

ORDINANCE NO. 15-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL REGULATIONS, AND ARTICLE IV, PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Regulations, and Article IV, Procedure, are hereby amended and reordained as follows:

By Amending:

- Sec. 3.1 Definitions
- Sec. 31.2 Building permit applications
- Sec. 32.3.5 Variations and exceptions
- Sec. 32.5.2 Contents of an initial site plan
- Sec. 32.5.4 Groundwater assessment information
- Sec. 32.6.4 Dam break inundation zones; engineering study and mapping information
- Sec. 32.7.4.2 Easements for facilities for stormwater management facilities and drainage control
- Sec. 34.2 Powers and duties of the board of zoning appeals
- Sec. 34A.1 Architectural review board; appointment and organization
- Sec. 34A.2 Powers and duties of the architectural review board
- Sec. 36.2 Enforcement
- Sec. 36.3 Civil penalties
- Sec. 36.5 Injunctive relief and other remedies

By Amending and Renaming:

- Sec. 32.4.2.8 ~~Effect of approval of an approved initial site plan has on other future and pending approvals~~ certificates of appropriateness and early or mass grading
- Sec. 32.7.4.1 ~~Erosion and sediment control, sStormwater management, and other water regulations; water~~ pollution; soil characteristics
- Sec. 34.1 Board of zoning appeals; ~~appointment~~ establishment and organization
- Sec. 34.3 Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals
- Sec. 34.4 ~~Application for v~~ Variances

By Adding:

- Sec. 32.4.2.9 Approval of early or mass grading prior to initial site plan approval
- Sec. 34.5 Special use permits
- Sec. 18-34.6 Interpreting a district map
- Sec. 18-34A.3 Design guidelines

By Repealing:

- Sec. 31.7 Review of public features to determine substantial accord with the comprehensive plan
- Sec. 34.5 Procedure
- Sec. 34.6 Decision of board of zoning appeals

Article I. General Regulations

Section 3

Definitions

Sec. 3.1 Definitions

Variance: A reasonable deviation from those provisions regulating the shape, size, or area of a lot, or the size, height, area, bulk, or location of a structure when the strict application of this chapter would ~~result in unnecessary or unreasonable hardship to the land owner~~ unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the ~~intended spirit and purpose of this chapter, and would result in substantial justice being done;~~ provided that a variance shall not include a change in use. (Added 10-3-01)

Comment: The definition is amended to incorporate the new definition in Virginia Code § 15.2-2201.

(§ 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13; Ord. 13-18(5), 9-11-13; Ord. 13-18(6), 11-13-13, effective 1-1-14; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code § 15.2-2286(A)(4).

Article IV. Procedure

Section 31

Administration and Enforcement

Sec. 31.2 Building permit applications

The zoning administrator shall review building permit applications submitted to the building official as follows:

- a. *Review.* The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Within each neighborhood model district, the director of planning shall also review each building permit application to determine whether the proposed structure conforms to the architectural and landscape standards in the approved code of development.

Comment: The new text is from current Section 8.5.5.4(d), but the reference to the department of community development is changed to the director of planning.

b. Information to be submitted; number of copies. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.

Comment: The text of this new subsection from current subsection (a).

b.c. Approval. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.

e.d. Circumstances when building permit shall not be approved. The zoning administrator shall not approve a building permit in the following circumstances:

1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.
2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § ~~17-400~~ 17-1000 until the applicant complies with Albemarle County Code § ~~17-401~~ 17-1001.

Comment: The cross-references are to sections in the Water Protection Ordinance, which was amended and reorganized in 2014.

3. No building permit shall be approved in violation of any provision of this chapter.

e.e. Other information for building official. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); Ord. 09-18(3), 7-1-09)

State law reference – Va. Code § 15.2-2286(A)(4)2

~~Sec. 31.7 Review of public features to determine substantial accord with the comprehensive plan~~

~~If a public facility subject to Virginia Code § 15.2-2232 is not already shown on the comprehensive plan, the commission shall determine whether the location, character and extent of the public facility subject is in substantial accord with the comprehensive plan as provided by Virginia Code § 15.2-2232.~~

~~(§ 31.2.5, 12-10-80; Ord. 09-18(3), 7-1-09)~~

Comment: This section may be repealed because Virginia Code § 15.2-2232 is not a zoning regulation and this section is unnecessary.

Section 32

Site Plans

Sec. 32.3.5 Variations and exceptions

The requirements of section 32 may be varied or excepted as follows:

- a. *Exception from requirement to provide certain details in site plan.* The agent may except certain details of a site plan and any amendment to a site plan otherwise required by sections 32.5 and 32.6 as provided herein:
 1. *Request for exception.* A developer requesting an exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable finding in subsection (a)(2).
 2. *Finding.* An exception may be approved if the agent finds that unusual situations exist or that strict adherence to requiring the details in sections 32.5 or 32.6 would result in substantial injustice or hardship. This finding shall be supported by information from the site review committee that all of the details required by sections 32.5 and 32.6 are not necessary for its review of the proposed development, and from the zoning administrator, in consultation with the county engineer, that the details waived are not necessary to determine that the site is developed in compliance with this chapter and all other applicable laws.
 3. *Action by the agent on a request.* The agent may approve or deny the request. In approving an exception, the agent shall identify the details otherwise required by sections 32.5 and 32.6 that are excepted.
- b. *Variation or exception from any requirement of section 32.7.* Any requirement of section 32.7, including any requirement incorporated by reference in section 32.7 except for those requirements applicable to signs under section 32.7.8(A), may be varied or excepted in an individual case as provided herein:

Comment: The added clause is intended to emphasize that site plan improvements required by Section 32.7 that are referenced in that section but exist elsewhere (e.g., Section 4.12, parking) are eligible for a variation or exception under this section.

1. *Request for a variation or exception.* A developer requesting a variation or exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable findings in subsections (b)(2) and (b)(3). When a variation is requested, the developer also shall describe the proposed substituted technique, design or materials composing the substituted improvement. The request should be submitted before the site review committee considers the initial site plan. The agent may request that the site review committee provide information and a recommendation on any request for a variation or exception.
2. *Findings required for a variation.* The agent may approve a request for a variation to substitute a required improvement upon finding that because of an unusual situation, the developer's substitution of a technique, design or materials of comparable quality from that required by section 32.7 results in an improvement that substantially satisfies the overall

purposes of this chapter in a manner equal to or exceeding the desired effects of the requirement in section 32.7.

