

ORDINANCE NO. 16-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, 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 IV, Procedure, is hereby amended and reordained as follows:

By Amending:

Sec. 33.5 Uniform procedures for special exceptions
Sec. 34.4 Variances

By Amending and Renaming:

Sec. 33.4 Uniform procedures for ~~owner-initiated~~ zoning map amendments not initiated by the county and special use permits

Chapter 18. Zoning

Article IV. Procedure

Sec. 33.4 Uniform procedures for ~~owner-initiated~~ zoning map amendments not initiated by the county and special use permits

Each application for an ~~owner-initiated~~ zoning map amendment that is not initiated by the county or a special use permit, except for those delegated by this chapter to the board of zoning appeals under section 4.15.5, shall be subject to the following:

- a. *Pre-application meeting.* A pre-application meeting shall be held with each prospective applicant (the “applicant”), and the applicant shall complete and submit information on county-provided forms before submitting an application (collectively, the “pre-application meeting”), subject to the following:
 1. *Purposes for a meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the county a common understanding of the proposed project; (ii) inform the applicant about the proposed project’s consistency with the comprehensive plan, other relevant policies, and county regulations; (iii) broadly identify the planning, zoning and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the director to identify the information the applicant must submit with the application, including the supplemental information delineated in subsection (c). Receiving the relevant supplemental information will allow the application to be comprehensively and efficiently reviewed.
 2. *Factors to consider in requiring meeting.* A pre-application meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations he determines to be relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in

subsection (c) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.

- b. *Applications.* Each application shall be composed of a completed county-provided application form and supplemental information (collectively, the “application”) required to review and act on the application.

1. *Who may file an application.* An application for a zoning map amendment or a special use permit may be filed by the owner, the contract purchaser with the owner’s consent, or the owner’s agent for the purpose of the zoning map amendment or the special use permit. An application for a special use permit also may be filed by the easement holder of an easement where the special use for which the permit is sought is a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.

12. *Application forms.* The director of planning is authorized to establish appropriate application forms for zoning map amendments and special use permits. The application form shall delineate the supplemental information required to be provided, as set forth in subsection (b)(23).

23. *When supplemental information may be required; establish or amend conventional districts; amend planned development districts; obtain or amend special use permits.* For each application for a zoning map amendment to establish or amend a conventional district, to amend a planned development district, and for each application to obtain or amend a special use permit, the director of planning may require some or all of the supplemental information delineated in subsection (c) to be submitted with each application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed district, and other considerations he determines to be relevant under sound zoning principles.

34. *When supplemental information required; establish planned development districts.* Each application to establish a planned development district shall submit all of the supplemental information delineated in subsection (c).

- c. *Elements of the supplemental information.* The supplemental information is the following:

1. *Project proposal.* A narrative of the project proposal, including its public need or benefit; an application to establish a neighborhood model district shall include a statement describing how the proposed district satisfies the intent of this chapter and if one or more characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.
2. *Comprehensive plan.* A narrative of the proposed project’s consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area; an application to establish a neighborhood model district also shall include a narrative as to the project’s consistency with the neighborhood model.

3. *Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.
4. *Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.
5. *Proposed proffers to address impacts.* A narrative of the proffers proposed to address impacts from the proposed project.
6. *Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions; if the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply.
7. *Conceptual plan for zoning map amendments for conventional districts and special use permits.* For an application for a zoning map amendment to establish a conventional district or a special use permit, a conceptual plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; and (ix) conceptual grading.
8. *Application plan for zoning map amendments for planned development districts.* For an application to establish a planned development district or to amend an approved application plan for an existing planned development district, an application plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; (ix) conceptual grading; (x) a use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features; (xi) topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes; (xii) the general layout for water and sewer systems; (xiii) the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas; (xiv) standards of development including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district; (xv) a conceptual lot layout; and (xvi) if the application is to establish a neighborhood model

district, the location of proposed green spaces and amenities as provided in section 20A.9.

9. *Code of development in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a code of development satisfying the requirements of section 20A.5.
 10. *Parking and loading needs study in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8, and transportation demand management strategies as provided in section 4.12.12; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
 11. *Stormwater management in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities.
 12. *Traffic impact statement.* For zoning map amendments, a local traffic impact statement as required by Virginia Code § 15.2-2222.1 and 24 VAC 30-155-40.
 13. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.
 14. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application, the proffer statement, if applicable, and all other related documents.
 15. *Contact person.* The name, address, telephone number and e-mail address of a single contact person for communications between the county and the applicant.
 16. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the county on the pre-application comment form.
- d. *Payment of delinquent taxes.* The applicant shall provide 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; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a special use permit is an easement holder.
- e. *Filing the application; number of copies.* ~~The owner, the owner's agent, or a contract purchaser with the owner's written consent (the "applicant") may file the application~~ shall be filed with the

department of community development. The director of planning is authorized to establish for each class of application the number of collated copies of the application required to be filed.

