

Chapter 23

Site Plans

23-100 Introduction

A *site plan* is a proposal for a development, including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the locality's ordinance. *Virginia Code § 15.2-2201*. In plain language, a site plan is a schematic drawing showing how one or more parcels will be developed, *i.e.*, where the buildings, parking lots, roads and other improvements will be located. Although site plans typically are required to be submitted and approved in accordance with a locality's zoning regulations, site plan regulations are a hybrid of both zoning and subdivision regulations. For example, site plan regulations are supposed to include the mandatory provisions of a subdivision ordinance found in Virginia Code § 15.2-2241 and may include the optional provisions in Virginia Code §§ 15.2-2242 through 15.2-2245. *Virginia Code § 15.2-2246* (note that these sections include Virginia Code §§ 15.2-2244 and 15.2-2244.1, pertaining to family subdivisions which do not translate to being applied to site plans). Likewise, site plans are subject to the submittal and approval requirements applicable to subdivision plats found in Virginia Code §§ 15.2-2258 through 15.2-2261. *Virginia Code § 15.2-2258*.

Subdivision Statutes Applicable to Site Plans

Virginia Code § 15.2-2241: Mandatory provisions of a subdivision ordinance
Virginia Code § 15.2-2242: Optional provisions of a subdivision ordinance
Virginia Code § 15.2-2243: Payment by subdivider of the pro rata share of the cost of certain facilities
Virginia Code § 15.2-2245: Provisions for periodic partial and final release of certain performance guarantees
Virginia Code § 15.2-2258: Plat of proposed subdivision and site plans to be submitted for approval
Virginia Code § 15.2-2259: Local planning commission to act on proposed plat
Virginia Code § 15.2-2260: Localities may provide for submission of preliminary subdivision plats; how long valid
Virginia Code § 15.2-2261: Recorded plats or final site plans to be valid for not less than five years

This chapter reviews the general procedures for the submittal, review, approval and technical requirements for site plans under Albemarle County's site plan regulations, and other general issues pertaining to site plans.

23-200 The scope of the authority to regulate the development of land under a site plan

Virginia Code § 15.2-2286(A)(8) authorizes a locality to require the submission of *plans of development* before building permits are issued "to assure compliance with regulations contained in [the zoning ordinance]." This provision enables a locality to require site plans at the beginning of most development projects where a subdivision plat is not required. In Albemarle County, Albemarle County Code § 18-32.1 states that the purpose of the county's site plan regulations is "to encourage innovative and creative design and facilitate use of the most advantageous techniques and highest standards in the development of land; and to ensure that land is used in a manner which is efficient, harmonious with neighboring property and in accordance with the comprehensive plan and with the provisions of this chapter."

For commercial and industrial uses, a site plan is required for all new development when there is a change in use. *Albemarle County Code § 18-32.2.1*. For residential uses, a site plan is required whenever the development involves three or more single-family dwelling units on the same lot. *Albemarle County Code § 18-32.2.1(a)*.

The following types of development are expressly excepted from the requirement that a site plan be obtained: (1) two-family dwellings on a lot not occupied by any other dwellings; (2) structures accessory to a single-family detached or two-family dwelling; (3) any agricultural activity except as otherwise provided in

Albemarle County Code § 18-5; and (4) any change in or expansion of a use, provided that the change or expansion does not require additional parking, no additional ingress or egress or alteration of existing ingress or egress is recommended by VDOT because of intensification of use, and no additional ingress/egress or alteration of existing ingress or egress is proposed. *Albemarle County Code § 18-32.2.1(b) through (e)*.

The substantive requirements of a locality’s site plan regulations are based in the enabling authority found in Virginia Code §§ 15.2-2241 through 15.2-2245, applicable to subdivisions, but also made applicable to site plans by Virginia Code § 15.2-2246. These requirements are set out in sections 22-310, 22-320 and 22-350.