3. *Findings required for an exception.* The agent may approve a request for an exception from any requirement of section 32.7 upon finding that: (i) because of an unusual situation, including but not limited to the unusual size, topography, shape of the site or the location of the site; or (ii) when strict adherence to the requirements would result in substantial injustice or hardship by, including but not limited to, resulting in the significant degradation of the site or to adjacent properties, causing a detriment to the public health, safety, or welfare, or by inhibiting the orderly development of the area or the application of sound engineering practices.
 4. *Findings required for a variation or exception of any requirement of section 32.7.5.2.* If the developer requests a variation or exception of any requirement of section 32.7.5.2, the agent shall consider whether the requirement would unreasonably impact the existing above-ground electrical network so that extensive off-site improvements are necessary. In approving a variation or exception, the agent shall find, in addition to the required findings under subsection (b)(2) or (b)(3), that requiring undergrounding would not forward the purposes of this chapter or otherwise serve the public interest and that granting the variation or exception would not be detrimental to the public health, safety, or welfare, to the orderly development of the area, and to the land adjacent thereto.
 5. *Action by the agent on a request; conditions.* The agent may approve, approve with conditions, or deny the request. If a request is approved, the agent shall prepare a written statement regarding the findings made. If a request is denied, the agent shall inform the developer in writing within five (5) days after the denial, and include a statement explaining why the request was denied. In approving a request, the agent may impose reasonable conditions deemed necessary to protect the public health, safety, or welfare.
- c. *Appeals.* The decision of the agent may be appealed as provided in section 32.3.6.
- (§ 32.3.5, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.2 (part), 5-1-87; § 32.2.2, 12-10-80) (§ 32.3.5; § 32.5.1, 12-10-80) (§ 32.3.10, Ord. 01-18(4), 5-9-01; § 32.3.11.4, 5-1-87) (§ 32.7.9.3, 5-1-87))

State law reference – Va. Code §§ 15.2-2241(9), 15.2-2242(1).

Sec. 32.4.2.8 Effect of approval of an approved initial site plan ~~has on other future and pending approvals certificates of appropriateness and early or mass grading~~

~~The approval of an~~ An approved initial site plan affects the following pending and future approvals:

- a. *Issues pertaining to a certificate of appropriateness.* An approved initial site plan that has complied with the architectural review board's requirements identified under section 32.4.2.2(b) shall be deemed to be consistent with the applicable design guidelines pertaining to the elements of sections 30.6.4(c)(2), (3) and (5) delineated in section 32.4.2.2(b)(1).
- b. *Erosion and sediment control plan and grading permit; conventional zoning districts.* ~~On any site within a conventional zoning district, including any conventional zoning district also within an entrance corridor overlay district, an approved initial site plan is an "approved site plan" within the meaning of section 17-204(E). As such, an erosion and sediment control plan and corresponding grading permit may be approved under chapter 17, provided the developer has satisfied the~~

conditions of approval identified by the agent in the letter required by section 32.4.2.5(c), and further provided that any site within a dam break inundation zone is subject to section 32.8.6. *Early or mass grading*. On any site within a conventional or planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17, subject to the following: (i) no grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; (ii) the developer has satisfied the conditions of approval identified by the agent in the letter required by section 32.4.2.5(d); and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

Comment: The Water Protection Ordinance was amended and reorganized in 2014. This subsection is being revised to correspond to the new language in Section 17-412.

e. — Erosion and sediment control plan and grading permit; planned development zoning districts. Notwithstanding section 8.5.5.4(e) but subject to sections 32.6.4 and 32.8.6, on any site within a planned development zoning district, including a planned development zoning district also within an entrance corridor overlay district, an approved initial site plan is an “approved site plan” within the meaning of section 17-204(E). As such, an erosion and sediment control plan and corresponding grading permit may be approved under chapter 17, provided that the developer has satisfied the conditions of approval identified by the agent in the letter required by section 32.4.2.5(c), and further provided that any site within a dam break inundation zone is subject to section 32.8.6. Except as provided in sections 32.6.4 and 32.8.6, nothing in this section shall affect the ability of a developer to obtain approval of an erosion and sediment control plan and corresponding grading permit prior to approval of an initial site plan as provided in section 8.5.5.4(b).

(§ 32.4.2.8, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference – Va. Code §§ 10.1-563, 15.2-2241, 15.2-2286(A)(4), 15.2-2306.

Sec. 32.4.2.9 Approval of early or mass grading prior to initial site plan approval

On any site within a planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17 prior to initial site plan approval, subject to the following:

- a. The erosion and sediment control plan measures, disturbed area, and grading are in conformity with the conceptual grading plan and measures shown on the application plan as determined by the county engineer, after consultation with the director of planning; provided that if, after consultation with the director of planning, the county engineer finds that there is not enough detail on the application plan to ensure that the proposed grading and other measures are consistent with the application plan, the early or mass grading shall not be approved until the final site plan is approved
- b. No grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

Comment: This section is new and is based on the provisions from current Section 18-8.5.5.4(b) and (c), and is intended to correspond to the language in Section 17-412, which is in the Water Protection Ordinance which was amended and reorganized in 2014.

State law reference – Va. Code §§ 40.1-563; 15.2-2241, 15.2-2286(A)(4), 15.2-2306, 62.1-44.15:55.

Sec. 32.5.2 Contents of an initial site plan

Each initial site plan shall contain the following information:

- a. *General information.* The name of the development; names of the owner, developer and individual who prepared the plan; tax map and parcel number; boundary dimensions; zoning district; descriptions of all proffers, special use permits and conditions thereof, special exceptions and conditions thereof, variances and conditions thereof, application plans, codes of development and bonus factors applicable to the site; magisterial district; county and state; north point; scale; one datum reference for elevation (if section 30.3, flood hazard overlay district, applies to any portion of the site, United States Geological Survey vertical datum shall be shown and/or correlated to plan topography and show existing and proposed ground elevations); the source of the topography; departing lot lines; minimum setback lines, yard and building separation requirements; the source of the survey; sheet number and total number of sheets; and the names of the owners, zoning district, tax map and parcel numbers and present uses of abutting parcels.
- b. *Information regarding the proposed use.* Written schedules or data as necessary to demonstrate that the site can accommodate the proposed uses, including proposed uses and maximum acreage occupied by each use; maximum number of dwelling units by type including the number of bedrooms for multi-family dwellings; gross residential density; square footage of recreational areas; the percentage and acreage of open space; maximum square footage for commercial and industrial uses; maximum floor area ratio and lot coverage for industrial use; maximum height of all structures; schedule of parking including the maximum amount required and the amount provided; the maximum amount of impervious cover on the site; and if a landscape plan is required, the maximum amount of paved parking and other vehicular circulation areas.
- c. *Phase lines.* If phasing is planned, phase lines and the proposed timing of development.
- d. *Topography and proposed grading.* Existing topography (up to twenty [20] percent slope, maximum five [5] foot contours, over twenty [20] percent slope, maximum ten [10] foot contours) for the entire site with sufficient offsite topography to describe prominent and pertinent offsite features and physical characteristics, but in no case less than fifty (50) feet outside of the site unless otherwise approved by the agent; proposed grading (maximum five [5] foot contours) supplemented where necessary by spot elevations; areas of the site where existing slopes are steep slopes.
- e. *Landscape features.* The existing landscape features as described in section 32.7.9.4(c).
- f. *Watercourses and other bodies of water.* The name and location of all watercourses and other bodies of water adjacent to or on the site; indicate whether the site is located within the watershed of a public water supply reservoir.
- g. *Onsite sewage system setback lines.* The location of onsite sewage system setback lines from watercourses including intermittent streams and other bodies of water.

- h. *Floodplain and related information.* The boundaries of the flood hazard overlay district, the base flood elevation on the site, the elevation of the lowest floor, including any basement, and for any structures to be flood-proofed as required by section 30.3, the elevation to which the structures will be flood-proofed.
- i. *Streets, easements and travelways.* The existing and proposed streets, including proposed bike lanes, access easements, alley easements and rights-of-way, and travelways, together with street names, state route numbers, right-of-way lines and widths, centerline radii and pavement widths.
- j. *Existing sewer and drainage facilities.* The location and size of existing water and sewer facilities and easements, the storm drainage system, drainage channels, and drainage easements.
- k. *Proposed sewer and drainage facilities.* The proposed conceptual layout for water and sewer facilities and the storm drainage system, indicating the direction of flow in all pipes and watercourses with arrows.
- l. *Existing and proposed utilities.* The location of other existing and proposed utilities and utility easements, including existing telephone, cable, electric and gas easements.
- m. *Ingress and egress.* The location of existing and proposed ingress to and egress from the property, showing the distance to the centerline of the nearest existing street intersection.
- n. *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements including buildings (maximum footprint and height) and other structures; walkways; fences; walls; trash containers; outdoor lighting; landscaped areas and open space; recreational areas and facilities; parking lots and other paved areas; loading and service areas; signs; and the proposed paving material types for all walks, parking lots and driveways.
- o. *Areas to be dedicated or reserved.* All areas intended to be dedicated or reserved for public use under sections 32.7.1.1, 32.7.1.2 and 32.7.1.3, and shall include a note on the plan stating that the land is to be dedicated or reserved for public use.
- p. *Landscape plan.* A landscape plan that complies with section 32.7.9, if it is required to be submitted with the initial site plan.
- q. *Traffic generation figures.* If deemed appropriate by the agent due to the intensity of the development, estimated traffic generation figures for the site based on current Virginia Department of Transportation rates; indicate the estimated number of vehicles per day and the direction of travel for all connections from the site to a public street.
- r. *Symbols and abbreviations.* A legend showing all symbols and abbreviations used on the plan.
- s. *Additional information.* The agent may require additional information to be shown on the initial site plan as deemed necessary to provide sufficient information for the agent and the site review committee to adequately review the plan.
- t. *Dam break inundation zones.* The limits of a dam break inundation zone.
- u. *Additional information for site plans within the neighborhood model district.* Each site plan for a planned development within the neighborhood model district shall contain the following additional

information: (i) the site plan pertains to at least one block; (ii) a phasing plan; and (iii) building elevations for all new or modified structures.

Comment: Although the provisions in subsection (u) are in current Section 8.5.5.1(b), they are repeated here.

((§ 32.5.6, 5-1-87, 2-6-02) (§ 32.4.5, 12-10-80); § 32.5.2, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(1), 3-5-14; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2286(A)(8).

Federal law reference – 44 CFR § 60.3(b)(3)

Sec. 32.5.4 Groundwater assessment information

The application for an initial site plan shall include draft groundwater management plans and aquifer testing workplans required by sections ~~17-403 and 17-404~~ 17-1003 and 17-1004, if applicable. The requirements of sections ~~17-403 and 17-404~~ 17-1003 and 17-1004 shall be satisfied prior to final site plan approval.

Comment: The cross-references are to sections in the Water Protection Ordinance, which was amended and reorganized in 2014.

(§ 32.5.4, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.5.7, Ord. 04-18(4), 12-8-04, effective 2-8-05))

State law reference – Va. Code § 15.2-2121.

Sec. 32.6.4 Dam break inundation zones; engineering study and mapping information

If the proposed development is located wholly or partially within a dam break inundation zone, the developer shall submit with the final site plan the following:

- a. *Engineering study.* If the Virginia Department of Conservation and Recreation determines that a plan of development proposed by a developer would change the spillway design flood standards of an impounding structure pursuant to Virginia Code § 10.1-606.3, the developer shall submit an engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act in Virginia Code § 10.1-604 *et seq.* and the Virginia Impounding Structure regulations in ~~4VAC 50-20~~ 4VAC50-20-10 *et seq.* The engineering study shall be reviewed and acted upon by the Virginia Department of Conservation and Recreation as provided in Virginia Code § 15.2-2243.1.

Comment: The cross-reference is amended because state regulations were renumbered.

- b. *Mapping information.* The developer shall provide the dam owner, the county, and any other affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.

(Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference--Va. Code §§ 10.1-606.3, 15.2-2243.1.

