

ALBEMARLE COUNTY CODE

CHAPTER 18

ZONING

SECTION 30

OVERLAY DISTRICTS

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30.1 OVERLAY DISTRICTS, GENERALLY

30.1.1 INTENT

Overlay districts hereby created and hereafter established shall be for the purpose of imposing special regulations in certain areas which are intended to accomplish the stated purpose of the particular overlay district and furthermore, intended to promote the general health, safety and welfare of the citizenry and to promote the goals and objectives of the comprehensive plan. Regulations, requirements and limitations of overlay districts shall be in addition to, or supersede, as the case may be, those of the underlying district.

(§ 30.1.1, 12-10-80)

30.1.2 APPLICATION

Overlay districts and amendments thereof shall be established in accordance with the provisions of section 33 of this chapter.

(§ 30.1.2, 12-10-80; Ord. 12-18(7), 12-5-12, effective 4-1-13)

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

30.2 AIRPORT IMPACT AREA OVERLAY DISTRICT - AIA

30.2.1 INTENT

The airport impact area (“AIA”) overlay district is created in recognition of: airport related hazards which may endanger lives and property; obstructions which effectively reduce air space required for take-off/ landing and maneuvering of aircraft, thereby reducing the utility of the Charlottesville-Albemarle Airport and the public investment therein; and noise from aircraft operations which may adversely affect the health of persons and the peaceful use and enjoyment of property. It is the intent of this overlay district to minimize the creation of physical, visual and other obstructions to the safe operations of the airport facility and to minimize adverse air port-related impact on persons and properties in the vicinity. The AIA overlay district shall consist of the airport protection area, runway protection zone (“RPZ”) and the AIA noise impact area.

(§ 30.2.1, 12-10-80; Ord. 05-18(6), 6-8-05)

30.2.2 APPLICATION

The AIA overlay district is hereby created and designated generally on the zoning map and specifically on the Airport Airspace Drawing-Part 77, as amended, and on the Existing Noise Contours Map (2003), of the Charlottesville/Albemarle Airport Master Plan, as amended (“Airport Airspace Drawing-Part 77” and “Existing Noise Contours Map (2003)”, respectively). Copies of these documents shall be available in the office of the zoning administrator.

(§ 30.2.2, 12-10-80; Ord. 05-18(6), 6-8-05)

30.2.3 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of this section 30.2:

(1) AIA noise impact area. The term “AIA noise impact area” means all land within the 65 DNL contour as delineated on the Existing Noise Contours Map (2003). (Amended 6-8-05)

(2) *Airport protection area*. The term “airport protection area” means the imaginary conical, horizontal, transitional and approach surfaces as delineated and/or described on the Airport Airspace Drawing-Part 77. (Amended 6-8-05)

(3) *Primary surface*. The term “primary surface” means a surface longitudinally centered on a runway. The primary surface for Runway 3-21 extends two hundred (200) feet beyond each end and is one thousand (1,000) feet wide. The elevation of the primary surface is the same as the elevation of the nearest point on the runway centerline. (Amended 6-8-05)

(4) *Runway protection zone*. The term “runway protection zone” means an area at ground level underlying a portion of the FAR Part 77 imaginary runway approach surface and extending to a point on the ground where the elevation of the approach surface reaches fifty (50) feet above the runway end elevation. The runway protection zone is trapezoidal in shape and centered about the extended runway centerline, with dimensions for a particular runway end defined by the type of aircraft and approach visibility minimum associated with that runway end. The runway protection zone typically begins two hundred (200) feet beyond the end of the runway area usable for takeoff and landing, and extends from the ends of the primary surface. At the Charlottesville-Albemarle Airport, the dimensions of the runway protection zone for Runway 3 are one thousand (1,000) feet (inner width), one thousand seven hundred fifty (1,750) feet (outer width) and two thousand five hundred (2,500) feet (length); the dimensions of the runway protection zone for Runway 21 are one thousand (1,000) feet (inner width), one thousand five hundred ten (1,510) feet (outer width) and one thousand seven hundred (1,700) feet (length). (Added 6-8-05)

(5) *Safety area*. The term “safety area” means the airport primary surface and the runway protection zone at each end of the runway as shown on the Airport Lay-Out Plan.(Amended 6-8-05)

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(12-10-80; Ord. 05-18(6), 6-8-05)

30.2.4 PERMITTED USES

Within the AIA overlay district, uses shall be permitted in accordance with the regulations and requirements of the underlying district except as hereafter expressly provided.

(§ 30.2.4, 12-10-80)

30.2.4.1 PENETRATION PROHIBITED

No building, structure, object of natural growth, or use shall be permitted which shall penetrate the airport protection area. Penetration shall include but shall not be limited to any use or activity which would cause the intrusion into any of the imaginary zones of light, glare, smoke, particles, projectiles, radiation or electrical interference. In determination of potential penetration, the zoning administrator shall consult with the Federal Aviation Administration, the Virginia Department of Aviation and the Charlottesville-Albemarle Airport Board.

(§ 30.2.4.1, 12-10-80)

30.2.4.2 PERMITTED USES WITHIN SAFETY AREA

No uses except agricultural and open space type uses not involving concentrations of people shall be permitted in the safety area. A prominent disclosure statement to this effect shall be required upon any plans or plats approved by any Albemarle County official and on all land transfers within the subdistrict.

The regulations prescribed by this ordinance shall not be construed to require the removal, lowering or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this ordinance and is diligently prosecuted.

The foregoing notwithstanding, the owner of any existing nonconforming structure or tree is hereby required to permit the installation operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Charlottesville-Albemarle Airport Board to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated and maintained at the expense of the Charlottesville-Albemarle Airport Board. Such owner is hereby further required to permit the trimming of any trees which presently conform to these regulations in such a manner as to prevent such trees from not conforming to these regulations in the future.

(§ 30.2.4.2, 12-10-80)

30.2.5 NOISE PERFORMANCE STANDARDS

Any building or structure intended for human occupancy or use proposed to be located within the noise impact area shall be designed and constructed in accordance with the acoustical performance standards in section 30.2.5.1. Building plan conformance to these requirements shall be certified by the Albemarle County building official prior to initiation of construction activities. "As-built" conformance to these requirements shall be certified by the building official prior to the issuance of any certificate of occupancy.

Plats or plans of lands within the noise impact area approved by any Albemarle County official shall prominently display a disclosure statement that such plat or plan includes land and/or buildings within the AIA noise impact area.

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30.2.5.1 ACCOUSTICAL PERFORMANCE STANDARDS

<u>Land Use Category</u>	<u>Maximum Interior Noise Levels [dB(a)]</u>
Residential	Ldn ≤ 45
Public and quasi-public use:	
School	Ldn ≤ 45
Library	Ldn ≤ 45
Church	Ldn ≤ 45
Hospital	Ldn ≤ 45
Auditorium, concert hall, etc.	Ldn ≤ 45
Parks and recreation, sports arena	Ldn ≤ 70
Office	Ldn ≤ 55
Commercial	
Retail	Ldn ≤ 55
Movie theatre	Ldn ≤ 55
Hotel, motel	Ldn ≤ 55
Distribution, industry	Ldn ≤ 70
Manufacturing and assembly industry	Ldn ≤ 70

30.2.6 CLUSTER DEVELOPMENT, BONUS FACTORS

No cluster development or bonus level provisions or regulations will be permitted unless the commission shall determine that such development will reduce or be equivalent to hazard and/or noise impacts anticipated under standard level-conventional development of the underlying zoning district.

30.3 FLOOD HAZARD OVERLAY DISTRICT - FH

30.3.1 PURPOSE AND INTENT

Under the authority of Virginia Code § 15.2-2280, the purposes and intent of section 30.3 are to:

- A. *Prevention of harm.* Prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base.
- B. *Means used.* In order to prevent the several harms described in subsection (A), section 30.3 establishes an overlay zoning district to: (i) regulate uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies; (ii) restrict or prohibit certain uses, activities, and development from locating within areas subject to flooding; (iii) require all of those uses, activities, and developments that do occur in areas subject to flooding to be protected or flood-proofed, or both, against flooding and flood damage; and (iv) protect individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
- C. *Flood insurance.* Address a local need for flood insurance and to participate in the National Flood Insurance Program.

(§ 30.3.01, 12-10-80; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.1, Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR §§ 59.22(a)(1), (a)(2).

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30.3.2 FLOOD INSURANCE RATE MAP AND FLOOD INSURANCE STUDY

The flood hazard overlay district shall be composed of all areas of the county within the special flood hazard areas delineated on the Flood Insurance Rate Map for Albemarle County, Virginia and Incorporated Areas and the Independent City of Charlottesville, most recently amended effective on and after May 16, 2016 (the “Flood Insurance Rate Map”), and the Flood Insurance Study for Albemarle County and Incorporated Areas and the Independent City of Charlottesville prepared by the Federal Emergency Management Agency, most recently amended effective on and after May 16, 2016 (the “Flood Insurance Study”), and includes all subsequent revisions and amendments to the Flood Insurance Rate Map and Flood Insurance Study.

The Flood Insurance Rate Map and the Flood Insurance Study are incorporated herein by reference. The Flood Insurance Rate Map, including all of the special flood hazard area zones designated thereon, is hereby adopted as the zoning map of the flood hazard overlay district.

(§ 30.3.02.1 (part), 12-10-80; 6-10-87; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.2, Ord. 14-18(1), 3-5-14; Ord. 16-18(5), 5-4-16, effective 5-16-16)

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR § 60.2(h).

30.3.3 APPLICABILITY

Section 30.3 applies as follows:

- A. *Territory.* Section 30.3 shall apply to all privately and publicly owned lands within the county that are identified as being within a special flood hazard area according to the Flood Insurance Rate Map provided to the county by the Federal Emergency Management Agency.
- B. *Relationship to other regulations.* The regulations in section 30.3 supersede any less restrictive conflicting ordinances and regulations.
- C. *New uses and development.* On and after April 2, 2014, no land shall be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of section 30.3, this chapter, and any other applicable ordinances and regulations which apply to uses within the county.
- D. *Pre-existing uses and development.* Any use or development lawfully existing on April 2, 2014 shall be nonconforming to the extent that it is not in compliance with section 30.3.
- E. *Presumptions.* Any, use, structure or other development lawfully established after April 2, 2014 without a floodplain development permit, elevation certificate, or any other certification or documentation (collectively, the “documentation”) required for development within the flood hazard overlay district is presumed to be a violation of this chapter until the documentation is provided to the floodplain administrator and determined to satisfy the requirements of the district.

(§ 30.3.3; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR § 60.1(b).

30.3.4 DISCLAIMER

The degree of flood protection sought by the provisions in section 30.3 is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total

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flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. Therefore:

- A. *Flooding and flood damage may occur outside of flood hazard overlay district.* Section 30.3 does not imply that lands or uses outside of the flood hazard overlay district will be free from flooding or flood damage.
- B. *Disclaimer.* Section 30.3 is not a waiver of sovereign immunity or any statutory immunities and shall not create liability on the part of the county or any of its officers or employees for any flood damage resulting from reliance on this section or any decision or determination lawfully made under this chapter.

(§ 30.3.08, 12-10-80; § 30.3.4; Ord. 14-18(1), 3-5-14)

30.3.5 DEFINITIONS.

The following definitions shall apply in the interpretation and implementation of section 30.3:

Accessory structure: An accessory structure, as defined in section 3.1, having a footprint that does not exceed two hundred (200) square feet.

Base flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year, and also referred to as the “one hundred year flood.”

Base flood elevation: The water surface elevation of the base flood in relation to the datum specified on the county’s Flood Insurance Rate Map or the elevation determined pursuant to section 30.3.13(C).

Basement: Any area of a building having its floor sub-grade (below ground level) on all sides.

Conditional Letter of Map Revision (CLOMR): A formal review and comment by the Federal Emergency Management Agency as to whether a proposed flood protection project or other project complies with the minimum National Flood Insurance Program requirements for such projects with respect to the delineation of special flood hazard areas, but which does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

Development: Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building: A building without a basement built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

Encroachment: The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing manufactured home park or subdivision: Any manufactured home park or subdivision lawfully approved and recorded before the effective date of the Flood Insurance Rate Map or before January 1, 1975 for Flood Insurance Rate Maps effective before that date.

Existing structure: Any structure for which the “start of construction” commenced before the effective date of the Flood Insurance Rate Map or before January 1, 1975 for Flood Insurance Rate Maps effective before that date.

Flood or flooding: Either (i) a general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters, the unusual and rapid accumulation or runoff of surface waters from any source; or mudflows which are proximately caused by flooding from unusual and rapid accumulation or runoff of surface waters from any source, and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; or (ii) the collapse or subsidence of land along the shore of a lake or other

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body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding from the overflow of inland waters.

Flood Insurance Rate Map (FIRM): A map of the county on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable within the county.

Flood Insurance Study (FIS): A report by the Federal Emergency Management Agency that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain: Any land area susceptible to being inundated by water from any source.

Flood proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodplain impact plan. A plan prepared by a professional engineer or other professional of demonstrated qualifications, and submitted to the floodplain administrator in sufficient detail as provided in the Design Standards Manual to allow him to conduct a complete review of the impacts to the floodplain that may be caused by an encroachment, wherein the plan is composed of hydrologic and hydraulic analyses performed in accordance with standard engineering practices and demonstrating that a proposed encroachment will not result in an increase in water surface elevation or a change in boundaries of the base flood above that allowed in the particular zone within the county during the occurrence of the base flood discharge, and studies, analyses, computations, and the plan preparer's certification that the technical methods used correctly reflect currently-accepted technical concepts.

Floodway, regulatory: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway fringe: The portion of the floodplain subject to a one (1) percent or greater chance of flooding in any given year that lies between the regulatory floodway and the outer limits of the special flood hazard area depicted on the Flood Insurance Rate Map.

Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management, for the primary purpose of compensating for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed, all of which, in turn, may allow flood insurance premiums to be reduced below that which they might otherwise be.

Freeboard elevation. The base flood elevation plus one (1) foot.

Habitable space. An enclosed area having more than twenty (20) linear feet of finished walls composed of, but not limited to, drywall, paneling, lath and plaster, or used for any purpose other than solely for parking of vehicles, building access, or storage.

Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: Any structure that is: (i) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (ii) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a

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registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (iii) individually listed on a Secretary of the Interior-approved State inventory of historic places; or (iv) individually listed on a county inventory of historic places under a county historic preservation program that has been certified by an approved State program as determined by the Secretary of the Interior.

