

ALBEMARLE COUNTY CODE

CHAPTER 18

ZONING

SECTION 2

APPLICATION OF REGULATIONS

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2.1 APPLICATION OF DISTRICT REGULATIONS

The regulations set by this ordinance within each district shall be minimum or maximum limitations as appropriate to the case and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

2.1.1 USE, OCCUPANCY AND CONSTRUCTION

Each use, building and structure, whether primary or accessory, shall hereafter be established only in compliance with all applicable regulations of the zoning district upon which the particular use, building or structure is located, except for nonconforming uses and structures as provided in this chapter. (Amended 10-9-02)

2.1.2 HEIGHT, BULK, DENSITY, LOT COVERAGE, YARDS AND OPEN SPACES

No building or other structure shall hereafter be erected or altered:

- a. To exceed the height or bulk;
- b. To accommodate or house a greater number of buildings, families or to have greater floor area;
- c. To occupy a greater percentage of lot area;
- d. To have narrower or smaller rear yards, front yards, side yards or other open areas than herein required; or in any other manner contrary to the provisions of this ordinance.

2.1.3 REQUIRED YARD, OPEN SPACE; AREA, PARKING OR LOADING SPACE FOR ONE STRUCTURE, OR USE, NOT TO BE USED TO MEET REQUIREMENTS FOR ANOTHER

No part of a yard, or other open space, area, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance shall be included as part of a yard, open space, area or off-street parking or loading space similarly required for any other building.

2.1.4 REDUCTION OF LOTS BELOW MINIMUM PROHIBITED

The size, frontage and width of any lot of record existing on the effective date of this chapter shall not be reduced below the minimum requirements of the zoning district in which the lot is located and section 4 of this chapter except as the result of the dedication of land to public use or the exercise of eminent domain by a public entity. Any lot created after the effective date of this chapter shall satisfy at least the minimum requirements of this chapter, except for lots created for use by a public entity to the extent that the public use may be justifiable under the powers of eminent domain. (Amended 9-9-92, 12-2-09)

2.1.5 REDUCTION OF YARDS BELOW MINIMUM

No yard existing at the time of passage of this ordinance shall be reduced in dimension below the minimum requirements set forth herein, unless such yard requirements reduce the buildable area to unreasonable dimensions. In such cases, the board of zoning appeals shall determine the minimum requirements consistent with provision of adequate light and air, prevention of loss of life, health, or property from fire or other dangers, and prevention of danger in travel. Yards created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance. This provision shall not apply to reduction of yard dimension as may result from dedication to or exercise of eminent domain by a public agency. (Amended 9-9-92)

2.1.6 REDUCTION OF REQUIRED OFF-STREET PARKING OR LOADING SPACE

No existing off-street parking or loading space, and no off-street parking or loading space hereafter provided, which meets all or part of the requirements for off-street parking or loading space set forth in these regulations, shall be reduced or eliminated so that resulting reduction results in area not meeting requirements or standards contained herein. Reductions may be permitted where spaces are no longer required by these regulations or alternative spaces meeting the requirements of these regulations are provided.

2.1.7 CREATION AND USE OF SPECIAL LOTS

A special lot shall not be subject to the requirements of this chapter for the creation of a lot including, but not limited to, the building site requirements in section 4.2.1, the frontage and lot width requirements in section 4.6.1, the area and bulk regulations of the zoning district in which the special lot is located and, for special lots in the Rural Areas zoning district, the requirement in section 10.3 that each lot less than twenty-one (21) acres in size have a development right. A special lot shall be subject to the requirements of this chapter pertaining to the use of the special lot and the location of a building, structure, and improvements on a special lot. (Added 6-1-11)

2.2 CLUSTER DEVELOPMENT

2.2.1 DENSITY

Unless precluded by other applicable regulations, the maximum number of lots within a cluster development shall be determined by multiplying the number of acres in the parcel by the permitted density within the applicable zoning district.

2.2.2 MINIMUM NUMBER OF LOTS

Cluster developments shall consist of at least three (3) lots for dwelling units, except that the commission may permit a lesser number of such lots if they form a logical extension and/or addition to an existing cluster development.

2.2.3 MINIMUM OPEN SPACE REQUIRED

Except as otherwise provided in the PRD and PUD districts, a minimum of twenty-five (25) percent of the total land area of the cluster development shall be in common open space, subject to section 4.7, regulations governing open space. (Amended 7-17-85)

2.3 REGULATIONS CONFLICTING WITH OTHER LOCAL OR STATE OR FEDERAL LAWS

Whenever provisions within this chapter conflict with any local, state or federal statute or regulation with respect to requirements or standards, the most severe or stringent requirement or standard shall prevail.