**Sec.32.7.4.1 ~~Erosion and sediment control, s~~Stormwater management, and other water regulations;
water pollution; soil characteristics**

Each site plan shall comply with the following:

- a. ~~*Erosion and sediment control, s*~~*Stormwater management and other water regulations*. Each site plan shall comply with all applicable requirements of chapter 17.
- b. *Water pollution*. In addition to the provisions of section 4.14 and other applicable laws, each site plan shall provide for minimizing the pollution of downstream watercourses and groundwater where on-site measures are deemed warranted by the county engineer. In determining whether and what measures, if any, are warranted, the county engineer shall consider the character of the proposed use including, but not limited to, whether petroleum products, pesticides, poisons, synthetic organic compounds, or other substances would be stored or used on the site which, if improperly stored or inadvertently discharged, may reasonably be anticipated to pollute surface water or groundwater.
- c. *Soil characteristics*. In reviewing site plans, the site review committee shall refer to the U. S. Department of Natural Resource Conservation Service, Soil Survey of Albemarle County, Virginia, August, 1985 in commenting on soil suitability for the intended development and, in particular, Table 10 Building Site Development, Table 12 Construction Materials, and Table 16 Soil and Water Features. If soils are rated as “poor” or “severely limited” for a proposed use, or where high seasonal water table and/or hydrologic group D soils are encountered, the site review committee shall notify the agent of these conditions and provide recommendations for special design measures.

(§ 32.7.4.1, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.7.4, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.1, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.2, 5-1-87) (§ 32.7.4.3; § 32.5.14, 12-10-80) (§ 32.7.4.4, 5-1-87))

State law reference – Va. Code §§ ~~40-1-560 et seq., 40-1-603.2 et seq., 10.1-2108, 15.2-2241(3), 15.2-2283, 62.1-44.15;24 et seq.~~

Sec. 32.7.4.2 Easements for facilities for stormwater management facilities and drainage control

The agent shall require each developer to dedicate easements to the county for facilities for stormwater management and drainage control as follows:

- a. *Easements required*. The following easements shall be required:
 1. An easement for all stormwater management facilities and drainage control improvements located on the site shall be established whenever the improvement is designed, ~~and/or~~ constructed, or both, beyond a street right-of-way or access easement, and shall extend from all drainage outfalls to an adequate channel as defined in ~~4 VAC § 50-30-40~~ 9VAC25-840-10 that satisfies the minimum standards in ~~4 VAC § 50-30-40(19)~~ 9VAC25-840-40(19) to the boundary of the site.

Comment: The amended references are to state regulations under the Virginia Stormwater Management Program (VSMP) which were renumbered when responsibility over the VSMP transferred from DCR to DEQ in late 2013.

2. An easement along any natural stream or man-made waterway located on the site that will be used for drainage purposes.

- b. *Area of easement.* The area of each easement shall be sufficient, as determined by the county engineer, to: (i) accommodate the facilities and the drainage characteristics from each drainage outfall from a drainage control facility; and (ii) allow access to a natural stream or man-made waterway to allow widening, deepening, relocating, improving, or protecting the natural stream or man-made waterway for drainage purposes.
- c. *Right of ingress and egress.* Each easement shall include the right of ingress and egress for installation, maintenance, operation, repair, and reconstruction of any improvement within the easement. The agent also may require that an easement be provided through abutting land under the same ownership as the site.
- d. *Compensation not required.* The board of supervisors shall not be required to compensate the developer for any easement or any improvements thereon.
- e. *Not considered part of street width.* No easement shall be considered part of any required street width.

(§ 32.7.4.2, Ord. 12-18(6), 10-3-12, effective 1-1-13)

State law reference – Va. Code § 15.2-2241(3).

Section 34

Board of Zoning Appeals

Sec. 34.1 Board of zoning appeals; appointment establishment and organization

~~A board of zoning appeals, consisting of five (5) members, shall be appointed in accordance with the provisions of section 15.2-2308 of the Code, and shall have such powers and duties as set forth in section 15.2-2309 of the Code.~~

~~Within the limits of funds appropriated by the board of supervisors, the board of zoning appeals may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as the board of zoning appeals may deem necessary for transaction of its business.~~

~~Members of the board of zoning appeals shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.~~

~~Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him, after hearing held after at least fifteen (15) days notice.~~

~~The board of zoning appeals shall have the authority to request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county within the scope of his or its respective competence.~~

~~The board of zoning appeals may, from time to time, adopt such rules and regulations consistent with the ordinances of the county and the laws of the Commonwealth as it may deem necessary to carry out the duties imposed by this ordinance. The meetings of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine. The board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating~~

~~such fact. All records of official actions shall become part of the permanent records of the board. A quorum shall be a majority of all the members of the board.~~

~~A board of zoning appeals, consisting of five (5) members, shall be appointed in accordance with the provisions of section 15.2 2308 of the Code, and shall have such powers and duties as set forth in section 15.2 2309 of the Code.~~

~~Within the limits of funds appropriated by the board of supervisors, the board of zoning appeals may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as the board of zoning appeals may deem necessary for transaction of its business.~~

~~Members of the board of zoning appeals shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.~~

~~Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him, after hearing held after at least fifteen (15) days notice.~~

~~The board of zoning appeals shall have the authority to request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county within the scope of his or its respective competence.~~

~~The board of zoning appeals may, from time to time, adopt such rules and regulations consistent with the ordinances of the county and the laws of the Commonwealth as it may deem necessary to carry out the duties imposed by this ordinance. The meetings of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine. The board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. All records of official actions shall become part of the permanent records of the board. A quorum shall be a majority of all the members of the board.~~

A board of zoning appeals is hereby established, subject to the following:

- a. *Members and their appointment.* The board shall have five (5) members. Each member shall be appointed by the Albemarle County Circuit Court.
- b. *Eligibility.* Each member shall be a qualified resident of Albemarle County.
- c. *Term; vacancies; serving beyond expiration of term.* Members shall be appointed for terms of five (5) years and any member may be reappointed for successive terms. The original appointments were made in staggered terms so that the term of one member expires each year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- d. *Holding other public office prohibited.* A member may not hold any other public office within the county except that one member may be a member of the commission.
- e. *Organization.* The board shall elect at its annual meeting a chairman, who shall preside over all meetings, a vice-chairman, who shall act in the absence of the chairman, and a secretary. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the Board shall not vote on any matter. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.

- f. Quorum. A quorum shall be a majority of all the members of the board.
- g. Resources; obtaining services. Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary for transaction of its business. The board may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.
- h. Compensation. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.
- i. Removal from office. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Albemarle County Circuit Court, after hearing held after at least fifteen (15) days notice.

Comment: This section is updated and reorganized.

State law reference – Va. Code §§ 15.2-2308, 15.2-2309.