Hydrologic and hydraulic analyses: Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and the Federal Emergency Management Agency, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of Map Change (LOMC): An official Federal Emergency Management Agency determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study in the form of a Letter of Map Amendment, a Letter of Map Revision, or any other similar official Federal Emergency Management Agency determination made by letter.

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a parcel, site or structure was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a particular parcel or site as described by metes and bounds, or a structure, is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and regulatory floodway delineations, and planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A revision based on technical data making the determination that a parcel, site or structure has been elevated by fill, authorized and placed in accordance with section 30.3 and all other requirements of this chapter, above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood.

Lowest floor: The lowest floor of the lowest enclosed area (including basement) of a building, provided that an unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, and further provided that the enclosed area is not built so as to render the building in violation of the applicable non-elevation design requirements of section 30.3.15 and 44 CFR §60.3.

Manufactured home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities and, for floodplain management purposes, includes park trailers, travel trailers, and other similar vehicles placed on a site for longer than one hundred eighty (180) consecutive days, but does not include a recreational vehicle.

Manufactured home park or subdivision: A parcel or site divided into two or more manufactured home lots for rent or sale.

New construction: For floodplain management purposes, new construction means structures for which the start of construction commenced on or after December 16, 1980 and includes any subsequent improvements to such structures.

Post-FIRM structures: A structure for which construction or substantial improvement lawfully occurred on or after December 16, 1980.

Pre-FIRM structures: A structure for which construction or substantial improvement lawfully occurred before December 16, 1980.

Recreational vehicle: A vehicle which is: (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projection; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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Repetitive loss structure: A building covered by a contract for flood insurance that has incurred flood-related damage on two (2) occasions during a ten (10)-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded twenty-five (25) percent of the market value of the building at the time of each flood event.

Shallow flooding area: A special flood hazard area with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident, and where the flooding may be characterized by ponding or sheet flow.

Special flood hazard area: The land in the floodplain subject to a one (1) percent or greater chance of flooding in any given year and which may be designated as Zone A on the Flood Hazard Boundary Map and, after detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map, designated as Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, or AR/A.

Start of construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within one hundred eighty (180) days after the date the permit was issued; provided that: (i) “actual start” means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation; (ii) “permanent construction” does not include land preparation, such as clearing, grading and filling, nor the installation of streets or walkways, or both; nor any excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor the installation on the site of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure; and further provided that, for a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement and includes structures which have incurred substantial damage regardless of the actual repair work performed; provided that the term does not include: (i) any project for improvement of a structure to correct existing violations of state or county health, sanitary, or safety code regulations which have been identified by the zoning administrator, the building official or any other code enforcement officer and which are the minimum necessary to assure safe living conditions; or (ii) any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

Water-dependent facility. Facilities that cannot exist outside of the flood hazard overlay district and must be located on the shoreline because of the intrinsic nature of its operation and which include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

Watercourse: A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically, and includes specifically designated areas in which substantial flood damage may occur.

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Zone A. A special flood hazard area that is subject to inundation by the one (1) percent annual chance flood event (one hundred year flood) where detailed hydraulic analyses have not been performed and no base flood elevations or flood depths are shown.

Zone AE or A1-30. A special flood hazard area that is subject to inundation by the one (1) percent annual chance flood event (one hundred year flood) determined by detailed methods where base flood elevations are shown. Zone AE is the designation replacing Zone A1-30 on new and revised Flood Insurance Rate Maps.

Zone AH. A special flood hazard area that is subject to inundation by one (1) percent annual chance (one hundred year flood) shallow flooding, usually areas of ponding, where average depths are one to three feet and base flood elevations derived from detailed hydraulic analyses are shown.

Zone AO. A special flood hazard area that is subject to inundation by one percent annual chance (one hundred year flood) shallow flooding, usually sheet flow on sloping terrain, where average depths are one to three feet and average flood depths derived from detailed hydraulic analyses are shown.

(§ 30.3.02.1 (part), 12-10-80; 6-10-87; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.5; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR § 59.11.

30.3.6 DESIGNATION OF FLOODPLAIN ADMINISTRATOR; POWERS AND DUTIES

The county engineer is hereby designated the floodplain administrator (the “floodplain administrator”) and shall have any and all powers and duties authorized by law to administer and to enforce section 30.3, including, but not limited to, the following:

- A. *Administration.* Administer section 30.3 which shall include, but not be limited to, performing all applicable duties and responsibilities of the county as provided in 44 CFR § 60.3(a), (b), (c), and (d) relevant to the administration of section 30.3.
- B. *Delegation to qualified employees and authorized public entities.* Delegate any duties and responsibilities set forth in section 30.3: (i) to qualified technical personnel, plan examiners, inspectors, and other employees; and (ii) with the prior consent of the Virginia Department of Conservation and Recreation, to an authorized public entity by written memorandum of understanding or memorandum of agreement; provided that the floodplain administrator and the county shall remain responsible for complying with the requirements of this section and all applicable state and federal laws.
- C. *Implement commitments.* Implement the commitments required to be made by the county under 44 CFR § 59.22(a).
- D. *Recordkeeping.* Maintain and permanently keep records that are necessary for the administration of section 30.3, including: (i) Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and (ii) documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the Flood Insurance Rate Map) to which structures have been flood-proofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- E. *Reporting.* Report information as required by law, including the following:
 - 1. *Periodic report regarding County participation in program.* Submit to the Federal Emergency Management Agency, either annually or biennially as he determines, a report

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concerning the county's participation in the National Flood Insurance Program, including, but not limited to, the county's development and implementation of floodplain regulations, under 44 CFR § 59.22(b).

2. *Report of buildings, development and related permits.* Upon the request of the Federal Emergency Management Agency, complete and submit a report concerning participation in the National Flood Insurance Program, and which may include information regarding the number of buildings in the special flood hazard areas, number of permits issued for development in the special flood hazard areas, and number of variances issued for development in the special flood hazard areas.
 3. *Changes to base flood elevation.* As soon as practicable, but not later than six (6) months after the date information regarding an increase or decrease to the county's base flood elevations resulting from physical changes affecting flooding conditions becomes available, the administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data.
- F. *Signatory on applications for Letters of Map Change.* Sign as the community official on applications for Letters of Map Change to the Federal Emergency Management Agency.
- G. *Enforcement.* In conjunction with the zoning administrator who is authorized by section 31.1 to enforce this chapter, enforce section 30.3, investigate alleged violations, issue notices to comply, notices of violation, or stop work orders, as authorized by law, and require permit holders to take corrective action.

(§ 30.3.6; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR §§ 59.22(b), 60.2(e), 60.3(b)(5), 65.3.

30.3.7 ADMINISTRATION; INTERPRETATION OF FLOOD INSURANCE RATE MAP

The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, including the approximated floodplain, and regulatory floodway boundaries. The following shall apply to the use and interpretation of a Flood Insurance Rate Map and data:

- A. *Where field surveyed topography indicates that adjacent ground elevations above or below base flood elevation.* Where field surveyed topography indicates that adjacent ground elevations are:
1. *Above base flood elevation.* Above the base flood elevation, the area shall be regulated as a special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
 2. *Below base flood elevation.* Below the base flood elevation, even in an area not delineated as a special flood hazard area on a Flood Insurance Rate Map, the area shall be regulated as a special flood hazard area and subject to the requirements of section 30.3.
- B. *Special flood hazard area identified, where base flood elevation and floodway data not identified (approximated floodplain).* In any special flood hazard area where base flood elevation and floodway data have not been identified and the floodplain is approximated, any other flood hazard data available from a federal, state, or other sources shall be reviewed and reasonably used and, for example, the floodplain administrator may use as guidance the Federal Emergency Management Agency publication entitled "Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations."

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- C. *Special flood hazard area not identified.* In any area where a special flood hazard area has not been identified, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- D. *Elevations and boundaries on Flood Insurance Rate Map and in Flood Insurance Study take precedence.* The base flood elevations and regulatory floodway boundaries on a Flood Insurance Rate Map and in a Flood Insurance Study shall take precedence over base flood elevations and regulatory floodway boundaries by any other sources if those sources show reduced regulatory floodway widths, lower base flood elevations, or both.
- E. *Reasonable use of other data sources.* Other sources of data shall be reasonably used if they show increased base flood elevations, larger floodway areas, or both, than are shown on a Flood Insurance Rate Map and in a Flood Insurance Study.
- F. *Preliminary Flood Insurance Rate Map; preliminary Flood Insurance Study.* If a preliminary Flood Insurance Rate Map, Flood Insurance Study, or both has been provided by the Federal Emergency Management Agency:
 - 1. *Prior to the issuance of a Letter of Final Determination.* Prior to the issuance of a Letter of Final Determination by the Federal Emergency Management Agency, the use of preliminary flood hazard data: (i) is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations, regulatory floodway widths, or both, in existing flood hazard data provided by the Federal Emergency Management Agency; (ii) shall be deemed the best available data and used where no base flood elevations, floodway areas, or both, are provided on the effective; and (iii) any such preliminary data may be subject to change, appeal to the Federal Emergency Management Agency, or both.
 - 2. *Upon the issuance of a Letter of Final Determination.* Upon the issuance of a Letter of Final Determination by the Federal Emergency Management Agency, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from the Federal Emergency Management Agency for the purposes of administering section 30.3.

(§ 30.3.02.2, 12-10-80; Ord. 01-18(6), 10-3-01; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.7; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR § 60.3.

30.3.8 ADMINISTRATION; INTERPRETATION OF DISTRICT BOUNDARIES

The zoning administrator, in consultation with the floodplain administrator, is authorized to interpret the boundaries of the flood hazard overlay district, as provided in section 31.1(a), subject to any aggrieved person’s right to appeal any decision, determination or order to the board of zoning appeals as provided in section 34.

(§ 30.3.8; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2286, 15.2-2311.

Federal law reference – 44 CFR § 59.22(b)(1).

30.3.9 ADMINISTRATION; AMENDMENT TO DISTRICT BOUNDARIES

With the prior approval of the Federal Emergency Management Agency, the board of supervisors may amend the boundaries of the flood hazard overlay district in one or more of the following cases: (i) where natural or man-made changes have occurred; (ii) where more detailed studies have been conducted or

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undertaken by the United States Army Corps of Engineers or other qualified agency; or (iii) an individual documents the need for such change.

(§ 30.3.07 (part), 12-10-80; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.9; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2285, 15.2-2286

Federal law reference – 44 CFR § 59.22(b)(1).

30.3.10 ADMINISTRATION; LETTERS OF MAP CHANGE

Letters of Map Change are subject to the following:

A. *Request.* Any owner, developer or subdivider (collectively, the “owner”) shall or may request a Letter of Map Change or a Conditional Letter of Map Change as provided by federal law, and as follows:

1. *Letter of Map Amendment (“LOMA”) or Conditional Letter of Map Amendment (“CLOMA”).* If survey data shows that a parcel, site or structure is or will be above the base flood elevation and the owner wants the parcel, site or structure removed from the special flood hazard area designation, he may request a Letter of Map Amendment from the Federal Emergency Management Agency. The owner also shall provide survey data to the floodplain administrator, which shall be in a form and of a substance that is satisfactory to the floodplain administrator. If the survey data is satisfactory to the floodplain administrator, he shall record the data. An owner may request a Conditional Letter of Map Amendment for an undeveloped parcel.
2. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), optional.* If a new flood study has been conducted showing that the original study was in error or that the new study is based on more accurate or better technical data, an owner may request a Letter of Map Revision or a Conditional Letter of Map Revision from the Federal Emergency Management Agency to change the floodplain or regulatory floodway boundaries or to include new flood data.
3. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), required.* If development, or proposed development, in the floodplain may result in a change to the base flood elevation in any special flood hazard area, encroaches on the regulatory floodway, or would alter or relocate a stream, the owner shall request a Letter of Map Revision or a Conditional Letter of Map Revision from the Federal Emergency Management Agency. If the requested Letter of Map Revision is based on new fill in the floodway fringe where a regulatory floodway is defined, the owner shall request a Letter of Map Revision-fill (“LOMR-F”) or a Conditional Letter of Map Revision – fill (“CLOMR-F”).
4. *Minimal submittal requirements to the floodplain administrator; signature.* The owner shall submit to the floodplain administrator two (2) copies of the proposed application, together with supporting documentation and models, and the applicable fee, for review and approval prior to the floodplain administrator signing the application as the community official. If the owner is required to obtain a special use permit for any proposed development in the flood hazard overlay district, the owner shall first obtain approval of the special use permit and satisfy all applicable conditions of the special use permit before the floodplain administrator signs the application.

B. *Effect of conditional Letter of Map Change.* A Conditional Letter of Map Change informs the owner and others that when the development is completed, and if the owner submits an elevation certificate and as-built drawings certified by a land surveyor or a professional engineer to demonstrate that the development was built as approved in the Conditional Letter of Map of Map

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Change, it will qualify for the particular Letter of Map Change, which must be requested from and issued by the Federal Emergency Management Agency in order for the map to be amended or revised.

C. *Effect of Letter of Map Change on permitting and uses.* A proposed or pending request for a Letter of Map Change affects permitting and uses as follows:

1. *Letter of Map Amendment or Conditional Letter of Map Amendment.* If the owner has or will be requesting a Letter of Map Amendment or a Conditional Letter of Map Amendment as provided in subsection (A)(1), the administrator or any other county official or body may act on any pending application and any authorized use may begin, provided that the owner furnished to the administrator the survey data on which a Letter of Map Amendment or Conditional Letter of Map Amendment is or will be based before the Letter of Map Amendment or Conditional Letter of Map Amendment is issued.
2. *Letter of Map Revision or Conditional Letter of Map Revision, optional.* If the owner has or will be requesting an optional Letter of Map Revision or Conditional Letter of Map Revision as provided in subsection (A)(2), the administrator or any other county official or body may act on any pending application and any authorized use may begin, provided that if the Letter of Map Revision or Conditional Letter of Map Revision, if issued, would reduce any design or construction standard, or change the special flood hazard area designation of the parcel, site or structure from the regulatory floodway to the floodway fringe, any approval may be conditioned on, and no use shall be begin, until the Federal Insurance Administrator issues the Letter of Map Revision or Conditional Letter of Map Revision.
3. *Letter of Map Revision (“LOMR”) or Conditional Letter of Map Revision (CLOMR), required.* If the owner has or will be requesting a required Letter of Map Revision or Conditional Letter of Map Revision as provided in subsection (A)(3), the administrator or any other county official or body shall not act on any pending application and no use shall begin until the Federal Emergency Management Agency issues the Letter of Map Revision and all requirements of 44 CFR § 65.12 are satisfied.