23-300 Procedure under Albemarle County’s site plan regulations

Localities variously assign action on a site plan review to the locality’s planning staff or zoning administrator, to the planning commission or to the governing body itself. *1991 Va. Op. Atty. Gen. 68*. In Albemarle County, this function is delegated to the zoning administrator, who acts as the agent for the board of supervisors on site plans, and the planning commission under specific circumstances. *Albemarle County Code §§ 18-32.3.2, 18-32.4.2, 18-32.4.3*.

Although the state enabling legislation provides some criteria which must be satisfied before a site plan can be approved, it does not provide an exhaustive list of what is to be considered before approval or disapproval. *See, Dorn v. Fairfax County Board of Supervisors, 28 Va. Cir. 133 (1992)*.

The approval of a site plan is a ministerial act and, once the developer has complied with all existing ordinances, the function of approval becomes ministerial, and the plan must be approved. *Board of County Supervisors of Prince William County v. Hylton Enterprises, Inc., 216 Va. 582 (1976)* (pertaining to a subdivision plat); *Planning Commission of City of Falls Church v. Berman, 211 Va. 774 (1971)*; *see section 8-300 for a discussion of the ministerial nature of site plans*. One circuit court has said that a zoning ordinance may give the agent or the commission the authority to make its approval of a final site plan subject to reasonable conditions. *Schalk v. Planning Commission of City of Winchester, 1987 Va. Cir. LEXIS 319 (1987)* (holding that condition was not arbitrary and capricious even though the applicant opposed the condition and the public works director was of the opinion that it was not necessary; the members of the commission could properly consider their own personal knowledge they may have gained concerning a particular site and its environs and could give consideration to matters within the personal knowledge of its members in arriving at a decision). However, given the ministerial nature of site plans, *Schalk* may be an anomaly because those conditions cannot extend beyond requiring the developer to comply with some applicable requirement in the zoning ordinance.

23-310 The key steps to action on a preliminary site plan in Albemarle County

Following are a table and outline of the key steps and events in having a preliminary site plan acted on by Albemarle County.

Nine Key Steps to Action on a Preliminary Site Plan	
1.	Preliminary conference.
2.	Submittal of preliminary site plan and determination of completeness.
3.	Notice by agent to abutting landowners and members of the board of supervisors and the planning commission.
4.	Review of preliminary site plan by site review committee.
5.	Site review committee forwards requirements and recommendations to the agent.
6.	Developer makes revisions to the preliminary site plan, if necessary.
7.	Consideration of preliminary site plan by the agent or the planning commission.
8.	Action on preliminary site plan by the agent or the planning commission.
9.	If preliminary site plan disapproved, developer may appeal decision to the circuit court or the board of supervisors.

- **Preliminary conference:** Before a preliminary site plan is submitted, the developer and county staff have an informal meeting and discussion. The developer may present a preliminary schematic master plan providing basic information about the property, such as its boundary lines, existing land conditions and

topography, and a general layout design of the proposed project. The preliminary schematic serves as a guide, and is not binding on either the developer or the County. *Albemarle County Code § 18-32.4.1.*