Sec. 34.2 Powers and duties of the board of zoning appeals

~~The board of zoning appeals shall have the following powers and duties in accordance with section 15.2-2309 of the Code:~~

~~To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance or of any regulation adopted pursuant hereto:~~

~~To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provision will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:~~

~~When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the use of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.~~

~~No such variance shall be authorized by the board of zoning appeals unless it finds: (a) that the strict application of this ordinance would produce undue hardship; (b) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (c) that the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

~~No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code.~~

~~No variance shall be authorized unless the board of zoning appeals finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.~~

~~In authorizing a variance, the board of zoning appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.~~

~~To hear and decide appeals from the decision of the zoning administrator.~~

~~To hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by section 15.2-2204 of the Code, the board of zoning appeals may interpret the map in such way as to carry out the intent and the purpose of this ordinance for the particular section or district in question. The board of zoning appeals shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by this ordinance and the zoning map.~~

The board of zoning appeals shall have the following powers and duties:

- a. Meet and conduct business; continued meetings due to inclement weather. To regularly meet to conduct its business as provided in section 34.1 and this section. The board also may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. The finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for the meeting shall be conducted at the continued meeting and no further advertisement is required.
- b. Appeals. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer, and to hear and decide appeals from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter, exclusive of section 32, as provided in section 34.3.
- c. Variances. To consider and approve variances as provided in section 34.4.
- d. Special use permits. To consider and approve special use permits for certain signs under sections 4.15.5 and 4.15.5A, and to revoke a special use permit previously approved, as provided in section 34.5.
- e. Interpret a district map To hear and decide applications to interpret a district map where there is any uncertainty as to the location of a district boundary, as provided in section 34.6.
- f. Power to administer oaths and compel attendance of witnesses. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses for any hearing on an appeal under section 34.3 or any application for a variance under section 34.4.

Comment: This section is updated and reorganized. The regulations pertaining to the various actions are updated and moved to their own sections.

State law reference – Va. Code § 15.2-2309.

Sec. 34.3 Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals

~~Appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator, and with the board of zoning appeals, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.~~

Comment: Section 34.3 is updated and reorganized, and existing and new procedural requirements and standards are incorporated, and a standard process for this type of matter is established.

An appeal from any order, requirement, decision or determination made by an administrative officer, and an appeal from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter (collectively, a “decision”), exclusive of any decision made under section 32, shall be considered by the board of zoning appeals as follows:

a. *Standing to appeal.* An appeal to the board may be taken by any person aggrieved or by any county officer, department, board or bureau affected by any decision of the Zoning Administrator or an administrative officer.

Comment: This is an existing standard in Virginia Code § 15.2-2311(A).

b. *Time in which to appeal decision.* Any appeal shall be received by the zoning administrator and the board within thirty (30) days after the date of the decision. The date of the decision shall be the date that it is mailed or hand delivered to the recipient, provided that the time in which to appeal an order or a notice of violation shall not commence until the recipient is provided the notice required by section 36.2(d).

Comment: This is an existing standard in Virginia Code § 15.2-2311(A). The provisions pertaining to when the 30-day period begins to run are authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

c. *Form of the appeal.* Any appeal shall be in writing and shall state the grounds for the appeal.

Comment: This is an existing standard in Virginia Code § 15.2-2311(A).

d. *Where appeal must be submitted.* An appeal must be submitted to the zoning administrator and to the board. An appeal received by the county’s department of community development shall be deemed to have been received by both the zoning administrator and the board.

Comment: This is an existing standard in Virginia Code § 15.2-2311(A).

e. Payment of fees. The submitted appeal shall be accompanied by the applicable fee required by section 35.1. An appeal shall not be deemed to have been received until the required fee is paid.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

f. Effect of filing appeal. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that, by reason of the facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. If the zoning administrator makes such a certification, the proceedings shall not be stayed unless either the board or the Albemarle County Circuit Court grants a restraining order on application and on notice to the zoning administrator and for good cause shown.

Comment: This is the existing standard in Virginia Code § 15.2-2311(B).

g. Transmittal of information. The zoning administrator shall promptly transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Comment: This is an existing requirement in Virginia Code § 15.2-2311(A).

h. Procedural requirements prior to the hearing. The following procedures apply prior to the board's hearing on the appeal:

1. Scheduling the hearing on the appeal. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (j).

Comment: This is an existing requirement in Virginia Code § 15.2-2312.

2. Notice of the hearing. The board shall give notice of the hearing as well as written notice to the parties to the appeal. The notice shall be given as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the appeal, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

Comment: These are existing requirements in Virginia Code §§ 15.2-2309(3) and 15.2-2312. The County's practice of providing posted notice, as provided in the last sentence, is in addition to the notice required by state law.

3. Contact by parties with board members. The non-legal staff of the board of supervisors, as well as the appellant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the appeal. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the appellant, landowner or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

Comment: These are new requirements in new Virginia Code § 15.2-2308.1(A) and (C).

4. Sharing information produced by county staff. Any materials relating to an appeal, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

Comment: This is a new requirement in new Virginia Code § 15.2-2308.1(B).

- i. Procedural requirements at the hearing. The following procedures apply at the board's hearing on the appeal:

1. The right to equal time for a party to present its side of the case. The board shall offer an equal amount of time in a hearing on the case to the appellant or other person aggrieved and the county staff.

Comment: This is a new requirement in Virginia Code § 15.2-2308.

2. The administrative officer's required explanation. The administrative officer whose decision is being appealed shall explain the basis for his decision.

Comment: This is a new requirement in Virginia Code § 15.2-2309(1).

3. The presumption of correctness. At the hearing, the administrative officer's decision is presumed to be correct.

Comment: This is a new standard in Virginia Code § 15.2-2309(1).

4. Burden of proof. After the administrative officer explains the basis for his decision, the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.

Comment: This is a new standard in Virginia Code § 15.2-2309(1).

- j. Time for decision. The board shall schedule a reasonable time for the hearing on an appeal so that it may make its decision within ninety (90) days after the date the appeal was filed. This ninety (90) day period is directory, not mandatory.

Comment: This is an existing requirement in Virginia Code § 15.2-2312. The second sentence is based on a decision of the Virginia Supreme Court.

- k. Factors to consider when acting. The board's decision shall be based on its judgment of whether the administrative officer's decision was correct. The board also shall consider any applicable ordinances, laws, and regulations in making its decision. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

Comment: These are existing and new requirements in Virginia Code §§ 15.2-2309(1) and 15.2-2309(5).

