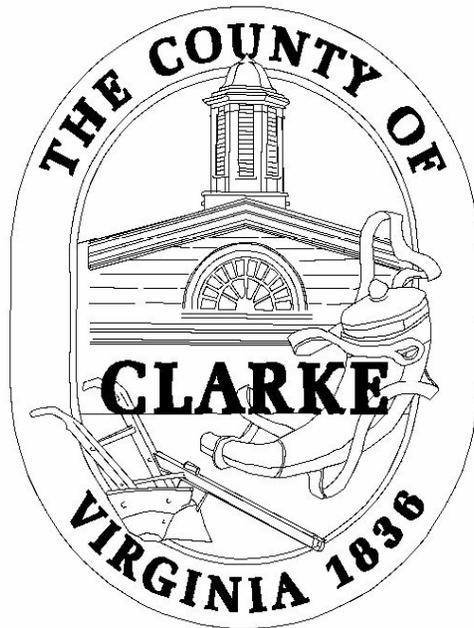


# CLARKE COUNTY SEPTIC ORDINANCE



Adopted: November 17, 1987

Amended: JUNE 15, 2010

## Chapter 143 Septic Systems

[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

**General References** Chapter 71 Building Construction  
Chapter 161 Subdivision of Land  
Chapter 180 Water and Wastewater, Article I Sewage Disposal  
Chapter 184 Wells  
Chapter 188 Zoning

**Code of Virginia References** § 15.2-2157. Septic tanks and sewage disposal when sewers not available  
§ 32.1-163 et seq. - Sewage disposal

### Article I Permits, Septic Tank Cleaners

[Adopted 1-19-1988 as Secs. 12-46 through 12-49 of the 1987 Code]

*§ 143-1. Permit for installation.* It shall be unlawful for any person to install or have installed in the county an onsite sewage system without first obtaining a permit from the Health Department.

*§ 143-1.1 Education Requirement* Prior to issuance of an operation permit for an Onsite Sewage System, the applicant shall be required to review educational material describing the operation and maintenance requirements for such system and demonstrate a basic understanding of the requirements by completing a short questionnaire provided by the Health Department.

*§ 143-2. Inspection and approval of design and location.* A. The Health Department shall determine whether or not the land available for the installation of an onsite sewage system is adequate and satisfactory as to size, topography, characteristics of the soil, and the nature and location of the water supply. The Health Department shall approve the system design and capacity and the location of the septic tank. The system shall be maintained and operated to conform to the requirements of the State Board of Health. Any information which is needed by the Health Department as to the characteristics of the soil and the topography of the area shall be provided by the property owner.

B. Septic tanks shall be inspected and approved by the Health Department before they are permitted to be used.

C. The Health Department may inspect any and all onsite sewage disposal systems maintained at all premises in the County for the purpose of determining if such system is being operated and maintained in a sanitary manner. Such inspection shall be done at reasonable times and, whenever practical, in the company of the

owner or occupant of the premises.

- D. Prior to issuance of an operations permit by the Health Department, any Alternative Onsite Sewage System located within an active livestock area (pasture) must be fenced so as to exclude access by livestock. In all other areas vehicular access must be prevented by fencing or landscaping the system site.
- E. No alternative onsite sewer system shall be approved for use until the owner or owners of the property have provided to the County a written indemnity agreement, in a form approved by the County, indemnifying the County and other property owners in the County from any damages or liabilities resulting from the malfunction or failure of the alternative onsite sewer system. The indemnity agreement shall remain in force for the duration of the validity of the permit for the alternative onsite sewer system. In the event of the sale or conveyance of the property, the owner may obtain a release of the indemnity agreement upon the new owner or owners providing the required indemnity agreement.

*§ 143-3. Standards for professional septic tank cleaners.*

No person shall engage in the business of cleaning septic tanks unless and until the equipment to be used by such person in connection with the operation of such business complies with the following standards and has been inspected and approved in writing by the Health Department:

- A. The tank into which the septic tank sludge is pumped or delivered and carried shall be fully enclosed and watertight.
- B. All inlets and outlets to such tank shall be fully enclosed and provided with watertight valves.
- C. Suction and discharge hose shall be watertight and provision shall be made for carrying such hose in a manner that will prevent any leakage therefrom.
- D. All exposed surfaces shall be painted and maintained in a sanitary condition by frequent washings.
- E. The name and address of the person owning or operating such equipment shall be painted thereon in letters at least four inches high.

*§ 143-4. Disposition of sludge.*

It shall be unlawful for any person, whether or not engaged in the business of cleaning septic tanks, to dispose of the sludge and other material removed from septic tanks except by depositing it in such a manner that it will not endanger the source of domestic food or water

supplies or by depositing it into a public sewer system or sewage treatment plant except at such designated locations and under such conditions as may be promulgated by the owners or operators of such public sewer system or treatment plant. In any event, the sludge or other material shall be carefully deposited and the surface of the ground, manholes, tanks, etc., into which the deposit is made shall be maintained in a sanitary condition. Any covering of such surfaces with sludge or other material shall be promptly and completely removed.

*§ 143-5. Violations and penalties.*<sup>1</sup> Penalties for violation of the provisions of this article shall be as provided in Chapter 1, General Provisions, Article I.

## Article II Siting and Installation

[Adopted 12/15/87, as amended through 06/15/10]

*§ 143-6. Intent; state regulations; exceptions.*  
[Amended 02-11-19; 05-03-15]

The intent of this article is to minimize the potential for groundwater contamination resulting from improper siting and construction of onsite sewage systems in Clarke County. Clarke County has Karst topography and fragile hydrogeology and has the potential for depletion and contamination of water sources and the potential for hazards to public health, safety and welfare as a result. To protect the health, safety and welfare of the general public, the standards as set forth hereafter in this chapter are established for all onsite sewage systems constructed or installed in the County. Pursuant to these goals, the Board of Supervisors hereby exercises its power, as granted by § 15.2-2157 of the Code of Virginia (1950, as amended), to regulate onsite sewage systems.

To that end, standards and procedures for soil evaluation, system siting and system design and installation are addressed herein, followed by conditions for obtaining a variance to the provisions of this article and the penalties associated with the violation of this article. Definitions of technical terms contained herein are addressed in § 143-7.

