

Chapter 1

The Locality and Its Boards, Commissions, and Officers

1-100 The County¹

Counties are political and territorial subdivisions of the State, which serve as local units for the administration of the State's functions and duties. As explained by the Virginia Supreme Court in *Fry v. County of Albemarle*, 86 Va. 195 (1889):

A county organization is created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and of transport, and especially for the general administration of justice.

With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are in fact but a branch of the general administration of that policy.

Counties, like cities, are subordinate agencies of the State government and are invested by the General Assembly with subordinate powers of legislation and administration relative to local affairs within their prescribed areas. *Murray v. City of Roanoke*, 192 Va. 321, 324, 64 S.E.2d 804, 807 (1951).

Historically, the “distinctions between cities, towns, and counties were clear. Cities and towns were urban centers for work and shopping. They had relatively high population densities. Counties, on the other hand, were the agricultural, less densely populated areas of the state. As rural localities, counties required fewer powers since they did not face the problems associated with urbanization.” *JLARC, State/Local Relations and Service Responsibilities, 1994 Senate Document 37, March 1993, p. 49*. The practical distinctions between cities, towns, and counties have diminished more recently, with counties urbanizing, and with some becoming densely populated employment and commercial centers with the service demands that come with that.

The Virginia Code frequently refers to “localities.” Counties, cities, and towns are localities; other public entities such as authorities are not localities.

1-110 Powers

Under the Virginia Constitution, all county powers are delegations of authority granted by the General Assembly and, unless otherwise indicated by statute or the constitution, are vested in the board of supervisors. *Constitution of Virginia, Art. VII, § 3; Virginia Code § 15.2-1401; see the discussion in section 1-220*. With respect to the regulation of land use, the General Assembly has granted counties numerous powers to provide for comprehensive planning and to regulate the use and development of land by adopting zoning and subdivision ordinances. *Virginia Code § 15.2-2200 et seq.*

1-120 Limitations on powers

Of course, a county's powers are limited. One limitation on the county is that the exercise of its powers must not violate any constitutional principles. These principles include, but are not limited to, due process and equal protection. Another limitation is that the exercise of the county's powers may not be inconsistent with the general

¹ This chapter emphasizes counties and the County of Albemarle in particular. An in-depth discussion of cities, towns, and their governing bodies is not included. Sections 1-130 and 1-140 briefly discuss the differences between counties, cities, and towns. Although city and town councils have powers that may differ from boards of supervisors, cities and towns have planning and zoning authority similar to counties, with some variations provided under State law or the cities' or towns' charters.

laws of Virginia or of the United States. *Virginia Code* § 1-248. This means that the county's exercise of its powers may not be contrary to any supreme law and may be preempted by a supreme law. Finally, the county's powers are limited by the rule of statutory construction known as the Dillon Rule. The Dillon Rule limits the county's powers to those that are expressly granted by the General Assembly, those that may be necessarily or fairly implied from those powers expressly granted, and those that are essential and indispensable. *Marble Technologies v. City of Hampton*, 279 Va. 409, 417, 690 S.E.2d 84, 88 (2010). These issues are discussed in Chapters 5, 6 and 7 of this handbook.

1-130 Counties compared to cities

Like counties, cities are subordinate agencies of the State, with several significant differences including their broader taxing powers.

Unlike all other states, cities in Virginia are “independent cities,” which means that cities are completely independent from the counties that surround them, and those counties generally provide no services within the city. This quality is established in the Virginia Constitution, which defines a “city” to mean “an independent incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.” *Virginia Constitution, Article VII, § 1*. This means that a city provides its own services for its residents, has its own system for taxation, and has its own school division, court system, and constitutional officers.

While many of the general State laws applicable to counties also apply to cities, cities also operate under a charter adopted by the General Assembly that serves as an additional source of city powers.

1-140 Counties compared to towns

Unlike cities, towns in Virginia are not independent of the county in which they exist.

