



# Article 1: General Provisions

## Division 1.1 Enactment and Authority

### Section 1.1.1 Title

This chapter will be known and may be cited as the “Albemarle County Zoning Ordinance,” “Zoning Ordinance,” or “Ordinance.”

### Section 1.1.2 Authority

This Ordinance is adopted pursuant to Virginia Code § 15.2-2200 et seq., as amended, and other titles of the Virginia Code enabling the County to classify and regulate land development and use through its zoning regulations.

### Section 1.1.3 Purpose <sup>1</sup>

The purposes of this Ordinance are to implement the policies, goals, and objectives of the comprehensive plan, to promote the public health, safety, convenience, and welfare of the community, and to accomplish the objectives of Virginia Code §§ 15.2-2200 and 15.2-2283, and as amended. To these ends, this Ordinance is intended to:

- (1) Provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers;
- (2) Reduce or prevent congestion in the public streets;
- (3) Facilitate creating a convenient, attractive and harmonious community;
- (4) Facilitate providing adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public facilities;
- (5) Protect against destroying or encroaching upon historic areas;
- (6) Protect against overcrowding of land, undue density of population in relation to community facilities, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers;
- (7) Encourage economic development activities that provide desirable employment and enlarge the tax base;

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<sup>1</sup> Editor’s Note: Purpose expanded to include existing Section 1.5 – Implementation of the Comprehensive Plan



- (8) Provide for preserving agricultural and forestal lands and other lands of significance for the protection of the natural environment;
- (9) Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities;
- (10) Promote creating and preserving affordable housing suitable for meeting the current and future needs of the County as well as a reasonable proportion of the current and future needs of the planning district within which the County is situated;
- (11) Provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard;
- (12) Provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 or Commonwealth and federal fair housing laws, as applicable; and
- (13) Protect surface water and ground water as defined in Virginia Code § 62.1-255 et seq., as amended.

#### **Section 1.1.4      Applicability**

- (A) Pursuant to the Code of Virginia, § 15.2-2281, as amended, the provisions of this Ordinance apply to the following:
  - (1) All of the unincorporated land area of the County, subject to subsections (2), (3), and (4) below.
  - (2) The superjacent airspace of any unincorporated land area in the County that is not owned by the Commonwealth.
  - (3) The superjacent and subjacent airspace of any public highway, street, lane, alley, or other public travelway in the County owned by the Commonwealth that is not required for the purpose of travel or other public use.
  - (4) The superjacent airspace of any land area in the County not provided for in subsection (3) owned by the Commonwealth or any county, city, or town, that is occupied by an entity or person other than the Commonwealth or any county, city, or town.
- (B) Pursuant to the Code of Virginia, § 15.2-2284, as amended, the zoning regulations and districts as herein set forth have been drawn with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of properties for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public



services; and the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agriculture and forestal land, the conservation of properties and their values, and the encouragement of the most appropriate use of land throughout the County.

### **Section 1.1.5 Conformity Required**

Except as otherwise provided in this Ordinance or as modified through a zoning approval, all land, buildings, structures, and/or premises within the County will only be used, occupied, erected, constructed, moved, enlarged, and/or altered in conformance with this Ordinance's regulations,

### **Section 1.1.6 Severability**

Should any Section or any provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

## **Division 1.2 Ordinance Conflicts and Interpretation**

### **Section 1.2.1 Interpretation <sup>2, 3</sup>**

The Zoning Administrator will interpret this Ordinance based upon the following criteria:

- (1) Provisions must be considered the minimum or maximum required to promote the public health, safety, convenience and general welfare;
- (2) Unless otherwise specified, the standards of this Ordinance are the minimum required;
- (3) When regulations of this Ordinance conflict with each other, other County Ordinances, or Commonwealth or federal law, the more restrictive regulation will govern;
- (4) While neither Albemarle County nor any of its officers, employees, or agents, shall have any duty to enforce covenants, easements, or any other private agreement, this Ordinance does not abolish them. However, pursuant to the Code of Virginia, § 15.2-2315, as amended, where this Ordinance's requirements vary with the requirements of any other lawfully adopted

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<sup>2</sup> Editor's Note: The date of the revised ordinance adoption will be inserted after formal adoption.

<sup>3</sup> Editor's Note: In subsections (6) and (7) existing Section 34.6 is utilized but reworded for clarity.



statute, regulation, or ordinance, the most restrictive, or the higher standard, will control to the extent necessary to resolve the conflict;

- (5) A building, structure, or use which was not legally existing on \_\_\_\_\_ (effective date of revised ordinance) may not be made lawful solely by adoption of this Ordinance;
- (6) Where this Ordinance's requirements are vague or unclear, the Zoning Administrator will be responsible for their interpretation, and must carry out the intent and purpose of the Ordinance and Zoning Map for the section or district in question; and
- (7) Conditions imposed or accepted as part of a zoning approval prior to \_\_\_\_\_ (effective date of revised ordinance) will remain in effect. Pursuant to the Code of Virginia, § 15.2-2261.1, as amended, where there is a conflict between conditions imposed through those land use decisions and this Ordinance, the conditions will apply. If there is no condition that addresses a specific use or development standard of this Ordinance, this Ordinance's requirements will govern.