- Preliminary site plan submittal and determination of completeness: A preliminary site plan may be submitted on those dates determined by the agent. A preliminary site plan is deemed to be *officially submitted* on the date of the next application deadline following its submittal. *Albemarle County Code § 18-32.4.2.1.* This date is used for computing the period in which the county is required to approve or disapprove the preliminary site plan. Within ten days of the date the preliminary site plan is officially submitted, the agent must determine whether it contains the information required by Albemarle County Code § 18-32.5, and if it is incomplete, she denies the preliminary site plan. *Albemarle County Code § 18-32.4.2.1.* The developer may correct deficiencies in the preliminary site plan and request that its review be reinstated. *Albemarle County Code § 18-32.4.2.1.* The determination as to whether a site plan submittal is complete may require the exercise of discretion and not be purely ministerial. *Umstadd v. Centex Homes*, 274 Va. 541 (2007) (subdivision plat; mandamus is not a proper remedy to compel a locality to accept a preliminary plat as complete because the determination as to whether the submittal was complete required the official to investigate the submitted plat, the conditions existing on the subject land and the surrounding area, and the exercise of discretion and judgment in applying the applicable statutes, ordinances and regulations to the conditions found to exist (such as whether any waivers would be required)).
- Agent provides notice to abutting landowners and members of the board of supervisors and the planning commission: At least five days before the site review committee meets to consider a preliminary site plan, the agent must provide notice that a preliminary site plan has been submitted to each abutting landowner and to members of the board of supervisors and the planning commission. *Albemarle County Code § 18-32.4.2.5(a).* The notice must describe the proposed use and the location of the development, inform the recipients when the site review committee will meet, and advise the recipients of their right to request the planning commission to consider the site plan. *Albemarle County Code § 18-32.4.2.5(a).*
- Site review committee reviews preliminary site plan: If the preliminary site plan is complete, the agent transmits the plan to the site review committee. *Albemarle County Code § 18-32.2.2.* The site review committee is composed of members of the county's department of community development, the county's department of fire rescue, and other federal, state and local agencies and authorities. *Albemarle County Code § 18-32.3.3.* The site review committee reviews the preliminary site plan for technical compliance with the zoning ordinance. *Albemarle County Code § 18-32.2.2.*
- Site review committee forwards requirements and recommendations to agent: After review of the preliminary site plan, the site review committee forwards its requirements and recommendations to the agent. *Albemarle County Code § 18-32.2.2.* *Requirements* are regulations of the zoning ordinance and the laws of the agencies and authorities represented on the site review committee. *Albemarle County Code § 18-32.2.2.* *Recommendations* are suggestions for design change, deemed to be in the public interest. *Albemarle County Code § 18-32.2.2.*
- Developer makes revisions to preliminary site plan: The developer then must revise the preliminary site plan to include all of the requirements identified by the site review committee, and may revise the preliminary site plan to include some or all of the recommendations identified by the site review committee. *Albemarle County Code § 18-32.2.3.* If the developer does not make the revisions required by the site review committee, the agent denies the preliminary site plan. *Albemarle County Code § 18-32.2.4.*
- Consideration of preliminary site plan by the agent or the planning commission: In taking action on a preliminary site plan, the agent considers the recommendations of the site review committee, information provided by the developer and other evidence deemed necessary. *Albemarle County Code § 18-32.4.2.6*; *see, Virginia Code § 15.2-2260(D)* (requiring action within not more than 90 days). If

the planning commission has been asked to review and act on the preliminary site plan, the agent must make her recommendation on the plan, based on the same evidence described above. *Albemarle County Code § 18-32.4.2.6*. In taking action on a preliminary site plan, the planning commission considers not only the agent’s recommendation, but also the recommendations and information the agent must consider. *Albemarle County Code § 18-32.4.2.6*. The *other evidence* that the planning commission will consider includes information received from citizens at a public meeting.