(§ 30.3.07 (part), 12-10-80; Ord. 05-18(1), 1-5-05, effective 2-5-05; § 30.3.10; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2286.

Federal law reference – 44 CFR §§ 59.22(b)(1), 65.3, 65.6.

30.3.11 PERMITTED AND PROHIBITED USES AND STRUCTURES

The uses and structures permitted by right and by special use permit, and the uses and structures expressly prohibited, in the flood hazard overlay district are as follows:

Use or Structure	Regulatory Floodway	Floodway Fringe
Agricultural, Natural Resources, and Recreational Uses and Structures*		
Agricultural uses, limited to field crops, pasture, grazing, livestock, raising poultry, horticulture, viticulture and forestry; provided that no primary or accessory structures are permitted under this classification	BR	BR
Structures accessory to a permitted agricultural use; provided that no accessory structures having habitable space are permitted	N	BR
Recreational uses including, but not limited to, parks, swimming areas, golf courses and driving ranges, picnic areas, wildlife and nature preserves, game farms, fish hatcheries, hunting, fishing and hiking areas, athletic fields, and horse show grounds; provided that no primary or accessory structures are permitted under this classification	BR	BR

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Structures accessory to a permitted recreational use; provided that no accessory structures for human habitation are permitted	N	BR
Sod farming	SP	SP
Topsoil, sand, and gravel removal	SP	SP
Flood and Water Related Uses and Structures*		
Flood warning aids and devices, water monitoring devices, and similar uses	BR	BR
Flood control or environmental restoration projects which: (i) are designed or directed by the county, a soil and water conservation district, or a public agency authorized to carry out flood control or environmental restoration measures; or (ii) are reviewed and approved by the department of community development in accordance with the water protection ordinance	BR	BR
Dams, levees and other structures for flood control or for the public drinking water supply	SP	SP
Engineered structures, including, but not limited to, retaining walls and revetments made of non-natural materials such as concrete which are constructed along channels or watercourses for the purpose of water conveyance or flood control	SP	SP
Water related uses such as boat docks and canoe liveries	SP	SP
Hydroelectric power generation (reference 5.1.26)	SP	SP
Public Utility and Telecommunications Uses and Structures*		
Electric, gas, oil and communications facilities, including poles, lines, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility, but excluding tower structures	BR	BR
Water distribution and sewage collection lines and appurtenances owned and operated by the Albemarle County Service Authority, but excluding pumping stations and holding ponds; public water and sewer transmission lines, main or trunk lines, and interceptors, but excluding treatment facilities and pumping stations, owned and/or operated by the Rivanna Water and Sewer Authority	BR	BR
Pump stations for water or wastewater, including power supply and control devices, holding ponds and other appurtenances	SP	SP
Electrical transmission lines and related towers; microwave and radio-wave transmission and relay towers	SP	SP
Tier I and Tier II personal wireless service facilities that are attached to an existing structure	N	BR
Tier III personal wireless service facilities	N	N
Stream Crossings and Grading Activities*		
Stream crossings for driveways serving single-family dwellings and pedestrian trails, including, but not limited to, pedestrian and multi-use paths that are within county-owned or operated parks and greenways, and any footbridges necessary to cross tributary streams, watercourses and swales, that: (i) meet the applicable requirements of sections 17-406 and 17-604; (ii) demonstrate, in a floodplain impact plan, to the floodplain administrator's satisfaction, that construction of the crossing will have no impact on the elevations or limits of the floodplain; and (iii) will serve one dwelling unit that could not be accessed by any other means.	BR	BR
Bridges, ferries and culverts not serving single-family dwellings	SP	SP
Grading activities in compliance with the Water Protection Ordinance; provided that it is demonstrated, in a floodplain impact plan that the grading will have no impact on the elevations or limits of the floodplain and further provided that any cut or fill shall be only to level areas for playfields, correct erosion problems, build trails, or other fine grading activities which will have no impact on the floodplain.	N	BR
Grading activities, including cut or fill, in compliance with the Water Protection Ordinance, but for which the floodplain administrator determines will or may cause the base flood elevation to rise or the horizontal limits of the floodplain to expand	N	SP
Miscellaneous Structures*		
Aircraft landing strips; provided that structures other than the landing strip, aircraft parking, and aircraft storage are prohibited	SP	SP

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Fences	BR	BR
Structures accessory to uses permitted by right in the regulatory floodway, excluding structures having habitable space; provided that any such structure permitted shall be flood-proofed and anchored per FEMA standards.	N	SP
Structure having habitable space, including any manufactured home, regardless of the structure’s proposed use, whether it qualifies as a dwelling unit, and whether it is a primary or accessory structure	N	N
Storage as a Primary or Accessory Use*		
Storage of gasoline, kerosene and other petroleum products	N	N
Storage of flammable liquids, dynamite, blasting caps and other explosives	N	N
Storage of pesticides and poisons and other similar materials	N	N
Storage of machinery and motor vehicles except as accessory to a use allowed by right or by special use permit	N	N
Storage of junk	N	N

*Heading is for organizational purposes only and is not a use classification.

**Heading denotes that the use classifications are prohibited as either primary or accessory uses.

BR: The use is permitted by right, provided that the use or structure satisfies all applicable requirements of this chapter, including, but not limited to, the permitting requirements of section 30.3.12 and the encroachment and construction standards in sections 30.3.13 through 30.3.15.

SP: The use is permitted by special use permit, provided that the use or structure satisfies all applicable requirements of this chapter, including, but not limited to, the permitting requirements of section 30.3.12 and the encroachment and construction standards in sections 30.3.13 through 30.3.15.

N: The use is not permitted.

((§ 30.3.04, 12-10-80); (§ 30.3.05, 12-10-80); (§ 30.3.05.1, 12-10-80); (§ 30.3.05.1.1, 12-10-80, 7-1-81, 5-12-93; Ord. 98-18(2); 9-16-98; Ord. 04-18(2), 10-13-04; Ord. 09-18(2), 5-13-09); (§ 30.3.05.1.2, 12-10-80; Ord. 05-18(1), 1-5-05, effective 2-5-05); (§ 30.3.05.2, 12-10-80); (§ 30.3.05.2.1, 12-10-80, 4-28-82, Ord. 98-18(2); 9-16-98; Ord. 04-18(2), 10-13-04); (§ 30.3.05.2.2, 12-10-80); § 30.3.11, Ord. 14-18(1), 3-5-14)

State law reference – Va. Code § 15.2-2280.

Federal law reference – 44 CFR § 60.1(d).

30.3.12 PREREQUISITE TO DEVELOPMENT; REQUIRED PERMITS AND CERTIFICATIONS

In addition to the requirements for any other permits under this chapter, no use, structure, or any other development (collectively, the “development”) within the flood hazard overlay district shall commence without the owner first obtaining or providing the following:

- A. *Floodplain development permit.* A floodplain development permit for any development, including those for which other permits or certificates are required under subsections (B) through (E), issued by the floodplain administrator, which shall be deemed to be certification of the following:
 - 1. *Uses, structures or development subject to permit.* The owner submitted documentation that the proposed development is authorized within the district as it has been proposed and approved under this chapter and that it is in compliance with all applicable state and federal laws.
 - 2. *Compliance with all applicable laws.* The development is authorized to be undertaken only in strict compliance with the requirements of the flood hazard overlay district, this chapter, and all other applicable laws, including the Virginia Uniform Statewide Building Code, the Subdivision Ordinance, and the Water Protection Ordinance.

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3. *Reasonably safe from flooding.* The site has been reviewed by the floodplain administrator and he is assured that it is reasonably safe from flooding. This assurance shall be based, in part, upon any documentation provided by the owner showing the elevation of the lowest floor, including the basement, of any new and substantially improved structures and, if the structure has been flood-proofed in accordance with the requirements of the flood hazard overlay district, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.
 4. *Adverse effect on capacity of channels and floodways prohibited.* Under no circumstances shall any development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
 5. *Floodway or in a riverine floodplain where the floodway is not mapped.* For any development in the regulatory floodway or in a riverine floodplain where the floodway is not mapped, the owner shall submit to the floodplain administrator a no-rise certificate composed of a professional engineer's certification that the development will not cause an increase in flood levels, based on the technical data required by section 30.3.13. The no-rise certificate shall be on a form provided by the floodplain administrator.
- B. *Grading permit.* No grading permit shall be issued for fill in the floodway fringe unless the floodplain administrator determines that the proposed fill satisfies the requirements of section 30.3.14.
- C. *Permit to relocate or alter a watercourse; required notice.* Prior to any proposed alteration or relocation of any channels or of any watercourse within the flood hazard overlay district, the owner shall obtain all required permits from the United States Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). In riverine areas, notification of the proposed relocation or alteration shall be given by the owner to all affected adjacent jurisdictions, the Virginia Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management, the Federal Emergency Management Agency, and any other public agencies required to be notified by state or federal law. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.
- D. *Building permits.* No building permit shall be issued for any structure within the flood hazard overlay district unless:
1. *Elevations.* The building permit includes the existing and proposed ground elevations, 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 structure will be flood-proofed.
 2. *Elevation certificate.* The owner submits to the floodplain administrator an elevation certificate, to be retained by the floodplain administrator, certifying that the lowest floor is elevated at or above the freeboard elevation. The elevation certificate shall be either on the Federal Emergency Management Agency Elevation form or a form provided by the floodplain administrator.
 3. *Flood-proofing certificate; non-residential buildings.* The owner submits to the floodplain administrator a flood-proofing certificate composed of a professional engineer's certification that a non-residential building was properly flood-proofed as required by section 30.3.15. The flood-proofing certificate shall be either on the Federal Emergency Management Agency Elevation form or a form provided by the floodplain administrator.

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((§ 30.3.03.2 (part), 12-10-80, 6-10-87); (§ 30.3.03.3, 12-10-80); § 30.3.12, Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR §§ 60.3(a)(1), (a)(2), (a)(4)(i), (a)(3), (b)(1), (b)(6), (b)(7).

30.3.13 ENCROACHMENT STANDARDS; DETERMINING IMPACT ON BASE FLOOD ELEVATION

Any use, structure or other development authorized by section 30.3.11 shall be subject to the following:

A. *Within the floodway in Zone A1-30 or AE.* The following shall apply within the regulatory floodway of any Zone A1-30 or AE:

1. *Encroachment prohibited unless owner demonstrates no increase in water surface elevation of the base flood.* Any encroachment, including new construction, substantial improvements, fencing crossing a stream channel, or other development, but excluding fill, is prohibited unless the owner demonstrates in a floodplain impact plan that the proposed encroachment will not result in any increase in the water surface elevation of the base flood within the county during the occurrence of the base flood discharge. Fill is prohibited in the regulatory floodway regardless of whether the owner demonstrates that the fill will not result in any increase in the water surface elevation of the base flood.
2. *Encroachment which would increase the water surface elevation may be allowed with Conditional Letter of Map Revision.* Any encroachment, including fill, new construction, substantial improvements, or other development, which would increase the water surface elevation of the base flood may be allowed provided that the owner first applies, with the floodplain administrator's endorsement, for a Conditional Letter of Map Revision as provided in section 30.3.10, and receives the approval of the Federal Emergency Management Agency.
3. *Authorized encroachments; applicable design standards.* All new construction and substantial improvements shall comply with the applicable standards in section 30.3.15. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision to replace an existing manufactured home, provided the anchoring, elevation, and encroachment standards in section 30.3.15(A) and (B) are satisfied.

B. *Within Zone A1-30, AE or AH, floodway not designated.* The following shall apply within any Zone A1-30, AE or AH where the floodway is not designated:

1. *Encroachment prohibited unless owner demonstrates cumulative increase in water surface elevation of the base flood will not exceed one (1) foot.* Any encroachment, including fill, new construction, substantial improvements, fencing crossing a stream channel, or other development, is prohibited unless the owner demonstrates in a floodplain impact plan that the cumulative effect of the proposed encroachment, when combined with all other existing and anticipated development, will not result in an increase in water surface elevation of the base flood by more than one (1) foot within the county during the occurrence of the base flood discharge.
2. *Encroachment which would increase the water surface elevation of the base flood by more than one foot may be allowed with Conditional Letter of Map Revision.* Any encroachment, including fill, new construction, substantial improvements, or other development, which would increase the water surface elevation of the base flood by more than one (1) foot may be allowed provided that the owner first applies, with the floodplain administrator's endorsement, for a Conditional Letter of Map Revision as

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provided in section 30.3.10, and receives the approval of the Federal Emergency Management Agency.

- C. *Within Zone A; floodway not designated and floodplain boundary approximated.* The following shall apply within any Zone A where the floodway is not designated and the floodplain boundary is approximated, in order to determine the location of the floodway and the floodplain, and the elevation of the base flood:
 - 1. *Floodway and base flood elevation.* The base flood elevation and floodway shall be determined for the proposed development using information from federal, state, and other acceptable sources shall be used to determine the floodway and base flood elevation, when available. These sources shall include, but are not limited to, the United States Army Corps of Engineers Floodplain Information Reports and the United States Geological Survey Flood-Prone Quadrangles. If the base flood elevation cannot be determined using these sources of data, then the applicant for the proposed encroachment shall determine the base flood elevation, as follows:
 - a. *Other sources.* Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, comparable to those contained in a Flood Insurance Study for subdivisions, site plans, and other proposed development proposals that exceed fifty (50) lots or five (5) acres, whichever is the lesser; or
 - b. *Hydrologic and hydraulic analyses.* In his discretion, the floodplain administrator may require a floodplain impact plan.
 - 2. *Approximated floodplain.* In the approximated floodplain, the applicant shall use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, detailed methodologies, or hydrologic and hydraulic analyses. Studies, analyses, computations, and other information shall be submitted to the floodplain administrator in sufficient detail to allow him to conduct a complete review of the analyses. In his discretion, the floodplain administrator may require the owner to submit a floodplain impact plan.
- D. *Any zone; additional information.* The floodplain administrator may require a hydrologic and hydraulic analysis for any development. When the base flood elevation data is used, the lowest floor shall be elevated to or above the freeboard elevation.

(§ 30.3.03.2 (part), 12-10-80, 6-10-87; § 30.3.13; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR §§ 59.1, 60.3(b), (c), (d).

