

ALBEMARLE COUNTY CODE

CHAPTER 18

ZONING

SECTION 34

BOARD OF ZONING APPEALS

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34.1 BOARD OF ZONING APPEALS; ESTABLISHMENT AND ORGANIZATION

A board of zoning appeals (the “board”) is hereby established, subject to the following:

- a. *Members and their appointment.* The board shall have five (5) members. Each member shall be appointed by the Albemarle County Circuit Court.
- b. *Eligibility.* Each member shall be a qualified resident of Albemarle County.
- c. *Term; vacancies; serving beyond expiration of term.* Members shall be appointed for terms of five (5) years and any member may be reappointed for successive terms. The original appointments were made in staggered terms so that the term of one member expires each year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- d. *Holding other public office prohibited.* A member may not hold any other public office within the county except that one member may be a member of the commission.
- e. *Organization.* The board shall elect at its annual meeting a chairman, who shall preside over all meetings, a vice-chairman, who shall act in the absence of the chairman, and a secretary. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not vote on any matter. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.
- f. *Quorum.* A quorum shall be a majority of all the members of the board.
- g. *Resources; obtaining services.* Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary for transaction of its business. The board may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.
- h. *Compensation.* Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

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- i. *Removal from office.* Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Albemarle County Circuit Court, after hearing held after at least fifteen (15) days' notice.

(12-10-80; Ord. 15-18(5), 7-8-15)

State law reference – Va. Code §§ 15.2-2308, 15.2-2309.

34.2 POWERS AND DUTIES OF THE BOARD OF ZONING APPEALS

The board of zoning appeals (the “board”) shall have the following powers and duties:

- a. *Meet and conduct business; continued meetings due to inclement weather.* To regularly meet to conduct its business as provided in section 34.1 and this section. The board also may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. The finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for the meeting shall be conducted at the continued meeting and no further advertisement is required.
- b. *Appeals.* To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer, and to hear and decide appeals from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter, exclusive of section 32, as provided in section 34.3.
- c. *Variances.* To consider and approve variances as provided in section 34.4.
- d. *Special use permits.* To consider and approve special use permits for certain signs under sections 4.15.5 and 4.15.5A, and to revoke a special use permit previously approved, as provided in section 34.5.
- e. *Interpret a district map* To hear and decide applications to interpret a district map where there is any uncertainty as to the location of a district boundary, as provided in section 34.6.
- f. *Power to administer oaths and compel attendance of witnesses.* The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses for any hearing on an appeal under section 34.3 or any application for a variance under section 34.4.

(12-10-80; Ord. 15-18(5), 7-8-15)

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

34.3 APPEALS OF ORDERS, REQUIREMENTS, DECISIONS, AND DETERMINATIONS TO THE BOARD OF ZONING APPEALS

An appeal from any order, requirement, decision or determination made by an administrative officer, and an appeal from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter (collectively, a “decision”), exclusive of any decision made under section 32, shall be considered by the board of zoning appeals (the “board”) as follows:

- a. *Standing to appeal.* An appeal to the board may be taken by any person aggrieved or by any county officer, department, board or bureau affected by any decision of the zoning administrator or an administrative officer.
- b. *Time in which to appeal decision.* Any appeal shall be received by the zoning administrator and the board within thirty (30) days after the date of the decision; provided that any appeal of a notice

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of violation involving temporary or seasonal commercial uses, parking commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations, shall be received by the zoning administrator and the board within ten (10) days after the date of the decision.. The date of the decision shall be the date of the letter or written notice, provided that the time in which to appeal an order or a notice of violation shall not commence unless and until the recipient is provided the notice required by section 36.2(d).

- c. *Form of the appeal.* Any appeal shall be in writing and shall state the grounds for the appeal.
- d. *Where appeal must be submitted.* An appeal must be submitted to the zoning administrator and to the board. An appeal received by the county’s department of community development shall be deemed to have been received by both the zoning administrator and the board.
- e. *Payment of fees.* The submitted appeal shall be accompanied by the applicable fee required by section 35.1. An appeal shall not be deemed to have been received until the required fee is paid.
- f. *Effect of filing appeal.* An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that, by reason of the facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. If the zoning administrator makes such a certification, the proceedings shall not be stayed unless either the board or the Albemarle County Circuit Court grants a restraining order on application and on notice to the zoning administrator and for good cause shown.
- g. *Transmittal of information.* The zoning administrator shall promptly transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- h. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board’s hearing on the appeal:
 - 1. *Scheduling the hearing on the appeal.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (j).
 - 2. *Notice of the hearing.* The board shall give notice of the hearing as well as written notice to the parties to the appeal. The notice shall be given as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the appeal, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).
 - 3. *Contact by parties with board members.* The non-legal staff of the board of supervisors, as well as the appellant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the appeal. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the appellant, landowner, or his agent or attorney are all invited. For the purposes of this section, the “non-legal staff of the board of supervisors” is any staff who is neither an attorney in the county attorney’s office nor appointed by special law.
 - 4. *Sharing information produced by county staff.* Any materials relating to an appeal, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable

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thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

- i. *Procedural requirements at the hearing.* The following procedures apply at the board's hearing on the appeal:
 - 1. *The right to equal time for a party to present its side of the case.* The board shall offer an equal amount of time in a hearing on the case to the appellant or other person aggrieved and the county staff.
 - 2. *The administrative officer's required explanation.* The administrative officer whose decision is being appealed shall explain the basis for his decision.
 - 3. *The presumption of correctness.* At the hearing, the administrative officer's decision is presumed to be correct.
 - 4. *Burden of proof.* After the administrative officer explains the basis for his decision, the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.
- j. *Time for decision.* The board shall schedule a reasonable time for the hearing on an appeal so that it may make its decision within ninety (90) days after the date the appeal was filed. This ninety (90) day period is directory, not mandatory.
- k. *Factors to consider when acting.* The board's decision shall be based on its judgment of whether the administrative officer's decision was correct. The board also shall consider any applicable ordinances, laws, and regulations in making its decision. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.
- l. *Action by the board; vote required.* The board may reverse or affirm, wholly or partly, or may modify, the decision appealed from. The concurring vote of three (3) members of the board is required to reverse any decision. If the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.
- m. *Effect of decision on owner; appeals from notices of violation or written orders.* A decision by the board on an appeal from a notice of violation or a written order of the zoning administrator shall be binding upon the owner of the lot that is the subject of the appeal only if the owner was provided written notice of the zoning violation or written order. The owner's actual notice of the notice of zoning violation or written order, or active participation in the appeal hearing, shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.
- n. *Judicial review.* Any action contesting a decision of the board shall be as provided in Virginia Code § 15.2-2314.
- o. *Appeals of decisions made under section 32.* Any appeal of a decision made under section 32 shall be brought only as provided in section 32.

(§ 34.3, Ord. 15-18(5), 7-8-15 (§ 34.3, 12-10-80; Ord. 09-18(3), 7-1-09)(§ 34.5, 12-10-80; 5-5-82)(§ 34.6, 12-10-80))

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2311, 15.2-2312, 15.2-2314.

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34.4 VARIANCES

An application for a variance shall be considered by the board of zoning appeals (the “board”) as follows:

- a. *Who may file an application.* An application may be filed by any owner, tenant, the easement holder of an easement where the use for which the variance is sought is a use allowed by the deed of easement or equivalent instrument, government official, department, board or bureau (the “applicant”). The zoning administrator is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.
- b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The application may pertain to one or more lots owned or occupied by the applicant. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:
 1. *Criteria to establish right to a variance.* Information pertaining to the criteria to establish the right to a variance in subsection (i).
 2. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a variance is an easement holder.
- c. *Filing the application; number of copies.* The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.
- d. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
 1. *Timing of determination of completeness.* The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
 2. *Procedure if application is incomplete.* If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
 3. *Effect if timely determination not made.* If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
 4. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

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

- e. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

- f. *Transmittal of information.* The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

- g. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board's hearing on the application:
 1. *Scheduling the hearing on the application.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

 2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the variance, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

 3. *Contact by parties with board members.* The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

 4. *Sharing information produced by county staff.* Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

- h. *Procedural requirements at the hearing.* The following procedures apply at the board's hearing on the application:
 1. *The right to equal time for a party to present its side of the case.* The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

 2. *Burden of proof.* The applicant has the burden to prove by a preponderance of the evidence that his application meets the definition of a variance in Virginia Code § 15.2-2201 and the criteria in subsection (i).

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- i. *Criteria to establish basis to grant a variance.* The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:
 - 1. *Good faith acquisition and hardship not self-inflicted.* The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
 - 2. *No substantial detriment.* Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
 - 3. *Condition of situation not general or recurring.* The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
 - 4. *Use variance prohibited.* Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
 - 5. *Special use permit or special exception not available.* The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.
- j. *Factors not to be considered.* The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.
- k. *Time for decision.* The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.
- l. *Action by the board; vote required to grant variance.* The concurring vote of three (3) members of the board is required to grant a variance.
- m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:
 - 1. *Nature of conditions.* The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.
 - 2. *Guarantee or bond to ensure compliance.* The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
 - 3. *Conditions deemed to be essential and nonseverable.* Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.
- n. *Effect of granting variance; expansion of structure.* The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

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- o. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
 - 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.
 - 2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- p. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.
- q. *Judicial review.* Any action contesting a decision of the Board under this section shall be as provided in Virginia Code § 15.2-2314.