- Action by the agent or the planning commission: Within 60 days after the application was officially submitted, the agent or the planning commission must either approve or disapprove the preliminary site plan. *Albemarle County Code § 18-32.4.2.6*. If a state agency is required to review the preliminary site plan, the period in which to take action may be up to 90 days. *Virginia Code § 15.2-2260*; *Albemarle County Code § 18-32.4.2.6*. Localities with a population greater than 90,000 based on the 2000 United States Census must act on a preliminary site plan for the development of commercial or industrial uses according to an alternative timeline (not applicable to Albemarle County, whose 2000 population was about 84,000). *Virginia Code § 15.2-2260(C)*. If the site plan is not timely acted upon, the developer may petition the circuit court for an order, which may include directing approval of the site plan. *Virginia Code § 15.2-2260(D)*. See section 23-500 regarding the procedure for disapproving a site plan.
- If preliminary site plan disapproved, appeal by the developer to the circuit court or to the board of supervisors: A developer may request judicial review of a decision of the agent or the planning commission by the circuit court (*see section 23-500*). Before doing so, however, the developer may appeal the decision of the agent or the commission to the board of supervisors. *Albemarle County Code § 18-32.4.2.7*. The appeal must be submitted in writing in the office of the agent within ten calendar days after the date of the decision. The board may affirm, reverse or modify in whole or in part, the decision of the agent or the commission. In so doing, the board must give due consideration to the recommendation of the site review committee, the recommendation or decision of the agent, the decision of the commission, and such other evidence as it deems necessary for a proper review of the application. *Albemarle County Code § 18-32.4.2.7*.
- Period of validity of preliminary site plan: A preliminary site plan is valid for a period of five years, provided the developer: (1) submits a final site plan for all or a portion of the property within one year of the approval (or a longer period provided in the zoning ordinance); and (2) thereafter diligently pursues approval of the final site plan. *Virginia Code § 15.2-2260(F)*. After three years have passed since the preliminary site plan was approved, and upon 90 days’ written notice to the developer, the agent or the commission may revoke the approval of the preliminary site plan upon a finding that the developer has not diligently pursued approval of the final site plan. *Virginia Code § 15.2-2260(F)*. If the preliminary site plan expires, a final site plan may not be submitted based on the expired preliminary site plan, no vested rights may accrue and, as a result, the proposed development will be subject to the regulations in effect at the time the new preliminary site plan is approved.

23-320 The key steps to action on a final site plan in Albemarle County

Following are a table and an outline of the key steps and events in having a final site plan approved by Albemarle County.

Six Key Steps to Action on a Final Site Plan	
1.	Final site plan submitted within one year of approval of preliminary site plan and determination of completeness.
2.	Review of final site plan by site review committee.
3.	Site review committee recommends action on the final site plan.
4.	Consideration of final site plan by the agent or the planning commission.
5.	Action on final site plan by the agent or the planning commission.
6.	If final site plan disapproved, developer may appeal decision to the circuit court or the board of supervisors.

- Timely submittal of final site plan: The final site plan must be submitted within one year of the approval of the preliminary site plan. *Albemarle County Code § 18-32.4.3.1*. If the final site plan is not timely submitted, the approval of the preliminary site plan expires. *Albemarle County Code § 18-32.4.3.1*.
- Prerequisites to approval: The developer must show that the conditions of approval for the preliminary site plan have been satisfied, and that tentative approvals have been obtained from all of the entities represented on the site review committee. *Albemarle County Code § 18-32.4.3.1*.
- Agent determines completeness: The agent reviews the final site plan to determine whether it contains the information required by Albemarle County Code § 18-32.6, and if it is incomplete, the agent disapproves the final site plan. *Albemarle County Code § 18-32.4.3.3*. The developer may correct deficiencies in the final site plan and request that its review be reinstated. *Albemarle County Code § 18-32.4.3*.
- Site review committee reviews final site plan: If the final site plan is complete, the agent transmits it to the site review committee. *Albemarle County Code § 18-34.2.2*. If the final site plan is eligible to be approved by the agent, the site review committee reviews the plan and recommends its approval to the agent if it determines that the final site plan complies with the technical requirements of the zoning ordinance and that the conditions of the preliminary site plan approval have been satisfied. *Albemarle County Code § 18-32.4.3.4*. If the final site plan is subject to approval by the planning commission, the site review committee reviews the plan and makes its recommendations to the agent. *Albemarle County Code § 18-32.4.3.5*.
- Consideration of final site plan by the agent or the planning commission: The final site plan is reviewed under the regulations in effect when the preliminary site plan was approved, provided that the requirements for submittal are satisfied. *Albemarle County Code § 18-32.4.3.1*. The agent and the commission are obligated to “thoroughly review the [site plan] and . . . make a good faith effort to identify all deficiencies, if any, with the initial submission.” *Virginia Code § 15.2-2259(A)*. When reviewing a final site plan, the agent considers the recommendation of the site review committee. The final site plan is reviewed by the planning commission if: (1) the final site plan is substantially changed from the preliminary site plan approved by the commission; (2) the commission requested review of the final site plan when it approved the preliminary site plan; or (3) the developer requests review by the commission. *Albemarle County Code § 18-32.4.3.6*. If none of these circumstances apply, then the final site plan is reviewed by the agent. A third party has no right to request commission review of a final site plan. When reviewing a final site plan, the planning commission considers the recommendations and comments of the agent and the site review committee, the developer’s response to the recommendations and comments of the agent and the site review committee, as well as any other evidence pertaining to the plan’s compliance with the technical requirements of the zoning ordinance. *Albemarle County Code § 18-32.4.3.6*. If the final site plan is reviewed by the planning commission, the procedure for review is similar to that for a preliminary site plan, including providing notice to abutting landowners. *Albemarle County Code § 18-32.4.3.5*.
- Action by the agent or the planning commission: Within the periods discussed in section 23-310 for preliminary site plans, the agent or the planning commission must either approve or disapprove the final site plan. When the agent or the commission is satisfied that the final site plan complies with the technical requirements of the zoning ordinance and all of the conditions of preliminary site plan approval, the agent signs the master drawing required under Albemarle County Code § 18-32.6.4. *Albemarle County Code § 18-32.4.3.7*. If the site plan is not timely acted upon, the developer may petition the circuit court for an order, which may include directing approval of the site plan. *Virginia Code § 15.2-2259(B)*. See section 23-500 regarding the procedure for disapproving a site plan.
- Appeal by developer to the circuit court or the board of supervisors: A developer may request judicial review of a decision of the agent or the planning commission to the circuit court (*see sections 23-500*