30.3.14 ENCROACHMENT STANDARDS; FILL IN THE FLOODWAY FRINGE

Any fill in the floodway fringe authorized by special use permit under section 30.3.11 shall, in addition to any condition of approval of the special use permit and any applicable encroachment standard in section 30.3.13, be subject to the following:

- A. *Minimize obstruction.* The fill shall be designed and constructed to minimize obstruction to and effect upon the flow of water such that: (i) the fill will not, in the opinion of the floodplain administrator, result in any increase in the base flood elevation above that authorized in section 30.3.13; and (ii) no fill is placed in the regulatory floodway.

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- B. *Protect against erosion.* The fill shall be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead or another method acceptable to the floodplain administrator. Any structure, equipment or material installed to protect against erosion shall be firmly anchored to prevent dislocation due to flooding.
- C. *Non-polluting.* The fill shall be of a material that will not pollute surface water or groundwater.
- D. *Additional information.* The floodplain administrator may require any owner to submit additional topographic, engineering and other data or studies as the administrator deems necessary to determine the effect of flooding on a proposed structure or fill, the effect of the structure or fill, or both, on the flow of water during a flood.
- E. *Certification by floodplain administrator.* No fill activity shall occur before the owner submits a site plan for review, the floodplain administrator certifies that the requirements of subsections (A) through (D), and all other applicable requirements of the Code, have been satisfied.

(§§ 30.3.06, 30.3.06.1, 12-10-80; § 30.3.14; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2280, 15.2-2286.

Federal law reference – 44 CFR § 60.1(d).

30.3.15 CONSTRUCTION STANDARDS

The following standards shall apply to any structure authorized under section 30.3.11 within the flood hazard overlay district, and its special flood hazard area zones:

- A. *Structures and related improvements in any special flood hazard area; general standards.* Any structures and related improvements in any special flood hazard area zone shall satisfy the following:
 - 1. *Compliance with building code and required anchoring.* New construction and substantial improvements shall be according to the Virginia Uniform Statewide Building Code, and anchored to prevent flotation, collapse or lateral movement of the structure.
 - 2. *Use materials resistant to flood damage.* New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - 3. *Use methods to minimize flood damage.* New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - 4. *Design to prevent water entering systems.* Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
 - 5. *Design to prevent water entering water supply systems.* New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - 6. *Design to prevent water entering sanitary sewage systems.* New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - 7. *Design to prevent impairment or contamination of on-site waste disposal systems.* On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

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8. *Historic structures.* Any historic structure undergoing repair or rehabilitation that would constitute a substantial improvement shall comply with any requirements of the flood hazard overlay district that do not preclude the structure's continued designation as a historic structure. The owner shall provide documentation from the Secretary of the Interior or the State Historic Preservation Officer that a specific requirement of the flood hazard overlay district will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places, as applicable. Any relief from any requirement shall be the minimum necessary to preserve the historic character and design of the structure.
- B. *Buildings in Zones A, A1-30, AE, and AH; elevation and construction standards.* Any buildings in Zones A, A1-30, AE, and AH, where base flood elevations have been provided in the Flood Insurance Study or generated by a certified professional, shall satisfy the following:
1. *Existing residential building.* Any substantial improvement of any residential building, including any manufactured home, shall have the lowest floor, including the basement, elevated to or above the freeboard elevation.
 2. *Non-residential buildings.* Any new construction or substantial improvement of any non-residential building shall: (i) have the lowest floor, including basement, elevated to or above the freeboard elevation; or (ii) in any Zone A1-30, AE, or AH, the building may be flood-proofed in lieu of being elevated to or above the freeboard elevation, provided that all areas of the building components below the freeboard elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The certification, including the specific elevation, in relation to mean sea level, to which such structures are flood-proofed, shall be maintained by the floodplain administration.
 3. *Drainage paths.* Within Zone AH, adequate drainage paths around structures on slopes shall be established and maintained to guide floodwaters around and away from all proposed structures.
- C. *Buildings in Zone AO.* Any buildings in Zone AO shall satisfy the following:
1. *Existing residential building.* Any substantial improvements of any residential building shall have the lowest floor, including the basement, elevated to or above the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade at least as high as the flood depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including the basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
 2. *Non-residential buildings.* All new construction and substantial improvements of non-residential buildings shall satisfy either of the following: (i) the lowest floor, including the basement, shall be elevated to or above the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map; if no flood depth number is specified, the lowest floor, including the basement, shall be elevated at least two (2) feet above the highest adjacent grade; or (ii) completely flood-proof the building, including any utility and sanitary facilities, to the freeboard elevation so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

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3. *Drainage paths.* Adequate drainage paths around structures on slopes shall be established and maintained to guide floodwaters around and away from all proposed structures.
- D. *Structures in Zones A, A1-30, AE, AH and AO; design, construction and use standards for space below the freeboard elevation.* Any fully enclosed area below the freeboard elevation (the “enclosed area”) in any new construction or substantially improved structure in Zones A, A1-30, AE, AH and AO, where base flood elevations have been provided, shall satisfy the following:
1. *Uses.* The enclosed area shall be used only for parking vehicles, building access, or the limited storage of maintenance equipment not otherwise prohibited by section 30.3.11 that is used in connection with the premises.
 2. *Access.* Access to the enclosed area shall be the minimum necessary to allow for parking vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to other areas of the structure (stairway or elevator).
 3. *Construction materials.* The enclosed area shall be constructed entirely of flood resistant materials below the freeboard elevation.
 4. *Openings.* The enclosed area shall include measures to automatically equalize hydrostatic flood forces on walls by allowing floodwaters to enter and exit. To meet this requirement, openings shall be provided that are either certified by a professional engineer or architect, or meet the following minimum design criteria:
 - a. *Minimum number.* Provide a minimum of two (2) openings on different sides of each enclosed area.
 - b. *Minimum net area.* The total net area of all openings shall be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - c. *Multiple enclosed areas.* If a structure has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. *Bottom of opening.* The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.
 - e. *Permitted equipment on openings.* Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - f. *Flexible skirting, masonry and wood foundations; requirement for openings.* Foundation enclosures made of flexible skirting do not create enclosed areas and do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings.
- E. *Recreational vehicles.* Any recreational vehicle in Zone A1-30, AE or AH where base flood elevations have been provided shall either: (i) be stored on the lot for fewer than one hundred eighty (180) consecutive days, be fully licensed and ready for highway use; or (ii) satisfy all requirements for new construction in subsections (A) and (B). For the purposes of this subsection, a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

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- F. *Fences.* Any fence crossing a stream channel that, as determined by the floodplain administrator, may block the passage of floodwaters or may catch debris during a flood, shall be designed and constructed to be a breakaway fence that will give way on one end under a specified amount of pressure in order to swing parallel to the flow and minimize both resistance to floodwaters and catching debris.

(§ 30.3.03.02 (part), 12-10-80, 6-10-87; § 30.3.15; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2286, 36-98.

Federal law reference – 44 CFR §§ 60.3(a), (b), (c), (d).

30.3.16 NONCONFORMING USES AND STRUCTURES

Any pre-FIRM structure or any use which lawfully existed before December 16, 1980, but which is not in conformity with the requirements of the flood hazard overlay district, may continue, subject to the following:

- A. *Expansion or enlargement of existing uses or structures.* Existing uses or structures shall not be expanded or enlarged.
- B. *Modification, alteration, repair, reconstruction or improvement of an existing use or structure; not a substantial improvement.* Existing uses or structures may be modified, altered, repaired, reconstructed or improved (collectively, the “improvements”), but not enlarged or expanded, where the improvements are not a substantial improvement, provided that the improvements: (i) are authorized by sections 6.2 and 6.3, as applicable; and (ii) comply with the Virginia Uniform Statewide Building Code.
- C. *Modification, alteration, repair, reconstruction or improvement of an existing use or structure; substantial improvement.* Existing uses or structures may be modified, altered, repaired, reconstructed or improved (the “improvements”), where the improvements qualify as a substantial improvement, provided that: (i) the entire use or structure complies with the requirements of the flood hazard overlay district and all other applicable laws; and (ii) the entire structure complies with the Virginia Uniform Statewide Building Code.
- D. *Repair or rehabilitation of historic structure; substantial improvement.* Any historic structure undergoing repair or rehabilitation that would constitute a substantial improvement shall comply with any requirements of the flood hazard overlay district that do not preclude the structure’s continued designation as a historic structure. The owner shall provide documentation from the Secretary of the Interior or the State Historic Preservation Officer that a specific requirement of the flood hazard overlay district will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places, as applicable. Any relief from any requirement shall be the minimum necessary to preserve the historic character and design of the structure.

(§30.3.09, 12-10-80; § 30.3.16; Ord. 14-18(1), 3-5-14)

State law reference – Va. Code §§ 15.2-2286, 15.2-2307.

Federal law reference – 44 CFR § 60.1(d).

30.3.17 VARIANCES

The board of zoning appeals is authorized to consider and act on applications for variances, subject to the following:

- A. *Eligibility.* Variances may be issued in the following circumstances:

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1. *New construction or substantial improvements; nearby structures constructed below the base flood elevation.* For new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided that the board of zoning appeals may, upon good cause shown, consider a variance application pertaining to a lot larger than one-half acre.
 2. *New construction, substantial improvement, or development; required for water-dependent facilities.* For new construction, substantial improvements, or other development necessary for a water-dependent facility, not otherwise authorized by a special use permit, provided that all applicable requirements of the flood hazard overlay district not varied are satisfied and any structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- B. *What may be varied.* The following may be varied within the flood hazard overlay district: (i) any requirement of this chapter that is eligible to be varied under section 34.2 and Virginia Code § 15.2-2309; (ii) any minimum encroachment standard in sections 30.3.13 and 30.3.14; (iii) any minimum construction standard in section 30.3.15; or (iv) any standard applicable to nonconforming uses and structures in 30.3.16. Neither any part of section 30.3.11 nor any administrative or procedural requirement of the flood hazard overlay district may be varied.
- C. *Procedures.* The procedures and requirements for applying for and acting on a variance application shall be as provided in section 34.
- D. *Factors to be considered.* In considering a variance application under this section, the board of zoning appeals shall consider the following factors in addition to those in section 34.2:
1. *Danger to life and property.* The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any regulatory floodway that will cause any increase in the base flood elevation.
 2. *Danger of materials being swept away.* The danger that materials may be swept on to other lands or downstream to the injury of others.
 3. *Water supply and sewage systems.* The proposed water supply and sanitary sewage systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 4. *Susceptibility to flood damage.* The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 5. *Importance of services.* The importance of the services provided by the proposed facility to the community.
 6. *Need for waterfront location.* The requirements of the facility for a waterfront location.
 7. *Availability of alternative locations.* The availability of alternative locations not subject to flooding for the proposed use.
 8. *Compatibility.* The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 9. *Comprehensive plan and flood management program.* The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

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10. *Vehicular access.* The safety of access by emergency and non-emergency vehicles to the site in time of flood.
 11. *Flood waters.* The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 12. *Historic nature of structure.* The historic nature of a structure and whether the proposed repair or rehabilitation will preclude the structure's continued designation as a historic structure.
- E. *Referral to obtain technical assistance.* The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to the floodplain administrator for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
- F. *Findings.* A variance may be issued if the board of zoning appeals finds:
1. *Cause.* The owner has demonstrated good and sufficient cause consistent with the requirements of this section.
 2. *Undue hardship.* The failure to issue the variance would result in undue hardship.
 3. *Impacts.* The issuance of the variance will not: (i) result in unacceptable or prohibited increases in flood heights; (ii) result in additional threats to public safety; (iii) result in extraordinary public expense; (iv) create a public or private nuisance; (v) cause fraud or victimization of the public; and (vi) conflict with county regulations.
 4. *Variance is minimum required.* The variance to be issued will be the minimum required to provide relief.
 5. *Additional finding for historic structures.* In addition to findings (1) through (4) above, the proposed repair or rehabilitation of the historic structure will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- G. *Structure below base flood elevation; notice to owner of effect of issuing a variance.* The board of zoning appeals shall notify the applicant in writing that the issuance of a variance to construct a structure below the base flood elevation increases the risks to life and property and will result in increased premium rates for flood insurance. Providing this information on a variance application form shall satisfy the notice requirements of this subsection.
- H. *Recordkeeping.* A record shall be maintained of the above notification, as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
- I. *Use variances.* No variance may be issued to authorize a use in the flood hazard overlay district not otherwise expressly authorized.

(§30.3.10, 12-10-80; § 30.3.17; Ord. 14-18(1), 3-5-14)

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

Federal law reference – 44 CFR § 60.6.

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30.4 NATURAL RESOURCE EXTRACTION OVERLAY DISTRICT - NR

30.4.01 INTENT

This natural resource extraction overlay district (herein referred to as NR) is created to provide for the utilization of spring water for off-site consumption, sand, gravel, stone or other mineral deposits within the county in a manner compatible with adjacent land uses.

NR districts may be established where deposits of sand, gravel, stone or other minerals exist; where the uses permitted hereunder are unlikely to create effects adverse to public health, safety and welfare or to the value of adjacent properties; and specifically where existing roads will not make it necessary to conduct trucking operations through developed residential areas or areas likely to be developed for residents during the course of any extractive use. (Amended 6-10-92)

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30.4.02 PERMITTED USES

30.4.02.1 BY RIGHT

Within any NR district, uses may be permitted by right as for and subject to the district regulations of the underlying zoning district. In addition, there shall be permitted by right within any NR district the following uses:

1. Except as otherwise provided in sections 10.2.1.18, 10.2.2.40 or 30.4.2.2, removal of soil, sand, gravel, stone or other minerals by excavating, stripping, quarrying or other mining operation. (Amended 7-6-83)
2. Accessory uses to a use permitted by right such as blasting, washing, grading, sorting, stockpiling, grinding and the like; provided that such operations are located on the site of the main use. (Amended 4-28-82)

30.4.02.2 BY SPECIAL USE PERMIT

Within any NR district, uses by special use permit shall be permitted as for and subject to the district regulations of the underlying zoning district. In addition, the following shall be permitted by special use permit in any NR district:

1. Concrete batching plants.
2. Asphalt mixing plants.
3. Mining and milling of uranium or other radioactive materials. (Added 4-28-82)
4. Extraction of oil and natural gas. (Added 4-28-82)
5. Coal mining. (Added 4-28-82)
6. Deep mining. (Added 4-28-82)
7. Accessory uses to a use permitted by special use permit or off-site accessory uses to a use permitted by right such as blasting, washing, grading, sorting, stockpiling, grinding and the like. (Added 4-28-82)
8. Spring water extraction and/or bottling which does not involve pumping of water to the surface. (Added 6-10-92)

30.4.03 REQUIREMENTS FOR ZONING CLEARANCE

Each zoning clearance required by section 31.5(a)(5) shall be subject to the following:

- a. *Information required to be submitted.* The operator of the natural resource extraction activity shall file the following as part of its application for a zoning clearance:
 1. *Plan of proposed activity.* A plan of the proposed natural resource extraction activity, supported by all data deemed necessary by the zoning administrator to ensure compliance with the requirements of section 30.4. The plan may be a copy of the applicable plan of the proposed natural resources extraction activity authorized by the Virginia Department of Mines, Minerals and Energy under Title 45.1 of the Virginia Code. The zoning administrator may require that the state-approved plan be supported by all data deemed necessary to ensure compliance with the requirements of section 30.4.

