and excludes that portion of the lot which is utilized for off-street parking purposes.

(12) In addition to those regulations noted above, move the following regulations out of Sec. 226. General Provisions, to the proposed Development Standards chapter:

- 226(l) Permitted height, density, or bulk
- 226(o) Building grades
- 226(p) Guts and drainage channels
- 226(v) Projections into yards

That definition is applied in Secs. 226(y) and (x):

(y) In addition to any and all other requirements set forth in this subchapter for the provision of front, side or rear yards, off-street parking and/or loading, there shall be provided in all multifamily residence districts such additional *open space* as is set forth herein which shall be used for landscaping and which may not be used for off-street parking or loading purposes.

(13) Clarify regulations applying to accessory buildings and residential districts (Sec. 26(r)(1-5) and move these provisions to the section devoted to Accessory Uses and Structures.

(14) Move the provisions for airports (Sec. 226(g)) and heliports (Sec. 226(h) to the new Tables of Permitted Uses and to the proposed Use Standards chapter.

# Zoning Districts and Land Uses

# 6

This section discusses:

1. Establishment of Zoning Districts
2. Zoning Maps
3. Permitted and Conditional Uses

## 1. Establishment of Zoning Districts

### a. Regulatory Purpose

The purpose of this section of a zoning code is to list all titles and abbreviations of the zoning districts that are established in the code. Such lists are typically included as a short item in the introductory material of the code or in a General Provisions chapter.

### b. Findings and Recommendations

Sec. 223 of the existing code provides the titles of the 18 zoning districts in effect in the U.S. Virgin Islands. The introduction to the section states that the Virgin Islands consist of the islands of St. Thomas, St. John, and St. Croix. It also states that not all 18 districts are in use on each island. More detailed descriptions of each district are found later in the district-by-district list of development provisions in Sec. 229.

Sec. 223 is adequate as is, although we recommend that the list of districts be included as a section within a new introductory chapter.

## 2. Zoning Maps

### a. Regulatory Purpose

The purpose of this section of a zoning code is to identify by name, document number, and physical location (e.g., on file in the Planning Department or stored as a GIS file on the government computer network) of the jurisdiction's current zoning map. The section should also explain how the map is maintained and updated and how zoning district boundaries are to be interpreted where the map is unclear or if a dispute arises.

### b. Findings

Sec. 224 of the current code contains all the necessary elements of such a section.

### c. Recommendation

We recommend that this section be included in a new introductory chapter.

## 3. Permitted and Conditional Uses

### a. Regulatory Purpose

The purpose of a use table in a zoning ordinance is to set forth, by zoning district, which land uses are permitted by right, under certain conditions, or prohibited. The information is commonly placed in a table.

### b. Findings

The content of Sec. 228, Table of Permitted Uses, meets that basic standard of what such a district should accomplish, but the information is poorly organized and very difficult to navigate. As currently constituted this section does not compare favorably to best practices or even standard practice as found in most codes throughout the U.S.

The introduction to Sec. 228 provides that “Land, water and buildings may be used only for a use set forth in the Table of Permitted Uses and only within those districts specified in said table and only under the circumstances indicated in said Table.” The “table” is in fact a set of 18 lengthy, single-spaced, district-by-district repetitive lists of every use permitted within each zoning district. Each such list is followed by more lists of conditional uses, accessory uses, and prohibited uses. Accessory uses are listed as a line item in the use table and are permitted in every zoning district.

There are a total of 512 land uses listed in 18 zoning districts. In addition to permitted uses lists, each list

is followed by separate lists of conditional, accessory, and prohibited uses. As currently constituted this important information is difficult to find unless the user knows where to look.

Some of the more common uses appear in as many as eight of the 18 zoning districts. For example, greenhouses are listed as a permitted use in eight districts, artists studios are permitted in 12 districts, and private garages are permitted in 16 districts. The fact that the uses are permitted in multiple districts is to be expected. The problem is one of repetition—the same uses appear over and over again from district to district. In the 161-page version of the code that we are using for this assessment, a full 56 pages are devoted to these lists. This format is unwieldy, unhelpful to users, and unnecessary.

There are a number of informal policies that can be deciphered in looking at the permitted use tables. First, the code is quite permissive with regard to home occupations and also with artist work spaces and commercial spaces.

Second, the R-3 district is a residential zone but the range of possible (and for that matter existing) commercial uses that could be sited there is overly permissive. On the surface it could be regarded as an attempt to allow an organic mix of uses within higher density neighborhoods. But because there is no formal mixed-use policy in place that aims to create mixed use nodes to serve the immediate neighborhood areas, this district needs considerable refinement and refocusing.

Third, the exhaustive nature of the use lists reflects an outdated approach to zoning that dates back to the mid-Twentieth Century and earlier. It was driven by a belief that every land use has unique attributes and externalities that need to be carefully controlled and sited in places that were deemed appropriate. In practice, there is no need to make such fine

distinctions between many uses, such as, for example, a plumbing contractor's yard versus a sign painter's yard. Both involve trucks, machinery, and large parts; neither is appropriate near residential districts or in pedestrian areas, neighborhood commercial districts or resort areas. As currently constituted, an applicant who proposes to build a use that is not currently listed in any of the tables would have to get a zoning change to permit it, even if the potential impacts are lesser or no different from comparable uses already in the district.

Home occupations are also listed as a single, separate use in the Table of Permitted Uses. This raises numerous questions about what constitutes a home occupation vis-a-vis an accessory use in a residential district. The following is the definition for home occupation in the existing code:

- (56) Home occupation. Any use customarily conducted entirely within the dwelling and carried on by the inhabitants thereof which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, including consultation by such professionals as a physician, dentist, lawyer, architect, engineer or clergyman, and excluding such uses as a real estate broker, tea rooms, cafes, and animal hospital. A home occupation will not display or advertise any commodity or service for sale on the premises, nor will it involve the employment of more than one person other than a member of the immediate household.

The code departs from standard zoning practice in that it lists home occupation as a single use type. In practice, there are many types of businesses and enterprises that are commonly operated out of private homes, including small day care centers, tax preparation offices, and catering operations. These three examples alone present very different degrees

of potential negative impacts on the surrounding neighborhood. For that reason they should not be lumped together and treated as a single uniform activity.

Further this definition is in conflict with one of our cardinal rules of drafting good zoning definitions; it includes development standards (e.g., no advertising; number of employees) that apply to the use or activity being defined.

Clarification is also needed in the intent of the “accessory building (residential)” definition relative to a home occupation. Many home occupations are carried out in an accessory structure on a residential lot. However the definition for “accessory building (residential)” specifically precludes its use for business or commercial activities.

Finally, **signs** are currently listed as uses in each of the districts according to sign type. In fact signs are not a use, they are technically accessory structures that are regulated by a stand-alone section in the zoning code or a separate article of the government code altogether. In the existing code all detailed requirements for each sign type are located in Sec. 230. Uses Permitted Subject to Conditions. Again, signs should not be treated as a use and thus these

### c. Recommendations

- (1) Create a new section devoted to zoning districts. Group the zoning districts as follows:
  - a. Residential
  - b. Commercial and Office
  - c. Public and Civic
  - d. Agriculture
  - e. Mixed Use and Other Special Districts
- (2) Rewrite and move the purpose statements for zoning districts to the new section referenced above in the assessment of Sec. 227. (See discussion below.)
- (3) Reorganize the uses into use groups and within each group, into more narrowly tailored use categories, as proposed in Table 6.1 below. A use category would include all uses within a group that are functionally similar to one another. For example, in the Commercial Use Group, vehicle sales and service would be a use category.



Figure 5. Charlotte Amalie Street Scene

**Table 6.1. Proposed Use Groups and Use Categories**

<b>Residential Use Group</b>
The residential use group includes uses that provide living accommodations to one or more persons. The group includes two use categories: group living and household living.
<ul style="list-style-type: none"> <li>■ = Use Group</li> <li>■ = Use Category</li> </ul>
<ul style="list-style-type: none"> <li>■ Group Living                             <ul style="list-style-type: none"> <li>■ Group Home</li> <li>■ Nursing Home</li> <li>■ Transitional Living</li> <li>■ Rooming Houses and Boarding Houses</li> </ul> </li> <li>■ Household Living                             <ul style="list-style-type: none"> <li>■ Detached</li> <li>■ Single-Family</li> <li>■ Two-Family</li> <li>■ Attached</li> <li>■ Semi-Detached</li> <li>■ Multiple-Family</li> <li>■ Mobile Home</li> </ul> </li> </ul>
<b>Public and Civic Use Group</b>
The public and civic use group includes uses that provide public or quasi-public services. The public and civic use group would include the following use categories:
<ul style="list-style-type: none"> <li>■ Public Gathering Places                             <ul style="list-style-type: none"> <li>■ Amphitheaters</li> <li>■ Arenas &amp; Field Houses</li> </ul> </li> <li>■ Cultural &amp; Educational Facilities                             <ul style="list-style-type: none"> <li>■ Aquariums</li> <li>■ Libraries</li> <li>■ Museums</li> </ul> </li> <li>■ Day Care Facilities</li> <li>■ Hospitals</li> <li>■ Parks and Recreational Facilities                             <ul style="list-style-type: none"> <li>■ Athletic Fields</li> <li>■ Playgrounds</li> <li>■ Recreational Centers &amp; Gymnasiums</li> </ul> </li> <li>■ Places of Worship</li> <li>■ Public Safety                             <ul style="list-style-type: none"> <li>■ Fire</li> <li>■ Police</li> <li>■ Detention and Correctional Facilities</li> </ul> </li> <li>■ Schools                             <ul style="list-style-type: none"> <li>■ Primary</li> <li>■ Secondary</li> <li>■ Nursery</li> <li>■ Art</li> <li>■ Dancing</li> <li>■ Diving and Snorkeling</li> <li>■ Driving</li> <li>■ Music</li> <li>■ Special Education</li> <li>■ Technical Trade &amp; Vocational</li> <li>■ Music</li> </ul> </li> <li>■ Utilities and Public Services                             <ul style="list-style-type: none"> <li>■ Electrical Substation</li> <li>■ Airports &amp; Flying Fields</li> <li>■ Ports &amp; Commercial/Industrial Docks</li> </ul> </li> <li>■ Waste-Related Uses                             <ul style="list-style-type: none"> <li>■ Wastewater Treatment</li> <li>■ Sewage Lift Station &amp; Pressure Control Station</li> <li>■ Sewage Treatment Plants</li> </ul> </li> </ul>
<b>Commercial Use Group</b>
The commercial use group includes uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public. The commercial use group includes the following use categories:
<ul style="list-style-type: none"> <li>■ Animal Sales &amp; Services</li> <li>■ Building Maintenance Services</li> <li>■ Business Support; Equipment Sales &amp; Services</li> <li>■ Dry Cleaning &amp; Laundry</li> <li>■ Eating &amp; Drinking Establishments</li> <li>■ Financial Services</li> <li>■ Food &amp; Beverage Retail Sales</li> <li>■ Funeral &amp; Interment Services</li> <li>■ Gasoline &amp; Fuel Sales</li> </ul>

**Table 6.1. Proposed Use Groups and Use Categories**

Lodging and Accommodations
▪ Bed & Breakfast
▪ Hotel or Motel
▪ Resort
▪ Retreat Center
▪ Vacation Rental
Medical and Dental Offices
Parking
▪ Garage, Private
▪ Garage, Public
▪ Garage, Community
Personal Services
Professional Offices
Retail Sales
Vehicle Sales & Service
▪ Car Wash/Cleaning Service
▪ Heavy Equipment Sales/Rentals
▪ Light Equipment Sales/Rentals
▪ Motor Vehicle Repair
▪ Vehicle Storage & Towing
<b>Industrial Use Group</b>
This industrial use group includes all manufacturing and production facilities, mining, recycling centers, junk yards, and warehousing.
Junk/Salvage Yard
Manufacturing, Production & Industrial Services
Mining/Excavation
Recycling Service
Residential Storage Warehouses
Warehousing, Wholesaling & Freight Movement
<b>Agricultural Use Group</b>
This use group includes all crop and livestock farming, aquaculture, agricultural and food processing, and similar uses.
Farming
▪ Crop Cultivation
▪ Fish Hatcheries
▪ Livestock & Poultry
Horticulture
▪ Plant Nursery
▪ Greenhouses
Agricultural Equipment & Machinery
Agricultural Processing
Riding Stables
Tourist Attractions

(Note that the draft U.S. Virgin Islands Development Law of 2003 proposed this type of system although there are differences between our recommended categorizations and the categories used in that draft.)