- A. This article is based on the current Virginia Department of Health's Sewage Handling and Disposal Regulations, as amended, but extends some of the requirements of that document in order to meet the special needs of Clarke County's fragile hydrogeology, as allowed by the Code of Virginia.
- B. Permits issued prior to December 15, 1987, shall be subject to provisions of this article after July 1, 1992.
- C. Conditional permits shall not be issued for applications submitted after November 19, 2002, unless specifically requested by the

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<sup>1</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Health Department and only if approved by the Board of Septic & Well Appeals.

*§ 143-7. Definitions.*  
[Added 95-12-19;  
Amended 04-04-20; 05-  
03-15; 07-03-20]

Definitions of terms contained in this article shall be those given in the Sewage Handling and Disposal Regulations, Virginia Department of Health (VDH), as amended, except as noted herein. The following definitions shall apply:

**ALTERNATIVE DISCHARGING SEWAGE TREATMENT SYSTEM OR DISCHARGING SYSTEM** -- A device or system that results in a point source discharge of treated sewage for an individual single family dwelling or a multifamily dwelling with flows less than or equal to 1,000 gallons per day. Such system is designed to treat sewage from a residential source and dispose of the effluent by discharging it to an all weather stream, an intermittent stream, a dry ditch, or other location.

**ALTERNATIVE ONSITE SEWAGE SYSTEM, AOSS, or ALTERNATIVE ONSITE SYSTEM** -- A treatment works providing a minimum of secondary treatment that is not a conventional onsite sewage system and does not result in a point source discharge.

**CONVENTIONAL ONSITE SEWAGE SYSTEM or COSS**, -- A treatment works consisting of one or more septic tanks providing only primary sewage treatment with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface soil treatment area.

**FLOODPLAIN DISTRICT** -- The channel of a river, stream or other watercourse and the adjacent land area required to carry and discharge a flood that, on the average, is likely to occur once every 100 years (i.e., that has a one-percent chance of occurring each year). [Added 12-19-1995]

**FLOODWAY** -- The channel of a river, stream or other watercourse and the adjacent land area required to carry and discharge a flood that, on the average, is likely to occur once every 10 years (i.e., that has a ten-percent chance of occurring each year). [Added 12-19-1995]

**GEOTECHNICAL ENGINEER (GE)**: a Virginia Certified Professional Engineer specializing in geotechnical engineering or a Virginia Certified Professional Geologist specializing in geotechnical engineering geology, either with a minimum of 5 years experience.

**HEALTH DEPARTMENT** -- The Clarke County Office of the Virginia Department of Health (VDH) and its authorized employees and agents.

LIMITING FEATURE – A feature of the soil that limits or intercepts the vertical movement of water, including seasonal, perched, or permanent water table, soil horizons having an estimated or measured percolation rate greater than 120 minutes per inch, soils having a high shrink-swell potential, fragipans or other pans, soil restrictions and impervious strata, soil horizons containing greater than 75% (by volume) coarse fragments, and pervious or impervious bedrock. The Soil Survey of Clarke County, Virginia, 1982 shall be consulted for soil characteristic information such as soil type, permeability, and high shrink-swell potential.

ONSITE SEWAGE SYSTEM – Also known as a “septic system” or “Sewage disposal system” and includes conventional onsite sewage systems or alternative onsite sewage systems and all components for conveyance, treatment, and disposal of sewage therewith.

SOIL TREATMENT AREA (“Drainfield”) -- The physical location in or on the naturally-occurring soil medium where final treatment and dispersal of onsite sewage system effluent occurs.

SPRING -- A spring is defined as a feature:

- 1) which is a natural issue of water from the earth or a rock formation or fracture onto the land or into a body of water via defined channel, the place of issuance being relatively restricted in size; or
- 2) shown as a spring on the USGS 7 1/2-Inch Quadrangle Map (incomplete) or, Virginia Division of Mineral Resources Publication 102, Map of Hydrogeologic Components for Clarke County, Virginia Plate 2 (incomplete); or
- 3) identified in the USGS Water-Resources Investigations Report 90-413, Ground-Water Hydrology and Quality in the Valley and Ridge and Blue Ridge Physiographic Provinces of Clarke County, Virginia; or
- 4) which is currently used as a domestic drinking water source; or,
- 5) which is currently used as a source of water for watering animals; or,
- 6) which feeds a pond or lake less than 500 feet from where the spring issues; or,
- 7) which has been designated as a significant hydrologic feature by the Clarke County Board of Supervisors prior to the filing of an application for an on-site waste disposal system (a list of such designated features is on file with the Clarke County Planning Department); or
- 8) which by right maybe used as a source of water by an adjoining property owner; or

- 9) which has manmade features indicating past or present use as a water supply.

*§ 143-8. Soil evaluation criteria; field testing.*  
[Amended 05-03-15]

Minimal soil evaluation criteria for suitability of an onsite sewage system are established in the current Sewage Handling and Disposal Regulations, Virginia Department of Health (VDH), as amended. Soil characteristics shall be estimated by field-testing by a Health Department Environmental Health Specialist or by a licensed Onsite Soil Evaluator with the Department of Professional and Occupational Regulation (DPOR) Board of Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. The Soil Survey of Clarke County, Virginia, 1982, provides a general guide for soil treatment area suitability, but is not definitive for individual onsite sewage systems.

*§ 143-8.1 Closure of Onsite Inspection Pits.*

- A. Any property owner causing or permitting inspection pits to be excavated for the purpose of determining soil suitability for the installation of a septic system shall have the pits filled within thirty days of final determination of suitability of the site for installation of a system. "Final determination" shall be defined as the latter of the following: the date of determination of suitability or unsuitability by the Health Department; the date of a determination of suitability by a licensed Onsite Soil Evaluator, or, the date of any decision by any appellate board or court having review jurisdiction.
- B. The Health Department representatives, licensed Onsite Soil Evaluators, and Excavation Contractors providing service relating to the investigation of suitability of any site for the installation of an onsite sewage system shall inform property owners of this requirement of the Clarke County Code. Failure of any of the above to so notify the property owner shall not be a defense against non-compliance.
- C. This Ordinance shall be administered and enforced by the Zoning Administrator who shall have all necessary authority on behalf of the governing body to administer and enforce the Ordinance, including the ordering in writing of the remedying of any condition found in violation, and the bringing of legal action to compel compliance with the Ordinance or provide for the imposition of the penalties hereinafter provided. The assistance of appropriate officials of Clarke County, including, but not limited to, the Health Department, Sheriff, and the Commonwealth's Attorney shall be provided upon request.