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2. *Evidence of compliance.* Evidence deemed sufficient by the zoning administrator to determine that that the operator has obtained all permits required by the Virginia Department of Mines, Minerals and Energy and the Virginia Department of Environmental Quality, and evidence that the operator has complied with all applicable requirements of Title 45.1 of the Virginia Code and the applicable regulations of the Virginia Department of Environmental Quality.

- b. *Periodic review and termination of zoning clearance.* Each zoning clearance shall be subject to annual review by the zoning administrator. If any permit for a natural resource extraction activity issued by the Virginia Department of Mines, Minerals and Energy or the Virginia Department of Environmental Quality expires or is terminated as provided by law, the zoning clearance shall not be deemed to authorize any activity authorized by the expired or terminated state-issued permit.

(§ 30.4.03, 12-10-80; 4-28-82; Ord. 11-18(8), 8-3-11)

30.4.04 MINIMUM AREA REQUIREMENT--ESTABLISHMENT OF DISTRICT

The minimum area for the establishment of any NR overlay district shall be twenty (20) acres.

30.4.05 MAXIMUM PERCENTAGE LOT COVERAGE

All operations associated with the extraction of natural resources as well as the provision of parking areas and access roads and driveways shall not occupy more than eighty (80) percent of the total site.

30.4.06 YARD AND BUILDING LOCATIONS

Minimum yard dimensions and building location requirements shall be as specified in the underlying zoning district regulations except that no natural resource extraction operation, including associated uses, and structures containing any such use shall be located less than one hundred (100) feet from any public road right-of-way or adjoining property within any residential district; except that no such operation, uses or structure shall be located within two hundred (200) feet of any contiguous property subdivided into residential lots of one (1) acre or less not under the ownership or control of the applicant nor within two hundred (200) feet of any occupied dwelling.

30.4.07 FENCING

Any natural resource extraction operation shall be subject to such fencing requirements as may be deemed necessary by the zoning administrator for the protection of the public safety. In particular, fencing shall be provided in the cases hereinafter described by a substantial fence erected at least sixty (60) feet outside the limits thereof, such fence being at least five (5) feet in height and so designed as effectively to control access thereto from locations ordinarily open to the general public, including, but not limited to, locked gates at all access points.

30.4.7.1 The top of all open excavations having a depth of ten (10) feet or more, which will create a slope of forty-five (45) degrees or more from the horizontal and which shall remain for a period of more than twenty-four (24) hours;

30.4.7.2 Any collection of water of five (5) feet or more in depth and occupying an area of two hundred (200) square feet or more, which shall remain for at least one (1) consecutive month.

30.4.08 LATERAL SUPPORT

All operations shall be conducted in a safe manner with respect to the likelihood of hazard to persons, physical damage to adjacent land or improvements and damage to any public road by reason of slides, sinking or collapse.

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30.4.09 ROADSIDE LANDSCAPING, SCREENING

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented by selective cutting, transplanting and addition of new trees, shrubs and other ground cover for the depth of any roadside setback. The type, design and spacing of such plantings shall be approved by the zoning administrator and shall be so designed as to lessen the visual impact of the activity from any adjacent public road, and to minimize the noise and dust resulting from such operation. In any case in which roadside planting is not practical, the zoning administrator may permit the substitution of other screening devices such as fences, berms, walls and the like which are adequate to accomplish the same purpose.

30.4.10 HOURS OF OPERATION

Operations involving power equipment of an industrial type shall be limited to the hours of 7:00 a.m. to midnight except in cases of a public emergency as determined by the director of emergency services for the county. Blasting operations shall be restricted to Monday through Friday between 8:00 a.m. and 5:00 p.m.

30.4.11 PUBLIC IMPROVEMENTS, INTERNAL ROADS

- 30.4.11.1 Operations as proposed shall not generate unusual traffic hazards or the need for improvements to public streets or other public facilities at public expense.
- 30.4.11.2 All internal access roads shall be surfaced with bituminous or other dust free surface for a distance of three hundred (300) feet from any public road.

30.4.12 TRANSPORTATION OF EXCAVATED MATERIALS

All vehicles used to transport excavated materials shall be loaded in such manner that the material cannot be unintentionally discharged from the vehicle. All such vehicles shall be cleaned of all material not in the load-bed prior to entering onto any public road.

30.4.13 COLLECTIONS OF WATER

Creation of undrained pockets and stagnant pools of water shall be avoided to the maximum extent reasonably practicable, and all such undrained pockets and stagnant pools resulting from surface drainage shall be sprayed in accordance with requirements of the Virginia Department of Health to eliminate breeding places for mosquitoes and other insects.

30.4.14 PERFORMANCE STANDARDS

In addition to any other provision of law, the following performance standards shall apply to any use permitted by sections 30.4.02.1 or 30.4.02.2:

1. No blasting shall be permitted except in conjunction with a zoning clearance required by sections 30.4.03 and 31.5(a)(5);
2. Ground vibration from surface blasting shall not exceed the limits set forth in 4 VAC 25-40-880, as measured in the manner set forth therein;

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3. Air overpressure resulting from surface blasting shall not exceed 133 decibels measured at the closest boundary line of a lot abutting the NR district that is not within an NR district and is measured using the procedures provided in section 4.18.03.

(§ 30.4.14, 12-10-80; 6-14-00; Ord. 11-18(8), 8-3-11)

30.4.15 OFF-STREET PARKING

Off-street parking areas adequate for all employees' vehicles and used in any extractive operation shall be provided.

30.5 SCENIC STREAMS OVERLAY DISTRICT - SS (Amended 9-9-92)

30.5.1 INTENT

This scenic streams overlay district (hereafter referred to as SS) is created to conserve elements of the county's scenic beauty as are contained along scenic waterways. Any development undertaken, rezoning request or new use adjacent to or within any designated scenic streams overlay district which is subject to review by any officer or employee of the county shall be reviewed in accordance with the objectives of such designation as provided by law. (Amended 9-9-92)

30.5.2 APPLICATION

SS overlay districts may be applied over any basic zoning district or other overlay district. (Amended 9-9-92)

30.5.2.1 (Repealed 9-9-92)

SS stream overlay districts shall be applied to the following: (Amended 9-9-92)

The entire length of the Moormans River from the bottom of the Charlottesville Water Supply Dam at Sugar Hollow to the confluence of the Moormans River with the Mechum River.

30.5.2.2 (Repealed 9-9-92)

30.5.3 ZONING MAP

The zoning administrator shall cause SS overlay districts to be shown on copies of the zoning map. (Amended 9-9-92)

30.5.4 (Repealed 9-9-92)

30.5.4.1 (Repealed 9-9-92)

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30.5.4.2 (Repealed 9-9-92)

30.5.4.3 (Repealed 9-9-92)

30.5.4.4 (Repealed 9-9-92)

30.5.5 PERMITTED USES BY RIGHT AND BY SPECIAL USE PERMIT

30.5.5.1 Within an adopted SS overlay district, uses shall be permitted as for and subject to the district regulations of basic and/or other overlay districts as cited in section 30.5.2, except as hereinafter expressly provided.

(§ 30.5.5.1, 12-10-80)

30.5.5.2 Within the immediate environs of any stream designated in section 30.5.2, no person shall commence any use involving the construction of any structure, the cutting of any living tree over six (6) inches caliper measured at six (6) inches above ground level, or the grading or other like physical alterations of the immediate environs of such stream except as follows:

- a. The cutting or removal of any such tree as may be necessary to prevent the obstruction of such stream, to eliminate a danger to the health, safety and welfare of any citizen of the county;
- b. Fences;
- c. Maintain existing fords and bridges;
- d. The following uses by special use permit only:
 1. Navigational and drainage aids;
 2. Flood warning aids and devices;
 3. Water monitoring devices;
 4. Bank erosion structures;
 5. Boat docks, piers, wharves;
 6. Bridges, causeways and other similar structures designed for pedestrian and/or vehicular access; provided that the board of supervisors shall find, by clear and convincing evidence, in addition to the factors to be considered under section 33.8, that:
 - (a) such bridge or other structure is to be located at the site of an existing bridge, ford or other stream crossing;
 - (b) such existing crossing is regularly used, and such bridge or other structure is to be used, as to the sole means of access to one or more existing, lawfully occupied dwellings;
 - (c) no alternative means of access to such dwellings is physically practicable;

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- (d) no such alternative means of access has been abandoned, aliened or otherwise relinquished by the voluntary act or omission of the owner of the land upon which such dwellings are located since December 10, 1980;
- (e) such bridge or other structure is necessary to prevent, eliminate or substantially alleviate a hazard to the life or property of any resident of the county;
- (f) such bridge or other structure is so designed as to pose the minimum practical disruption of the environment of the stream consistent with the other provisions hereof; and
- (g) such bridge or other structure shall comply with all applicable state and federal law including, but not limited to, Chapters 3.5, 7, 8, 9 and 20 of Title 62.1 of the Code of Virginia (1950), as amended, to the extent that any or all of the same may be applicable in a particular case.

e. Uses and structures immediately appurtenant and necessary to the foregoing.

(§ 30.5.5.2, 12-10-80; 1-19-83; 9-9-92; Ord. 12-18(7), 12-5-12, effective 4-1-13)

30.5.5.3 For purposes of this section, the term "immediate environs" shall include the bed of any such stream and the land on either side thereof to a distance of fifteen (15) feet from the edge of such at mean annual flow level.

(§30.5.5.2, 12-10-80)

30.5.6 AREA AND BULK REGULATIONS AND OPTIONS FOR BONUS FACTORS

Area and bulk regulations and options for bonus factors shall be as for and subject to the district regulations of the underlying basic and/or other overlay districts as cited in section 30.5.2, except that the following limitations shall apply:

Except as herein otherwise expressly provided, no buildings or structures other than necessary accessory appurtenant fences and/or walls shall be constructed within sixty-five (65) feet of the edge of any designated stream at mean annual flow level. In addition, within sixty-five (65) feet of the edge of any designated stream at mean annual flow level, there shall be no excessive cutting of any forested area. Any such forested area shall be deemed to have been excessively cut if, as a result of any cutting operation or series or combination of operations, the area of the canopy of such forested area shall be reduced by more than twenty-five (25) percent on any one parcel of land as determined by reference to aerial photographs of such area, provided that any cutting not prohibited by this section shall be done in such a manner as to maintain insofar as possible a uniform density of trees throughout the entire portion of any land parcel affected hereunder. Each such photograph shall be in existence at the time of the adoption of this section and shall be clearly marked by the director of planning as reference material for this section. Area within any such district may be part of a lot and countable for purposes of area, density and yard requirements unless otherwise prohibited within this ordinance.

(§ 30.5.6, 12-10-80, 9-9-92; Ord. 01-18(6), 10-3-01)

30.5.6.1 (Repealed 9-9-92)

30.5.6.2 (Repealed 9-9-92)

30.5.6.2.1 (Repealed 9-9-92)

30.5.6.2.2 (Repealed 9-9-92)

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30.5.6.2.3 (Repealed 9-9-92)

30.5.6.3 (Repealed 9-9-92)

30.5.6.3.1 (Repealed 9-9-92)

30.5.7 (Repealed 9-9-92)

30.5.7.1 (Repealed 7-8-92)

30.5.7.2 (Repealed 7-8-92)

30.6 ENTRANCE CORRIDOR OVERLAY DISTRICT - EC (Added 10-3-90)

30.6.1 PURPOSE AND INTENT

The purpose of this section 30.6 is to implement the enabling authority in Virginia Code § 15.2-2306(A) by identifying those arterial streets and highways found to be significant routes of tourist access to the county and to designated historic landmarks, structures or districts within the county or in contiguous localities, and to require that the erection, reconstruction, alteration or restoration of structures, including signs, on parcels contiguous to those streets and highways as provided herein, be architecturally compatible with those historic landmarks or structures.

The comprehensive plan provides that scenic resources contribute to the community's desirability as a place to live, enhance and protect property values, and contribute to the overall quality of life for the county's residents. The comprehensive plan also acknowledges that scenic resources are important to visitors as well as the county's residents, and that visitors to the Blue Ridge Mountains and the county's rural historic structures gather a lasting impression of the county as they travel the county's scenic roadways. The significant routes of tourist access within the entrance corridor overlay district provide access to the county and to many of the county's historic landmarks, structures and districts including, but not limited to Monticello, the home of Thomas Jefferson, which is on the World Heritage List administered by the United Nations and a National Historic Landmark, Ash Lawn-Highland, the home of James Monroe, the University of Virginia, whose Rotunda is on the World Heritage List and a National Historic Landmark, and whose academical village is on the World Heritage List, a National Historic Landmark and a National Register Historic District, and the county's eight historic districts on the National Register of Historic Places, including the Southwest Mountains Rural Historic District and the Southern Albemarle Rural Historic District.

The entrance corridor overlay district is intended to implement the comprehensive plan's goal to preserve the county's scenic resources because they are essential to the county's character, economic vitality and quality of life. An objective of this goal is to maintain the visual integrity of the county's roadways by using design guidelines. The entrance corridor overlay district will ensure that development is compatible with the county's natural, scenic, historic and architectural resources by providing for review of new construction along the identified significant routes of tourist access by an architectural review board under design guidelines promulgated by that board and ratified by the board of supervisors.