(4) Convert the existing Table of Permitted Uses into an actual table (i.e., a matrix) (See Table 6.2 below). This table would organize the use groups and categories by zoning district. Not every conceivable land use would be listed in the table. Rather the chapter would include detailed descriptions of the general types of uses that fit into each category. (This information may also be located at the end of the code.)

(5) Create a new use table that presents permitted and conditional uses in each zoning district. List any use for which unique requirements or conditions apply as a separate line item under the category title. In the far right column of that item would be cross references to a new Use Standards section, where all uses to which additional or supplementary standards apply would be housed. This new chapter would be similar to the standards that are currently contained in Sec. 231. For example, additional conditions such as landscaping and screening might be needed for auto repair shops that are adjacent to residential neighborhoods.

**Table 6.2. Sample Use Table for Commercial Zoning District**

Note: This table is provided for illustrative purpose only. The precise set of use categories and their status as permitted or conditional uses in each zone will be determined completed during a comprehensive code revision.

Use Category ↳ specific use type	ZONING DISTRICT					Use Standards
	CBD	B-2	B-3	B-4	C	
<b>P: Permitted S: Use subject to conditions</b>						
<b>RESIDENTIAL USE GROUP</b>						
<b>Household Living</b>						
↳ Detached	P	P	P			
↳ Single-family	P	P	P			
↳ Two-family	P	P	P			
↳ Attached	P	P	P			
↳ Semi-detached	P	P	P			
↳ Multiple Family	P	P	P			
↳ Mobile home	P	P	P			
<b>Group Living</b>						
↳ Group home	P	P	P	P		
↳ Nursing home	P	P	P	P		
↳ Transitional living						
↳ Rooming and boarding houses						
↳ All other group living	S	S	S	S		
<b>PUBLIC / CIVIC USE GROUP</b>						
<b>College/University</b>		S		S	S	
<b>Cultural Facilities</b>	P	P	P	S	S	
<b>Day Care</b>	P	P	P			
<b>Public Gathering Places</b>			P	P		
<b>Schools</b>						
↳ Primary			P			
↳ Secondary			P			
↳ Nursery			P			
↳ Special education	P	P	P			
↳ Technical Trade & vocational	P	P	P		P	
↳ All other instruction	P	P	P		P	
<b>Utilities and Major Facilities</b>						
↳ Electrical substation	P	P	P	P	P	
↳ Airports & flying fields	S	S	S	S	S	
↳ Ports & commercial/industrial docks						
<b>Waste Treatment and Removal</b>						
↳ Wastewater treatment						
↳ Sewage lift station & pressure control						
↳ Sewage treatment plants						
<b>COMMERCIAL</b>						
<b>Animal Service</b>						
↳ Sales and grooming			P	P		
↳ Shelter or boarding [!]				P	P	
↳ Veterinary			P	P	P	
↳ Stable					P	
<b>Artist Work or Sales Space</b>	P	P	P	P		
<b>Building Maintenance Service</b>	P	P	P	P	P	
<b>Business Equipment Sales and Service</b>	P	P	P	P	P	
<b>Business Support Service</b>						
<b>Eating and Drinking Establishments</b>						
↳ Tavern or nightclub				P		
↳ All other eating/drinking establishments	P	P	P	P	P	
<b>Entertainment and Spectator Sports</b>						
<b>Financial Services</b>						
↳ Banks				S	S	
↳ Investment services						
↳ Short-term loan & pawn shops				S	S	
↳ All other financial services	P	P	P	P	P	
<b>Food and Beverage Retail Sales</b>	P	-	P	P	-	
<b>Funeral and Interment Service</b>						
<b>Gasoline and Fuel Sales</b>	P	P	P	P	P	

Sample table format

Content does not match current code

Use Category	ZONING DISTRICT					Use Standards
	CBD	B-2	B-3	B-4	C	
L: specific use type P: Permitted    S : Use subject to conditions						
<b>Lodging</b>						
L: Bed and Breakfasts			P	P		
L: Hotels			P	P		
L: Resorts				S	S	
L: Short term vacation rentals						
<b>Medical Services</b>	P	P	P	P	P	
<b>Professional Offices</b>	P	P	P	P	P	
<b>Parking</b>				P	P	
<b>Personal Improvement Service</b>						
L: Body art service				P		
L: Fortune telling service				P		
L: All other personal improvement services	P	P	P	P	P	
<b>Repair or Laundry Service</b>				P	P	
<b>Retail Sales</b>			P	P	P	
<b>Sports and Recreation, Participant</b>						
L: Indoor				P	P	
L: Outdoor				S	S	
<b>Vehicle Sales and Service</b>						
L: Car wash/cleaning service				P	P	
L: Heavy equipment sales/rental				-	P	
L: Light equipment sales/rental (indoor)				P	P	
L: Light equipment sales/rental (outdoor)				P	P	
L: Motor vehicle repair, limited				P	P	
L: Motor vehicle repair, general					P	
L: Vehicle storage/towing					S	
<b>INDUSTRIAL USE GROUP</b>						
<b>Manufacturing, Production and Industrial Service</b>						
L: Artisan			P	P	P	
L: Limited				S	P	
L: General						
<b>Recycling Service</b>						
L: Limited					P	
<b>Residential Storage Warehouse</b>				P	P	
<b>Warehousing, Wholesaling, Freight Movement</b>						
<b>AGRICULTURAL USE GROUP</b>						
<b>Agriculture, Crop</b>	P	P	P	P	P	
<b>Outdoor Advertising</b>						
L: Off-premise signs up to 80 sq. ft. in area	-	-	-	P	P	
L: Off-premise signs more than 80 sq. ft. in area	-	-	-	S	S	
<b>Wireless Communication Facility</b>	S/P	S/P	S/P	S/P	S/P	

Sample table format

(6) Modify procedures to give the planning director the authority to designate the appropriate use group for any new uses. This could be accomplished in lieu of a text amendment.

(7) Move all home occupations standards to a new section titled Use Standards (or what is termed in the existing code, Uses Permitted Subject to Specific Conditions)

(8) Clarify how home occupations are regulated relative to accessory uses in residential areas.



## 7

## Development Standards

This section discusses development standards that regulate building height, setbacks, yards, lot coverage, and other related dimensional and bulk standards.

### a. Regulatory Purpose

The purpose of a Development Standards section is to set forth standards applicable to buildings and structures in each zoning district. These standards typically include building height, setbacks and yards, and lot coverage. Similar to what was noted above regarding permitted use tables, most ordinances present some if not all of this information in a table or matrix. Diagrams are also included to further explain each requirement and how it is measured. This makes the information much easier to find than in the current code, which simply lists all requirements in narrative lists or as cross references.

### b. Findings

Sec. 229, Development Provisions, provides development standards for each of the code's 18 zoning districts. Similar to the format in the Table of Permitted Uses in Sec. 228, the numerical standards are listed in narrative form. Some of the provisions listed (including parking) contain only cross references to other sections of the code. This section does include titled sub-parts for each applicable provision in a district (see list below), which is an improvement over how the Table of Permitted Uses is presented.

Additional comments on the merits of each of these provisions follow this list.

- Statement of purpose of the zoning district
- Uses permitted
- Permitted accessory uses
- Required parking areas
- Floor area ratio
- Limitations on persons per acre
- Required lot area
- Permitted lot occupancy

- Front yard
- Side and rear yards
- Usable open space
- Maximum height limits; definition of story

**Statement of Purpose.** This section contains a statement of purpose for each zoning district. In common practice, such statements are a concise expression of land use policy (often referencing applicable adopted plans) and the groups of uses that are best suited to the district. The statements are designed to be used by decision makers to guide their review of development applications and rezonings.

The purpose statements in the existing code are inconsistent with one another. Some contain little more than a description of what is in the district already and other contain commentary and subjective information that is more typically found in a policy document or land use plan. For example the R-1—Low Density district purpose statement states:

The minimum area for such use should be one-half (1/2) acre, and even this minimum is questionable with respect to adequate disposal of sewage without surfacing of effluent to disturb one's neighbor.

The B-4 Business-Residential District purpose statement, on the other hand, is clearer in its intent:

In order that convenience shopping facilities may be available in all parts of the Islands, a Business-Residential area is established .... When integrated into the design of a residential area, such shopping facilities, small in scale, can benefit the residential area instead of detracting from such areas and lowering property values as has resulted in the past where such facilities have been established on a spot zone basis.

The C-Commercial district purpose statement is peculiar in how it characterizes which uses are appropriate in the district; it refers to uses such as service stations, automobile dealers, warehouses, and laundries as “not exactly business...and not exactly light industrial.” These uses are in fact essential commercial activities that serve both residents, businesses, and the tourist trade to an extent. They should be located on the major thoroughfares outside of central business districts and historically significant areas. Ideally they would be planned as nodes of activity rather than as a conventional, sprawling, strip commercial layout.

In the absence of an up-to-date comprehensive plan for the Islands, the zoning district purpose statements, if carefully drafted, can provide more than adequate policy guidance to decision makers on what uses and activities the community believes are suitable and compatible with the district.

**Uses Permitted.** This sub-part reiterates what is stated earlier in the introduction to the Table of Permitted Uses, namely it establishes that the only uses allowed in the district are those listed in the table and such uses are subject to standards in other sections of the code. This sub-part can be eliminated when the code is reorganized.

**Permitted accessory uses.** This sub-part repeats information that is already included in the Table of Permitted Uses. For most districts, this subsection states: “Customary accessory uses are permitted.” In several districts, such as A-1, the sub-part also includes examples of permitted accessory uses e.g., “The [customary accessory uses] include but are not limited to, barns, storage sheds, and a secondary residence for an employee. One (1) roadside stand for the sale of agricultural products produced on the premises shall be permitted.” This is inconsistent with the Table of Permitted Uses, which states only that “accessory buildings (structures)” are allowed

under certain conditions. This sub-part should be eliminated when the code is reorganized.

**Required off-street parking.** For each zoning district this sub-part contains a cross reference to Sec. 230. (Off-Street Parking). When the code is reorganized to include a new Table of Development Standards, a stand-alone section for off-street parking standards should be established. A cross reference to such a section could then be included in the Development Standards table we are proposing.



Figure 6. Existing Parking Area

**Required lot area.** This provision states the minimum lot size for each zoning district. This is one of several provisions that we always include in such a chapter and thus would be retained when the code is revised. As with other dimensional standards that follow here, this information would be converted from narrative text to a table.

**Permitted lot occupancy.** Depending on the district, this sub-part lists the number of dwelling units permitted per parcel *or* the percentage of the lot area that may be occupied by a building or use. The more common term for the former standard is “density” or “dwelling units per acre.” The more common term for the latter is “lot coverage.” Density and lot coverage should be separated.

**Front yard.** This sub-part provides the minimum requirement for front yard setbacks, measured in feet. This standard would be included in a table in a revised code.

**Side and rear yards.** This sub-part provides the minimum requirements for side and rear yard setback, measured in feet. It would be included in a table in a revised code. Several stakeholders mentioned in their interviews that the current way in which side yards are measured is ambiguous. However, the definition in the current code is clear: “A yard between the sideline of the lot and the nearest line of the principal building...”

**Maximum height limits.** This sub-part provides the maximum permissible height of buildings, expressed in *stories* for residential uses and *feet* for nonresidential uses. This standard would be included in a table in a revised code. The issue of building height, and how it is measured, is one of the most pervasive problems that users of the current zoning code encounter, according to many of the stakeholders we interviewed. Addressing this problem will require a discussion and consensus on what the government’s policy is in this regard. Is the aim to preserve views? To cap development density as a means of reducing impacts on public infrastructure? The method of measuring building height also needs to be explained in the code.

### Findings on Standards not Currently Included

The current code does not adequately address development on steep slopes, which is where so much residential development currently occurs and will continue to occur. There is widespread concern regarding stormwater run off, filling of guts, improper contouring of lots, driveways, and roads, and negative visual impacts of large residential structures on hillside lots.