*§ 143-9. System siting.*  
[Adopted 99-08-17;

- A. In all cases, the soil and site evaluation shall determine if a Conventional Onsite Sewage System can be designed to serve the proposed use. If so, the COSS shall be proposed. If a COSS cannot

Amended 04-06-15; 05-03-15; 05-07-19, 08-12-16]

be designed for the site, a statement must accompany the soil evaluation, signed by a licensed Onsite Soil Evaluator that states the site restrictions that restrict the site to an Alternative system.

B. Soil restrictions for Onsite Sewage Systems.

(1) Alternative Onsite Sewage Systems must be installed a minimum below the ground surface in naturally occurring, in-situ soil as follows:

- a. In karst soils as defined in Section 143-9-G – installation of the dispersal system must be no shallower than 10 inches.
- b. In all other soils - Installation of the dispersal system must be no shallower than 3" or half the total depth of the A, A1 and A2 horizons, whichever is greater.

(2) Conventional Onsite Sewage Systems must be installed a minimum of 18 inches below the ground surface in naturally occurring, in-situ soil.

(3) Onsite Sewage Systems installed at less than 18" depth require at least 12 inches of soil cover in the soil treatment area, unless the system is an AOSS installed in a wooded area where trees will not be removed.

(4) Effluent dispersed from an AOSS, may only be discharged to a soil treatment area when the vertical and horizontal separation from the soil treatment area to a limiting feature consists of at least 18 inches of naturally-occurring, in-situ soil.

(5) Effluent dispersed from a COSS may only be discharged to a soil treatment area when the vertical and horizontal separation from the soil treatment area to a permeability-limiting feature consists of at least 24 inches of naturally-occurring, in-situ soil, and the vertical separation to seasonal water table, seasonal wetness indicators, or pervious strata must be a minimum of 20 inches.

(6) Onsite Sewage System soil treatment areas shall be a minimum of 10 feet horizontally from surface rock outcrops.

(7) Onsite Sewage System soil treatment areas, utilizing gravel less dispersal, shall have no reduced footprints.

(8) Onsite Sewage Systems shall not be installed in soil horizons having "high shrink-swell potential", soils classified as "poorly drained" or having "slow permeability", or having known descriptions of pans of any type. A soil test is required to

confirm the aforementioned characteristics. If the percolation rate is satisfactory, all vertical and horizontal siting requirements must also be satisfied.

- B. Site restrictions; Table 1. Minimum distances between components of septic systems and site features are prescribed in the current Sewage Handling and Disposal Regulations, Virginia Department of Health, as amended. Onsite sewage system components shall be prohibited or restricted on sites as described in Table 1, Minimum Separation Distances.

Table 1  
[Amended 05-03-15]

Minimum Separation Distances  
Minimum Distance From

Structure or Topographic Features	Soil Treatment Area or Vault Privies (feet)	Septic Tanks (feet)	All Other Parts of the Septic System (feet)
Slopes greater than 25%	Not permitted	N/A	N/A
Free flowing streams, natural lakes or impounded waters (measured from edge)	100	100	50
Intermittent stream	50	50	50
Drainageways (measured from low point)	50	50	N/A
Wells	100	100	50
Discernible edge of sinkholes and cave entrances	100	100	50
Springs at a lower elevation than the septic system	500	500	100
Springs at a higher elevation than the septic system	200	200	100
Utility Easement (edge of) Upslope Downslope	10 25	10 25	10 10

**NOTES:** N/A = Not applicable.

C. Floodplain. New Onsite Sewage Systems shall not be permitted in the floodway portion of the Flood Plain District.

D. Replacement, repairs, and expansions of existing approved onsite sewage systems, may encroach on minimum separation distances for site features listed in Table I, so long as they are no closer to those features than the existing onsite sewage system and so long as the encroachment is not likely to cause a significant threat to public health or the environment as determined by the Health Department. [Added 99-08-17, Amended 10-06-15]

E. Easements. Easements for off-site installation of onsite sewage

systems are not permitted:

- (1) Except for residences constructed prior to December 15, 1987.
  - (2) Except for commercial uses:
    - (a) Located in a commercial zoning district.
    - (b) In operation prior to March 17, 1992, or located on a previously undeveloped parcel in a commercial zoning district of less than three contiguous acres, zoned for commercial uses prior to December 15, 1992.
  - (3) Provided that such off-site onsite sewage systems for such qualifying commercial uses:
    - (a) Do not constitute a mass drainfield (that is with loading rates in excess of 1,200 gallons per day for any acre and containing more than 2,000 linear feet of percolation piping).
    - (b) Have a one-hundred-percent reserve area.
    - (c) Have a maintenance program which includes pumping out of the septic tank every three years at a minimum.
    - (d) Need not be located in a commercial zoning district.
    - (e) Shall be shown on an approved site plan and placed under an easement, recorded in the land records of Clarke County within six months of site plan approval. Such easement shall show the land area encompassing the septic facilities, provide means of access and state the party responsible for the maintenance of the septic system.
    - (f) Shall be abandoned if public sewer service becomes available to the property being served by the off-site septic system easement. Hookup to the public sewer system is required and the requirement for an easement shall terminate.
- F. The distance from a house to the nearest point of the soil treatment area shall not be greater than 400 feet. [Added 04-06-15, Amended 10-06-15]
- G. Subsurface Investigations [Added 7/19/05]  
This section is to establish review procedures and performance standards for non-invasive subsurface investigations designed to

identify the potential for voids beneath primary and reserve onsite sewage system soil treatment areas so as to avoid locating in areas where subsidence may occur.

