

ALBEMARLE COUNTY CODE

CHAPTER 18

ZONING

SECTION 31

ADMINISTRATION AND ENFORCEMENT

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31.1 DESIGNATION OF ZONING ADMINISTRATOR, AUTHORITY

The office of zoning administrator is hereby established, subject to the following:

- a. *Authority.* The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce this chapter. This authority includes, but is not limited to:
 1. Interpreting this chapter and the official zoning map;
 2. Administering this chapter by making determinations and decisions on any matters arising under this chapter, including but not limited to, how a building, structure or use should be classified, whether a use is permitted within a particular zoning district, whether a proposed building or structure complies with setback, height, bulk and other requirements, whether a building, structure, use or lot is nonconforming, and whether a lot meets minimum lot size requirements.
 3. Ordering in writing the remedying of any use or structure determined to be in violation of this chapter;
 4. Insuring compliance with this chapter, bringing legal action, including an action for injunction, abatement, civil penalties or other appropriate action or proceeding subject to appeal as provided by Virginia Code § 15.2-2311 and this chapter;
 5. In specific cases, making findings of fact and, with concurrence of the county attorney, conclusions of law regarding determinations of rights under Virginia Code §§ 15.2-2307 and 15.2-2311(C);
 6. Enforcing the provisions of this chapter regulating the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws;
 7. Making decisions and determinations as to whether a pending site plan, subdivision plat, building permit application or any other application subject to review and approval by the county or the program authority complies with this chapter;
 8. Administering and enforcing proffers accepted in conjunction with zoning map amendments, including: (i) ordering in writing the remedying of any noncompliance with the proffers; (ii) insuring compliance with the proffers by bringing legal action, including an action for injunction, abatement, or other appropriate action or proceeding; and (iii)

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requiring a guarantee in the form of a surety bond, letter of credit, cash deposit, or another form of guarantee determined to be acceptable by the county attorney, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffers, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the zoning administrator, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part; and

9. Keeping and making available for public inspection a conditional zoning index. The index shall provide ready access to the proffers accepted in conjunction with a zoning map amendment and the regulations provided for in a particular district or zone. The index also shall provide ready access to all proffered cash payments and expenditures disclosure reports prepared by the board of supervisors pursuant to Virginia Code § 15.2-2303.2. The zoning administrator shall update the index annually and no later than November 30 of each year.

b. *Absence of specific authority not a limitation.* The specific authority expressly granted to the zoning administrator in other sections of this chapter shall not be construed to be a limitation on the authority of the zoning administrator to administer and enforce those sections where specific authority is not expressed.

((§ 31.1, 12-10-80; Ord. 09-18(3), 7-1-09)(§ 33.3.3, 12-10-80); Ord. 12-18(7), 12-5-12, 4-1-13)

State law reference – Va. Code §§ 15.2-2286(A)(4),(14), 15.2-2299, 15.2-2300

31.1.1 – 31.1.3 (Repealed 7-1-09)

31.2 BUILDING PERMIT APPLICATIONS

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

- a. *Review.* The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Within each neighborhood model district, the director of planning shall also review each building permit application to determine whether the proposed structure conforms to the architectural and landscape standards in the approved code of development.
- b. *Information to be submitted; number of copies.* Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.
- c. *Approval.* If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.
- d. *Circumstances when building permit shall not be approved.* The zoning administrator shall not approve a building permit in the following circumstances:
 - 1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.

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2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code section 17-1000 until the applicant complies with Albemarle County Code section 17-10001.
3. No building permit shall be approved in violation of any provision of this chapter.
- e. *Other information for building official.* The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); Ord. 09-18(3), 7-1-09; Ord. 15-18(5), 7-8-15)

31.2.1 – 31.2.5 (Repealed 7-1-09)

31.3 ZONING PERMITS

The zoning administrator shall review requests for zoning permits for those buildings and structures not required to file a building permit application, as follows:

- a. *When required.* Prior to starting, establishing, constructing, reconstructing, enlarging or altering any buildings or structures for which a building permit application is not required under the building code, the applicant shall request a zoning permit.
- b. *Review.* The zoning administrator shall review each zoning permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall provide a copy of the most recent plat of record of the land to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.
- c. *Approval.* If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the zoning permit application.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); § 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01 (part); Ord. 09-18(3), 7-1-09)

31.4 CERTIFICATES OF OCCUPANCY

The zoning administrator shall review certificates of occupancy submitted to the building official as follows:

- a. *Review.* Prior to issuance of a certificate of occupancy, the zoning administrator shall review the certificate to ensure that the building, structure and improvements comply with this chapter.
- b. *Approval.* If the proposed building, structure and improvements, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the certificate of occupancy. The final zoning inspection approval or approvals may serve as evidence of the zoning administrator's approval of the certificate of occupancy for any addition or alteration to a building or structure for which a certificate of occupancy has previously been issued or is not required under the building code.
- c. *Certificate of occupancy where improvements not completed.* Upon the request of a developer, the zoning administrator may approve a certificate of occupancy where the buildings or structures shown on a site plan are completed in compliance with the building code and this chapter before all improvements required by the site plan are completed, as follows:

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1. *Required findings.* The zoning administrator may approve a certificate of occupancy upon finding that: (i) the improvements still to be completed and operating are not directly related to health and safety, such as fire hydrants and safe and convenient access to public roads; and (ii) the site may be occupied without endangering life or public health or safety prior to full completion of the improvements required by the site plan.
 2. *Surety.* Before issuing a certificate of occupancy, the zoning administrator may require the developer to provide a certified check, bond with surety, a letter of credit, or other form of surety, all of which shall be in a form satisfactory to the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements within one (1) year. Upon the request of the developer prior to the expiration of the surety, the zoning administrator may extend the period of the surety if the developer demonstrates that an extension is required because of adverse weather conditions or other unusual circumstances beyond the developer's control, rather than the developer's failure to diligently pursue completion or other reasons.
- d. *Circumstances when certificate of occupancy shall not be issued.* The zoning administrator shall not issue a certificate of occupancy in the following circumstances:
1. No certificate of occupancy shall be issued in violation of this chapter.
 2. No certificate of occupancy shall be issued if, after review of any building, structure or site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan.
- e. *Other information for building official.* The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure does not comply and, therefore, a certificate of occupancy should not be issued by the building official.

(§ 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01; § 31.2.3.3, 9-9-2; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09)

31.5 ZONING CLEARANCE

The zoning administrator shall review requests for zoning clearances as follows:

- a. *When required.* A zoning clearance shall be required in the following circumstances:
1. *New use.* Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural, use.
 2. *Change or intensification of existing use.* Prior to changing or intensifying an existing non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural use.
 3. *Change of occupant.* Prior to a new occupant taking possession of an existing non-residential use, other than an agricultural use.
 4. *Specific buildings, structures or uses.* Prior to establishing any building, structure, or use for which a zoning clearance is required under section 5.
 5. *Commencement of extraction activity.* Prior to commencing any natural resource extraction activity within the natural resources overlay district.

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- 6. *Events and activities at farm wineries, farm breweries, farm distilleries, and agricultural operations.* Prior to the first time that a specific class of event or activity is held at a farm winery, farm brewery, farm distillery, or agricultural operation, if a zoning clearance is required under sections 5.1.25(b), 5.1.57(b), 5.1.58(d), and 5.1.59(b).
- 7. *Outdoor amplified music.* Prior to the first time that outdoor amplified music is generated at an event or activity at a farm winery, farm brewery, or agricultural operation, as provided in sections 5.1.25, 5.1.57, and 5.1.58, respectively.
- b. *Approval.* If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.
- c. *Circumstance when zoning clearance shall not be issued.* The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan.
- d. *Notice to the owner if the applicant is not the owner.* Within ten (10) days after receipt of a request for a zoning clearance by an applicant who is not the owner of the lot and/or structure to which the zoning clearance pertains, and prior to acting on the request, the zoning administrator or the applicant, at the zoning administrator's request, shall give written notice of the request to the owner. Written notice mailed to the owner's last known address as shown on the current real estate tax assessment records shall satisfy this notice requirement. If the zoning administrator requests that the applicant provide the written notice, the applicant shall provide satisfactory evidence to the zoning administrator that the notice has been given.
- e. *Commercial and industrial uses defined.* For the purposes of this section 31.5, production agriculture, production silviculture, and agricultural operations are neither commercial nor industrial uses; a home occupation is a commercial use.
- f. *Effect of renumbering and renaming.* Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.5 or a zoning clearance.

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09; Ord. 11-18(1), 1-12-11; Ord. 11-18(8), 8-3-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

31.6 SPECIAL USE PERMITS

(Repealed 12-5-12, effective 4-1-13; Formerly § 31.2.4)

31.6.1 – 31.6.4 (Repealed 12-5-12, effective 4-1-13; Formerly §§ 31.2.4.1-31.2.4.4)

31.7 (Repealed 7-8-15)

31.8 (Repealed 12-5-12, effective 4-1-13)