- f. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information 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 director of planning shall determine whether an application is complete within ten (10) days after the application was received.
 2. *Procedure if application is incomplete.* The director of planning 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 director of planning does not send or deliver the notice as provided in subsection (f)(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 director may reject the application as provided herein if the applicant fails to timely provide the omitted information.
 4. *Notice to other owners of application for zoning map amendment to amend existing proffers.* Within ten (10) days after an application for a zoning map amendment seeking to amend existing proffers is determined to be complete, written notice of the proposed amendment shall be provided to each owner subject to the same proffers as required by Virginia Code §§ 15.2-2204(H) and 15.2-2302.
 5. *Notice to owner of application for special use permit filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special use permit filed by an easement holder is determined to be complete, written notice of the proposed special use permit shall be provided to each owner of the lot for which the special use permit is sought as required by Virginia Code § 15.2-2204(H).
- g. *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.
- h. *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 director of planning as provided in subsection (f)(2), the applicant may resubmit the application with all of the information required by subsections (b) and (c) for a new determination of completeness under subsection (f).
- i. *Worksessions.* For any application, the director of planning may schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, as he determines to be appropriate considering the nature of the approval requested, the acreage affected, the possible impacts that could result from an approved application, and any other factors deemed relevant upon applying sound zoning principles, subject to the following:

1. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the board or the commission with the department of community development's analysis of the major issues, seek direction from the board or commission on their expectations in addressing those issues, and to allow the board or commission to receive public comments.
 2. *When applicant's consent required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- j. *Community meetings.* A community meeting shall be held for each application, subject to the following:
1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.
 2. *Factors to consider in requiring meeting.* A community meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting under this subsection unnecessary.
 3. *Guidelines.* The director of planning is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process community meetings should be conducted, and how a community meeting should be conducted including, but not limited to, how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.
 4. *When applicant's consent required.* The applicant's consent to a community meeting shall be required if the community meeting would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- k. *Review of staff comments.* Upon request by the applicant, the director of planning shall meet with the applicant to review comments to the application made by county staff.
1. *Public hearings.* Before the board of supervisors acts on a zoning map amendment or a special use permit, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- m. *Notice of public hearings.* Notice of public hearings shall be provided as follows:

1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C); and, for zoning map amendments seeking to amend an existing planned development district, written notice of the proposed amendment also shall be provided to the owner of each parcel within the planned development district and the substance of that notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application shall be posted, as follows:
 - a. *When sign must be posted.* The sign shall be posted by the zoning administrator at least twenty-one (21) days before the commission's public hearing on the application and shall remain posted until the board of supervisors has acted on the application or the application has been withdrawn.
 - b. *Where sign to be located.* The sign shall be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and shall be so placed as to be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application shall be deemed to grant consent to the zoning administrator to enter the parcel(s) to erect the signs.
 - c. *Content of sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
 - d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the commission or the board of supervisors to defer action on an application until there is reasonable compliance with this subsection.
 - e. *Ownership of sign; violation for removing or tampering with sign.* Each sign is the property of the board of supervisors. It shall be unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the zoning administrator.
 - f. *Effect of failure to comply.* If the requirements of this subsection to post notice are not complied with:

1. *Prior to action by board.* The board of supervisors may defer taking action on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
 2. *Action not invalid.* No action on an application shall be declared invalid solely because of the failure to post notice as required by this subsection.
- n. *Time for decision.* Each application shall be acted on as follows:
1. *By the planning commission.* An application shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval unless the applicant requests or consents to the ninety (90) day period being extended.
 2. *By the board of supervisors.* An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
 3. *Tolling.* The period in which action is required by the commission or the board of supervisors shall be tolled during any period in which the applicant has requested that the review of the application be suspended or the public hearings or action thereon be deferred or continued.
 4. *Referral.* The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board of supervisors is within twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
- o. *Recommendation by commission.* The commission shall either recommend approval of the application as proposed, approval subject to changes being made prior to action by the board of supervisors, or disapproval. For any application for a zoning map amendment, the commission's recommendation also should include its recommendations on proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of development, the code of development, and any special exception requested by the applicant under section 8.2. For any application for a special use permit, the commission's recommendation should include its recommendations on the proposed conditions.
- p. *Action by the board of supervisors.* The board of supervisors may either approve or deny the application, or defer action to allow changes to be made prior to final action by the board. In approving an application for a zoning map amendment, the board may accept the proposed proffers as provided in section 33.7. In approving an application for a special use permit, the board may impose conditions as provided in section 33.8.