#### Site Review

Whenever an application is filed for a onsite sewage system permit or certification letter with the Health Department, except for emergency repair applications, as determined by the Health Department, after July 19, 2005, in any region underlain with limestone, dolomite, calcareous shale, or marble, specifically described as areas containing soils derived from these materials, which include soil types (4, 5B, 5C, 10, 15B, 15C, 17B, 18, 23, 24, 30B, 31B, 32B, 33B, 35B, 35C, 36B, 36C, 37B, 38B, 38C, 38D2, 39B, 39C, 39D2, 43C, 44B, 45B, 46B, 47B, 47C, 48B, 51B, 55D, 56, 57C2, and 57D2) (as identified in the Clarke County Soil Survey, 1982), the applicant will hire a Geotechnical Engineer (GE) to conduct Electrical Resistivity tests to determine if voids or other anomalies are located beneath the proposed soil treatment area.

#### Resistivity testing

Testing shall be performed by an individual with a 4-year degree in geology or engineering with a minimum of 2-years experience conducting resistivity testing;

Testing shall utilize dipole-dipole resistivity surveying array;

Testing shall consist of a minimum of two lines laid out through the soil treatment area (two lines each primary and reserve area, unless contiguous), perpendicularly to the strike of the bedrock, and extending a minimum distance beyond the drain field area of 60 feet so as to provide a minimum depth of penetration of 20 feet at the edge of the field, and allow for movement of the field should irregularities be identified;

Testing shall include use of a minimum of 24 electrodes per 100 feet of line, so as to provide a minimum of 200 soundings;

Testing shall provide minimum reading depth of 40 feet;

Electrode contact resistance shall be less than 5000 ohms, if not a salt-water mix shall be poured over the soil where electrodes are placed;

Lines shall be clearly marked at each end with stakes or other identifiable markers;

Results of test shall be included in a report which includes, in part, the following, to be provided to the county Natural Resource Planner:

- a. summary of methods,
- b. resistivity described in Ohm-meters,
- c. electrode spacing,
- d. directional orientation,

- e. plan maps describing the line layout and in relation to onsite system soil treatment areas
- f. color image profiles detailing the results and identifying any hazards, images shall maintain a consistently applied color scale ranging from blue-green-yellow-red, and indicate the location of the soil treatment area relative to the profile. The Ohm-m scale shall range from 0 to 4000 to provide consistency between consultants. Hazards shall be labeled on the profile so as to indicate the type of irregularity as described below,
- g. irregularities in the profile shall include pinnacle/cutter topography, float rocks, soft zones, voids, mud-filled voids, extreme fracturing, and any other such anomaly,
- h. the amount of overburden,
- i. surface elevations shall be integrated with ER profiles,
- j. discuss the significance of the geologic structure,
- k. quantify qualitative terms such as "low", "moderate" or "high" risk
- l. implications of findings, i.e. should drain fields be located as proposed, and if so why, and
- m. discuss the possible benefits if any of relocating a soil treatment area;

If the profiles show irregularities, and the engineer recommends use of the site, then air track drilling is recommended to explore rock discontinuities. In questionable soil (like cutters) conventional test borings are preferable. In either case the drilling/test shall be conducted to determine the extent and significance of the irregularity. The location of drilling or borings shall be documented and the findings of each described in detail, including a summary of the implications of the feature, if the site continues to be recommended for use, and why the feature is inconsequential;

If evidence of voids is documented beneath the proposed soil treatment area, or if irregularities encompass 20% or more of the proposed site, or the implications of findings recommend avoidance of the site, then the soil treatment area shall be relocated and the new area evaluated as described above; and

Subdivision plats and onsite sewage system permits shall include the following statement:

"Subsurface investigations have been conducted for the onsite sewage system sites on the parcels identified herein. Reports detailing the findings are available at the Clarke County Planning Department."

*§ 143-10. Design and installation.*

A. Onsite sewage systems, that provide unsaturated soil conditions (enhanced flow) within the soil treatment area shall be required in the

[Amended 00-04-17;  
02-02-19; 05-03-15;  
06-05-16; 08-12-16;  
09-08-18; 10-06-15]

following soils:

- (1) Soils that have an estimated or measured percolation rate of 16 or less minutes per inch.
- (2) Soils that have an estimated or measured percolation rate of 91 to 120 minutes per inch.
- (3) Soil horizons containing between 50% and 75% (by volume) coarse fragments
- (4) Spring Conservation Overlay District (SC) as described in Section 3-E-2-b of the Clarke County Zoning Ordinance.

B. Privies. The Health Department may issue permits only for portable or vault privies. No other type of new privy shall be permitted except in remote areas where vehicular access is unavailable. (Refer to § 143-9C, Table 1, Minimum Separation Distances.)

- (1) Portable privies.
  - (a) Portable privies are allowed only for temporary activities such as construction sites, entertainment events or agricultural or forestry activities.
  - (b) Within the Flood Plain District (one-hundred-year floodplain), portable privies:
    - [1] Require a permit from the Health Department.
    - [2] May not be located on a parcel for more than 15 consecutive days between October 1 and April 30.
    - [3] Shall be located at least two feet above the elevation of the annual floodplain.
    - [4] Shall be removed from the Ten-Year Floodway of the Shenandoah River when flooding of the river is predicted by the National Weather Service.
    - [5] Shall submit a maintenance contract with the waste hauler, indicating that the privy will be pumped when the tank is 3/4 full, with the permit application.
  - (c) Agricultural activities requiring the use of pit privies are exempt from Subsection B(1) and (2).