Figure 7. Hillside Development

### 3. Recommendations

- (1) Relocate the Statements of Purpose for each zoning district, the Uses Permitted information, and Permitted Accessory Uses to other chapters in the revised code format.
- (2) Create a new chapter titled Development Standards that would feature a new table (see Table 6.3 below) of lot and building standards for each zoning district group. The table condenses information that the existing code uses 20 pages to present in narrative form. Note: The sample table provided here contains the actual requirements from the existing code.
- (3) Change the measurement for permissible building height from stories to feet and create a firm standard that a residential building cannot exceed. As recommended above, the definition of a story should also be modified to include both a minimum and maximum vertical height. This numerical standard should be set at a point where a majority of existing residential structures would meet the new height standard (e.g., 35 feet), which may differ by use district.

(4) Relocate all standards in the existing General Provisions section to the Development Standards chapter. Because they apply to all development, these standards do not have to be included in the table.

(5) Create a new intermediate density residential zoning district that would accommodate developments that are larger than what is permitted in R2 but less dense than what is permitted in R3. Currently the permitted density jumps from approximately 8.35 dwelling units an acre in the R-2 zone, with a two-story height limit, to approximately 30 dwelling units per acre in the R-3 zone with a six-story height limit. This is too large of a leap and no doubt has resulted in variance requests in the R-2 zone.

(6) Bring order and rationality to the number, type, and overall mix of uses that are currently permitted in the following districts: R-3-Residential Medium Density, B-2-Secondary Neighborhood, B-3-Scattered, and B-4-Business-Residential Areas. The R-3 district is overly permissive as to the number and type of commercial uses it permits (as discussed earlier). The B-2, B-3, and B-4 districts all seem to be trying to accomplish roughly the same thing, which is to balance relatively high-density residential housing with interspersed commercial uses of all types. The purpose statements of B-2, B-3, and B-4 districts all mention the need for neighborhood-serving shopping areas. The B-3 district, similar to the R-3 district, appears to be a catch-all, where commercial uses are interspersed throughout, owing to the existing land use pattern when the ordinance was adopted in 1972. In a revised ordinance the precise intent of each of these districts will need to be made clear. It is also possible

that an additional district intended to direct neighborhood-scale commercial development into nodes will be needed.

(7) Create a new section for steep slope development standards. The purposes of these new standards would be to:

- a. Prevent excessive grading and scarring of slopes and open spaces that occurs during residential development.
- b. Control the proliferation of buildings that are too tall for their location and have too dominant an impact on the views of the hills.
- c. Protect the safety of the public and reduce the likelihood of loss or damage to private property that can result from clearing of vegetation, grading, and construction on steep slopes.
- d. Ensure that projects are designed to fit with and avoid site constraints.
- e. Minimize the potential for geologic failures, fires, and floods that result from or conversely impact new development.

There are several common components of steep slope development standards that we found in a review of other jurisdiction's ordinances that should be considered for inclusion in this new section. They include:

- a. A required analysis of site constraints that would identify the most buildable portions of the site and the areas that should not be disturbed.
- b. A threshold slope above which the regulations would apply, e.g., any development or disturbance (e.g., pre-development land clearing) on slopes

- of 15 percent or higher.
- c. Limitations on cut and fill for the purpose of creating building sites.
- d. Impervious surface limitations that include the principal structure, driveways, parking pads, and other hard surfaces
- e. A required site plan submitted to the reviewing agency (i.e., DPNR) that would display:
  - Proposed cut and fill location and quantity
  - Location and plan to accommodate drainage guts
  - Orientation of proposed principal and accessory structures on the site
  - Location of public or private roads and driveways
  - Location of retaining walls and fences <sup>2</sup>

**Table 7.1 Permitted Density and Lot Area by Zoning District**

This table presents the density and lot standards for each zoning district which are currently found in approximately 29 pages of narrative lists in the current code. A comprehensive revision to the code would reorganize Sec. 229, Development Provisions, of the existing V.I. zoning code in a tabular format. The information is much easier to find and users can readily compare standards by district when it is represented in this way. We recommend that these standards be presented as they are here if the code is to undergo a comprehensive revision.

Zoning District	Required Lot Area	Permitted Density Per Acre	Floor Area Ratio	Lot Occupancy (i.e., lot coverage)	Maximum Building Height (in stories and feet)
A-1 Agriculture	40 acres	1 du/20 acres			3 (R uses)
A-2 Agriculture	2 acres	1 du/1 acre			3 (R uses)
R-1 Residence—Low Density	1/2 acre	4 du/acre		25%	2
R-2 Residence—Low Density	10,000 sq. ft.	8.35 du/acre		30%	2
R-3 Residence—Medium Density	6,000 sq. ft.	80 persons/acre ~30 du/acre*		30%	6
R-4 Residence—Medium Density	3,000 sq. ft.	120 persons/acre 45 du/acre*		50%	3
R-5 Residence—High Density	10,000 sq. ft.	160 persons/acre 60 du/acre*		30%	8
Business—Central Business District	20,000 sq. ft. for principally residential; no minimum for nonresidential	160 persons /acre for residential, including hotels	2	40% (for principally residential use)	No maximum ex. in historically certified areas
B-2 Business—Secondary	5,000 sq. ft. for principally residential; no minimum for nonresidential	80 persons/ acre for residential, including hotels	1	40% (for principally residential use)	No maximum ex. in historically certified areas

Zoning District	Required Lot Area	Permitted Density Per Acre	Floor Area Ratio	Lot Occupancy (i.e., lot coverage)	Maximum Building Height (in stories and feet)
B-3 Business—Scattered	6,000 sq. ft. for principally residential; no minimum for nonresidential	120 persons/acre for residential		60% (for principally residential use)	2, except for R uses and mixed R and C uses.
B-4 Business—Residential Areas	3,000 sq. ft. for principally residential; no minimum for nonresidential [1]	80 persons/ acre for residential		50% (including commercial and residential structures)	2
C Commercial	5,000 sq. ft.			≤50% lot area may be used for storage	35 ft.
I-1 Industry—Heavy	5 acres			≤35% lot area may be used for storage	50 ft., except 150 ft. for appurtenances
I-2 Industry—Light	5,000 sq. ft.			≤60% lot area may be used for storage	35 ft.
W-1 Waterfront—Pleasure	10,000 sq. ft.	Maximum 2 du/lot or 8.35 du/acre		40%	3
W-2 Waterfront—Commercial—Industrial	20,000 sq. ft.			≤40% lot area may be used for storage	35 ft.
P--Public	na				May not exceed max ht. of adjoining district.
S-- Special	na	80 persons/acre		50%	3

\*We converted the population per acre measure to du/acre by assuming an average household size of 2.65 persons, which is based on the U.S.V.I. definition of density and persons occupying a particular type of dwelling unit.

2. See generally, Robert Olshansky, *Planning for Hillside Development*, Planning Advisory Service Report No. 466 (Chicago: American Planning Association, November 1996).

## 8

## Use Standards

**a. Regulatory Purpose**

The purpose of this section is to set forth all additional requirements that land uses that are denoted in a use table as “S” for special (or alternately, “C” for conditional) will be subjected to beyond what is called for in the basic requirements of each zoning district. The additional standards include among other things, larger setbacks, additional parking, and additional landscaping or screening. These are uses that are generally compatible with the principal permitted uses of the district (e.g., commercial uses, residential uses) but because of their greater or unique intensity or kind of activity that is taking place, additional regulation is needed to mitigate any potential impacts on neighboring properties or the area as a whole. “Use Standards” is the more common title used in zoning ordinances for such a section.

**b. Findings**

Sec. 231, Uses Permitted Subject to Conditions in the existing code is the equivalent to what is more commonly referred to as Use Standards.

**1. Uses Permitted Subject to Conditions**

There are 32 uses to which additional use standards are applied in the current code:

- Amusement parks
- Athletic fields
- Apartment houses, hotels, and guesthouses.
- Automobile laundry
- Bowling alleys and roller skating
- Cafes, retail concessions, and restaurants
- Camps
- Churches, synagogues, temples, and Sunday School buildings.
- Colleges, universities and other institutions of higher learning.
- Community centers
- Convalescent, rest, nursing and retirement homes; sanitariums
- Country clubs and golf clubs
- Dwelling—attached, semi-detached and group.
- Electrical substations, radio and TV transmission towers, and telephone relay towers.
- Fire stations, police stations, and postal substations
- Garages (community)
- Gymnasiums and athletic clubs
- Hospitals
- Laundry and dry cleaning
- Marinas
- Medical clinics
- Memorial parks, memorial garden, memorial nature reserve park, perpetual care park
- Motion picture (indoors)
- Nurseries, plant; agriculture; horticulture
- Refreshment stands
- Riding stables
- Religious quarters
- Seaplane ramps
- Sewage lift station, sewage and water pressure control station, and sewage treatment plants
- Signs
- Water storage

The uses listed here reflect the standard array of uses that one finds in comparable sections of other zoning ordinances. The nature of the additional requirements is comparable as well. The problematic areas of this section include the following:

Signs are regarded as a permitted use subject to conditions, which is an inaccurate characterization. On-premises signs that businesses, schools, churches, or any other uses display on site to identify themselves are technically an accessory structure to a principal use. That said, there are six permitted sign types listed in this section (and also listed in the Table

of Permitted Uses as conditional uses): business, identification, directional, for sale/rent, occupancy, and temporary.

Directional, identification, and temporary signs are permitted under the conditions of this section in all districts. The remaining signs are permitted under conditions in most of the other districts. The exceptions include a) occupancy signs which are intended for use on residential properties and for home occupations and thus are not needed in nonresidential districts; b) business signs which are not permitted in the A-1 or A-2 districts, or in R-1, R-2, or P-Public. For sale/rent signs are not allowed in the P district either.

The sign size limits range from 1 square foot of sign area for directional signs in all districts, to 16 square feet for temporary signs in all districts, to 20 square feet for business signs in the Industrial districts and the Waterfront-1 district.

There is no definition provided in the code for identification signs, for sale/rent signs, or temporary signs. There is a definition for outdoor advertising signs (i.e., billboards) but no other mention is made of that sign type anywhere in the code, and presumably they are prohibited across the board.

### **c. Recommendations**

- (1) Add cross references and hyperlinks to the use standards provided in this new chapter so code users can easily locate the additional requirements that apply to these uses.
- (2) Create a new code section for sign regulations, revising some of the sign definitions, and adding standards for sign types that are not currently regulated, such as internally illuminated signs.
- (3) Review and revise the code to ensure it is not in violation of the First Amendment with respect to signs.



## 9 Planned Area Development; Affordable Housing

This two-part section addresses the basic contents of planned area development regulations and planned area development regulations specifically targeted to accommodate affordable housing developments.

### a. Regulatory Purpose

Planned area development (PAD) regulations are a zoning tool that allows for creative design arrangements of buildings and uses which may divert from the standards of the base zoning district in which it is located. They are typically used to develop parcels of a certain size that are in unified control of one or more owners and subject to a unitary site plan. Such developments must generally conform to the character of the district in which it is located and to the comprehensive plan .

### b. Findings

The PAD provisions, in Sec. 232, are “intended to provide an opportunity for alternative variety and creative or unique design arrangements and relationships of buildings and uses of land which are built as a single entity under unified control when the plan of development has been approved in the manner [prescribed by the zoning code].”

An initial problem is that the development standards in Sec. 232 refer to “planned residential development” implying that all such projects will be residential. All PADs must be at least five acres in size. Establishing a PAD requires an amendment of the zoning map following a public hearing and review and approval by the Legislature. Planned residential developments are permitted in the A-1, A-2, R-1, and R-2 districts, so it appears that the map amendment is an overlay rather than a replacement of the underlying district; the PAD is to be represented on the zoning map through dashed lines rather than the solid lines of a use district boundary. In addition to the uses already authorized as of right in these districts, the zoning code allows the uses permitted in the R-3, R5, B-3, and B-5 Districts, but they cannot occupy more

and B-5 Districts, but they cannot occupy more than five percent of the gross area of the planned development.