#### Section 1.2.2 Figures and References<sup>4</sup>

- (A) Unless otherwise specified, where figures are contained in this Ordinance, they are provided for demonstrative purposes only and are not intended to provide governing regulations.
- (B) If any section of this Ordinance incorporates by reference any Commonwealth statute or regulation, the Ordinance incorporates future amendments of the Commonwealth statute or regulation.

## Division 1.3 Zoning Districts Map

#### Section 1.3.1 Establishment, Maintenance, and Amendment

- (A) The official location and boundaries of the primary zoning districts and overlay districts created by this Ordinance are hereby established as shown on the official Albemarle County Zoning Map, known hereafter as the "Zoning Map".
- (B) The Zoning Map also includes symbols that represent the existence of conditions, including proffers, attaching to the zoning of a parcel on the Zoning Map.
- (C) The Zoning Map is the digital form of the Zoning Map adopted on December 10, 1980, as amended by all Zoning Map amendments after that date. The Zoning Map is held in digital form on the Albemarle County Geographic Information

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<sup>4</sup> Editor's Note: This text has been added for clarification.



Systems and will be updated from time to time as the results of the following Board of Supervisor's actions:

- (1) Amendments to the Ordinance;
  - (2) Approval of a Zoning Map amendment (See Article 3, Section 2); or
  - (3) Approval of a conditional zoning (See Article 3, Section 3).
- (D) A certified copy of the Zoning Map will be filed in the office of the Clerk of Circuit Court of Albemarle County.
- (E) The Zoning Map will be available for examination and inspection by the public at all reasonable times and may be accessed in the Community Development Department.

### Section 1.3.2 Incorporated by Reference

The Zoning Map is composed of the several maps and digital source files and all dimensions, symbols, notations, and designations shown on the maps and in the digital source files, is maintained by the Department of Community Development, and is incorporated by reference as part of this Ordinance.

### Section 1.3.3 Interpretation of Boundaries

The Zoning Map associated with this text and showing the division of the territory into districts must be interpreted with the following rules when uncertainty exists with respect to the boundaries of any of the districts:

- (1) **Boundaries designated.** The district boundaries shown on the Zoning Map are intended to follow the lot lines and the center lines of streets or alleys as they existed on December 10, 1980 and as hereafter amended; provided that where a district boundary obviously does not follow any lot line or center line, and is not depicted on an approved subdivision plat or site plan or described by dimensions or other means, the district boundary must be determined by measurement using a scale.
- (2) **Boundaries not designated.** All waterways, roads, streets, alleys, highways, railroads, and other rights-of-way (collectively, "features"), if not otherwise specifically designated and if not part of a parcel abutting the feature, will be deemed to be in the same district as the immediately abutting parcels, and the departing boundary lines from those abutting parcels will be deemed to extend to the centerline of the feature. If the center line of a feature serves as a parcel boundary, the zoning of the feature, if not otherwise specifically designated, will be deemed to be the same as that of the parcel to which it is a part.
- (3) **Superjacent and subjacent airspace.** The superjacent and subjacent airspace of any unincorporated territory within the County will be deemed to



be within the same district as the parcel to which it pertains unless the superjacent or subjacent airspace is zoned otherwise by a Zoning Map amendment.

- (4) **Areas not otherwise designated.** The intent of this Ordinance is to designate all unincorporated territory of the County to a zoning district. Except for those features identified in **Section 1.3.3(2)** any area shown on the Zoning Map having a white background will be deemed to be in the Rural Areas (RA) district.
- (5) **Inconsistencies.** If there is an inconsistency between any information shown on the Zoning Map and any decision made by the Board of Supervisors or an interpretation of the Zoning Map made by the Board of Zoning Appeals after December 10, 1980, then the decision of the Board of Supervisors or the interpretation of the Board of Zoning Appeals will govern.
- (6) **Uncertainty.** In any case in which there is uncertainty, contradiction, or conflict as to the location of any zoning district boundary, whether due to scale, illegibility, lack of detail, physical or natural features that vary from those on the Zoning Map, or any other circumstances not covered by this Section, the Zoning Administrator will have the authority to interpret the district boundaries in accordance with **Section 2.1.1** of this Ordinance.<sup>5</sup>
- (7) **Appeal.** The Zoning Administrator's interpretations may be appealed to the Board of Zoning Appeals in accordance with **Article 2, Section 3**, of this Ordinance. The Board of Zoning Appeals will not have the power to change substantially the locations of district boundaries.