- (2) Vault privies are not allowed within the Ten-Year Floodway of the Shenandoah River. Outside of the Ten-Year Floodway, vault privies are allowed only for primitive recreational areas with intermittent use and no plumbing facilities. A maintenance contract with the waste hauler, indicating that the privy will be pumped when the tank is 3/4 full, shall be submitted with the permit application.
  - (3) All non-portable privies within the Ten-Year Floodway of the Shenandoah River shall be abandoned and removed by May 1, 1995. Abandonment and removal shall be accomplished by removing the structure, liming the pit and covering the pit with at least two feet of soil and otherwise complying with any applicable regulations of the State Board of Health for pit privy abandonment.
- C. Pump and Haul [Added 00-04-17, Amended 02-02-19]  
The Board of Septic and Well Appeals has the authority to approve a variance to this ordinance for the temporary pumping and hauling of untreated sewage (pump and haul) in lieu of on site sewage treatment. Such variance requests must meet the criteria of Section 143-11-C-1-b.
- D. Explosives or pneumatic hammers. The use of explosives or pneumatic hammers (other than hand-held pneumatic hammers) shall not be permitted for the excavation associated with septic tanks or onsite sewage systems or within 50 feet of any soil treatment areas (except blasting may be permitted for installation of one-piece septic tanks fitted with rubber boots).
- E. Reserve area. An onsite sewage system reserve area with a capacity at least equal to that of the primary area shall be provided in accordance with the provisions of this article regardless of parcel recordation date. If existing lots must be merged to create a satisfactory building lot, then a 100% reserve area is required.
- F. Reutilization of Existing system.

This section is to establish review procedures and performance standards for:

- The reutilization of existing on-site sewage disposal systems in the event of replacement of a structure having been lost by fire or other circumstances, or
- When the applicant desires to substantially modify an existing structure, or

- When the applicant proposes a change of use, or when an existing system’s use has been discontinued or utilized under design capacity.

A County official will determine the need for and must request an existing system review by the Health Department.

In order to be considered for reutilization the following criteria must be met, as determined by the Health Department:

- The system must have no known history of failure or malfunction either since installation or previously authorized repair or replacement.
- Adequate information about the system must exist or be determined in order to make a judgment as to its adequacy for the proposed use. This information may include, but is not limited to, the following:
  - system location, landscape, setbacks, etc.
  - tank size and integrity
  - size of the absorption system
  - construction and materials
  - design plan
- The system shall be of a nature previously or presently approved by the Health Department.
- The owner shall supply evidence that the septic tank has been pumped within the last 5 years.
- The structure that the system is proposed to serve must have been in recent and continuous service, as determined by the Health Department. Any structure not in use for the previous two years must meet current standards for a new system.
- The proposed effluent quantity shall not exceed the amount previously applied to the system unless it can be established the system was utilized below design capacity. In no case shall the original design capacity be exceeded.
- A reserve area shall be provided as described in Section 143-10-E.

### System Evaluation

In cases where Health Department records are insufficient, the following procedure shall be completed in order to determine the adequacy of the system:

- If needed, hold a preliminary fact-finding meeting with the

applicant to discuss status of the existing system and requirements for completing a soil evaluation report, as-built drawings, and an inspection report.

- Conduct a physical walkover of the site to insure that there is no evidence of ponding on the ground surface. Also the perimeters of the site shall be checked to ensure that there are no discharges of sewage or gray water.
- Put dye in suspicious systems (possible straight pipes, wet spots, etc.) and conduct follow up visits as needed to ensure proper system operation.
- Note any structures, driveways, trees, etc. built over system components and make recommendations for removal as needed.
- Confirm the footprint of any new proposed addition conforms with current separation distances to sewage disposal system(s) and well(s).
- Any proposal for an increase in waste-loading rate more than the design will require a standard site and soil evaluation to pursue a septic system construction permit for expansion.
- At a minimum, all distribution boxes, both lids of the septic tank(s), and the end of the last line shall be uncovered by the owner for further evaluation.
- Check number of outlet ports and attempt to estimate size.

#### Reporting

The Health Department shall:

- Forward a letter to the County official requesting the evaluation that describes the system and any recommendations.
- A disclaimer shall be attached to the report stating, "This report is only intended to address the above referenced request. This report is not intended for use as part of a real estate transfer or any other unauthorized use. There is no implied guarantee of future system performance based on this report. In the event of sewage disposal malfunction, the owner will be responsible for any repairs or other actions deemed necessary to correct the situation."

#### *§ 143-11. Appeals & variances.*

[Amended 99-08-17; 00-04-17, 02-02-19, 04-02-17; 05-08-16]

- A. Board of Septic and Well Appeals (1) Appeals of administrative interpretations of this article, and applications for variances, shall be heard by a Board of Septic and

[Amended 99-08-17;  
00-04-18; 04-02-17;  
05-08-16]

Well Appeals ("The Board").

- (2) The Board of Septic and Well Appeals shall consist of three members:
  - (a) the member of the Board of Supervisors, who serves as the Board's liaison to the Planning Commission, with The Vice Chairman of the Board designated as his/her alternate,
  - (b) a Chairman of Planning Commission with the Vice Chairman designated as his/her alternate, and
  - (c) a member of the public, who is a resident of the county with the Vice Chairman of the Planning Commission designated as his/her alternate. [Amended 05-08-16]

All members shall be appointed by the Board of Supervisors at their first regular meeting of each year. [Added 99-08-17, Amended 04-02-17]

- (3) The Board shall have the following powers and duties:
  - (a) To hear and decide appeals from any order, requirement, decision or determination made by the Clarke County Health Department in the administration or enforcement of this article.
  - (b) To hear and decide applications for variances in accordance with the provisions of this section.

- B. Appeals.
  - (1) Any appeal shall be filed within 30 days of the date of the order, requirement, decision, or determination appealed from.
  - (2) Any person seeking an appeal shall apply in writing to the Board. Such application shall include:
    - (a) A citation to the order, decision, determination or regulation to which an appeal of interpretation or application is requested;
    - (b) Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article;
    - (c) Other information, if any, deemed pertinent by the applicant; and
    - (d) Such other information as the Board may require.
  - (3) The Board shall act on any appeal request within 30 calendar days of receipt.
  - (4) All appeals shall be consistent with the intent of this article. The Board may attach reasonable conditions consistent with the intent of this article in granting appeals.