The minimum standards for the plan are not specified in the code, but rather are to be established by rules and regulations adopted by the Virgin Islands Planning Office. The section also provides that some adjustments to the approved PAD plan may be approved by the Office.

If construction of a planned development does not proceed within a period of two years after the date of approval by the Legislature, the approval is “void.” The entire matter must then be resubmitted to the office for reconsideration unless the applicants have submitted a revised plan or revised schedule “which may be approved by law and adopted in lieu of the original plan or schedule,” presumably by the Legislature.

Under this section, the incentive for using planned development is related to increased density. For example, in the A-1, A-2, and R-1 District, the residential density is that of the R-2 District, and in the R-2 District, the residential density is that of the R-3 District.

Maximum lot occupancy is 30 percent and maximum height limit is six stories.

Sec. 232 requires that 40 percent of development to be common open space. Such space “shall be used for recreation, and outdoor living space not including off-street parking, all of which uses shall include space for landscaping.” This language is rendered ambiguous by another statement that “[c]ommon open space shall be established in an amount not less than the percentage approved by Legislature based upon the Department of Planning and Natural Resources.”

The phrase “outdoor living space” could be construed

than five percent of the gross area of the planned development.

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The phrase “outdoor living space” could be construed

to mean back yards, decks, pool areas, etc., none of which would be usable by all owners and residents of the development. Further there are no standards for the quantity, location, appearance, and mix of plant materials or turf that constitute landscaping.

Reflecting the broader problem of permitting many nonresidential uses in residential districts (particularly in R-3), the PAD requirements provided that any uses permitted in the R-3, R-5, B-3, and B-4 zoning districts may be allowed when approved as part of a development plan provided they do not occupy more than five percent of the gross area of the PAD.

The Virgin Islands Planning Office may require that land be deeded to the government for public schools and for recreation and/or park purposes if consistent with the General Plan of Development or government policies. Such land is to be fully credited as usable open space. However, the zoning code does not contain any standards for the amount of land for schools, recreation, or park purposes.

Sec. 232 also includes provisions for affordable housing planned area developments, which is to be used in conjunction with Section 232a, which follows. The requirements for affordable housing developments are less stringent than the general requirements. For example, there are no minimum area standards, and no minimum density, lot occupancy, and setback requirements; instead, the Legislature is to set them for each affordable housing development based upon the recommendations of the DPNR.

Sec. 232a sets forth more specialized procedures for planned area affordable housing development permits, which are to be issued in connection with the approval of a zoning map amendment for a planned development. The section does not, however, fix a minimum percentage or number of affordable units. It states that applications for such permits

are to receive priority review by the DPNR, other administrative agencies, and the Legislature, in 60 business days of submission.

DPNR must adopt rules and regulations governing the contents of applications and procedures of preapplication meetings, and preliminary and final review, provided, however, that the rules and regulations shall not allow more than 15 business days for departments to determine whether an application is complete. The applicant must enter into a recordable affordable housing agreement with DPNR and the Virgin Islands Housing Finance Authority indicating a commitment to provide affordable units within the planned development.

The public hearing and report by DPNR on the planned affordable housing development must be undertaken only after a complete application has been received by the DPNR.

Failure of the DPNR to report its recommendations to the Legislature, the Governor, the VIHFA, or the Zoning Administrator after the public hearing is treated as a favorable recommendation of the application. The DPNR report must include findings and recommendations and the reasons for approval, disapproval or modification of the proposed development.

A statement of the recommendations of the DPNR and approving, disapproving or proposing a modification of such planned area affordable housing development proposal must be read at the public hearing. However, the Legislature may approve a planned affordable housing development even if the DPNR recommends disapproval.

After the public hearing and following submission of the report, the Legislature must approve, disapprove, or modify and approve the proposed development and accordingly authorize the issuance or denial of, as

appropriate, the development permit.

In contrast, however, to the general requirements for planned developments, the zoning code, in Sec. 232(c), mandates that the Legislature can only grant approval of an affordable housing development if the DPNR finds and determines the development:

- (1) will provide affordable housing which will remain affordable for at least the term of the applicable affordable housing development agreement;
- (2) will provide safe, sanitary and high quality dwelling units with amenities sufficient to meet the needs of eligible home buyers or renters and which are aesthetically compatible with the environment;
- (3) will not unreasonably compromise or substantially impair any otherwise applicable environmental, water or land use and building policies and standards; and
- (4) will significantly promote the health, safety and general welfare of residents of the United States Virgin Islands by helping to reduce the shortage of housing affordable to low and moderate income households and providing additional jobs for residents of the United States Virgin Islands.

One stakeholder commented that the planned area development standards for affordable housing are rarely used because they are too complicated for developers to implement. Another individual told us that the problem is the lack of guidance in this section, which leaves potential PADs open to “subjective interpretations and unwritten policies of DPNR and developers’ representatives rather than a clear path to follow.” And a third person told us that it is easier for a developer to simply get a zone change to get the additional density because the developer has to provide less information than what is called for in the PAD process.

### c. Recommendations

- (1) Modify the PAD regulations to more narrowly define a mix of uses that includes both “vertical” (e.g., in a single structure) and “horizontal” (e.g., development compact nodes but not necessarily in a single structure) that compliment predominantly residential areas and do not exacerbate the current problem of overly permissive spot zoning such as what is found in the R-3 district.
- (2) Add provisions for planned commercial/ office developments or planned mixed-use developments.
- (3) Clarify what is included in the calculation of the 40% common open space requirement and whether the standard is a minimum that cannot be modified.
- (4) Provide minimum standards in the code for the PAD development plan itself.
- (5) Consider the incorporation of the following provisions for affordable housing to provide more substantive standards for Sec. 232a:
  - a. The PAD development plan must include an affordable housing element that provides housing affordable to low- and moderate-income families, as defined by the U.S. Department of Housing and Urban Development, adjusted by family size. This requirement shall be fulfilled by one of the following:
    - i. a set-aside of no fewer than [20] percent of the units for occupancy by, and at rates affordable to, families earning no more than [65 or 80] percent of the median area income, adjusted for family size; or
    - ii. a dedication of developable land of equivalence value, or its equivalent in cash.
  - b. Affordable housing must be appropriately designed and integrated into the overall development plan for the PAD [and shall not be limited to one phase of the development if the development is to be built in phases]
  - c. Affordable housing provided under this section must be restricted by deed, restrictive covenant, or other legal agreement accepted by the government that requires its sale or rental at an affordable price or rent for a period of 25 years from the date the first certificate of occupancy was issued. The government shall have a right of first refusal to buy or rent any affordable housing unit offered for sale or rental during this period. Rental and sales prices may only increase by (a) the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index, and (b) the fair market value of any improvements to the structures or lot.
  - d. The applicant or its successor must prepare an annual monitoring report for the government on the affordable housing program, which shall include a description of how the affordable housing plan and deed, covenant or other legal restrictions are being enforced on the sale and rental of affordable housing.
  - e. A PAD that provided affordable housing will receive a density bonus of one additional unit of housing for each unit of affordable housing that is provided in the development.<sup>1</sup>

1. These provisions are adapted from Daniel R. Mandelker, *Planned Unit Developments*, Planning Advisory Service Report No. 545 (Chicago: American Planning Association, March 2007), 89.

**a. Regulatory purpose**

This section typically lists all permitted accessory uses and structures that are allowed in connection with a lawfully established principal use. These regulations should be clear that all accessory uses and structures are required to be subordinate to a principal use or structure. For example an accessory dwelling is a subordinate *use* to a principal residential use, and the accessory *structure* (the physical space containing the use) is subordinate to the principal structure (e.g., a single-family house).

Accessory uses and structures are subject to the same lot and building standards as the principal use or structure. That is to say, such regulations are not intended to be used as a means to achieve an exception or variance of the base zoning district standards. Swimming pools, satellite dishes, windmills, and TV antennae are all accessory uses found in residential districts. Fences, sheds, decks, carports, and garages are all commonly found accessory structures in residential districts.

**b. Findings**

The existing code presents a very muddled picture of how accessory uses and buildings are regulated. The provisions are overlapping, overly broad, and not in keeping with standard practice in other jurisdictions.

Section 226, General Provisions, contains standards for the location and arrangement of accessory buildings. The current code defines the relevant terms:

An “accessory building” is defined as “A subordinate building or portion of a main building, the use of which is incidental to that of the main building and which is located on the same lot as the main building.”

An “accessory building (residential)” is defined as “A subordinate building attached to or detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service. Accessory buildings include but are not limited to automobile storage garage, laundry room, garden shelter, hobby room, and mechanical room.”

An “accessory use” is defined as “A use of land or a portion of the building customarily incidental to the actual principal use of the land or building and located on the same parcel of property with such principal use.”

The Table of Permitted Uses (Sec. 228) lists accessory buildings that are permitted by right in 13 zoning districts and conditionally in four zoning districts (see table below). Sec. 233, Accessory Uses, regulates all accessory uses separately from the structures or buildings in which they operate. It begins with some very general standards applicable to all accessory uses. Specifically, it provides that an accessory use must be located on the same lot as a principal use, must be subordinate to the principal use, and must be a “use or activity which is customarily incidental to the principal use.” Further, the accessory use must not “materially or substantially change or alter the character of activity of the principal use it serves.” These last two clauses are critical because of the unusual designation of so many activities in the R-3 district as accessory uses. They include nightclubs and delicatessens that would almost certainly not meet these measures. Further, although those uses are listed as accessory, it is not clear from this section what additional standards might apply.

The remainder of the section provides additional regulations for accessory uses in planned residential

districts, agricultural districts, and for hotels and multiple residences.

In the R-3 district, there are 32 accessory *uses* that are permitted under certain conditions. We assume that these are uses that existed in areas that were zoned R-3 at the time the zoning ordinance was adopted in 1972. Rather than require that they be removed entirely or even that they be categorized as a nonconforming use, a decision was apparently made to label them accessory.

There are several problems with this approach, namely, many of the uses listed as “conditionally accessory” are: (1) incompatible with adjacent residential uses even if conditions are imposed; (2) not necessarily subordinate (or difficult to maintain as subordinate) to a principal residential use; and (3) difficult to regulate at all given that the standards in Sec. 233 that purport to govern such activities are just too general to offer any amount of control.

Moreover, whereas such uses could have been allowed to remain in place in the R-3 district after zoning was adopted, the law should have precluded the establishment of any more of these uses in that district. Instead, they have been allowed to proliferate. The result has been the creation of areas where discordant mixes of activities are in place, none of which result in what we would consider a sound strategy for mixed-use development.

**Table 10.1 Treatment of Accessory Uses and Buildings**

The purpose of this table is to show how accessory uses and structures are regulated in the current code. This table is not proposed for inclusion in a revised code.

Accessory uses and buildings are:	Zoning District	Uses Listed as Accessory
Permitted by right in:	R-2, R-4 B-1, B-2, B-3, B-4 C I-1, I-2 W-2 P S	Accessory Buildings
Permitted conditionally per Sec. 233 in:	A-1, A-2 R- 5 W-1	Accessory Buildings
Listed as Accessory uses permitted subject to Sec. 233:	R-3*	32 uses in R-3 are listed as

\* The R-3 District lists 31 uses as accessory uses which are permitted subject to conditions of Sec. 233. They are: accessory buildings (structures); artists, commercial & display; art galleries; automobiles & motorcycles (rental offices); baby sitting bureaus; barber or beauty shops; bars & taverns (drinking places); business management consulting services; coffee shops & ice cream parlors; cafeteria; delicatessens; night clubs; restaurants; sandwich shops; radio & television studios, broadcasting; and travel arranging services; and the following retail uses: apparel & accessories; books & stationery; cameras & photographic supplies; candy & other confectionery; chinaware, glassware, & metalware; cigarettes & tobacco products; concession; drugs & proprietary; florists; gifts, novelties & souvenirs; jewelry & precious metals (sales & repair); liquor; news & magazines; perfume & cosmetic shops; and sporting goods.

**c. Recommendations**

Regarding signs and accessory uses, we recommend the following:

- (1) Add Accessory Uses and Structures as an item within the new Use Standards section (which would take the place of Sec. 231. Uses Permitted Subject to Conditions).
- (2) Revise the accessory uses provisions to reflect

a more disciplined and rigorous approach. The standards of Sec. 233 are just too general to offer adequate control. The idea of having a residential zone that allows an owner to establish such uses anew is very unusual and may be a deterrent to investment in the area.