For purposes of this section, any proffer heretofore accepted by the board of supervisors in accordance with Virginia Code §§ 15.2-2296 *et seq.*, shall be continued in effect and shall be construed to be a "local regulation" until amended or varied by the board of supervisors in accordance with law, regardless of the repeal of any previous zoning ordinance. (Amended 7-11-07)

2.4 INTENT OF BONUS FACTOR PROVISIONS

The provision of bonus factors is intended to encourage development which reflects the goals and objectives of the comprehensive plan. To this end, bonus factors are based on development standards as recommended by the comprehensive plan.

2.4.1 APPLICATION OF BONUS FACTORS

Bonus factors shall be applied to the gross density-standard level in accordance with the regulations of the applicable district, except that the resulting density shall not exceed the recommended density shown in the comprehensive plan.

Unless otherwise specifically provided, bonus factors shall not be permitted for any improvement or design feature required by this ordinance, Chapter 14 of the Code of Albemarle, or any other applicable law or regulation. Where permitted, bonus factors shall be applied in toto only. (Amended 8-14-85)

2.4.2 PROCEDURES--GENERALLY

Bonus factors may be applied at the time of subdivision or site development plan approval, whichever is applicable. The applicant shall submit preliminary plats or site development plans which shall be of sufficient detail to permit preliminary determination of probable bonus factors by the staff.

Following the approval of a plan or plat which utilizes a bonus provision, such density increase shall be designated on the official zoning map with an appropriate symbol for reference purposes. (Amended 8-14-85)

2.5 PROCEDURES FOR ADMINISTRATIVE WAIVERS

Applications for administrative waivers submitted pursuant to sections 4.2.5, 21.7, 26.10 and 32.2 shall be processed as follows:

- a. *Application.* A developer or subdivider requesting a waiver shall file a written request with the department of community development stating the reason for the waiver and explaining why the request satisfies one or more of the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2.

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- b. *Notice to board, commission and abutting owners.* When an application for an administrative waiver is submitted, the agent shall send notice by first class mail, electronic mail (“e-mail”) or by personal de-livery to each member of the board of supervisors, the commission and to the owner of each lot abutting the lot for which the waiver is sought. The notice shall describe the proposed waiver, the name, address, email address and telephone number of the agent, the location where any documents submitted with the waiver request may be viewed, and the date by which the agent will act on the request. The notice also shall advise each recipient of the right to request review of the waiver request by the commission and the date by which the review must be requested. The notice shall be mailed, sent or hand delivered at least five (5) days prior to the date by which the agent will act on the waiver request. Notice that is mailed to the owner of each lot abutting the lot for which the waiver is sought shall be mailed to the last known address of the owner. Mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. If a lot abutting the lot for which the waiver is sought is owned by the same owner, the notice shall be given to the owner of the next abutting property not owned by that owner. The failure of any person to receive the notice required by this subsection shall not affect the validity of a waiver, if granted.
- c. *Request for commission review.* An abutting owner or a member of the board of supervisors or the commission may request commission review of a waiver. Any request shall be in writing, shall state the reasons that commission review is requested, and shall be received by the agent by the date stated in the notice. A written request may be submitted either by regular mail, by email, or by hand delivery.
- d. *Procedure if commission review requested.* If review of a waiver by the commission is timely requested, the commission shall review and act on the waiver request within thirty (30) days of the date of the request for review. In its review and action on the waiver, the commission shall apply the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2. In granting a waiver, the commission may impose such conditions deemed necessary to protect the public health, safety, or welfare.
- e. *Appeals.* The denial of a waiver, or the approval of a waiver with conditions objectionable to the developer or subdivider, may be appealed from the agent or the commission to the commission or the board, as the case may be, as an appeal of a denial of the plat, as provided in section 14-226 of the Code, or the site plan, as provided in sections 32.4.2.7 or 32.4.3.9, to which the waiver pertains. A waiver considered by the commission in conjunction with an application for a special use permit shall be subject to review by the board of supervisors. In considering a waiver on appeal, the commission or the board may grant or deny the waiver based upon the applicable standards and findings in sections 4.2.5, 21.7, 26.10 or 32.2, amend any condition imposed by the agent or the commission, and impose any conditions deemed necessary to protect the public health, safety, or welfare.
- f. *Waivers include modifications.* For the purposes of this section 2.5, the term “waiver” or any form thereof, includes the term “modification” as used in this chapter.

(Ord. 09-18(1), 1-14-09)