- (5) No appeal may be heard except after notice and hearing as required by § 15.2-2204, Code of Virginia and in accordance with the requirements of Section 10-E of the Clarke County Zoning Ordinance.
- (6) An appeal of a decision of the Board shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.
- (7) The concurring vote of two members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance, or to effect any variance from the Ordinance. [Added 04-02-17]

C. Variances. (1) Variance criteria.

[Amended 98-04-21;  
01-01-16; 02-02-19;  
04-02-17; 04-09-21;  
05-08-16]

- a. General (other than Temporary Pump and Haul). In order to be eligible for a variance, the applicant must meet one of the following criteria:
  - (i) A habitable building for which the variance is requested is currently occupied.
  - (ii) A habitable building has been destroyed by circumstances beyond the control of the owner or occupant of the building within one year of the variance application.
  - (iii) The building is eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places.
  - (iv) The variance is requested so as to provide for septic systems or water supply systems replacing existing septic systems or water supply systems that are more consistent with the regulations of this article. A habitable building must be located on the property with the existing septic system or water supply system.
  - (v) The entire parcel of land has been placed under a permanent conservation easement granted to the Clarke County Conservation Easement Authority, Lord Fairfax Soil and Water Conservation District, Virginia Foundation

and/or Virginia Board of Historic Resources.

- b. Temporary Pump and Haul.
  - (i) Temporary pump and haul may be allowed if public sewer service or other means of approved sewage disposal is imminent and if all of the following criteria are met:
    - a) The structure to be served is one of the following:
      - 1) An existing occupied dwelling;
      - 2) An existing structure used as a place of worship;
      - 3) A new or existing school structure; or
      - 4) A new or existing commercial structure on a property in a commercial zoning district; and
    - b) The Health Department has rejected an application for an onsite sewage system or an off-site system as permitted under this ordinance.
  - (ii) Temporary pump and haul may be allowed for up to three years if public sewer service or other means of approved sewage disposal is not imminent and if all of the following criteria are met:
    - a) The structure to be served is an existing dwelling without indoor plumbing and is converting to indoor plumbing, or an existing septic system has failed;
    - b) For at least one continuous year, the applicant has been the owner and full-time resident of the dwelling to be served; and,
    - c) The Health Department has rejected an application for an onsite sewage system or an off-site septic system, as permitted under this ordinance
    - d) There shall be no additional bedrooms added to the dwelling as a result of the permitting of temporary pump and haul.

(2) Variance procedure:

If the proposed variance involves a request to locate a soil treatment area farther than 400 feet from the house site, the applicant must provide an affidavit signed by the soil consultant stating that no suitable area could be found within the 400 feet radius. Attached to the affidavit shall be a written report detailing the reasons why no site could be found, including but not limited to soil test pit locations and profiles, site conditions such as topography, and/or setback restrictions. [Added 05-08-16]

- (a) Any person seeking a variance shall apply in writing to the Board. Such application shall be in writing and shall include:

- (i) A citation to the order, decision, determination or regulation from which a variance is requested.
  - (ii) Identification of which of the variance criteria in paragraph C.(1) applies;
  - (iii) The nature of the variance requested.
  - (iv) Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article.
  - (v) Statements or evidence why the public health and welfare as well as the groundwater resources would not be degraded if the variance were granted.
  - (vi) Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on public health and welfare or groundwater resources.
  - (vii) Other information, if any, deemed pertinent by the applicant.
  - (viii) Such other information as the Board may require.
- (b) The Board Of Septic And Well Appeals shall act on any variance request within 30 calendar days of receipt of the request
- (c) The Board may attach reasonable conditions consistent with the intent of this article in granting variances. If a variance is granted for a property eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district in the Virginia Landmarks Register or the National Register of Historic Places, the property owner shall apply for a county historic overlay district for the subject property.
- (d) In acting upon a request for a pump and haul system the Board shall require the following:
- (i) The maximum capacity of a sewage holding tank serving a residence shall be 3,000 gallons;
  - (ii) The property owner shall provide copies of an agreement to pump and haul the sewage with a contract hauler, holding a sewage handling permit, and a letter of acceptance from the operator of a certified sewage treatment plant. The property owner shall provide the county with a copy of the invoice(s) from the contract hauler every three months. A pump and haul variance shall be void if the property owner does not provide such

an invoice, or a in the absence of an invoice, a letter of explanation, within any six month period;

- (iii) The property owner shall enter into an agreement with the county to construct and operate a pump and haul system in accord with all State Health Department regulations.
- (e) In acting upon a variance request for temporary pump and haul, the time limit for the pump and haul variance shall be determined by the board based on the circumstances of each application. However, the time limit for a pump and haul variance where public sewer service or other means of approved sewage disposal is not imminent shall be no longer than five years.
- (f) In granting a variance request for temporary pump and haul, the Board shall require a guarantee of the payment of hauling costs for the term of the variance, up to one year, in one of the following forms:
  - (i) cash escrow;
  - (ii) cash, corporate or property bond, with surety satisfactory to the board; or,
  - (iii) a bank letter of credit in a form satisfactory to the board.
- (g) A renewal of a variance for temporary pump and haul may be requested. In acting upon such request, the Board shall determine whether there have been any changes in conditions since the granting of the last variance that eliminates the need for a pump and haul system.
- (h) No variance may be granted except after notice and hearing as required by § 15.2-2204, Code of Virginia, and in accordance with the requirements of Section 10-E of the Clarke County Zoning Ordinance except as provided for in § 143-11C(2) of the County Code. Posting and notification of adjacent property owners are waived for existing failed systems requiring emergency repairs, which alter the configuration of the existing system as determined by the county Health Department.
- (i) A denial of a variance, or an appeal from the terms and conditions set forth in the variance, shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.

- (j) All variances are transferable unless otherwise stated.
- (k) Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.
- (l) Variances for emergency repairs shall be heard by the county Natural Resources Planner. The Natural Resources Planner shall consult with the Board of Septic Appeals before acting on such a variance request. [Amended 04-02-17]
- (m) Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing improvements, as described in Section (C)(1), above, as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant. [Added 01-01-16]
- (n) Variances shall be heard by the county Natural Resources Planner for Systems that substantially comply with the intent of this ordinance. Substantial compliance is defined as a variance of not greater than 10% from the stated regulations. The Natural Resources Planner shall consult with the Board of Septic Appeals before acting on such a variance request. [Added 04-02-17]

*§ 143-12. Fees.*<sup>2</sup>  
[Amended 99-11-16;  
00-03-21, 00-04-18]

The Board of Supervisors shall set by resolution such fees as it deems necessary and reasonable to defray the cost of permits and/or licenses, inspections and testing as are required to be issued under this article.