- (3) Rename the current list of accessory uses in R-3 as “established uses” or “nonconforming uses.” A more precise set of standards and conditions for governing them should then be adopted. An established use would be one that could continue indefinitely and even be expanded or rebuilt, if necessary. Other uses that are regularly and notably incompatible in residential areas, such as nightclubs, should be subject to a set of criteria to determine if and when they would be required to be removed. . Removal could be accomplished through amortization or attrition.
- (4) Replace the term “accessory building” with “accessory structure” because many accessory elements on a site are not buildings, e.g., fences, walls, towers.

# Administration, Enforcement, and Procedures

11

This section of the zoning and subdivision code assessment reviews the following areas:

1. Administration and Enforcement
2. Board of Land Use Appeals; Use Variances
3. Virgin Islands Planning Office
4. Amendments and Public Hearings
5. Fees and Penalties

## 1. Administration and Enforcement

### a. Regulatory Purpose

The administrative and enforcement provisions of a zoning code establish the processes for accepting applications for permits for development, determining whether they are complete, reviewing them, issuing the required permits if the application complies with the code, conducting inspections as necessary, and issuing a certificate of occupancy or code compliance. The provisions should also identify the steps a code official must take in order to correct violations.

The administrative and enforcement provisions should identify the agency or position who is responsible for enforcement and the requirements and standards for review and approval of permits for development. When a violation of the code is determined, there must be due process for the alleged violator, with adequate notice, the opportunity for a hearing, the preparation of written findings that state the basis for determination that there is a violation so that the violator knows what to do to obey the enforcement order, and provisions for judicial review. A stop-work order may be authorized in the case of a land use violation involving construction; as a result of such an order, all construction must cease at the site until the enforcement officer has had an opportunity to meet with the alleged violator and resolve the violation.

### b. Findings

The provisions on administration and enforcement

appear in Sec. 235 of the zoning code and are well-drafted and thorough. The zoning code assigns the responsibility for its administration and enforcement to a Zoning Administrator who is the Commissioner of DPNR, who in turn may assign the responsibility to one or more Assistant Zoning Administrators, in writing, to act on the Commissioner's behalf (Sec. 235). The administration and enforcement responsibility also extends to Chapters 5 (Airport Zoning in St. Croix) and 7 (Airport Zoning in St. Thomas) of Title 6 of the Virgin Islands Code. (Sec. 235(a)).

The Zoning Administrator may take appeals from any decision of the Board of Land Use Appeals when the decision has been overruled from the Board. (Sec. 235(a)). Such appeals are taken to the District Court of the Virgin Islands (see Sec. 236(c)).

By contrast, the Commissioner of Planning and Natural Resources is the Zoning Administrator for any development for which a coastal zone permit is required under the Virgin Islands Coastal Zone Management Act, Title 12, Chapter 21, of the Virgin Islands Code.

The zoning code requires the Zoning Administrator to maintain permanent and current records regarding adoption, amendment, administration, and enforcement, including, but not limited to, zoning maps, plans, applications, planned developments, conditional uses, variances, appeals, and their disposition. The Zoning Administrator is also to provide an information service for the public on all matters relating to zoning.

Other Zoning Administrator duties include examining all applications for building or other permits for the use of land and determining that the application and plan submitted complies with the code prior to the issuance of building or other permits; and making recommendations to the Planning Office



and the Legislature on changes in the law that the Administrator deems desirable to ensure that the law is a more effective instrument to achieve the General Development Plan of the Virgin Islands.

The zoning code, in Sec. 235(b), establishes the enforcement authority for the Zoning Administrator. This includes the inspection of buildings and premises to determine whether there is a violation of the zoning code. The authority for taking action to correct violations is broader and extends to “any official having jurisdiction,” who may institute an action or proceeding to prevent unlawful construction, use conversions, building alterations, prevent the occupation of buildings, structures, or land, or prevent any illegal action, conduct, business, or use in or about such premises.

In Sec. 235(c), the zoning code describes the contents of an application for building or other permits of the use of land. The application must, among other things, identify the location and dimensions of buildings, including height in stories and feet, and including the total square feet of ground area coverage of all existing and proposed buildings. In addition, the application must specify the use of existing and proposed buildings, including the number of dwelling units in any building and the number of bedrooms in each dwelling unit in any building occupied or proposed to be occupied by more than two dwelling or apartment units.

The Zoning Administrator also may ask for additional information, as necessary.

An applicant must attest in writing that the information as shown on the plans is “true and correct.” The Zoning Administrator may refuse to issue permits that do not comply with the zoning code and to revoke any permit that may have been issued for any building or use of land. There is no provision

for a fact-finding hearing in the zoning code regarding such revocations.

Once an application has been “properly submitted,” the Zoning Administrator must act on it within 60 days. (Sec. 235(c)).

A copy of an application for a building permit in any of the zones defined in chapters 5 and 7 of Title 6, Virgin Islands Code, must be submitted to the Virgin Islands Port Authority at the same time it is submitted to the Zoning Administrator provided such zone is one to which the building permit provisions of either of those chapters applies. (Sec. 235(d)).

No land can be occupied or used and no building erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy has been issued by the Zoning Administrator. The certificate must state that the premises or building complies with all provisions of zoning code; except that where the alteration does not require the vacating of the premises or where parts of the premises are finished and ready for occupancy before the completion of the alteration, or in the case of a new structure, before its completion, a conditional certificate of occupancy may be issued. No change or extension of use and no alteration shall be made in a nonconforming use of a building or land without a certificate of occupancy having first been issued by the Zoning Administrator. (Sec. 225(e)).

The requirements in the zoning code are minimum requirements and not intended to repeal, abrogate, or annul any other requirements, including easements and covenants. (Sec. 241).

### **c. Recommendations**

While these provisions may be adequate, a number of changes to the zoning code may be appropriate.

- (1) The two chapters on airport zoning, Chapter 5 (Airport zoning on St. Croix) and Chapter

7 (Airport zoning on St. Thomas) should be integrated into the zoning code rather than appearing as part of Title 6 (Aeronautics) (see Section 2 of this report, above).

(2) This section should be amended to require the issuance of a separate zoning permit to allow the construction of a building or structure or change in use, in addition to a building permit and would confirm that the proposed activity complies with all zoning requirements. (This approach is presently used for group dwelling approvals under Sec. 231 and 237(b)). The section should require, as necessary, the convening of a review team for each application whose members are in direct communication with each other and who would provide a single response and set of comments to the developer. Currently, Sec. 235(c) only states that “Any application properly submitted under this section shall be acted upon by the Zoning Administrator within sixty (60) days.” Thus, it is not clear that a permit must be issued, only that an application must be approved. In addition, the new language should require the posting of the zoning permit on the building or structure so that is visible to the public for a certain period of time while construction is underway and after the use has commenced.

(3) This section should also be amended to expressly authorize the Zoning Administrator with the authority to issue stop-work orders to stop construction performed without or in violation of a zoning permit until a full hearing can be held. Such an order prevents a suspected violator from completing work on a building, therefore intensifying the nature of the violation. For example, a stop-work order might be employed if a builder is in the process of adding an illegal story to a building.

(4) This section should be amended to provide for a

fact-finding hearing by the Zoning Administrator in a situation where the Administrator decides to revoke a permit that has been issued in error or where a stop-work order has been issued.

(5) It may be desirable to authorize the Zoning Administrator to issue formal written interpretations of different provisions in both the zoning and subdivision code when issues or questions arise and publish these in a uniform format, both in hard copy and on the Department of Planning Natural and Resources website, and, if there are a sufficient number, to index them. This would ensure consistency in the administration of the code as well as transparency to the public.

## **2. Board of Land Use Appeals and Legislative Use Variances**

### **a. Regulatory Purpose**

These provisions establish the process for appeals of administrative determinations by code officials, where there is a dispute over the code official’s decision, and the authorization of variances, which are minor departures from the strict and literal application of the zoning code. An administrative board, in some cases, or a hearing officer conducts the hearing and makes a decision on the appeal or variance.

These provisions describe composition of the board and the terms of the board members. It is important that this section contain clear standards to guide the discretion exercised by the board as well as procedures to ensure that applicants are afforded due process. The provisions will give the board the authority to adopt rules of procedure to govern the conduct of meetings. It is desirable to ensure that the board members have training beforehand to expose them to the zoning code, their roles, how to conduct hearings, and how to make findings.

A number of states (Kentucky, Louisiana, New Jersey, New York, South Carolina and Tennessee) are now requiring planning commission and zoning board members to undergo training before being seated as members.<sup>2</sup>

### **b. Findings**

Sec. 236 creates a Board of Land Use Appeals with the authority to hear certain appeals in the administration of the zoning and other codes. However, Sec. 236(a) excludes the power to grant use variances or to increase the height of a structure above that permitted by the law.

The Board hears and decides all matters referred to it or which it is required to decide under the law; hear and decide appeals made by any person or persons severally or jointly aggrieved by any order, requirement, decision or determination made by the Zoning Administrator; and grant special permits as are authorized by the zoning code.

In hearing appeals, the Board may reverse, affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from the Zoning Administrator. To that end, the board has all of the powers of the officers from whom the appeal is taken.

Sec. 236(b) requires that all meetings of the Board be in public, although executive meetings of the Board may be held. Any record of such meetings must also be opened to public inspection. Sec. 236(c) establishes the rules of procedures of the Board. Decisions of the Board take effect when rendered, provided that a copy is filed in the Lieutenant Governor's Office.

Sec. 236(d) contains detailed requirements for

2. Kentucky Revised Statutes Sec. 147A.027; Louisiana Act 859 (2004); New Jersey Statutes Annotated 40:55D-23.2 to 23.3; New York, Chapter 662 of the Laws of 2006; South Carolina Code of Laws Sec. 6-29-1310; Tennessee Code Sec. 13-4-101.

minutes of the Board's proceedings. All findings and actions of the board must be in writing and must set forth the reasons for the action taken "irrespective of what action was taken." The section requires that findings "shall be complete, detailed and in specific terms setting forth the reasons for the decisions." They must "go beyond such generalities as 'in the interest of the public health, safety, and general welfare'" and, in every instance, "a statement of the facts upon which such action is based shall appear in the minutes."

Sec. 236(e) requires a concurring vote of two-thirds of the members of the Board to reverse any action of the Zoning Administrator or decide in favor of an applicant on any matter which it is required to pass.

Sec. 236(f) permits the Board to call on other governmental departments for assistance. In addition, the Virgin Islands Planning Office must submit an advisory opinion to the Board, when requested by the Board as well as required by Sec. 237 (see below) at least four days prior to the public hearing on the matter on which the opinion is required. However, the failure to submit such an opinion does not bar the Board from reaching a decision.

Sec. 236(g) sets forth the criteria the Board must apply in granting variances or modification from the strict application of the zoning code. The test for variances is "unusual difficulty or unreasonable hardship." Since use variances and height variances are not within the authority of the Board, the impact of this section appears to limit the Board to area or bulk variances and similar types of actions.

Sec. 236(h) limits the effectiveness of a decision of the Board permitting the erection, alteration, or use of a building or the use of a land for a period not to exceed one year unless a building permit is obtained, the alteration or erection proceeds to completion, or unless the use of the building or land is established

within that period.

Sec. 236(i) gives the Board the authority to interpret zoning district maps and boundaries. Sec. 236(j) describes the procedures for appeals and applications for special use permits.

Sec. 236(h) authorizes appeals of Board decisions to the District Court of the Virgin Islands and the power of the court to “reverse or affirm, wholly or partly, or . . . modify the decision brought up for review.”

Sec. 236(l) also gives the Board the authority to hear appeals from decisions of the Zoning Administrator regarding the application of chapters 5 and 7 of Title 6 of the Virgin Islands Code.

The Legislature has the authority, under Sec. 238a, to grant use variances in lieu of a map (and, in effect, a text) amendment. In those cases where an amendment to a zoning map is requested by a property owner for a specific use of property not permitted in the zoning district where the property is located, but which use would not “substantially conflict” with the permitted uses in the zoning district, the Legislature, in lieu of an amendment to the zoning map, may grant a variance for that specific use of the subject property; provided, however, that all other requirements of that zoning district will continue to apply to the subject property.