### Section 1.3.4 Unauthorized Changes

The Zoning Map may not be altered or amended in any way except in compliance with the procedures and standards established by this Ordinance for a Zoning Map amendment.

## Division 1.4 Transition of Regulations After Adoption

### Section 1.4.1 Effective Date<sup>6</sup>

This Ordinance was adopted on \_\_\_\_\_ (date of adoption of revised ordinance).  
This Ordinance is effective on \_\_\_\_\_ (date of adoption of revised ordinance) and

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<sup>5</sup> Editor's Note: Authority for the Zoning Administrator to interpret the Zoning Map was not expressly given in the current Ordinance. This text has been added to that purpose.

<sup>6</sup> Editor's Note: The date of the revised ordinance adoption will be inserted after formal adoption.





repeals and replaces any prior Zoning Ordinance adopted in Albemarle County. Its provisions will be in force until repealed or amended.

### Section 1.4.2 Violations Continue

Any development or activity in violation of the previous Zoning Ordinance will continue to be a violation under this Ordinance unless the development or activity complies with the express terms of this Ordinance.

### Section 1.4.3 Nonconformities <sup>7</sup>

If any use, structure, lot, sign, or site feature legally existed immediately prior to \_\_\_\_\_ (effective date of revised ordinance) but does not fully comply with the standards of this Ordinance or any amendment thereto, the use, structure, lot, sign, or site feature is considered nonconforming under this Ordinance and must comply with the requirements in Article X, Nonconforming Uses, Lots, and Structures.

### Section 1.4.4 Complete Applications <sup>8</sup>

- (A) This Section pertains to applications for the following:
  - (1) Zoning Text and Map amendments (rezoning);
  - (2) Proffers for Zoning Map amendments (conditional zoning);
  - (3) Special use permits; and
  - (4) Variances
- (B) Applications deemed by the Zoning Administrator to be complete prior to \_\_\_\_\_ (effective date of revised ordinance) but still pending final action as of that date, will be processed in accordance with the regulations in effect when the submittal was accepted if the applicable due diligence standard is met. Amendments to applications may be approved if they do not create any new or additional noncompliance with the amended Ordinance.
- (C) An applicant with a pending application accepted prior to \_\_\_\_\_ (effective date of revised ordinance) may opt to have the proposed development reviewed and decided under the standards of this Ordinance by withdrawing the pending submittal and submitting a new application in accordance with the procedures and standards of this Ordinance.
- (D) Applications accepted as complete prior to \_\_\_\_\_ (effective date of revised ordinance) will be processed in accordance with any time frames for review,

<sup>7</sup> Editor's Note: The date of the revised ordinance adoption will be inserted after formal adoption.

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approval, and completion established in the regulations in effect at the time the submittal was accepted as complete.

- (E) To the extent such a complete application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, will be nonconforming and subject to the requirements of Article X, Nonconforming Uses, Lots, and Structures.

### Section 1.4.5 Other Approved Permits and Development Approvals<sup>9</sup>

- (A) This Section pertains to applications for the following:
  - (1) Site plans;
  - (2) Zoning permits; and
  - (3) All other permits and development approvals not provided for in **Section 1.4.4, above**.
- (B) Any other permits or development approvals granted prior to \_\_\_\_ (effective date of revised ordinance) will remain valid until their expiration date.
- (C) Developments with valid permits or development approvals granted prior to \_\_\_\_ (effective date of revised ordinance) may be carried out in accordance with the terms and conditions of their approval and the development standards in effect at the time of approval, provided the permit or development approval is valid and has not expired or been revoked **per Section \_\_\_\_**.
  - (1) If the prior approval expires or is revoked, any subsequent development or use of the site will be subject to the procedures and standards of this Ordinance.
  - (2) Amendments to permits or development plans may be approved if they do not create any new or additional noncompliance with the amended Ordinance.
- (D) To the extent a prior-approved permit or development approval does not comply with this Ordinance, the subsequent development or use, although permitted, will be nonconforming and subject to the requirements of Article IX, Nonconformities, of this Ordinance.

### Section 1.4.6 Vested Right

- (A) The provisions of this Ordinance may not impair a vested right of a property owner. The Zoning Administrator is authorized to make determinations on whether a property owner's rights are deemed vested in a land use. Vested rights determinations must be made in accordance with the Code of Virginia § 15.2-2307, as amended.

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<sup>9</sup> Editor's Note: The date of the revised ordinance adoption will be inserted after formal adoption.





- (B) Nothing contained herein may require any change in the plans or construction of any building or structure for which a building permit was granted prior to \_\_\_\_ (effective date of revised ordinance).