- l. Action by the board; vote required. The board may reverse or affirm, wholly or partly, or may

modify, the decision appealed from. The concurring vote of three (3) members of the board is required to reverse any decision. if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

Comment: These are existing requirements in Virginia Code § 15.2-2312.

m. *Effect of decision on owner; appeals from notices of violation or written orders.* A decision by the board on an appeal from a notice of violation or a written order of the zoning administrator shall be binding upon the owner of the lot that is the subject of the appeal only if the owner was provided written notice of the zoning violation or written order. The owner's actual notice of the notice of zoning violation or written order, or active participation in the appeal hearing, shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

Comment: This is an existing requirement in Virginia Code § 15.2-2311(A).

n. *Judicial review.* Any action contesting a decision of the board shall be as provided in Virginia Code § 15.2-2314.

Comment: This is an existing requirement in Virginia Code § 15.2-2314.

o. *Appeals of decisions made under section 32.* Any appeal of a decision made under section 32 shall be brought only as provided in section 32.

Comment: Site plans are enabled under the state subdivision laws, and appeals of decisions made under the County's site plan regulations in Section 32 are addressed in that section and they are enabled by Virginia Code §§ 15.2-2259 and 15.2-2260.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2311, 15.2-2312, 15.2-2314.

Sec. 34.4 Application for ~~v~~Variances

~~Application for variances may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the zoning administrator in accordance with the provisions of this section and with rules adopted by the board of zoning appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board of zoning appeals who shall place the matter on the docket to be acted on by the board of zoning appeals. No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code. The zoning administrator shall also transmit a copy of the application to the commission which may send a recommendation to the board of zoning appeals or appear as a party at the hearing.~~

Comment: Section 34.4 is updated and reorganized, and a standard process for this type of matter is established.

An application for a variance shall be considered by the board of zoning appeals (the "board") as follows:

a. *Who may file an application.* An application may be filed by any owner, tenant, government official, department, board or bureau. (the "applicant"). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance, and identifies those who have standing to file an application.

b. Application. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. Criteria to establish right to a variance. Information pertaining to the criteria to establish the right to a variance in subsection (i).
2. Payment of delinquent taxes. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

c. Filing the application; number of copies. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

d. Determining completeness of the application; rejecting incomplete applications. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. Timing of determination of completeness. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
2. Procedure if application is incomplete. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
3. Effect if timely determination not made. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
4. Resubmittal of application originally determined to be incomplete. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

e. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

f. *Transmittal of information.* The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

Comment: This is an existing requirement in Virginia Code § 15.2-2310.

g. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

Comment: This is an existing requirement in Virginia Code § 15.2-2312.

2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the variance, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

Comment: These are existing requirements in Virginia Code § 15.2-2312. The County's practice of providing posted notice, as provided in the last sentence, is in addition to the notice required by state law.

3. *Contact by parties with board members.* The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

Comment: These are new requirements in new Virginia Code § 15.2-2308.1(A) and (C).

4. *Sharing information produced by county staff.* Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available

without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

Comment: These are new requirements in new Virginia Code § 15.2-2308.1(B).

h. Procedural requirements at the hearing. The following procedures apply at the board's hearing on the application:

1. The right to equal time for a party to present its side of the case. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

Comment: This is a new requirement in Virginia Code § 15.2-2308.

2. Burden of proof. The applicant has the burden to prove by a preponderance of the evidence that his application meets the definition of a variance in Virginia Code § 15.2-2201 and the criteria in subsection (i).

Comment: This is a new standard in Virginia Code § 15.2-2309(2).

i. Criteria to establish the right to a variance. The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:

1. Good faith acquisition and hardship not self-inflicted. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

2. No substantial detriment. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

3. Condition of situation not general or recurring. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

4. Use variance prohibited. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.

5. Special use permit or special exception not available. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

Comment: These are new criteria for granting a variance under Virginia Code § 15.2-2309(2).

j. Factors not to be considered. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

Comment: This is an existing requirement in Virginia Code § 15.2-2309(5).

k. Time for decision. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

Comment: This is an existing requirement in Virginia Code § 15.2-2312. The second sentence is based on a decision of the Virginia Supreme Court.

l. Action by the board; vote required to grant variance. The concurring vote of three (3) members of the board is required to grant a variance.

Comment: This is an existing standard in Virginia Code § 15.2-2312.

m. Conditions on variance. In granting a variance, the board may impose conditions, as follows:

1. Nature of conditions. The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.
2. Guarantee or bond to ensure compliance. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
3. Conditions deemed to be essential and nonseverable. Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.

Comment: Subsections (k)(1) and (2) are existing requirements in Virginia Code § 15.2-2309(2); subsection (m)(3) is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

n. Effect of granting variance; expansion of structure. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

Comment: These are existing requirements in Virginia Code § 15.2-2309(2).

o. Withdrawal of application. An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. Request to withdraw by applicant. An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

p. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

Comment: This is an existing standard in Virginia Code § 15.2-2310.

q. *Judicial review.* Any action contesting a decision of the Board under this section shall be as provided in Virginia Code § 15.2-2314.

Comment: This is an existing requirement in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

~~34.5 Procedure~~

~~Appeals and applications for variances shall be filed with the zoning administrator, together with a fee as set forth in section 35.0. (Amended 5-5-82)~~

~~The board of zoning appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof pursuant to section 15.2-2204 of the Code, as well as due notice to the parties in interest and decide the same within sixty (60) days. In exercising its powers, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. The concurring vote of three (3) 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 it is required to pass under the ordinance or to effect any variance from this ordinance.~~

Comment: This section is repealed because its subject matter is replaced by the procedures in Sections 34.3 et seq. for each different type of matter considered by the BZA.

~~34.6 Decision of board of zoning appeals~~

~~Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer, or any officer, department, board or bureau of the county, may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board of zoning appeals, which petition shall proceed in accordance with section 15.2-2314 of the Code.~~

Comment: This section is repealed because its subject matter is replaced by the provisions in sections 18-34.3 *et seq.* for each different type of matter considered by the BZA.

Sec. 34.5 Special use permits.

Comment: Section 34.5 is new to provide a procedure for special use permits considered by the BZA.