### c. Recommendations

The provisions establishing the Board of Land Use Appeals are well done, and provide clear direction to the Board, especially in the area of making findings (Sec. 236(d)). There are a number of modifications that would improve this section.

(1) While the consultants’ review of board hearing transcripts indicate that the Board is functioning effectively, it may, however, still be desirable to require training for new Board members and periodic

continuing education or retraining for existing Board members. Such training would provide an overview of the zoning code and other related codes, an introduction to reading maps and construction plans, an overview of typical variance and appeals cases, parliamentary procedure, and making written findings.

(2) Typically, a legislative body is not involved in granting use variances because such variances, where they are authorized, are administrative or policy-effectuating, rather than legislative, or policy-making in nature. The process established by Sec. 238a is not structured like an administrative process. Under this section, the U.S.V.I. Legislature is able to grant use variances without a formal application for such a variance, without a public hearing, without an express set of standards that can be applied to determine whether a use “substantially conflicts” with other permitted uses in the zoning district, and without making written findings to support the decision to approve or deny.

Moreover, given the fact that 512 uses are already permitted in different use districts under the existing zoning code (see Sec. 227), the Legislature’s involvement in administrative actions seems unnecessary. If there are serious problems with the uses permitted in different districts, then the appropriate way to deal with them is through either a text amendment or a more generic description of uses that would give the Zoning Administrator more leeway in determining which uses are to be permitted.

There are four possible alternatives to correct this problem:

- (1) Eliminate the authority of the Legislature to consider and approve use variances;
- (2) Authorize the Board of Land Use Appeals to consider and approve use variances, with an appeal to the Legislature on the record before the Board;

(3) Modify the authority of the Legislature to consider an approve use variances by establishing an application process, requiring a public hearing, clarifying decisionmaking standards as to when such variances may be granted, and requiring written findings to support the decision on the variance; or  
 (4) Provide for a zoning hearing examiner who would act on behalf of the Legislature in conducting the hearing, making findings, and recommending action to the Legislature.

### 3. Virgin Islands Planning Office

#### a. Regulatory Purpose

This section establishes the authority and powers of the planning function in government. While there is no favored approach to organizing the planning function in government, this section should describe the type or form (e.g., office, bureau, division, department, independent agency, etc.) the planning function will assume, describe its powers and duties, including its relationship to regulatory responsibilities in the zoning and subdivision code.

In some cases, the planning entity will have rulemaking power. Where a planning commission is authorized as part of the planning function, the code should describe the size, composition, manner of appointment, and terms of the commission members, the commission's duties, and its relationship to the governing body, chief executive, and other boards and commissions.

#### b. Findings

Sec. 237 describes the powers and duties of the Virgin Islands Planning Office. These include:

- Carrying on a continuous review of the effectiveness and appropriateness of the zoning code and recommending changes to the Legislature that are in keeping with the General Development Plan. (Sec. 237(a)).

- Review of certain applications for special permits, group dwellings, planned area or planned residential development. (Sec. 237(b)).
- Review of zoning text or map amendments. (Sec. 237(c)).

In reviewing text or map changes, the Planning Office must consider, in particular:

- (1) Changes that have taken place in the Virgin Islands in patterns of development and land use;
- (2) The supply of land and its availability for various purposes;
- (3) The effect of the change of any rule or regulation in the text upon the Islands as a whole;
- (4) The purpose of zoning and the particular zoning districts; and(4) Whether the change is in harmony with the general plan of development of the Virgin Islands. (Sec. 237(c)).

Sec. 237(d) requires the Planning Office to adopt general procedural rules and regulations and describes the time of hearings and provides for agendas for meetings.

Other powers include giving technical advisory counsel to the Zoning Administrator, the Board of Land Use Appeals, and other agencies when requested. The zoning code provides a linkage between the enactment of zoning map or text amendments by requiring notification to the Office of the Tax Assessor, which must reassess the property or properties affected within 60 days of any zoning changes. (Sec. 237(f)).

#### c. Recommendations

Overall, the provisions regarding the Planning Office's duties are strong and well-defined. However, several changes should be considered to enhance this section.

- (1) The Planning Office's responsibility for the

preparation and update of a comprehensive plan for the U.S.V.I. should be defined. The zoning code now directs the Office, in reviewing zoning map or text changes, to consider “whether the change is in harmony with the general plan of development of the Virgin Islands.” Since there is no separate plan, no definition of the plan’s contents, and no agency charged with its preparation, this existing requirement is impossible to satisfy. Thus, the code should include a definition of a comprehensive plan and its elements, and direction to the Planning Office to prepare the plan and update it on a regular basis for adoption by the Legislature.

- (2) The U.S.V.I. should consider the creation of a territory-wide planning commission, which would be charged with providing lay advice on planning priorities to the Planning Office, conducting hearings on a proposed comprehensive plan and amendments to it, and either adopting the plan itself and amendments, or recommending a plan and amendments for adoption to the Legislature. The advantage of a lay planning commission would be to serve as an advocate for the preparation of the plan and a sounding board for ideas to be included in the plan as well as assisting the Planning Office assess and respond to comments received on proposed plans.<sup>3</sup>

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3. A 2008 study conducted for the District of Columbia recommended establishing a planning commission there. The study included a survey of the 50 largest cities and the role of the planning commission there. The District of Columbia and Boston, Massachusetts are among the few large cities that do not presently have a planning commission. Zucker Systems, et al., *Review and Analysis of the Planning, Zoning and Development Review Processes in the District of Columbia* (San Diego, Calif.: Zucker Systems, June 2008, Draft). See also Stuart Meck, Gen. Editor, *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change, 2002 Edition* (Chicago: American Planning Association, January 2002), Sec. 7-105, at 7-30 (Establishment of Planning Commission) (recommending establishment of local planning commissions, observing that local planning commissions “have made a valuable contribution to local governments in the United States during

- (3) It may be useful to establish a requirement for an annual report by the Planning Office. Such a report would summarize activities by the office in the areas of planning and development review for the preceding year, and offer a means of conveying the office’s recommendations to the legislature and governor for new planning initiatives, programs, code changes, and other measures for future actions.

#### 4. Amendments and Public Hearings

##### a. Regulatory Purpose

When a comprehensive plan is adopted for a community, conditions change, new uses emerge, or if views change on the structure, content, and operation of the code, it may be necessary to amend the zoning and subdivision code and zoning map. This section describes the mechanisms for initiating amendments. These provisions should authorize the governing body to amend the zoning or subdivision text or zoning map after a public hearing and after receiving a recommendation from its professional staff and lay planning commission, if one exists. The amendments may be initiated by the government unit itself or by persons having a proprietary interest in the amendment, such as the owner of a certain parcel of land on which a rezoning is desired. Persons without any proprietary interest may suggest amendments to the government for consideration.

The provisions should establish clear and concise standards for amendments. The provisions should require staff review and comment as to the effect of the proposed amendment on the government’s

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this century. They can serve in a lay advisory capacity for planning that can compliment and inform the efforts of the legislative body and they can act as the internal advocate and developer of external constituencies in local government for long-range thinking and innovative approaches.” The *Guidebook* contains a discussion of the evolution of the planning commission and the pros and cons of establishing one.

comprehensive plan and other relevant factors. The provisions should provide for notice to be given, both in a newspaper of record and to property owners within a certain distance of the property to be rezoned. The provision may describe the manner in which public hearings are conducted; alternatively, these may be described in bylaws or administrative rules.

### **b. Findings**

Sec. 238 describes the procedure for amendment of zoning maps and text. A property owner or the Planning Office may initiate a zoning map amendment, but an amendment to the zoning law may be initiated by the Planning Office. It is not clear whether any other party may initiate a text amendment. (Sec. 238(b)).

Text and map amendments are to be referred to the Planning Office for a recommendation. This section, along with Sec. 237(d), requires the Planning Office to conduct its own hearing, after due notice, and then to transmit to the Legislature a report containing its recommendation on the proposed amendment. That report is to be read at any public hearing held by the Legislature. However, a proposal disapproved by the Planning Office may be adopted by the Legislature. (Sec. 238(c)).

This section contains a type of zoning reverter provision, in which a property owner who plans a development and fails to obtain permits and commence construction within 36 months must return to the Legislature to obtain approval. This section implies that the zoning reverts to the prior classification.

If the property that is the subject of the rezoning abuts a shoreline, the owner of such property shall also grant, provide and maintain public easements to the shoreline abutting such property that are easily accessible to the general public (Sec. 238(c)). This section does not contain a rationale or standards for

such easements. See *Nollan v. California Coastal Commission*, 483 U.S. 825 (1983) for a discussion of the problems with such an approach.

Sec. 238(d) provides that in case the Planning Office recommends denial of a request for a change in zoning or any amendment to the zoning code or any planned development, the Legislature shall not act upon any law covering the same request is filed with the Legislature more than ninety (90) days after the date of the Planning Office's recommendation of denial unless said law has been referred to the Planning Office for its further consideration.

The Office may reaffirm its original recommendation without holding further hearings if it finds and determines that there is no material change in conditions, or it may hold further hearings on the proposed law. The Planning Office must transmit its recommendation to the Legislature.

Sec. 239 describes the requirements for public hearings, including newspaper notice and notice by certified mail of owners of any and all lots within a 150 foot radius of the property to be rezoned. (Sec. 239(a)). Sec. 239(b) requires the Virgin Islands Planning Office and Board of Land Use Appeals to take all testimony, objections, and rulings by a reporter employed for that purpose or by a recording machine.

The Planning Office or Board of Land Use Appeals must make a decision on the matter that is the subject of the hearing within 30 days. (Sec. 239(c)).

### **c. Recommendations**

A number of changes need to be made to these sections to eliminate ambiguities and language that may cause potential problems.

- (1) Clarify whether the factors that the Planning Office must consider in reviewing an amendment

to the Zoning Text or Zoning District Map must also be treated as decision-making criteria by the Legislature. Sec. 237(c) lists five factors, including the relationship to the “plan of development” of the Virgin Islands. Conceivably, these same factors could be decision-making criteria for the Legislature.

(2) Establish a formal consistency test for the relationship between proposed zoning text and map amendments and the comprehensive plan, after it has been prepared and adopted. Again, as noted, the Planning Office must consider under Sec. 237(c) “whether the [zoning text or map] change is in harmony with the general plan of development of the Virgin Islands.” Language that establishes a consistency test would require an examination of whether the proposed zoning text or map amendment:

- (a) furthers, or at least does not interfere with, the goals and policies contained in the comprehensive plan;
- (b) is compatible with the proposed future land uses and densities and intensities contained in the plan; and
- (c) carries out, as applicable, any specific proposals for community facilities, including transportation facilities, or any other specific public actions are contained in the plan.

(3) Eliminate or modify the zoning reverter provision. Under this provision, an approved zoning map change apparently reverts to its previous zoning classification if the owner of property does not begin construction within 36 months after receiving all the necessary permits under the Virgin Islands Code; the owner “will again have to obtain the approval of the Legislature,” suggesting that the zoning change somehow expires. If the owner does nothing with the property and does not apply for the permits,

then the rezoning remains indefinitely. However, if the owner applies for the permits, and fails to commence construction within 36 months, then the owner must return to the Legislature.

- (4) Eliminate or modify the requirement that an owner of property who receives a necessary zoning change from the Legislature must, when the property abuts a shoreline, grant, provide, and maintain public easements to the shoreline abutting such property that are easily accessible to the general public. This provision, in Sec. 238(c), is problematic under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1983), a United States Supreme Court decision. Here, the Court struck down a Coastal Commission permit condition that required the Nollans to provide a public easement to pass across their beach, located between two public beaches, as a condition of replacing their small bungalow on a Pacific coast lot with a larger house. The Court invalidated the access-easement condition as a taking because it found a “lack of nexus” between the condition imposed and the original purpose of the building restriction, to provide uncompensated access to the beach. While the *Nollan* case involved a permit issued by an administrative agency and the U.S.V.I. Code deals with zoning map changes, the issue is the same: whether requiring an easement to the public as a condition of development, in the absence of some demonstrated nexus to proposed development activity, is a taking.
- (5) Consider adding a requirement that notices for public hearings be placed on the government’s website in addition to legal advertisements in newspapers, since many people rely on the Internet as a major source of information.
- (6) Clarify who may initiate or propose zoning and subdivision code text amendments. While the Planning Office clearly may initiate text amendments, it is not clear who else, including the Legislature, citizens, and individual property



owners, may do so.