*§ 143-13. Violations and penalties.*<sup>3</sup>

Penalties for violation of the provisions of this article shall be as provided in Chapter 1, General Provisions, Article I.

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<sup>2</sup>Editor's Note: Fees are on file in the office of the County Administrator.

<sup>3</sup>Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

### Article III Recordation of Onsite Sewage Disposal Permit Limitations

[Adopted 05/15/07; Amended 11/20/07]

*143-14 New Systems.*  
[Amended 07-11-20] Upon issuance by the Virginia Department of Health (“VDH”) of an onsite sewage disposal system Operation permit (“Operation Permit”) for a structure, the owner(s) of the property for which the Operations Permit is issued shall record in the Clarke County Circuit Court land records, within ten (10) days of the issuance of the Operations Permit, a Notice of Onsite Sewage Disposal Limitations, setting forth the limitations on the structure to be served by the approved onsite sewage disposal system, with a copy of the Operation Permit attached. The Notice of Onsite Sewage Disposal Limitations shall be on a form prepared by and available in the Clarke County Department of Planning.

*143-15 Recordation of Certification Letter.*  
[Amended 07-11-20, 08-12-16] Any owner(s) of an existing lot that is issued a VDH Certification Letter shall record said Certification Letter in the Circuit Court land records, within 90 days of issuance.

[Amended 07-11-20, 08-12-16] Prior to Health Department approval of a subdivision plat, the owner(s) of the property to be subdivided must apply for a VDH Certification Letter, at the Clarke County Health Department, for each lot to be created by the subdivision, and record said Certification Letters in the Circuit Court land records within 90 days after approval of the subdivision.

*143-16 Certificate of Use and Occupancy*  
[Amended 07-11-20] Any applicant requesting a Certificate of Use and Occupancy from the Clarke County Building Department, for a structure to be served by an onsite sewage disposal system, which is either new construction or the conversion of an existing structure to an occupied structure, or the addition to an existing structure so as to increase the number of bedrooms or to change the use of the structure so as to increase the gallons per day, shall record in the Circuit Court land records a Notice of Onsite Sewage Disposal Limitations, setting forth the limitations on the structure to be served by the approved onsite sewage disposal system, with a copy of the Operation Permit for that structure attached, and shall file with the building department a photocopy of the recorded Notice of Onsite Sewage Disposal Limitations, showing the Clerk’s recording stamp. No such Certificate of Use and Occupancy shall be issued unless such a Notice of Onsite Sewage Disposal Limitations has been recorded for the structure.

*143-17 Building Permits*  
[Amended 07-11-20] Any application for a building permit not requiring a certificate of occupancy when completed, which is served by an onsite sewage disposal system, shall comply with either A. or B.:

- A. Notice of Onsite Sewage Disposal Limitations not previously recorded  
Record in the Circuit Court land records a Notice of Onsite Sewage Disposal Limitations for the structure, with a copy of the Operations Permit attached for each such structure on the property. If an Operation Permit has not been issued then a copy of the onsite sewage disposal system permit ("Sewer Permit") shall be attached. A photocopy of the recorded Notice of Onsite Sewage Disposal Limitations and Sewer Permit, showing the Clerk's recording stamp, shall be filed with the building permit application; or
- B. Notice of Onsite Sewage Disposal Limitations previously recorded  
The applicant shall file with the application a photocopy of the previously recorded Notice Onsite Sewage Disposal Limitations with a copy of the Operations Permit attached for each such structure on the property. If an Operation Permit has not been issued then a copy of the Sewer Permit, showing the Clerk's recording stamp, shall be attached. A photocopy of the recorded Notice of Onsite Sewage Disposal Limitations and Sewer Permit, showing the Clerk's recording stamp, shall be filed with the building permit application.

No building permit, except for emergency repairs as described below, shall be issued unless a Notice of Onsite Sewage Disposal Limitations has been recorded for the structure.

Emergency Repairs. If the application for a building permit is for repairs that must be performed in an emergency situation, as determined by the building official, the Notice of Onsite Sewage Disposal Limitations shall be submitted to the building official within 5 working business days of issuance of the building permit.

*143-18 Existing  
Systems.*  
[Amended 07-11-20]

Prior to the sale or transfer of any interest in any real property on which is located a structure or structures served by an onsite sewer disposal system, if a Notice of Onsite Sewage Disposal Limitations has not previously been recorded for each structure on the property, the owner of the property, prior to the recordation of the deed transferring ownership, shall record in the Circuit Court land records a Notice of Onsite Sewage Disposal Limitations for each structure on the property for which a Notice of Onsite Sewage Disposal Limitations has not previously been recorded, with a copy of the Operations Permit attached for each such structure on the property. If the owner of the property fails to record the Notice of Onsite Sewage Disposal Limitations prior to recordation of the deed transferring ownership, the grantee under the deed shall record a Notice of Onsite Sewage Disposal Limitations, with a copy of the Operations Permit attached, within thirty (30) days of recordation of the deed. If an Operation Permit has not been issued then a copy of the Sewer Permit shall be attached.

*143-19 No Sewer Permit Available.*  
[Amended 07-11-20]

If an owner of property is unable to obtain a copy of a Sewer Permit after completing a VDH "File Search of Records" with the VDH, then in lieu of the recordation of the Notice of Onsite Sewage Disposal Limitations required under Sections 143-16 and 143-17, owner shall record in the Clarke County Circuit Court land records a Notice of No Sewer Permit Availability, with a signed VDH "File Search of Records" form attached, indicating that a copy of a Sewer Permit for the property is not available. The File Search of Records form is available from the Clarke County Health Department. Under the foregoing circumstances, the recordation of the Notice of No Sewer Permit Availability shall satisfy the requirements of Sections 143-16 and 143-17 for the recordation of a Notice of Onsite Sewage Disposal Limitations.

*143-19.1 Sewer Permits*

If a Sewer Permit is attached to a Notice of Onsite Sewage Disposal Limitations pursuant to 143-17 or 143-18, above, it shall be identified on this Notice of Onsite Sewage Disposal Limitations as complete or incomplete. A definition of complete or incomplete Sewer Permits for the purposes of this Article is available in the Clarke County Department of Planning.