The Virginia Constitution defines “town” to mean “any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.” *Virginia Constitution, Article VII, § 1*. The relationship between counties and towns precedes the current Constitution. *Supervisors of Washington County v. Saltville Land Co.*, 99 Va. 640 (1901) (“The town of Saltville, so far as it lies within Washington county, is as much a part of the county as the county is a part of the state, not merely territorially, but governmentally”); *County of Brunswick v. Peebles & Purdy Co.*, 138 Va. 348 (1924) (“[A town’s] people and property are still subject to the county government for county purposes”).

Both the town and the county in which it is located provide services to the town’s residents. The services provided by the county include the public school system, the court system, constitutional officers (of which a town has none), public safety, health and human services, and parks. To help pay for these services, the residents of a town are subject to county taxation (with some exceptions). *Fairfax County v. City of Alexandria*, 193 Va. 82 (1951) (“[I]n Virginia an incorporated town continues to be an integral part of the county, subject to the jurisdiction of the county authorities and to taxation for general county purposes”). The county taxes are in addition to those imposed by the town.

While many of the general State laws applicable to the county also apply to a town, towns also operate under a town charter adopted by the General Assembly that serves as an additional source of town powers.

The General Assembly has often failed to clearly articulate the delineation of authority and jurisdiction of county ordinances in towns. However, some State laws in the area of planning and land use provide that needed clarity. Virginia Code § 15.2-2231, which pertains to comprehensive plans, states in part: “Any county plan may include planning of incorporated towns to the extent to which, in the county local planning commission’s judgment, it is related to planning of the unincorporated territory of the county. However, the plan shall not be considered as a comprehensive plan for any incorporated town unless recommended by the town commission, if any, and adopted by the governing body of the town.” Virginia Code § 15.2-2281, pertaining to zoning, is another example: “the

governing body shall have jurisdiction over all the unincorporated territory of the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.”

In the absence of an express or implied limitation in the State law (or the county ordinance itself), if a county ordinance is for a county-wide purpose or serves a county-wide function, the county ordinance has effect within the town. *1987-88 Va. Op. Atty. Gen. 201, 1986-87 Va. Op. Atty. Gen. 208, 1982-83 Va. Op. Atty. Gen. 212, 1978-79 Va. Op. Atty. Gen. 288, 1977-78 Va. Op. Atty. Gen. 131.*

1-200 The board of supervisors

The board of supervisors is the governing body of the county. The voters in the county elect its members.

1-210 Composition

As noted above, a county is governed by the board of supervisors, and the number of members may range from 3 to 11. *Virginia Code § 15.2-1400.* Some alternative forms of county government may specify a different range. For example, the county executive form of government requires that the number of members range between 3 and 9. *Virginia Code § 15.2-502(A).* Albemarle County operates under the county executive form of government, and its six-member board is elected by the qualified voters of single-member magisterial districts. *See Virginia Code § 15.2-502; County Code § 2-100 et seq.* Supervisors are elected to four-year terms. *County Code § 2-201.*

1-220 Powers and duties

Unless expressly provided otherwise, all powers granted to localities are vested in their respective governing bodies. *Virginia Code § 15.2-1401* (applicable to all counties); *Miller v. Highland County*, 274 Va. 355, 365, 650 S.E.2d 532, 536 (2007) (“the governing body of a locality is a distinct legal entity authorized in Title 15.2 to exercise the statutory powers of that locality”). The powers of the county as a body politic and corporate are vested in the board of supervisors. *Virginia Code § 15.2-502* (applicable to counties such as the County of Albemarle that have adopted the county executive form of government). Albemarle County is one of two counties in Virginia that operates under the county executive form of government. *Virginia Code § 15.2-500 et seq.* Under this form of government, the board is the policy-making body of the county and is vested with all policy-making powers and responsibilities conferred by general law upon county governing bodies.