## **5. Fees and Penalties**

### **a. Regulatory Purpose**

The purpose of fees is to recoup the costs of administering the zoning and subdivision code. The purposes of penalties are to recoup the costs of enforcement and to serve as a deterrent to the violation of the zoning and subdivision code. The fees and penalties must reflect, at a minimum, the actual administrative costs associated with their application. As a result, they must be reevaluated at regular intervals, every three to five years, and adjusted as necessary. A study that tracks and calculates the actual costs of typical permit approvals and enforcement and other actions should support the changes.

### **b. Findings**

Penalties for violation are not less than \$10.00 and not more than \$100.00 for each day the violation continues, but, if the offence is found to be willful on conviction, not less than \$100.00 or more than \$250.00 for each day that the violation continues. A court may also provide for imprisonment alone (10 days for each day the violation continues) or in conjunction with the monetary penalty. Any person who fails to remove the violation, upon having been served by a notice, is also subject to a civil penalty of \$250.00. (Sec. 240).

Sec. 242 establishes fees, including a base fee and additional per acre charges, for filing applications. The fees differ for amendments and planned developments, appeals and other applications. Applicants are responsible for paying for transcripts, but the Board of Land Use Appeals may waive the charge if the applicant cannot afford it. In addition, the Virgin Islands Planning Office may charge a fee to cover notices.

### **c. Recommendations**

The penalties and fees established by Sec. 240 and Sec. 242 are extraordinarily low, considering the amount of effort it takes to prosecute a violation and conduct an evaluation of a rezoning, variance, appeal, or other type of development application. The notes to these sections indicate that they have not been revisited since 1987, in the case of Sec. 240, and 1987, in the case of Sec. 242. It is recommended that an administrative study be conducted to determine the appropriate level of penalties and application and related fees so that they are set at a level to recoup costs and, for penalties, to serve as an effective deterrent for code violations.

## Subdivision Procedures and Standards

12

### a. Regulatory Purpose

Subdivision regulations are land use controls that govern the general division of land into two or more lots, parcels, or sites for building. They have a number of regulatory purposes. They ensure that improvements to be constructed and dedicated to the public will be built and will be easy and economical to maintain. Through the review of the development, the government can check proposed water supply and sewage treatment collection and disposal systems for adequate compliance with applicable health and environmental standards. Subdivision regulations also control the internal design of the subdivision and require that street patterns and intersections are safe, and lots are laid out in such a way as to take advantage of the properties amenities, and provide well-drained and properly oriented building sites with access to public streets.



Figure 8. Street Scene in Charlotte Amalie

Subdivision regulations coordinate the plans of other adjacent or nearby developers, and public and private entities, such as public utilities, through the location of roads, water and sewer lines, stormwater facilities and easements, and parks and school sites. Through the recordation of the final plat with the government's recorder (or similar position), they secure adequate records of land titles. By requiring that lots conform

to district regulations of the zoning code, they effectuate the code, eliminating future conflicts.

Subdivision regulations tend to be shorter than zoning codes, but still have a number of common elements, which may be organized in different ways:

- (1) general provisions (short title, interpretation and conflicts, purpose, etc.);
- (2) definitions;
- (3) types of subdivisions and land divisions requiring approval, which classifies the different types of subdivision, and provisions authorizing minor subdivisions for a certain number of lots and where no new roads are created;
- (4) procedures for preliminary plan review, including application requirements and design criteria (sometimes these procedures will include an optional "sketch plan" review stage);
- (5) procedures for final plat review, including application requirements and design criteria;
- (6) on-site and off-site improvement standards; and
- (7) miscellaneous provisions for performance bonds and maintenance bonds, procedures, engineering inspections and approvals, standards for the sequence of construction of infrastructure, oversize and recapture provisions, filing of as-built drawings, fees, subdivision variances, waivers, and modification, enforcement provisions, and penalties. In some cases, the public improvement standards are contained in a separate appendix.

Typically, there will be a public review of the proposed preliminary subdivision in which a planning commission receives reports and recommendations from various government departments or offices and incorporates them into conditions. In some cases, the planning commission is the final decisionmaker on the preliminary plan and final plat. In other cases, the planning commission will recommend action to the governing body, which will be the final decisionmaker.

## b. Findings

The subdivision regulations are contained in Sec. 272 through Sec. 279 as well as in a manual, the 1985 *Subdivider's Handbook (Handbook)*, published by the Office of the Governor, Virgin Islands Planning Office. The regulations consist of the following sections:

- § 272—Purposes
- § 273—Definitions
- § 274—Subdivision Regulations
- § 275—Subdivision Plans
- § 276—Fees
- § 277—Variances
- § 278—Appeals
- § 279—Subdivisions in the Coastal Zone

The subdivision regulations' purposes (Sec. 272) are to regulate the subdivision of land and to provide for the orderly development of street systems. These purposes are narrowly circumscribed, and exclude most of the typical purposes, described above, that subdivision regulations are intended to achieve.

Under the definitions (Sec. 273) "subdivision" means the division of a parcel of land into 4 or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land. Any division of land for agricultural purposes into lots or parcels of 5 acres or more and not involving a new street shall not be deemed a subdivision.

However, in reading this section and the discussion of the review procedure in the *Handbook*, it is unclear what constitutes a division of land for agricultural purposes, how the Planning Office determines that it is, and what happen if land that has been divided for agricultural purposes is later used for residential development.

There is no definition of a "plat," "preliminary plat," "general subdivision plan," or "final plat" in the definitions section of the subdivision regulations nor in the definitions section of the zoning code (Sec. 225). Similarly, there is no definition of a "minor subdivision" for residential or nonresidential development where no new street is involved and only a few new lots (usually fewer than four) are created.

The Virgin Islands Planning Office within DPNR is charged with the administration of subdivision regulations (Sec. 274) and given the authority to adopt rules and regulations. These rules and regulations are to "include in their provision the form and development of subdivisions, streets, and surrounding areas and for water, drainage, and sanitary facilities."

The *Handbook* does not give any evidence that it was adopted as a rule or regulation, since there is no specific date affixed to it other than the year 1985, and it is not written in the style of regulations, but in the style of a manual.

Under Sec. 275 a developer is to file applications for preliminary plats or general subdivision plans with the planning director, who shall approve or disapprove such plans within 30 days and notify the developer. By contrast, the *Handbook* specifies that the Planning Office "shall act on the Preliminary Plat submission within fifteen working (15) days of the confirmed date of submission (unless such time is extended by written agreement with the developer) giving written approval, written conditional approval stating the conditions or any modifications required, or written disapproval stating the reasons for disapproval." (*Handbook*, 22).

The preparation of a preliminary plat or general subdivision plan is mandatory. The code states: "Upon filing of an application with the planning

director for approval of a preliminary plat or general subdivision plan, the subdivider shall submit to the planning director such plans and data as may be required by the planning director as necessary to provide information as to the nature and scope of the project.”(Sec. 275(a)). The preliminary plat submission includes detailed engineering plans. Moreover, comparing Figure 5a (example of preliminary plat) with Figure 6b (example of final plat) in the *Handbook* indicates that the details for a preliminary plat are nearly identical to a final plat. The *Subdivider’s Handbook* describes an optional process of submitting a “proposed plat” but “recommended to make certain that the subdivision design is acceptable before a plat is completely prepared and before approvals are sought from other agencies or departments.” However, the “proposed plat” appears to be equivalent to a typical preliminary plat in its detail. (*Handbook*, 15).

Sec. 275 is silent on whether lots created through the process of subdivision must comply with the zoning code.

One comment that the consultants received in the stakeholder interviews concerned the length of time and adequacy of subdivision review:

We submit for review a set of plans for subdivision. It goes off into the ether. We don’t know who [is responsible for it]. There is quite a delay in getting a response. Quite often the response is informal. Rejections are arbitrary, without any critical technical substance. There is no one with the proper credentials to do what they are doing. [There is] nothing [in the code] on vegetation or inspection. Inspection is sparse. We don’t know who does inspections.

The *Handbook* contains a series of “design standards” but the manner in which they are presented makes it unclear whether they are mandatory or simply

examples of some practices that the Planning Office would like to see carried out. For example, the *Handbook* states:

Because of the inability of the government to keep up with maintenance of public easements and alleyways, the Planning Office *recommends* that whenever possible the rights-of-way of the streets and roads be used for the placement of sanitary sewer lines, water distribution lines, storm drainage facilities, and power lines. *It is recommended* that in new subdivisions consideration be given to underground conduits for power lines, telephone lines, and cable television lines. (Italics supplied) (*Handbook*, 51-52).



Figure 9. Street Scene in Charlotte Amalie

Reading this language, it is unclear if these recommendations are in fact policies or regulations that govern unless there are some very good reasons that they are not to be applied. Similarly, in Figure 11 in the *Handbook*, there is a drawing of a cul-de-sac with the notation “shall not exceed 600’.” This appears to mean that the street length in a cul-de-sac shall not exceed 600 feet, but the *Handbook* does not contain plain language to that effect, which is typical in subdivision regulations. In the same figure, there is language that states: “Off-street parking shall be provided for all cul-de-sacs.” (*Handbook*, 57).

Normally, parking requirements in the zoning code would be connected with particular uses rather than as ambiguous guidance in a manual. There are no standards for connecting driveways with streets.

The *Handbook* also permits the use of septic tanks on small lots without requiring percolation tests, as would typically be the case. In the discussion of the “schematic utility plan,” the *Handbook* states:

When a public sanitary sewage disposal system cannot be made available, the Planning Office will permit the installation of individual sanitary sewage disposal systems, such as septic tank drainfield systems or individual aerobic treatment plants, when a minimum lot size of one-quarter (0.25) acre is maintained, when the residential density does not exceed two dwelling units per lot, and when other conditions (such as steep slopes, shallow soil over rock, or high water table) do not preclude the use of such systems. (*Handbook*, 35).

Thus, as many as *eight dwelling units per acre* without direct sewer connections could be permitted under this language.

One comment that the consultants received in the stakeholder interviews concerned steep slope regulation and review by the Government staff:

Steep slope driveways and subdivision road plans require. . . no greater than 20%. . . slope under the code. Public Works is supposed to review but they never do site visits. Engineers and architects routinely write on applications and certify that these slopes are under 20% on their applications – when the actual site may be [much more than that]. They get away with this. I have asked DPNR staff [about this]. To our collective knowledge, no engineer has ever been disciplined for certifying inaccurate information on a plan – topography and

grade are routinely misrepresented. This causes many problems . . . . .

Considering the prevalence of steep slopes on St. Thomas and St. John, there is no minimum or maximum vertical grade for streets, although there are typical cross sections for roads (Figure 17, *Handbook*, p. 64) and suggestions on how to configure lot lines so they run parallel to contour lines (Figure 18, *Handbook*, p. 64) in mountainous terrain. Similarly, there are no written or graphic design standards in the *Handbook* for slope stabilization and erosion control, during and after construction.



Figure 10. Erosion

There is no public hearing or any type of public review associated with consideration of the application for a preliminary plat.

Neither the subdivision code nor the *Handbook* requires that a subdivider post performance bonds to ensure that the public improvements in the subdivision are built as proposed and within a certain amount of time. Nor do they require maintenance bonds to ensure that the improvements, once they have been accepted by the government, survive at least one year.

The procedures for inspection are unclear. One stakeholder commented: “Streets must be paved and infrastructure installed before final subdivision approval.”

In the event the preliminary plat or general subdivision plan is approved, the subdivider is to submit the final plat to the Planning Director “within such time as the Director prescribes.” This final plat is to “conform substantially to the general subdivision plan and, if requested in writing by the subdivider, it may constitute only that portion of the approved preliminary plat which he proposed to record and develop at the time.”(Sec. 275(b)(1)).

The Planning Director must confer with the Department of Planning and Natural Resources (DPNR) regarding connecting utilities and other engineering aspects of the final plat.