(§ 30.6.1, 10-3-90; Ord. 10-18(5), 5-12-10)

30.6.2 BOUNDARIES OF THE DISTRICT

The entrance corridor overlay district is established upon and comprised of those parcels contiguous to significant routes of tourist access, regardless of the underlying zoning district or the existence of other applicable overlay districts, as provided in section 30.6.2(b) as follows:

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- a. *Significant routes of tourist access.* The following arterial streets and highway are found to be significant routes of tourist access and are hereinafter referred to in section 30.6 as “EC streets”:
1. U.S. Route 250 East (Richmond Road).
 2. U.S. Route 29 North (Seminole Trail).
 3. U.S. Route 29 South (Monacan Trail).
 4. Virginia Route 20 South (Monticello Avenue and Scottsville Road).
 5. Virginia Route 631 (5th Street and Old Lynchburg Road) from Charlottesville City limits to Route 708 (Red Hill Road) and Virginia Route 631 (Rio Road West) from U.S. Route 29 North (Seminole Trail) to Route 743 (Earlysville Road). (Amended 11-14-90, 4-12-00)
 6. U.S. Route 250 West (Ivy Road and Rockfish Gap Turnpike).
 7. Virginia Route 6 (Irish Road).
 8. Virginia Route 151 (Critzers Shop Road).
 9. Interstate Route 64.
 10. Virginia Route 20 North (Stony Point Road).
 11. Virginia Route 22 (Louisa Road).
 12. Virginia Route 53 (Thomas Jefferson Parkway).
 13. Virginia Route 231 (Gordonsville Road).
 14. Virginia Route 240 (Three Notch’d Road).
 15. U.S. Route 29 Business (Fontaine Avenue)
 16. U.S. Route 29/250 Bypass.
 17. Virginia Route 654 (Barracks Road). (Added 11-14-90)
 18. Virginia Route 742 (Avon Street). (Added 11-14-90)
 19. Virginia Route 649 (Airport Road) from U.S. Route 29 North (Seminole Trail) to Virginia Route 606 (Dickerson Road). (Added 4-12-00)
 20. Virginia Route 743 (Hydraulic Road and Earlysville Road) from U.S. Route 29 North (Seminole Trail) to Virginia Route 676 (Woodlands Road). (Added 4-12-00)
 21. Virginia Route 631 (Rio Road) from U.S. Route 29 North (Seminole Trail) easterly to the Norfolk Southern Railway tracks. (Added 11-2-05)
- b. *Parcels contiguous to EC streets.* Parcels contiguous to EC streets are:
1. *Parcels sharing boundary with an EC street on reference date.* Each parcel that had a boundary that was shared at any point with the right-of-way of an EC street on one of the

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following applicable reference dates: (i) on October 3, 1990 for those parcels sharing a boundary with an EC street identified in section 30.6.2(a)(1) through (16); (ii) on November 14, 1990 for those parcels sharing a boundary with an EC street identified in section 30.6.2(a)(17) and (18); (iii) on April 12, 2000 for those parcels sharing a boundary with an EC street identified in section 30.6.2(a)(19) and (20); and (iv) on November 2, 2005 for those parcels sharing a boundary with an EC street identified in section 30.6.2(a)(21) (hereinafter, the “applicable reference date”).

2. *Parcels not sharing boundary with an EC street.* Each parcel within five hundred (500) feet of the right-of-way of an EC street that did not share at any point a boundary with the right-of-way of an EC street on the applicable reference date.
- c. *Extent of overlay district.* The overlay district extends across the entire width of each parcel contiguous to an EC street. The overlay district extends to the depth of each parcel as follows:
 1. *Parcels sharing boundary with an EC street on reference date.* If the parcel shared a boundary with an EC street on the applicable reference date as provided in section 30.6.2(b)(1), the overlay district extends to the full depth of the parcel.
 2. *Parcels not sharing boundary with an EC street.* If the parcel is within five hundred (500) feet of an EC street and did not share a boundary with an EC street on the applicable reference date as provided in section 30.6.2(b)(2), the overlay district extends to a depth of five hundred (500) feet from the right-of-way of the EC street.
- d. *Effect of subsequent change to parcel boundaries.* The subdivision, boundary line adjustment, or any other change to the boundaries of a parcel after the applicable reference date shall not reduce the area subject to this section 30.6 without a zoning map amendment that changes the boundaries to the entrance corridor overlay district.

(§ 30.6.2, 10-3-90; 11-14-90; 9-9-92; Ord. 00-18(4), 4-12-00; Ord. 01-18(3), 5-9-01; Ord. 05-18(9), 11-2-05; Ord. 10-18(5), 5-12-10)

30.6.3 PERMITTED USES AND APPLICABLE STANDARDS

Within the EC overlay district:

- a. *Uses.* The following uses may be permitted within the EC overlay district in accordance with the applicable requirements of this section 30.6 and the underlying zoning district:
 1. *By right.* Uses permitted by right in the underlying zoning district shall be permitted by right in the EC overlay district, except as otherwise provided in section 30.6.
 2. *By special use permit.* The following uses shall be permitted by special use permit in the EC overlay district:
 - a. Uses authorized by special use permit in the underlying zoning district.
 - b. Outdoor storage, display and/or sales serving or associated with a permitted use, other than a residential, agricultural or forestal use, any portion of which would be visible from the EC street to which it is contiguous or from any other EC street which is located within five hundred (500) feet; provided that review shall be limited to determining whether the outdoor storage, display and/or sales is consistent with the applicable design guidelines. (Amended 9-9-92)
 - c. The construction or location of any structure, including any subdivision sign or sign identifying a planned development as provided in section 4.15.16(I), upon the

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superjacent and subjacent airspace of an EC street that is not required for the purpose of travel or other public use by the Commonwealth of Virginia or other political jurisdiction owning such street.

- b. *Area and bulk and other regulations.* The area and bulk, minimum yard and setback requirements, and maximum building height requirements of the underlying zoning district shall apply to all uses and structures in the EC overlay district.
- c. *Bonus factors.* A condition of a certificate of appropriateness that requires improvements or design features for which a bonus might otherwise be permitted under the applicable district regulations shall not affect the eligibility for the bonus.
- d. *Grading or land disturbing activity.* No grading or other land disturbing activity (including trenching or tunneling), except as necessary for the construction of tree wells or tree walls, shall occur within the drip line of any trees or wooded areas designated on the site plan to be preserved, nor intrude upon any other existing features designated in the certificate of appropriateness for preservation.
- e. *Method for preserving designated features.* An applicant for a development subject to the provisions of section 30.6 shall sign a conservation checklist provided by the director of planning or his or her designee (the “director of planning”) specifying the method for preserving the designated features, and the method shall conform to the specifications contained in Standard and Specification 3.38 at pages III-393 through III-413 of the Virginia Erosion and Sediment Control Handbook; provided that the architectural review board, or the director of planning, may require alternative methods of tree protection if greater protection is deemed necessary.
- f. *Designating and protecting preserved features.* Areas on a site containing features to be preserved shall be identified on approved site plans and building plans and shall be clearly and visibly delineated on the site prior to commencing grading or other land disturbing activity, including trenching or tunneling. No grading, other land disturbing activity, or movement of heavy equipment shall occur within the delineated areas. The visible delineation of the boundaries of the areas to be preserved shall be maintained until a certificate of occupancy is issued by the county. All features designated for preservation shall be protected during development.

(§ 30.6.3, 10-3-90; § 30.6.3.1, 10-3-90; 30.6.3.2, 10-3-90; 9-9-92; Ord. 01-18(3), 5-9-01; § 30.6.3, Ord. 10-18(5), 5-12-10)

30.6.3.1 BY RIGHT (Repealed 5-12-10, Now see 30.6.3.a.1)

30.6.3.2 BY SPECIAL USE PERMIT (Repealed 5-12-10, Now see 30.6.3.a.2)

30.6.4 CERTIFICATES OF APPROPRIATENESS

The architectural review board is authorized to issue 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 follows:

- a. *Development requiring a certificate of appropriateness.* The following developments require a certificate of appropriateness:
 - 1. *Building permits required.* Each structure and/or site improvement for which a building permit is required, even though it is not a development for which a site plan is required, unless the structure and/or site improvement is exempt under section 30.6.5. No building permit shall be approved until the certificate of appropriateness is obtained.

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2. *Site plans required.* Each structure and/or site improvement for which a building permit is required in a development for which a site plan is required, unless the improvement is exempt under section 30.6.5. No site plan shall be approved until the certificate of appropriateness is obtained.
- b. *Types of certificates of appropriateness.* The architectural review board is authorized to issue the following types of certificates of appropriateness:
1. *Specific developments.* For specific developments associated with one or more building permits or a single site plan.
 2. *Signs in a new multi-business complex or shopping center.* For all of the signs in a new multi-business complex or shopping center, where the architectural review board first conducts a comprehensive sign review. Once a certificate of appropriateness for signs in a new multi-business complex or shopping center is issued, the director of planning is authorized to determine whether a particular sign satisfies the conditions of the certificate of appropriateness.
 3. *County-wide certificates of appropriateness.* County-wide certificates of appropriateness may be issued for classes of structures, sites, improvements, or architectural elements, subject to the applicable design criteria and procedures, as follows:
 - a. *Categories of structures, sites, improvements, or architectural elements eligible for county-wide certificates of appropriateness.* The following categories of structures, sites, improvements, or architectural elements shall be eligible for county-wide certificates of appropriateness:
 1. Structures located seven hundred fifty (750) feet or more from an EC street that are not more than five (5) stories tall.
 2. Structures that are proposed to be located behind another structure that fronts an EC street as viewed from the EC street, where the rear structure is no more than twice the height of the front structure.
 3. Personal wireless service facilities.
 4. Signs, except for wall signs whose height exceeds thirty (30) feet.
 5. Safety fencing and screening fencing.
 6. New or replacement rooftop-mounted or ground-mounted equipment.
 7. Additions to structures or improvements for which a certificate of appropriateness was issued, where the design of the addition to the structure or improvement is consistent with the architectural design approved with the certificate of appropriateness.
 8. New structure or site lighting or changes to existing structure or site lighting.
 9. Minor amendments to site plans and architectural plans.
 10. Building permits for which the proposed change occupies fifty (50) percent or less of the altered elevation of an existing structure.
 11. Permits classified in sections 5-202, 5-203, 5-204 and 5-208(A) not otherwise exempt under section 30.6.5(k).

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- b. *Design criteria.* The board may establish appropriate architectural or design features under the design guidelines that a structure, site, improvement or architectural element must be found to be consistent with in order to be eligible to be subject to a county-wide certificate of appropriateness. The architectural or design features may include, but are not limited to: (i) building and structure height; (ii) building and structure size; (iii) scale or mass; (iv) appropriate roof forms; (v) appropriate building materials and/or colors; (vi) minimum planting requirements; (vii) minimum screening requirements; (viii) building, structure and/or site improvement locations; and (ix) the structural and design details of signs.

- c. *Determination of compliance by director of planning.* Once a county-wide certificate of appropriateness is issued, the director of planning is authorized to determine whether a particular structure, site, improvement or architectural element satisfies the specific design criteria of the county-wide certificate of appropriateness. The director or a member of the architectural review board may request at an upcoming meeting that the architectural review board, instead of the director, determine whether a particular structure, site, improvement or architectural element satisfies the specific design criteria of the county-wide certificate of appropriateness.

- d. *Action and appeal.* Any person requesting a determination whether a proposed structure, site, improvement or architectural element satisfies the specific design criteria of a county-wide certificate of appropriateness shall submit a request to the director of planning providing the information required by the director. The procedure for submittal and action under section 30.6.6(b), (c), (d) and (f) shall apply.
 - 1. *By the director.* If the director determines that the proposed structure, site, improvement or architectural element does not satisfy the specific design criteria of the county-wide certificate of appropriateness, the director shall send notice to the person requesting the determination of his decision. The person requesting the determination may either: (1) appeal the director's decision to the architectural review board by filing an appeal with the director within ten (10) days after the date of the director's notice of decision; or (2) file an application and proceed under sections 30.6.6 and 30.6.7.

 - 2. *By the board.* If the board determines in its own review or on an appeal of the director's decision that the proposed structure, site, improvement or architectural element does not satisfy the specific design criteria of the county-wide certificate of appropriateness, the board shall send notice to the person requesting the determination of its decision. The person requesting the determination may either: (1) appeal the board's decision to the board of supervisors under the procedure in section 30.6.8(b), (c) and (d); or (2) file an application and proceed under sections 30.6.6 and 30.6.7.

- e. *Authority to assure consistency with applicable design guidelines.* In determining whether a structure or associated improvements are consistent with the applicable design guidelines, the architectural review board may specify the following, which are in addition to the requirements of the underlying zoning district or of section 32, provided that the board may not authorize any maximum standard to be exceeded, or any minimum standard to not be met:
 - 1. *Architectural features.* The appearance of any architectural feature including, but not limited to, its form and style, color, texture and materials.

 - 2. *Size and arrangement of structures.* The configuration, orientation and other limitations as to the mass, shape, area, bulk, height and location of structures. In considering the

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arrangement and location of structures, the architectural review board may require that the existing vegetation and natural features be used to screen structures and associated improvements from one or more EC streets to which the parcel is contiguous as provided in section 30.6.2(b).

3. *Location and configuration of parking areas and landscaping.* The location and configuration of parking areas and landscaping and buffering requirements.
 4. *Landscaping measures.* In addition to the requirements of section 32.7.9, landscaping measures determined to be appropriate to assure that the structures and associated improvements are consistent with the applicable design guidelines.
 5. *Preservation of existing vegetation and natural features.* The preservation of existing trees, wooded areas and natural features.
 6. *Appearance of signs.* In addition to the applicable requirements of section 4.15, the appropriate style, size, colors, materials, illumination and location of all proposed signs, and any other applicable design guidelines. Each application for a certificate of appropriateness for one or more signs shall be accompanied by a site plan or sketch plan that shows the location of all signs proposed to be erected on the lot or lots subject to the site plan or sketch plan.
 7. *Fencing.* The location, type and color of all fencing, including safety fencing.
- d. *Authority to impose conditions to assure development is consistent with the applicable design guidelines.* The architectural review board is authorized to impose reasonable conditions in conjunction with any approved certificate of appropriateness to assure that the development is consistent with the applicable design guidelines. The architectural review board also is authorized to approve plans showing, or identifying in a certificate of appropriateness, existing trees, wooded areas and natural areas to be preserved, the limits of grading or other land disturbing activity including trenching and tunneling, in order to, among other things, protect existing features, and grade changes requiring tree wells or tree walls.
 - e. *Authority of zoning administrator to determine compliance with certificate of appropriateness.* The zoning administrator is authorized to determine whether a development, including a sign, satisfies the terms and conditions of the certificate of appropriateness.
 - f. *Effect of certificate of appropriateness.* Each structure or associated improvement for which a certificate of appropriateness was issued shall be established and maintained in accordance with the terms, conditions and requirements of the certificate. Each site plan and building permit shall demonstrate that the structures and associated site improvements will satisfy the terms, conditions and requirements of the certificate.