- q. *Intensification of use classification prohibited without additional notice and hearing.* No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- r. *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 body considering the application 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 commission or the board of supervisors. 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 body considering the application 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 commission or the board of supervisors 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 director of planning before the one (1) year period expires, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, 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 clerk of the board of supervisors before the extension of the deferral period granted by the director expires, the board of supervisors may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the proposed use, 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.
- s. *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.
- t. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

((§ 33.2, 12-10-80) (§ 33.4, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.5, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.6, 12-10-80) (§ 33.7, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8, 12-10-80, 6-19-96) (§ 33.8.1, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8.2, 12-10-80, 6-19-96) (§ 33.8.3, 12-10-80, 6-19-96); §33.4, Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(3), (4), (5), (7), (B).

Sec. 33.5 Uniform procedures for special exceptions

Each application for a special exception shall be subject to the following:

- a. *Matters requiring a special exception.* Notwithstanding any other section of this chapter:
1. Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board of supervisors, provided that no special exception shall be required for the development and construction of residential dwellings at the use, height and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.
 2. Any requirement for a decision by the commission required by this chapter shall be considered and acted upon by the board of supervisors. For the purposes of this section, a decision by the commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any variation or exception provided in section 32.
- b. *Application.* Each application for a special exception shall be made as provided by, and include the information required by, the applicable section of this chapter authorizing the waiver, modification, variation or substitution.
1. *Who may file an application.* An application for a special exception may be filed by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the special exception, or by the easement holder of an easement where the waiver, modification, or variation for which the special exception is sought pertains to a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.
 2. *When application deemed officially submitted.* An application shall be deemed to be officially submitted when the applicant has submitted all of the required information as determined by the director of planning.
- c. *Public hearings.* Before the board of supervisors acts on a special exception that would increase by greater than fifty (50) percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- d. *Notice to owner of application for special exception filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special exception filed by an easement holder is determined to be complete, written notice of the proposed special exception shall be provided to the owner of the lot for which the special exception is sought as required by Virginia Code § 15.2-2204(H).
- de. *Notice of public hearings.* Notice of public hearing before the commission and the board of supervisors on an application for which a public hearing is required under subsection (c) shall be provided as required by Virginia Code § 15.2-2204(C).
- ef. *Time for decision.* Each application for a special exception shall be acted on by the board of supervisors within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.

- ~~fg.~~ *Recommendation by planning commission.* For those applications considered by the commission, the commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the board of supervisors, or disapproval. The commission's recommendation should include its recommendations on the proposed conditions.
- ~~gh.~~ *Action by the board of supervisors.* The board of supervisors may either approve the application, deny the application, or defer action to allow changes to be made prior to final action by the board. In approving the application, the board may impose conditions as provided in section 33.9.
- ~~hi.~~ *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

(§ 33.5, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 31.8, Ord. 12-18(1), 2-8-12)

State law reference – Va. Code § 15.2-2286(A)(3), 15.2-2288.1.

Sec. 34.4 Variances

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, the easement holder of an easement where the use for which the variance is sought is a use allowed by the deed of easement or equivalent instrument, 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.~~ The zoning administrator is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.
- b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The application may pertain to one or more lots owned or occupied by the applicant. 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; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a variance is an easement holder.
- 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.

- 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.
 5. *Notice to owner of application for variance filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a variance filed by an easement holder is determined to be complete, written notice of the proposed variance shall be provided to the owner of the lot for which the variance is sought as required by Virginia Code § 15.2-2204(H).
- 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.
- 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.
- 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).
 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).
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.
 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.
- 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.
 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).
- i. *Criteria to establish basis to grant 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

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

(§ 34.4, 12-10-80; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 15-18(5), 7-8-15)

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.

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. Dill | _____ | _____ |
| Ms. Mallek | _____ | _____ |
| Ms. McKeel | _____ | _____ |
| Ms. Palmer | _____ | _____ |
| Mr. Randolph | _____ | _____ |
| Mr. Sheffield | _____ | _____ |