Under Sec.275(5) before the Planning Director grants final plat approval to a new subdivision in which a subdivided parcel, as shown on a preliminary subdivision plan submitted for the director’s approval is contiguous to existing potable water lines (shown on the Water Distribution Maps of the Virgin Islands Water and Power Authority at the time of the Planning Director’s approval of the preliminary subdivision plan), the subdivider must install and connect potable water lines to the contiguous plots in the subdivision, or satisfy the Planning Director that all costs and expenses incidental to the installation and connection of potable water lines to the contiguous plots in the subdivision have been paid.

It is unclear from the language of this section whether the potable water lines must be installed or whether the subdivider simply must convince the planning director that financial arrangements have been made at some uncertain date in the future to ensure they will be installed. If it is the latter, the language in Sec.275(5) does not imply the posting of a performance bond.

The *Handbook* contains language that encourages the construction of private streets, which could lead to future disputes over ensuring such streets are adequately maintained by private individuals or organizations, such as homeowner organizations. In the “Procedure for Submission and Review of Final Plat,” the subdivider must submit a certification that the Commissioner of Public Works has “accepted the developer’s offer of dedication of streets in the development, or a permanent legal provision, approved by the Planning Office, for the maintenance and repair of those streets.” (*Handbook*, 41).

Under Sec. 275(b)(6), within 30 days from submission of the final plat the Planning Director must approve or disapprove the final plat and notify the subdivider. In case of disapproval the planning director must notify the subdivider and state the reasons for the denial. By contrast, the *Handbook* states that the Planning Office “shall act on the Final Plat submission within fifteen (15) working days of the confirmed date of submission (unless such time is extended by written agreement on Form VIPO 13) giving on Form VIPO 14 written approval. . .” (emphasis supplied). (*Handbook*, p. 44).

The fee schedule for a subdivision (Sec. 275a) includes a basic application fee of \$10.00, plus additional fees that depend on the additional acreage. For a subdivision of five acres but less than 20 acres, the additional fee is \$250.00. The highest level fee for 500 acres or more is an additional \$1,200. The initial application fee for planned unit development is \$200, plus \$2.00 for each acre in the total area of the development. Final plat fees are \$1.00 per dwelling unit or \$2.00 per residential lot, whichever is greater; or \$2.00 per acre for business or commercial land use.

It would be an understatement to say that these fees, which were last revised in 1985, some 24 years ago, are insufficient to cover the staff costs of conducting a subdivision review. To remedy this problem,

there would need to be an administrative study that would track the direct costs in staff time from the various U.S.V.I. departments to review and process subdivisions of various sizes.

The DPNR Commissioner is authorized to grant variances from the subdivision regulations. (Sec. 276). When the Commissioner finds that extraordinary hardships may result from strict compliance with the regulations, or additional regulations adopted by DPNR, the Commissioner may vary the terms of the regulations so that substantial justice may be done and the public interest secured: however, such variations cannot have the effect of nullifying the intent and purpose of the regulations. (Sec.276(a)). In granting variances and modifications, the Commissioner may require conditions to ensure that the objectives of the subdivision standards or requirements are otherwise satisfied. (Sec.276(c)).

Sec. 276 does not, however, establish a procedure for how such variances are to be applied for or granted. The *Subdivider's Handbook* is equally silent on this matter.

The Historic Preservation Commission may modify standards and requirements in the subdivision regulations and any additional regulations adopted thereto “in the case of a plan and program for a comprehensive new development or neighborhood which in the judgment of the Historic Preservation Commission provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.” (Sec. 276(b)).

The Historic Preservation Commission has the authority to grant variances or modifications under this section. However, the Commission cannot

permit an increase in the height of any structure by more than two stories or 30 feet above the maximum height permitted, until such variance or modification of that type is approved by the Governor and the Legislature. (Sec.276(d)). Thus, a second body, not involved directly with the subdivision process, has the authority to grant variances from it, in addition to the DPNR Commissioner.

Appeals from decisions of the DPNR Commissioner are to be made to the Board of Land Use Appeals, and thereafter to the District Court of the Virgin Islands in accordance with the procedure set forth in Section 270 of the code, which does not exist (Sec. 277).

The Commissioner is prohibited from issuing building and use permits for any structure on a lot in any subdivision that has not been recorded (Sec. 277(b)). In addition, sales of land from unrecorded plats are illegal. (Sec. 277(c)).

This section also provides for notice of violation and penalties for failure to comply. (Sec. 277(d)).

The Planning Director cannot approve applications for subdivision within the first tier of the coastal zone unless the developer submits evidence or a copy of a valid coastal zone permit authorizing such subdivision. Compliance with the terms and conditions of such coastal zone permit shall also be a condition of approval of any preliminary plat, general subdivision plan or final plat pursuant to the regulations. (Sec. 278).

### **c. Recommendations**

The subdivision code needs complete redrafting and reorganization. At a minimum, such a redrafting would include the following:

- (1) Consolidation of the code and regulations into a single document, rather than two separate documents, with the procedural

differences (see Sec. 2, Organization and Format, of this report above) between them eliminated, with the Zoning and Subdivision Code termed a “Unified Development Code”;

(2) Revision of the definition of “subdivision” to eliminate ambiguities, and inclusion of definitions of a “preliminary plan” and “final plat”, “major” and “minor” subdivision, and “concept plan,” among others;

(3) Requirement of a three-step review process for large projects (concept plan, preliminary plan, and final plat) and a two-step process for smaller projects (preliminary plan and final plat);

(3) Requirements that all lots created through the subdivision process comply with the zoning code;

(5) Regulations dealing with development on steep slopes, including minimum and maximum vertical and horizontal grades for roads by classification and design speed of roads, requirements for independent soil, hydrology, and bedrock analyses, and provisions, including illustrations, for slope stabilization and erosion control for all types of development;

(6) Clarification of provisions dealing with potable water lines (see above);

(7) Clarification of the applicability of design standards as policies (see Figure 7, *Handbook*, 53);

(8) Requirements for percolation tests in determining lot area per dwelling unit;

(9) Creation of a new fee structure based on the administrative costs of reviewing, inspecting, and recording plans and plats;

(10) Creation of a procedure for approval of minor subdivisions;

(11) Procedures for the granting of variances, including a set of decisionmaking criteria and a requirement of findings;

(12) Elimination of the role of the Historic Preservation Commission in granting variances to the subdivision regulations, replacing this function with an advisory role to the DPNR Commissioner;

(13) A process of public notice and review of preliminary plans and final plans;

(14) Requirements, in written and graphic form, for public improvements, including streets and other infrastructure;

(15) Requirements for performance and maintenance bonds, and inspections during and after the installation of public improvements.

As part of this rewrite, there needs to be developed a set of checklists that follows the subdivision through the review process and that indicate whether specific requirements in the subdivision code are being satisfied, and who is making that determination.



## Appendix A.

## Questionnaire

**Questionnaire for U.S. Virgin Islands Zoning and Subdivision Code Assessment**

Interviewee \_\_\_\_\_  
 Agency/Organization/Firm \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Address \_\_\_\_\_  
 Email \_\_\_\_\_ Telephone No. \_\_\_\_\_  
 Date \_\_\_\_\_ Interviewer \_\_\_\_\_

**Part 1: General Impressions**

- (1) What are the three most important land use and development issues facing the U.S. Virgin Islands?
- (2) Describe the policies of the U.S. Virgin Islands that address or respond to these issues, whether they are written or informal.
- (3) Describe the policies underlying the current zoning and subdivision code regarding the location and intensities/densities of land uses in the U.S. Virgin Islands.
- (4) Describe what you believe should be the policies for the location and intensities/densities of land uses in the U.S. Virgin Islands.
- (5) If you could change three things in the current zoning and subdivision code, what would they be?
- (6) Are there specific development projects that represent good or bad examples of development standards applied to existing projects? Please identify them.
- (7) What uses have been the most difficult to regulate in the Virgin Islands under the current zoning and subdivision code? Why?
- (8) Is the zoning and subdivision code effective in involving the public (see Section 239 of the zoning and subdivision code)? If not, what changes would you make?
- (9) From your perspective, is the zoning and subdivision code easy to read and understand? If not, why and what changes do you think should be made?
- (10) Do the subdivision regulations provide sufficient direction in the content, design, and construction of subdivisions? If not, what changes would you make?

**Part 2: Planning and Code Administration**

- (11) Currently, the U.S. Virgin Islands does not have a territory-wide planning commission to provide advice to the Department of Planning and Natural Resources and to the Legislature, but it does have the Board of Land Use Appeals, which hears appeals from administrative decisions and certain types of variance petitions and Coastal Zone Committees for each island, which authorize permits for certain development in the Coastal Zone.
  - a. Should the Virgin Islands have a planning commission?

b. If yes, what should be its responsibilities regarding the zoning and subdivision code?

- (12) Section 238a authorizes the Legislature to grant variances for specific uses of property in lieu of a zoning map amendment where the “specific uses would not substantially conflict with the permitted uses in the zoning district.” Should this authorization be continued? Are the standards for granting such a variance sufficiently clear?
- (13) Section 235 of the zoning code establishes procedures and standards for obtaining building permits and other permits for the use of land. Under this section, permits for applications that have been properly submitted must be issued within 60 days. How has this schedule worked? What changes, if any, would you make to this section?
- (14) The Coastal Zone Management Program regulates all land- and water-based development within in the first tier of the Virgin Islands coastal zone. The first tier comprises of a relatively narrow strip along the coast, excluding all federal land, and all off-shore islands and cays. This program, which is under the jurisdiction of the DNPR Commissioner and the Coastal Zone Management Commission (through island-specific committees), operates separately from the administration of the zoning and subdivision code, although the code does require compliance with coastal zone regulations. Should the regulations governing this program be merged into the text of the zoning and subdivision code? If so, how would it work?

### Part 3: Technical Issues

- (15) Do current development standards adequately mitigate any spillover effects, such as noise or lighting, from nonresidential districts or uses into adjacent or nearby residential areas?
- (16) The zoning code, in Section 225(29) defines “density” as the number of “persons residing on or family units developed on an acre of land.” Is this definition workable?
- (17) The current zoning code authorizes two agricultural districts, A-1 (Sections 228 and 229), which requires a lot size of 40 acres, and A-2, which requires a lot size of two acres. Have these districts been effective in preserving agricultural activity in the Virgin Islands?
- (18) The current zoning code describes the B-3 district as a “scattered” commercial district (Section 229). What locational policies should guide where scattered commercial development takes place? Should scattered commercial uses be permitted instead as conditional uses rather than through use districts?
- (19) Section 232a of the zoning code authorizes “planned area affordable housing development permits.” Has this section been effective in encouraging the construction of affordable housing in the Virgin Islands? If not, what could be done to make this section more effective?
- (20) Should the zoning code offer bonus floor area or additional density to developers who provide affordable housing (whether or not it is in a planned area development), dedicate open space to the public, or provide other public amenities?
- (21) The zoning code does not regulate building height, but rather regulates the number of stories in a building (see Section 225(b)(29))? Should this be changed?
- (22) How effective have the sign provisions (Section 231(a)(28) been in regulating the location and size of signs? If they

have not been effective, what changes would you make?

- (23) Do you have other additional issues, problems, or concerns regarding the content and administration of the current zoning and subdivision code? If so please describe them and, if applicable, please make reference to the section number in the code of the provisions you are discussing.

## Appendix B. List of Interviewees and Respondents to Questionnaire

Dayle Barry  
Raymond Berkeley  
Adrian Bishop  
Richard Borke  
Errol Chichester  
Sharon Coldren  
Aaron Cook  
Carol Cramer-Burke  
Olassie Davis  
Donald Diddams  
Paul Devine  
George Dudley  
Pam Gaffin  
Arnold Golden  
Dawn Henry  
Leia LaPlace  
Hunt Logan  
Elvis Marsh  
Greg Miller  
Christie O'Neil  
Chester Paul  
Andrew Penn  
Edward Phillips  
Luis Revuelta  
Samuel Sanes  
St. Croix Environmental Association  
Robert Schuster  
Tyrone Seales  
Allan Smith  
George Suarez  
Eric Tillett  
Liza Trey  
Jared Warren  
John Woods

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