(§ 30.6.4, 10-3-90; § 30.6.4.1, 10-3-90; 5-18-94; § 30.6.4.2, 10-3-90; §30.6.5(formerly § 30.6.3.2, 7-8-92; Ord. 01-18(3), 5-9-01); § 30.6.4, Ord. 10-18(5), 5-12-10; Ord. 12-18(2), 3-14-12)

30.6.4.1 (Repealed 5-12-10, Now see 30.6.4)

30.6.4.2 (Repealed 5-12-10, Now see 30.6.4)

30.6.5 DEVELOPMENT EXEMPT FROM REQUIREMENT TO OBTAIN CERTIFICATE OF APPROPRIATENESS

The following development is exempt from the requirements of section 30.6:

- a. Primary and accessory dwelling units if no site plan is required by this chapter.
- b. Structures for agricultural or forestal uses if no site plan is required by this chapter.
- c. Temporary construction headquarters (section 5.1.18(a)), temporary construction yards (section 5.1.18(b)), and temporary mobile homes (section 5.7).

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- d. Agricultural product signs, political signs, public signs, sandwich board signs, temporary signs, window signs and signs exempt from the sign permit requirement under section 4.15.6.
- e. The repair and maintenance of structures and site improvements where there is no substantial change in design or materials.
- f. The repair and maintenance of nonconforming structures or site improvements as authorized by section 6.3(B).
- g. Additions or modifications to structures or site improvements where there is no substantial change in design or materials.
- h. Additions or modifications to structures to the extent necessary to comply with the minimum requirements of the Americans with Disabilities Act, the Fair Housing Act, or any other similar federal or state law providing for the reasonable accommodation of persons with disabilities.
- i. Additions or modifications to nonconforming structures as authorized by sections 6.3(A)(3) and 6.3(A)(5).
- j. Interior alterations to structures where there is no change in the exterior appearance of the structures.
- k. Issuance of permits classified in sections 5-202, 5-203, 5-204 and 5-208(A) if a building permit has also been issued and the work authorized by the permit classified in those sections does not change the external appearance of the structure.
- l. If a sign for which a certificate of appropriateness was previously issued was thereafter required by the Virginia Department of Transportation (“VDOT”) to be removed in conjunction with a VDOT construction project, the erection of the same sign, or a new sign composed of new materials; provided that the same sign or the new sign: (1) complies with the previously issued certificate of appropriateness, including all of its conditions; and (2) any condition pertaining to the specific location of the sign need not be complied with if locating the sign in the previously approved location is not reasonably practicable but it will be located where it otherwise complies with the condition to the extent practicable, as determined by the zoning administrator.

(§ 30.6.6, 10-3-90; § 30.6.6.1, 10-3-90; § 30.6.6.2, 10-3-90, 6-14-00; § 30.6.6.3, 5-18-94; § 30.6.5; Ord. 10-18(5), 5-12-10; Ord. 12-18(2), 3-14-12; Ord.15-18(3), 5-6-15) (Formerly SIGNS, Now see 30.6.4, 5-12-10)

30.6.5.1 GENERAL REGULATIONS (Repealed 7-8-92)

30.6.5.2 REGULATION OF NUMBER, HEIGHT, AREA, TYPES OF SIGNS (Repealed 7-8-92)

30.6.5.3 (Repealed 7-8-92)

30.6.6 SUBMITTAL, REVIEW AND ACTION ON APPLICATION; PRELIMINARY REVIEW

Applications for preliminary review under section 30.6 shall be subject to the following:

- a. *Applications.* An application for preliminary review shall contain a completed county-provided application form and supplemental information required by the director of planning (the “application”). The application may be filed with the department of community development by the owner, the owner’s agent, or a contract purchaser with the owner’s written consent (the “applicant”). Eight (8) collated copies of the application and all other information required by the application form for a preliminary review shall be filed. The application shall be accompanied by the fee required by section 35 at the time of its filing.
- b. *Determination of complete application; rejection of incomplete application.* An application that provides the information required by section 30.6.6(a) shall be accepted for review and decision. The agent shall make a determination as to whether an application is complete within ten (10) days after the submittal deadline.

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1. *Complete application; date deemed to be officially submitted.* The date of the next application deadline following the submittal of a complete application shall be deemed to be the date upon which the application was officially submitted.
2. *Incomplete application; notice to applicant.* An application omitting information required by section 30.6.6(a) shall be deemed to be incomplete and shall not be accepted. The agent shall inform the applicant in writing of the reasons why the application was rejected as being incomplete. If the agent does not deliver the notice within the ten (10) day period, the application shall be accepted for review, provided that the agent may require the applicant to later provide omitted information within a period specified by the agent of not less than ten (10) days, and further provided that if the applicant fails to timely provide the omitted information the agent may deem the application to be incomplete and reject the application as provided herein.
- c. *Resubmittal of application originally determined to be incomplete.* Within fifteen (15) days after the date the notice of rejection was mailed or delivered by the agent as provided in section 30.6.6(b), the applicant may resubmit the application with all of the information required by section 30.6.6(a) together with payment of the fee for the reinstatement of review. The date of the next application deadline following the resubmittal of the application shall be deemed to be the date upon which the application was officially submitted. If the applicant fails to resubmit the application within the fifteen (15) day period, the application shall be deemed to be denied and a new application and fee shall be required to submit the new application.
- d. *Resubmittal of revised application originally determined to be complete.* During the review process of a complete application, the director of planning (for county-wide certificates of appropriateness) or the architectural review board may request further revisions to the application in order to find that the application is consistent with the applicable design guidelines, or the applicant may revise the application on its own initiative in the absence of such a request, subject to the following:
 1. *Request for revision.* The director of planning or the architectural review board shall inform the applicant in writing of the requested revisions to the application. The letter shall inform the applicant that if it chooses to make some or all of the requested revisions, it shall notify the director of planning within fifteen (15) days of the date of the writing. The letter shall also inform the applicant that it may choose to proceed to action on the application without further revisions, and request that the applicant notify the director of planning within fifteen (15) days of the date of the letter if it desires to do so. The failure of the applicant to respond to the letter shall be presumed to be a request by the applicant to proceed to action on the application without further revisions, provided that an untimely notification by the applicant that it desires to make some or all of the requested revisions shall not preclude the applicant from doing so.
 2. *Revision on applicant's initiative.* The applicant may revise the application at any time, provided that the applicant should inform the director of planning of it doing so when that decision is made.
 3. *Suspension of decision date.* The receipt by the director of planning of a writing from the applicant stating that it will revise its application shall suspend the sixty (60) day period in which a decision must be made on the application under subsection 30.6.6(f).
 4. *Date revised application deemed to be officially resubmitted.* The date of the next application deadline following the resubmittal of a revised and complete application shall be deemed to be the date upon which the application was officially resubmitted and the sixty (60) day period in which a decision must be made on the application shall recommence.

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- e. *Notice of submitted application.* The director of planning shall send a notice to each member of the board of supervisors, the commission and the architectural review board that an application has been officially submitted. The notice shall be sent within five (5) days after the application is determined to be complete. The notice shall provide the location of the development by street address and magisterial district, identify the proposed use(s), state that the application may be reviewed in the offices of the department of community development, and provide the date of the architectural review board meeting at which the application will be considered.
- f. *Time for decision.* An application shall be acted on within sixty (60) days after the date the original application was officially submitted or by a later date requested by or agreed to by the applicant (collectively, the “decision date”).
- g. *Recommendations and decisions.* The architectural review board shall review the application for consistency with the applicable design guidelines as follows:
 - 1. *Recommendation and decision on preliminary review.* In making its recommendations on applications for preliminary review, the board shall consider the recommendations of the agent, the statements and information provided by the applicant, and any other information pertaining to the compliance of the application with the requirements of section 30.6. In making a decision on the application for preliminary review, the board also may make any recommendations it deems appropriate. The board shall send notice to the applicant of its decision on the preliminary review.
 - 2. *Decision as action on final review.* The board, in its discretion, may determine that additional review of the application is not necessary and make a decision on the application under section 30.6.7(g).
- h. *Modes of sending notices, letters and other writings.* Notices, letters and other writings required by subsections 30.6.6(b), (d), (e) and (g) shall be mailed to the identified recipients by first class mail, be personally delivered to the applicant, or be sent by email.
- i. *Application defined.* For the purposes of sections 30.6.6 and 30.6.7, the term “application” means an application for a certificate of appropriateness and a review to determine whether submitted drawings satisfy the conditions of a certificate of appropriateness, and any other request by an applicant for review.

(§ 30.6.6; Ord. 10-18(5), 5-12-10)

(Formerly NONCONFORMITIES; EXEMPTIONS, Now see 30.6.5, 5-12-10)

30.6.6.1 (Repealed 5-12-10, Now see 30.6.5)

30.6.6.2 REPAIR AND MAINTENANCE OF STRUCTURES (Repealed 5-12-10, Now see 30.6.5)

30.6.6.3 EXEMPTIONS (Repealed 5-12-10, Now see 30.6.5)

30.6.7 SUBMITTAL, REVIEW AND ACTION ON APPLICATION; FINAL REVIEW

Applications for final review under section 30.6 shall be subject to the following:

- a. *Applications.* An application for final review shall contain a completed county-provided application form and supplemental information required by the director of planning (the “application”). The application may be filed by the owner, the owner’s agent, or a contract purchaser with the owner’s written consent (the “applicant”), with the department of community development. Eight (8) collated copies of the application and all other information required by the application form for a final review shall be filed. The application shall be accompanied by the fee required by section 35 at the time of its filing.

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- b. *Determination of complete application; rejection of incomplete application.* An application that provides the information required by section 30.6.7(a) shall be accepted for review and decision. The agent shall make a determination as to whether an application is complete within ten (10) days after the submittal deadline.
 - 1. *Complete application; date deemed to be officially submitted.* The date of the next application deadline following the submittal of a complete application shall be deemed to be the date upon which the application was officially submitted.
 - 2. *Incomplete application; notice to applicant.* An application omitting information required by section 30.6.7(a) shall be deemed to be incomplete and shall not be accepted. The agent shall inform the applicant in writing of the reasons why the application was rejected as being incomplete. If the agent does not deliver the notice within the ten (10) day period, the application shall be accepted for review, provided that the agent may require the applicant to later provide omitted information within a period specified by the agent of not less than ten (10) days, and further provided that if the applicant fails to timely provide the omitted information the agent may deem the application to be incomplete and reject the application as provided herein.
- c. *Resubmittal of application originally determined to be incomplete.* Within fifteen (15) days after the date the notice of rejection was mailed or delivered by the agent as provided in section 30.6.7(b), the applicant may resubmit the application with all of the information required by section 30.6.7(a) together with payment of the fee for the reinstatement of review. The date of the next application deadline following the resubmittal of the application shall be deemed to be the date upon which the application was officially submitted. If the applicant fails to resubmit the application within the fifteen (15) day period, the application shall be deemed to be denied and a new application and fee shall be required to submit the new application.
- d. *Resubmittal of revised application originally determined to be complete.* During the review process of a complete application, the director of planning (for county-wide certificates of appropriateness) or the architectural review board may request further revisions to the application in order to find that the application is consistent with the applicable design guidelines, or the applicant may revise the application on its own initiative in the absence of such a request, subject to the following:
 - 1. *Request for revision.* The director of planning or the architectural review board shall inform the applicant in writing of the requested revisions to the application. The letter shall inform the applicant that if it chooses to make some or all of the requested revisions, it shall notify the director of planning within fifteen (15) days of the date of the writing. The letter shall also inform the applicant that it may choose to proceed to action on the application without further revisions, and request that the applicant notify the director of planning within fifteen (15) days of the date of the letter if it desires to do so. The failure of the applicant to respond to the letter shall be presumed to be a request by the applicant to proceed to action on the application without further revisions, provided that an untimely notification by the applicant that it desires to make some or all of the requested revisions shall not preclude the applicant from doing so.
 - 2. *Revision on applicant's initiative.* The applicant may revise the application at any time, provided that the applicant should inform the director of planning of it doing so when that decision is made.
 - 3. *Suspension of decision date.* The receipt by the director of planning of a writing from the applicant stating that it will revise its application shall suspend the sixty (60) day period in which a decision must be made on the application under subsection 30.6.7(f).

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4. *Date revised application deemed to be officially resubmitted.* The date of the next application deadline following the resubmittal of a revised and complete application shall be deemed to be the date upon which the application was officially resubmitted and the sixty (60) day period in which a decision must be made on the application shall recommence.

- e. *Notice of submitted application.* The director of planning shall send a notice to each member of the board of supervisors, the commission and the architectural review board that an application has been officially submitted. The notice shall be sent within five (5) days after the application is determined to be complete. The notice shall provide the location of the development by street address and magisterial district, identify the proposed use(s), state that the application may be reviewed in the offices of the department of community development, and provide the date of the architectural review board meeting at which the application will be considered.

- f. *Time for decision.* An application shall be acted on within sixty (60) days after the date the original application was officially submitted or by a later date requested by or agreed to by the applicant (collectively, the “decision date”).
 1. *When application may be deemed approved.* If the decision date has passed without the application being acted upon, the applicant may make a written demand for action that is delivered to the director of planning. If the board fails to act on the application within twenty-one (21) days after the receipt of the written demand, the application shall be deemed to be approved.
 2. *Notice if application deemed approved.* If an application is deemed approved, the agent shall send notice that the application was deemed approved to the applicant, the zoning administrator and the county executive. The notice shall be sent within five (5) days after the expiration of the twenty-one (21) day period in which the architectural review board had to act.
 3. *Consent to extend time for decision.* The applicant may consent to extend the time for a decision.

- g. *Decisions.* The architectural review board shall review the application for consistency with the applicable design guidelines, exercising the authority granted by section 30.6. In making a decision on an application for a certificate of appropriateness and other applications for review, the board shall consider the recommendations of the agent, the statements and information provided by the applicant, and any other information pertaining to the compliance of the application with the requirements of section 30.6.
 1. *Issue or deny.* In making a decision on an application for a certificate of appropriateness, the board may issue the certificate of appropriateness and impose conditions and grant modifications if it finds that the application is consistent with the applicable design guidelines, or would be consistent with the applicable design guidelines subject to conditions of approval or specified modifications. The board shall send notice to the applicant of its decision on the final review.
 2. *Recommendations.* In lieu of issuing or denying a certificate of appropriateness, the board may make any recommendations it deems appropriate to the applicant to revise the application so that it is consistent with the applicable design guidelines before the board acts to issue or deny the application. If the time for a decision under section 30.6.7(f) would expire before the application could be thereafter considered by the board, the board must obtain the applicant’s consent to extend the time for decision.