and 22-700). Before doing so, however, the developer may appeal the decision of the agent or the commission to the board of supervisors. *Albemarle County Code § 18-32.4.3.9*. The procedures and the scope of review are the same as for appeals of preliminary site plans discussed in section 23-310.

- **Period of validity of final site plan:** A final site plan is valid for five years after its date of approval or a longer period as the agent or the planning commission may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. *Virginia Code § 15.2-2261(A)*; *Albemarle County Code § 18-32.4.3.8*. While the final site plan is valid, the right of the developer to commence and complete the development approved on the plan is unaffected by later zoning map and zoning text amendments, or amendments to any other county resolution, rule, regulation, policy or plan adopted after the date the site plan was approved. *Virginia Code § 15.2-2261(C)*. This rule does not apply if the amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare. *Virginia Code § 15.2-2261(C)*. If the final site plan expires, no vested rights may accrue and, as a result, the proposed development will be subject to the regulations in effect at the time the new preliminary site plan is approved.

23-400 Key design elements addressed in a site plan under Albemarle County's site plan regulations

As noted in section 23-100, one of the purposes of a site plan is to assure an appropriate development design. The following is a summary of the key design elements addressed in a site plan under Albemarle County's site plan regulations:

- **Safe and convenient access:** Each development must have safe and convenient ingress from and egress to one or more public roads. *Albemarle County Code § 18-32.7.2*. The design must reduce or prevent congestion, minimize conflicts and friction with traffic both on the public roads and on site, minimize conflicts with pedestrians, and provide continuous and unobstructed access for emergency vehicles. *Albemarle County Code § 18-32.7.2*. Additional design features that may be required include secondary emergency access, travel lanes connecting adjoining parcels, on-site parking and circulation, and sidewalks and pedestrian walkways. *Albemarle County Code §§ 18-32.7.2.4 through 18-32.7.2.8*. A safe and convenient access analysis does not include consideration of whether the existing roads serving the proposed development are adequate to handle the increased traffic. *See section 25-400 for a discussion of the authority of a locality to require road improvements as a condition of site plan approval.*
- **Streets and roads:** The principal access to a development having multiple uses or multiple dwelling units must be designed to conform to VDOT standards. *Albemarle County Code § 18-32.7.3*. If the access will be a private road, it must conform to the applicable standards for private roads in the subdivision ordinance, whether or not the property is proposed to be subdivided. *Albemarle County Code § 18-32.7.3*.
- **Erosion and sediment control; stormwater management:** The developer must provide for the disposition of surface water run-off from the site, including installing on-site and off-site drainage facilities and drainage easements as the commission or the agent, upon recommendation of the county engineer, may deem adequate. *Albemarle County Code § 18-32.7.4*. Erosion and sediment control and stormwater management must be addressed as provided in the water protection ordinance (*Albemarle County Code, Chapter 17*).
- **Water, sewer and other utilities:** The developer must provide all utilities, both on-site and off-site. *Albemarle County Code § 18-32.7.5*. If the development is within the service areas of the Albemarle County Service Authority and public water and/or sewerage service is reasonably available, it must be extended by the developer to the development. *Albemarle County Code § 18-32.7.5.1*. The developer may be required to provide utility easements through the development to allow the utilities to be extended to other properties. *Albemarle County Code § 18-32.7.5*. If the development will be served by