An application for a special use permit authorized by sections 4.15.5 and 4.15.5A shall be considered by the board of zoning appeals as follows:

a. Who may file an application. An application may be filed by any owner, tenant, government official, department, board or bureau. (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance, and identifies those who have standing to file an application.

b. Application. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. Factors to be considered for acting on the application. Information pertaining to the factors to be considered for a special use permit in subsection (i).

2. Payment of delinquent taxes. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

c. Filing the application; number of copies. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

d. Determining completeness of the application; rejecting incomplete applications. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. Timing of determination of completeness. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
2. Procedure if application is incomplete. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
3. Effect if timely determination not made. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
4. Resubmittal of application originally determined to be incomplete. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

- e. Payment of fees. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

- f. Transmittal of information. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

Comment: This is an existing requirement in Virginia Code § 15.2-2310.

- g. Procedural requirements prior to the hearing. The following procedures apply prior to the board's hearing on the application:

1. Scheduling the hearing on the application. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

Comment: This is an existing requirement in Virginia Code § 15.2-2312.

2. Notice of the hearing. The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

Comment: These are existing requirements in Virginia Code § 15.2-2312. The County's practice of providing posted notice, as provided in the last sentence, is in addition to the notice required by state law.

3. Sharing information produced by county staff. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

Comment: These requirements are authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

- h. Procedural requirements at the hearing. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

Comment: This is a new requirement in Virginia Code § 15.2-2308.

- i. Factors to consider when acting. The board shall reasonably consider the following factors when it is reviewing and acting on a special use permit:
 1. No substantial detriment. The proposed special use will not be a substantial detriment to adjacent lots.
 2. Character of district unchanged. The character of the district will not be changed by the proposed special use.
 3. Harmony. The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in sections 4 and 5, as applicable, and with the public health, safety, and welfare.
 4. Consistency with comprehensive plan. The proposed special use will be consistent with the comprehensive plan.

Comment: These are the criteria for granting a special use permit in Section 33.8 of the zoning ordinance.

- j. Factors not to be considered. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

Comment: This is an existing requirement in Virginia Code § 15.2-2309(5).

- k. Time for decision. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

Comment: This is an existing requirement in Virginia Code § 15.2-2312. The second sentence is based on a decision of the Virginia Supreme Court.

1. *Action by the board; vote required to grant special use permit.* The concurring vote of three (3) members of the board is required to grant a special use permit.

Comment: This is an existing standard in Virginia Code § 15.2-2312.

m. *Conditions.* In granting a special use permit, the board may impose conditions, as follows:

1. *Nature of conditions.* The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit.
2. *Guarantee or bond to ensure compliance.* The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
3. *Conditions deemed to be essential and nonseverable.* Except as the board may specify in a particular case, any condition imposed on a special use permit shall be deemed to be essential and nonseverable from the permit itself and any condition determined to be invalid, void or unlawful shall invalidate the permit.

Comment: Subsections (m)(1) and (2) are existing provisions in Virginia Code § 15.2-2309(6); subsection (m)(3) is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

n. *Revocation of permit.* The board may revoke a special use permit that it previously granted if it determines, after a hearing, that there has not been compliance with the terms or conditions of the permit. The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail.

Comment: This is an existing standard in Virginia Code § 15.2-2309(7).

o. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.
2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period

expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

p. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

Comment: This is an existing standard in Virginia Code § 15.2-2310.

q. *Judicial review.* Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

Comment: This is an existing requirement in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Sec. 34.6 Interpreting a district map

Comment: Section 34.6 is new to provide a procedure for applications to interpret a district map by the BZA.

An application to interpret a district map shall be considered by the board of zoning appeals as follows:

a. *Who may file an application.* An application may be filed by any owner, tenant, government official, department, board or bureau. (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance, and identifies those who have standing to file an application.

b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Factors to be considered for an application.* Information pertaining to the factors to be considered for interpreting a district map in subsection (i).

2. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute

a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

c. Filing the application; number of copies. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

d. Determining completeness of the application; rejecting incomplete applications. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. Timing of determination of completeness. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. Procedure if application is incomplete. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. Effect if timely determination not made. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. Resubmittal of application originally determined to be incomplete. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

e. Payment of fees. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

f. Transmittal of information. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board.

Comment: This subsection is required by Virginia Code § 15.2-2310. Note that unlike the procedures for variances and special exceptions, the information is not transmitted to the planning commission and it is not a potential party to the proceeding.

g. Procedural requirements prior to the hearing. The following procedures apply prior to the board's hearing on the application:

1. Scheduling the hearing on the application. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

Comment: This is an existing requirement in Virginia Code § 15.2-2312.

2. Notice of the hearing. The board shall give notice of the hearing to the owners of the lots that are affected by the question and as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

Comment: These are existing requirements in Virginia Code §§ 15.2-2309(4) and 15.2-2312. The County's practice of providing posted notice, as provided in the last sentence, is in addition to the notice required by state law.

3. Contact by parties with board members. The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

Comment: These are new requirements in new Virginia Code § 15.2-2308.1(A) and (C).

4. Sharing information produced by county staff. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

Comment: These are new requirements in new Virginia Code § 15.2-2308.1(B).

h. Procedural requirements at the hearing. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

Comment: This is a new requirement in Virginia Code § 15.2-2308.

i. Factors to consider when acting. The board shall reasonably consider the following factors when it is reviewing and acting on an application to interpret at district map:

1. Uncertainty in district boundary. Whether there is any uncertainty as to the location of a district boundary, provided that the board shall not have the power to change substantially the locations of district boundaries that are established by ordinance.

Comment: This is an existing requirement in Virginia Code § 15.2-2309(4).

2. Intent and purpose of section or district. The board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question.

Comment: This is an existing requirement in Virginia Code § 15.2-2309(4).

- j. Factors not to be considered. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

Comment: This is an existing requirement in Virginia Code § 15.2-2309(5).

- k. Time for decision. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

Comment: This is an existing requirement in Virginia Code § 15.2-2312. The second sentence is based on a decision of the Virginia Supreme Court.

- l. Action by the board; vote required to grant special use permit. The concurring vote of three (3) members of the board is required to change a district boundary.

Comment: This is an existing standard in Virginia Code § 15.2-2312.

- m. Withdrawal of application. An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. Request to withdraw by applicant. An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

2. When application deemed withdrawn. An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one

additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

n. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

Comment: This subsection is authorized under Virginia Code § 15.2-2286 as part of the administration of the zoning ordinance.

o. *Judicial review.* Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

Comment: This is an existing requirement in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Section 34A

Architectural Review Board (Added 10-3-90)

Sec. 34A.1 Architectural review board: appointment and organization

Comment: This section is reorganized and certain provisions pertaining to retaining records and keeping minutes are deleted because those provisions are covered by state law.