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- h. *Period of validity of certificate of appropriateness.* A certificate of appropriateness shall be valid for the same period that the site plan is valid or, if no site plan is required for the structure or site improvements, for three (3) years. The architectural review board may extend the period of validity of a certificate of appropriateness upon the written request of the applicant. The written request must be received by the director of planning before the certificate's period of validity expires and, upon receipt, the running of the period of validity shall be suspended until the architectural review board acts on the request. The board may grant an extension determined to be reasonable, taking into consideration the size and phasing of the proposed development and the laws, ordinances, regulations and design guidelines in effect at the time of the request for an extension and changes thereto since the certificate of appropriateness was originally issued.
- i. *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 denial.
- j. *Modes of sending notices, letters and other writings.* Notices, letters and other writings required by subsections 30.6.7(b), (d), (e), (f) and (g) shall be mailed to the identified recipients by first class mail, be personally delivered to the applicant, or be sent by email.

(§ 30.6.7, 10-3-90; Ord. 10-18(5), 5-12-10)

30.6.8 APPEALS

A decision of the architectural review board on an application for a certificate of appropriateness and other applications for review, and an application deemed approved under section 30.6.7(f), may be appealed to the board of supervisors as follows:

- a. *Persons and entities having right to appeal.* An appeal may be filed by the applicant, any person aggrieved, the zoning administrator, or the county executive.
- b. *Written appeal required; timing for filing.* An appeal shall be in writing and be filed with the clerk of the board of supervisors within ten (10) days after the date of the architectural review board's decision under section 30.6.7(g), or within ten (10) days after the date of the required notice if the application is deemed approved under section 30.6.7(f). The appeal shall state the grounds for the appeal.
- c. *Consideration of appeal by board of supervisors.* The board of supervisors may affirm, reverse, or modify in whole or in part the issuing, the issuing with conditions or modifications, or the denial of the certificate of appropriateness. In so doing, the board shall give due consideration to the recommendations of the architectural review board together with any other information it deems necessary for a proper review of the appeal. When considering an appeal pertaining to a public safety facility, the board may issue a certificate of appropriateness if it finds that the facility is a public necessity.
- d. *Appeal of board of supervisors' decision.* The applicant or any person aggrieved may appeal the final decision of the board of supervisors to the circuit court by filing a petition setting forth the alleged illegality of the action of the board of supervisors. The petition shall be filed within thirty (30) days after the date of the final decision.

(§ 30.6.8, 10-3-90; Ord. 10-18(5), 5-12-10)

30.6.9 PUBLIC HEALTH OR SAFETY CONSIDERED

Where the public health or safety and any requirement of this section 30.6 or any term or condition of a certificate of appropriateness conflict, the public health or safety shall prevail. In addition:

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- a. Nothing in section 30.6 shall be deemed to compromise, limit, or otherwise impair the agent or the commission in their review of a preliminary or final site plan under section 32. In their review of any preliminary or final site plan, the agent or the commission may modify, vary or waive any term or condition of a certificate of appropriateness upon finding that such action would better serve the public health or safety; provided that the agent may modify, vary or waive any such a term or condition only after consulting with the building official, the county engineer, a representative of the department of fire rescue or other public official who advises the agent that the public health or safety would be at risk if the condition is not modified, varied or waived.
- b. Nothing in section 30.6 shall be deemed to impair the authority of the zoning administrator under section 31.4(d).

(§ 30.6.9; Ord. 10-18(5), 5-12-10)

30.7 STEEP SLOPES OVERLAY DISTRICT

30.7.1 PURPOSE AND INTENT

The purpose of this section 30.7 is to establish an overlay district on those lands within the development areas of the county as delineated in the comprehensive plan which have steep slopes and for which additional development design care and consideration must be given, prior to permitted development occurring.

The board of supervisors finds that whenever steep slopes within the overlay district are disturbed, their disturbance should be subject to appropriate consideration and care in their design and construction in order to protect the integrity of the steep slope areas, protect downstream lands and waterways from the adverse effects of the unregulated disturbance of steep slopes, including the rapid or large-scale movement of soil and rock, or both, excessive stormwater runoff, the degradation of surface water, and to enhance and preserve the character and beauty of the steep slopes in the development areas of the county.

The board also finds that certain steep slopes, because of their characteristics, should be preserved to the maximum extent practical, and that other steep slopes, whose preservation is not required, should be managed. Preserved slopes are those slopes that have characteristics that warrant their preservation by the prohibition of disturbance except in the limited conditions provided in this overlay district. Managed slopes are those slopes where development may occur, provided that design standards are satisfied to mitigate the impacts caused by the disturbance of the slopes.

(§ 30.7.1; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

30.7.2 APPLICABILITY

Section 30.7 shall apply to all privately and publicly owned lands within the county that are within the boundaries of the steep slopes overlay district and depicted as being managed or preserved slopes on the series of maps entitled “Steep Slopes Overlay District,” which are hereby adopted as the zoning map of the steep slopes overlay district. Within this overlay district, the regulations in this chapter pertaining to critical slopes shall not apply.

(§ 30.7.2; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

30.7.3 CHARACTERISTICS OF STEEP SLOPES

The characteristics of the steep slopes within the overlay district are as follows:

- a. *Managed slopes.* The characteristics of managed slopes are the following: (i) the contiguous area of steep slopes is limited or fragmented; (ii) the slopes are not associated with or abutting a water feature, including, but not limited to, a river, stream, reservoir or pond; (iii) the slopes are not natural but, instead, are manufactured; (iv) the slopes were significantly disturbed prior to June 1, 2012; (v) the slopes are located within previously approved single-family residential lots; or (vi) the slopes are shown to be disturbed, or allowed to be disturbed, by a prior county action.
- b. *Preserved slopes.* The characteristics of preserved slopes are the following: (i) the slopes are a contiguous area of ten thousand (10,000) square feet or more or a close grouping of slopes, any or all of which may be less than ten thousand (10,000) square feet but whose aggregate area is ten thousand (10,000) square feet or more; (ii) the slopes are part of a system of slopes associated with or abutting a water feature including, but not limited to, a river, stream, reservoir or pond; (iii) the slopes are part of a hillside system; (iv) the slopes are identified as a resource designated for preservation in the comprehensive plan; (v) the slopes are identified as a resource in the comprehensive plan; (vi) the slopes are of significant value to the entrance corridor overlay district; or (vii) the slopes have been preserved by a prior county action, including, but not limited to, the placement of an easement on the slopes or the acceptance of a proffer or the imposition of a condition, restricting land disturbing activity on the slopes.

(§ 30.7.3; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

30.7.4 PERMITTED USES

The following uses and structures are permitted by right or by special use permit on managed or preserved slopes, provided that the land disturbing activity to establish the use or structure complies with design standards in section 30.7.5 and all other applicable requirements of the Code:

- a. *Managed slopes.* The uses permitted by right and by special use permit on managed slopes are as follows, subject to the applicable requirements of this chapter:
 1. *By right.* The uses permitted by right in the underlying district shall be permitted by right on managed slopes.
 2. *By special use permit.* The uses permitted by special use permit in the underlying district shall be permitted by special use permit on managed slopes.
- b. *Preserved slopes.* The uses permitted by right and by special use permit on preserved slopes are as follows, subject to the applicable requirements of this chapter:
 1. *By right.* The uses permitted by right on preserved slopes are the following:
 - a. *Existing single-family dwelling unit.* Any single-family detached or single-family attached dwelling unit which was lawfully in existence prior to March 5, 2014 may be expanded, enlarged, extended, modified or reconstructed. For the purposes of this subsection, the term “lawfully in existence” includes, but is not limited to, any single-family detached or single-family attached dwelling unit for which a building permit was issued prior to March 5, 2014; provided that the building permit has not expired.

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- b. *Existing lot of record; first single-family detached dwelling unit.* Any lot which was a lawful lot of record on March 5, 2014 may establish the first single-family detached dwelling unit on the lot; provided the lot does not contain adequate land area outside of the preserved slopes to locate the dwelling unit. For the purposes of this subsection, the term “lawful lot of record” includes any lot shown on a subdivision plat approved prior to March 5, 2014; provided that the plat is still valid.
 - c. *Necessary public facilities.* Public facilities necessary to allow the use of the lot, provided that the lot does not contain adequate land area outside of the preserved slopes to locate the public facilities and one or more of the following exist: (i) the land disturbing activity avoids impacts on other protected resources such as stream buffers or floodplain; (ii) the alignment of the public facilities is consistent with the alignment of public facilities depicted or described in the comprehensive plan; (iii) the disturbance is necessary to provide interconnection required by the Code or the applicable regulations of other public entities; or (iv) prohibiting the facilities from being located on preserved slopes will cause an unnecessary hardship. To the extent that public facilities are established on preserved slopes, the preserved slopes should be preserved to the maximum extent practicable consistent with the intent and purpose of this overlay district,
 - d. *Trails.* Public or private pedestrian and bicycle trails.
 - e. *Accessory uses and structures.* Any uses or structures accessory to a dwelling unit authorized by subsection (b)(1)(a) and (b)(1)(b).
 - f. *Distribution facilities.* Water, sewer, energy, and communications distribution facilities. To the extent that distribution facilities are established on preserved slopes, the preserved slopes should be preserved to the maximum extent practicable consistent with the intent and purpose of this overlay district,
 - g. *Legislative zoning actions related to the underlying district.* Any use or structure approved by the board of supervisors in a zoning map amendment whose location is expressly authorized in an approved application plan, code of development, or an accepted proffer, in a special use permit authorized in the underlying district regulations, or in a special exception authorizing a waiver or modification of the requirements of section 4.2.3; provided that the legislative action is still valid and that the use or structure complies with all requirements and conditions approved or imposed in conjunction with the legislative zoning action.
 - h. *Slopes less than 25% based on new topographic information.* Any use or structure allowed by right or by special use permit in the underlying district, provided that the owner submits new topographic information that is based on more accurate or better technical data demonstrating, to the satisfaction of the county engineer, that the slopes are less than twenty-five (25) percent.
2. *By special use permit.* The only use permitted by special use permit on preserved slopes are private facilities such as accessways, utility lines and appurtenances, and stormwater management facilities, not otherwise permitted by right under subsection (b)(1)(e), where the lot does not contain adequate land area outside of the preserved slopes to locate the private facilities.

(§ 30.7.4; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

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30.7.5 DESIGN STANDARDS

The following design standards apply to land disturbing activity to establish a use permitted by right or by special use permit in the steep slopes overlay district.

- a. *Retaining walls.* Retaining walls shall meet or exceed the following minimum standards:
 1. *Wall height.* The maximum height for a single retaining wall, measured from grade to grade, shall be six (6) feet, except as provided in subsection (a)(3). When the overall retained height would exceed six (6) feet, the retaining wall shall be broken into multiple stepped walls.
 2. *Multiple stepped walls; separation.* A minimum horizontal distance of three (3) feet shall be maintained between each individual wall in a stepped wall system, and shall be landscaped with screening shrubs planted on ten (10) foot centers.
 3. *Incorporation of wall into design of a building.* Retaining walls may be incorporated into the design of a building so that they become part of the building. Retaining walls incorporated into the design of a building shall not be subject to height limitations of subsection (a)(1).
- b. *Cuts and fills.* Any cut or fill shall meet or exceed the following minimum standards:
 1. *Rounding off.* Any cut or fill shall be rounded off to eliminate sharp angles at the top, bottom and side of regraded slopes.
 2. *Location of toe of the fill slope.* The toe of any fill slope shall not be located within ten (10) feet horizontally of the top of an existing or proposed cut slope.
 3. *Tops and bottoms.* Tops and bottoms of cut and fill slopes shall be located either: (i) a distance from existing and proposed property lines at least equal to the lesser of three (3) feet plus one-fifth (1/5) of the height of the cut or fill, or ten (10) feet; (ii) any lesser distance than provided in subsection (b)(3)(i) the zoning administrator determines would not adversely impact the abutting parcel based on information provided by the owner of the abutting parcel; or (iii) on the abutting parcel if the owner obtains an easement authorizing the slope on the abutting owner's parcel.
 4. *Steepness.* Cut and fill slopes shall not be steeper than a 2:1 (fifty (50) percent) slope. If the slope is to be mowed, the slope shall be no steeper than a 3:1 (thirty-three (33) percent) slope.
- c. *Reverse slope benches or a surface water diversion.* Reverse slope benches or a surface water diversion shall meet or exceed the following minimum standards:
 1. *When required.* Reverse slope benches or a surface water diversion shall be provided whenever: (i) the vertical interval (height) of any 2:1 (fifty (50) percent) slope exceeds twenty (20) feet; (ii) the vertical interval (height) of any 3:1 (thirty-three (33) percent) slope exceeds thirty (30) feet; or (iii) the vertical interval (height) of any 4:1 (twenty-five (25) percent) slope exceeds forty (40) feet.
 2. *Width and location of benches.* Reverse slope benches shall be at least six (6) feet wide and located to divide the slope face as equally as possible and shall convey the water to a stable outlet. Benches shall be designed with a reverse slope of 6:1 (approximately seventeen (17) percent) or flatter to the toe of the upper slope and have a minimum of one (1) foot. The bench gradient to the outlet shall be between two (2) percent and three (3) percent, unless accompanied by appropriate design and computations.

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3. *Flow length within a bench.* The flow length within a reverse slope bench shall not exceed eight hundred (800) feet unless accompanied by appropriate design and computations demonstrating that the flow length is designed to be adequate to ensure the stability of the slope and prevent or minimize erosion.
- d. *Surface water diversions.* Surface water shall be diverted from the face of all cut and/or fill slopes by the use of diversions, ditches and swales or conveyed downslope by using a designed structure. The face of the slope shall not be subject to any concentrated flows of surface water such as from natural drainage ways, graded swales, downspouts, or similar conveyances.

(§ 30.7.5; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

30.7.6 AMENDMENT OF DISTRICT BOUNDARIES

The boundaries of the steep slopes overlay district, including any lands depicted as managed or preserved slopes on the steep slopes overlay district map, or a slope's designation as preserved or managed, may be amended by the board of supervisors under section 33. In order to remove any lands from the district, the applicant shall submit, in addition to any information required by section 33, field run topography prepared by a licensed engineer, surveyor or landscape architect demonstrating that the lands to be removed from the district do not contain slopes of twenty-five (25) percent or greater.

(§ 30.7.6; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2280(1), (2), 15.2-2285, 15.2-2286(A)(4).