(§ 34.4, 12-10-80; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 15-18(5), 7-8-15; Ord. 16-18(3), 4-6-16)

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

34.5 SPECIAL USE PERMITS

(Formerly Procedure, Repealed 7-8-15; now see § 34.3)

An application for a special use permit authorized by sections 4.15.5 and 4.15.5A shall be considered by the board of zoning appeals (the “board”) as follows:

- a. *Who may file an application.* An application may be filed by any owner, tenant, government official, department, board or bureau. (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.
- b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:
 - 1. *Factors to be considered for acting on the application.* Information pertaining to the factors to be considered for a special use permit in subsection (i).

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2. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.
- c. *Filing the application; number of copies.* The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.
- d. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
 1. *Timing of determination of completeness.* The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
 2. *Procedure if application is incomplete.* If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
 3. *Effect if timely determination not made.* If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
 4. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.
- e. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.
- f. *Transmittal of information.* The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.
- g. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board's hearing on the application:
 1. *Scheduling the hearing on the application.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).
 2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

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3. *Sharing information produced by county staff.* Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.
- h. *Procedural requirements at the hearing.* The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.
- i. *Factors to consider when acting.* The board shall reasonably consider the following factors when it is reviewing and acting on a special use permit:
 1. *No substantial detriment.* The proposed special use will not be a substantial detriment to adjacent lots.
 2. *Character of district unchanged.* The character of the district will not be changed by the proposed special use.
 3. *Harmony.* The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in sections 4 and 5, as applicable, and with the public health, safety, and welfare.
 4. *Consistency with comprehensive plan.* The proposed special use will be consistent with the comprehensive plan.
- j. *Factors not to be considered.* The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.
- k. *Time for decision.* The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.
- l. *Action by the board; vote required to grant special use permit.* The concurring vote of three (3) members of the board is required to grant a special use permit.
- m. *Conditions.* In granting a special use permit, the board may impose conditions, as follows:
 1. *Nature of conditions.* The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit.
 2. *Guarantee or bond to ensure compliance.* The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
 3. *Conditions deemed to be essential and nonseverable.* Except as the board may specify in a particular case, any condition imposed on a special use permit shall be deemed to be essential and nonseverable from the permit itself and any condition determined to be invalid, void or unlawful shall invalidate the permit.
- n. *Revocation of permit.* The board may revoke a special use permit that it previously granted if it determines, after a hearing, that there has not been compliance with the terms or conditions of the permit. The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the

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special use permit, the board may give such notice by first-class mail rather than by registered or certified mail.

- o. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
 - 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.
 - 2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- p. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.
- q. *Judicial review.* Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

(Ord. 15-18(5), 7-8-15)

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

34.6 INTERPRETING A DISTRICT MAP

(Formerly Decision of Board of Zoning Appeals, Repealed 7-8-15, now see § 34.3)

An application to interpret a district map shall be considered by the board of zoning appeals (the “board”) as follows:

- a. *Who may file an application.* An application may be filed by any owner, tenant, government official, department, board or bureau (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.
- b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

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1. *Factors to be considered for an application.* Information pertaining to the factors to be considered for interpreting a district map in subsection (i).
 2. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.
- c. *Filing the application; number of copies.* The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.
- d. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
1. *Timing of determination of completeness.* The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
 2. *Procedure if application is incomplete.* If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
 3. *Effect if timely determination not made.* If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
 4. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.
- e. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.
- f. *Transmittal of information.* The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board.
- g. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board's hearing on the application:
1. *Scheduling the hearing on the application.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).
 2. *Notice of the hearing.* The board shall give notice of the hearing to the owners of the lots that are affected by the question and as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by

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registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members.* The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the “non-legal staff of the board of supervisors” is any staff who is neither an attorney in the county attorney’s office nor appointed by special law.
4. *Sharing information produced by county staff.* Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.
- h. *Procedural requirements at the hearing.* The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.
- i. *Factors to consider when acting.* The board shall reasonably consider the following factors when it is reviewing and acting on an application to interpret at district map:
 1. *Uncertainty in district boundary.* Whether there is any uncertainty as to the location of a district boundary, provided that the board shall not have the power to change substantially the locations of district boundaries that are established by ordinance.
 2. *Intent and purpose of section or district.* The board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question.
- j. *Factors not to be considered.* The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.
- k. *Time for decision.* The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.
- l. *Action by the board; vote required to grant special use permit.* The concurring vote of three (3) members of the board is required to change a district boundary.
- m. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

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2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- n. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.
- o. *Judicial review.* Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

(Ord. 15-18(5), 7-8-15)

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.