~~There is hereby created a~~An architectural review board (the “board”) is hereby established, consisting of five (5) members, who shall be appointed by the board of supervisors and shall have the powers and duties as set forth herein, subject to the following:

a. *Members and their appointment.* The board shall have five (5) members. Each member shall be appointed by the board of supervisors.

b. *Eligibility.* ~~All five (5) members~~ Each member shall be a qualified residents of Albemarle County and shall have a demonstrated interest, competence or knowledge in architecture, ~~and/or~~ site design, or both.

c. *Term.* Members shall be appointed for terms of four (4) years and shall serve at the pleasure of the board of supervisors. Initial appointments shall be for two (2) members for four (4) years and three (3) members for two (2) years.

~~The architectural review board may, from time to time, adopt such rules and regulations consistent with the ordinances of the county and the laws of the Commonwealth as it may deem necessary to carry out the duties imposed by this ordinance. The meetings of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine.~~

- d. Organization. The board shall ~~choose annually its own~~ elect at its annual meeting a chairman, who shall preside over all meetings, and a vice-chairman, who shall act in the absence of the chairman. ~~The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. All records of official actions shall become part of the permanent records of the board. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.~~
- e. Quorum. A quorum shall be a majority of all the members of the board.
- f. Resources; obtaining services. Within the limits of funds appropriated by the board of supervisors, ~~the architectural review board~~ may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as ~~the architectural review board~~ it may deem necessary ~~for transaction of~~ to transact its business. ~~The architectural review board shall have the authority to~~ may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county ~~within the scope of his or its respective competence.~~
- g. Compensation. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.2 Powers and duties of the architectural review board

Comment: This section is reorganized.

The architectural review board (the “board”) shall have the following powers and duties:

- a. ~~The architectural review board shall administer the provisions of section 30.6, entrance corridor overlay district EC, in accordance with duties as set forth in such district; and shall promulgate appropriate design standards for such districts for ratification by the board of supervisors;~~
- b. ~~The architectural review board may, from time to time, recommend areas for designation as EC overlay districts;~~
- e. ~~The architectural review board shall be advisory to the commission, board of supervisors and board of zoning appeals in rezonings, special use permits, site development plans, subdivisions, variances and other matters within EC overlay districts.~~
- a. Meet and conduct business. Regularly meet to conduct its business as provided in section 34A.1 and this section.
- b. Review initial site plans. Review initial site plans and provide requirements and recommendations as provided in section 32.4.2.2(b).
- c. Review and act on certificates of appropriateness. Review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the entrance corridor street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.
- d. Promulgate design guidelines. Promulgate design guidelines as provided in section 34A.3.

- e. Provide recommendations and act as advisor. Recommend areas to be included in the entrance corridor overlay districts and streets to be designated as entrance corridor streets, and act as an advisor to the commission, the board of supervisors and the board of zoning appeals on any applications for approval under this chapter or chapter 14.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.3 Design guidelines

Comment: This section is added to better describe the process for developing design guidelines.

The architectural review board (the “board”) shall promulgate design guidelines it determines to be appropriate for one or more entrance corridors:

- a. Review and act on certificates of appropriateness. The board shall review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the EC street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.
- b. Promulgation. The board shall promulgate design guidelines by an affirmative vote to approve the guidelines.
- c. Notice of promulgation. Before the board acts on any design guidelines, notice that design guidelines are being considered for approval shall be advertised as provided in Virginia Code § 15.2-2204.
- d. Ratification. After the board has promulgated the design guidelines, it shall forward them to the board of supervisors for ratification. The board of supervisors may ratify the design guidelines in whole or in part. If the board of supervisors decides to ratify the design guidelines, it shall do so by an affirmative vote to confirm the architectural review board’s approval. Any design guidelines not ratified by the board of supervisors shall be returned to the architectural review board for reconsideration, modification or other action.
- e. Effect of ratification. Any design guideline shall become effective only after it has been ratified by the board of supervisors.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Section 36

Violations

Sec. 36.2 Enforcement

The zoning administrator is authorized to enforce this chapter as follows:

- a. *Investigation.* Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.
- b. *Inspection warrants and search warrants.* The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the

inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.

- c. *Subpoenas duces tecum (court order to produce records)*. Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).
- d. *Notice of violation; exception*. If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing, ~~and/or~~ or both, if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(a).
1. *Contents of notice*. The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within the applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; (iv) the applicable appeal fee; (v) a reference to where additional information may be obtained regarding filing an appeal; and (iv) the time within which the violation shall be abated.

Comment: The added language clarifies and addresses the new informational requirement under Virginia Code § 15.2-2311.

2. *Delivery of notice*. The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.
- e. *Remedies*. In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

(§36.2, 12-10-80; §36.3, 12-10-80; § 36.4, 12-10-80; Ord. 09-18(3), 7-1-09)

State law reference – Va. Code § 15.2-2204, 15.2-2286(A)(4), 15.2-2311.

Sec. 36.3 Civil penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in

the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

- a. *Procedure.* Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.
- b. *Minimum elements of a civil summons or ticket.* A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
- c. *Amount of civil penalty.* Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.
- d. *Maximum aggregate civil penalty.* The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.
- e. *Each day a separate offense; single offense in 10-day period; stay.* Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
- f. *Option to prepay civil penalty and waive trial.* Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- g. *Civil penalties are in lieu of criminal penalties.* A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.
- h. *Violations excluded.* Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term “land development” means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 of Albemarle County Code or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project’s compliance with this chapter; or

(ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

i. Assessment of civil penalties during appeal period. No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided under section 34.3(b).

Comment: Subsection (i) is required by Virginia Code § 15.2-2311(A).

(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)

State law reference – Va. Code §§ 15.2-2209, 15.2-2311.

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be by in an action by the board of supervisors seeking injunctive injunction or other appropriate relief.

Comment: Although Virginia Code § 15.2-2208 is silent as to who brings an action for injunctive relief, Virginia Code § 15.2-2209 refers to the action under section 15.2-2208 being brought by the governing body.

(§ 37.3; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2208.

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of ____ to ____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Ms. Dittmar	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Sheffield	_____	_____