a central water or sewer system, those systems must be approved by the board of supervisors. *Albemarle County Code § 18-32.7.5.3*. If the development will be served by an individual well or septic system, those systems must be approved by the Virginia Department of Health. *Albemarle County Code § 18-32.7.5.3*.

- **Fire protection:** If public water is reasonably available, the developer must install fire hydrants and associated water distribution systems. *Albemarle County Code § 18-32.7.6*. If public water is not reasonably available, the division of fire rescue may require alternative provisions deemed reasonably necessary to provide adequate fire protection. *Albemarle County Code § 18-32.7.6*.
- **Landscaping and screening:** A landscape plan is required with all site plans. *Albemarle County Code § 18-32.7.9.1*. The purposes for a landscape plan include: (1) insuring that the development is consistent with the goals of the comprehensive plan related to natural resources and environmental and land use guidelines; (2) conserving energy by providing shade and wind breaks; (3) providing pervious area to reduce run-off and to recharge groundwater; (4) improving air quality; (5) minimizing noise, dust and glare; (6) promoting traffic safety by controlling views and defining circulation patterns; and (7) protecting and preserving the appearance, character and value of the neighboring properties. *Albemarle County Code § 18-32.7.9*. A landscape plan may include, when required, installing street trees (*Albemarle County Code § 18-32.7.9.6*); installing parking lot landscaping (*Albemarle County Code § 18-32.7.9.7*); screening the development from adjoining properties (*Albemarle County Code § 18-32.7.9.8*); and preserving part of the tree canopy (*Albemarle County Code § 18-32.7.9.9*).

23-500 Disapproval of a site plan and appeal to the circuit court

If a preliminary or final site plan is disapproved, the specific reasons for disapproval must be provided, either in a separate document or on the site plan itself. *Virginia Code §§ 15.2-2259(A) (final), 15.2-2260(C) (preliminary)*. The reasons for disapproval must identify the deficiencies in the site plan that caused the disapproval by reference to specific ordinances, regulations or policies, and also must generally identify modifications or corrections that will permit approval of the site plan. *Virginia Code §§ 15.2-2259(A) (final), 15.2-2260(C) (preliminary)*. The decision-maker is required to make a good faith effort to identify all deficiencies, if any, in the final plat. *Virginia Code § 15.2-2259(A)*.

Because Virginia Code §§ 15.2-2259 and 15.2-2260 apply to both subdivision plats and site plans, see section 22-700 for a discussion of the requirements and rights attached to the disapproval of a site plan (substitute *developer* for *subdivider* and *site plan* for *plat* where appropriate).

23-600 Judicial challenges to the approval or disapproval of a site plan

There are at least four possible scenarios when a decision to approve or disapprove a site plan may be challenged in court. Because Virginia Code §§ 15.2-2259 and 15.2-2260 apply to both subdivision plats and site plans, see section 22-800 for a discussion of judicial challenges (substitute *developer* for *subdivider* and *site plan* for *plat* where appropriate).