*143-20 Violations*  
[Amended 07-11-20]

Any person violating the provisions of this Article shall be subject to a fine of \$100.00. Each day the violation continues shall constitute a separate offense.

**Article IV Limitation on Residents in Single-Family Dwelling Served by On-Site Sewage Disposal Systems**

[Adopted January 20, 2009]

*143-21 Limitation on Residents in Single-Family Dwelling Served by On-Site Sewage Disposal Systems*  
[Added 09-01-20]

- A. Effective July 20, 2009, the number of persons who are permanent full-time residents occupying a single-family dwelling served by an on-site sewage disposal system with a Virginia Department of Health permit shall not exceed two per the number of bedrooms allowed by that permit.
- B. Upon being notified by the County of a violation of this ordinance the owner of the property shall take action within thirty (30) days of such notice to cure the violation by (i) reducing the number of residents in the dwelling or (ii) applying to the Virginia Department of Health to expand the current onsite sewage system for a sufficient number of bedrooms to accommodate the number of full-time resident occupants in the dwelling, and, if the application for expansion is denied, to apply, if eligible, to the Board of Septic and Well Appeals for a variance for a system designed to accommodate the number of full-time resident occupants in the dwelling. In the event an owner applies for such an expansion of the system and/or for such a variance, an action for a violation of this ordinance shall not be initiated by the County while any such application is pending. If any such application is granted, the owner of the property shall have ninety (90) days from the granting of the variance to install the approved system.
- C. No person shall be charged with a violation of the provisions of this Article based upon the number of persons occupying a dwelling prior to July 20, 2009.

**Amendments Chapter 143**

- 1998-05-19* § 143-8.1 Closure of Onsite Inspection Pits. Added 98-05-19
- 1999-08-17* § 143-9 System Siting, so as to add § 143-9 to allow replacement, repairs, and expansions of existing systems to encroach upon the minimum setbacks from site features...; § 143-11 Administrative Appeal Process, so as to modify the membership of the Board
- 1999-11-16* § 143-12 Variance Process add A-5 to allow variances for parcels placed under an easement granted by VOF and/or VBHR.
- 2000-03-21* § 143-12 Variance Process so as to establish a procedure to consider a variance when the entire tract of land has been placed under an easement granted to the VOF and/or VBHR.

- 2000-04-18 § 143-10 Design and Installation so as to add criteria whereby a pump and haul septic system is permitted; § 143-11 & § 143-12 appeal and Variance Process so as to reorganize and merge these two sections; § 143-12-A-(4) Variance process, so as to allow variances only when an existing habitable structure is present on the parcel.
- 2001-01-16 § 143-11 (C) Variances, so as to modify the criteria for granting variances.
- 2002-02-19 § 143-10-D, Design and Installation, and § 143-11, Appeals and Variances, so as to clarify that pump and haul may be used only as temporary method of sewage disposal.
- 2002-11-19 § 143-8.1 Intent; State Regulations; Exceptions, so as to add Section D restricting the issuance of conditional septic permits.
- 2004-02-17 § 143-11 Appeals & variances so as to restructure the appeals board and variance procedure.
- 2004-04-20 § 143-8.1 Definitions Revise definition of Spring
- 2004-06-15 § 143-9. System Siting - so as to add Section G limiting the maximum distance a drainfield may be located from a house to 400 feet.
- 2004-09-21 § 143-9. Appeals and variances C. Variances 1.(v) so as to delete additional criteria for open space easement properties eligible for a variance.
- 2005-03-15 § 143-6, -7, -8, -10 so as to clarify and update sections CC-05-01
- 2005-07-19 § 143-9 – Add H, Subsurface Investigations. CC-05-02
- 2005-08-16 § 143-11-A-(2) to provide an alternate to the public member of the Board. CC-05-03; Section 143-11-C-(2) Variance procedure so as to require an affidavit for soil work within 400 feet of a house. CC-05-03a
- 2006-05-16 § 143-10 C Add Use of any alternative sewage treatment systems shall require a monitoring and maintenance contract meeting the county requirements, as outlined in a resolution adopted by the Board of Supervisors entitled "Monitoring and Maintenance Requirements for Alternative Sewage Treatment Systems". CC-06-02
- 2007-03-20 § 143-07 Remove definition of Professional Soil Scientist CC-06-07
- 2007-05-15 § 143-15 thru § 143-19 add Article III Recordation of Onsite Sewage Disposal Permit Limitations
- 2007-11-20 §143-15 thru § 143-19 amend Article III Recordation of Onsite Sewage Disposal Permit Limitations add 143-20 & 21

<i>2008-12-16</i>	§143-9 amend to allow exception for emergency repairs; §143-10. Design and installation. To require 100% reserve area for merged lots; and §143-16 Recordation of Certification Letter to allow 90 days for recordation. CC-08-03
<i>2009-01-20</i>	§143-21, Article IV, Limitation on Residents in Single-Family Dwelling Served by On-Site Sewage Disposal Systems.
<i>2009-08-18</i>	§ 143-10 add Section 143-10-G, Reutilization of Existing System, so as to require new sewage disposal systems for new construction. CC-09-04.
<i>2009-09-15</i>	§ 143-01 through out section remove subsurface and add "septic" where applicable. 143-17 remove "for existing structures" through out section. CC-09-05.
<i>2009-10-20</i>	§ 143-16 thru –20 Section 143-16 Recordation of Onsite Sewage Disposal Permit Limitations, so as to require recordation of sewer permits prior to issuance of any building permit; Sections 143-16, 17 and 18, so as to delete the reference to the definition and form regarding complete or incomplete sewage disposal records and add a section in Section 143 so as to reference the form defining complete or incomplete sewage disposal permits, and; Section 143-17, so as to require the grantee to record the Notice of On-site Sewage Disposal Limitations, if the owner fails to record such Notice prior to property transfer.; Add 143-19.1 Sewer Permits CC-09-07.
<i>2010-06-15</i>	Chapter 143, Septic Systems, so as to establish standards for the siting and installation of alternative onsite sewage systems. CC-10-04