A board of supervisors can act only at authorized meetings as a corporate body and not by the actions of its members separately and individually. *Campbell County v. Howard*, 133 Va. 19, 59, 112 S.E. 876, 888 (1922). An individual board member is a public officer whose duties are fixed by law. *Old v. Commonwealth*, 148 Va. 299, 302, 138 S.E. 485, 486 (1927). The chair of the board has no significant substantive powers. The only special powers granted to the chair are to “be the head of the local government for all official functions and ceremonial purposes.” *Virginia Code § 15.2-1423.* Otherwise, there do not appear to be any official powers conferred on an individual member of a board of supervisors. *1984-85 Va. Op. Atty. Gen. 23.*

As the policy-making body of the county, the board is empowered to make all the legislative decisions pertaining to land use, and this power may not be delegated to other boards, commissions, or employees in the absence of express statutory authority. *Sinclair v. New Cingular Wireless*, 283 Va. 567, 581, 727 S.E.2d 40, 47 (2012). Thus, the board makes the final decision on those land use matters that are legislative in nature – comprehensive plan amendments, zoning text amendments, zoning map amendments, and special use permits. An example where the delegation of a legislative power is expressly authorized is found in *Virginia Code § 15.2-2309(6)*, which enables a governing body to authorize a board of zoning appeals (“BZA”) to review and approve special use permits. A board also may delegate the responsibility for non-legislative matters to subordinate bodies and officers, provided that the delegation does not run afoul of the Dillon Rule, as discussed in Chapter 5, and the common law rules of delegation, as discussed in Chapter 8, of this handbook.

1-300 The planning commission

A planning commission is an administrative body established by a locality's governing body pursuant to Virginia Code § 15.2-2210 *et seq.*

1-310 Composition

A planning commission must consist of between 5 and 15 members. *Virginia Code § 15.2-2212.* The Albemarle County planning commission is composed of eight members appointed by the board of supervisors. *Virginia Code § 15.2-2212; County Code § 2-401(A).* The members of the commission must be residents of the county and are qualified by knowledge and experience to make decisions on questions of community growth and development. *Virginia Code § 15.2-2212; County Code § 2-401(A).* At least one-half of the members of the commission must be owners of real property. *Virginia Code § 15.2-2212; County Code § 2-401(A).*

Seven members of the Albemarle County planning commission are voting members, and of those seven, six come from each of the county's six magisterial districts and the other is appointed at-large. The eighth member is a non-voting member appointed by the board with the advice of the president of the University of Virginia. *County Code § 2-401(B).* The terms of the commissioners from each of the county's magisterial districts are coterminous with the four-year terms of the supervisors in the district they serve; the term of the at-large member is two years; the term of the non-voting member is one year. *County Code § 2-401(B).*

1-320 Powers and duties

A planning commissions is part of the locality and operates under the authority granted to planning commissions under State law. *Sinclair v. New Cingular Wireless*, 283 Va. 567, 582-583, 720 S.E.2d 40, 48 (2012); *see Board of Supervisors of Fairfax County v. Washington, D.C. SMSA LP*, 258 Va. 558, 522 S.E.2d 876 (1999).

A planning commission has specific powers related to individual development applications. On legislative matters such as comprehensive plan amendments, zoning text amendments, zoning map amendments, and special use permits, the commission is advisory to the governing body and makes recommendations to the board. (*Virginia Code §§ 15.2-2223 (comprehensive plan), 15.2-2285 (rezonings), 15.2-2286 (rezonings and special use permits)*).

On ministerial matters such as subdivision plats and site plans, the subdivision and zoning ordinances may designate the planning commission as the decision-making body. When the commission is acting on a subdivision plat or a site plan, it is acting in a ministerial capacity, and its role is to determine whether the subdivision plat or site plan meets the minimum requirements of the applicable regulations.

The planning commission also has the following powers and duties:

- **Advisor to the governing body**: Serves as an advisory body to the governing body to promote the orderly development of the county and its environs and to accomplish the objectives set forth in Virginia Code § 15.2-2200.
- **Official maps**: At the direction of the governing body, or on its own initiative, makes or causes to be made an official map as provided in Virginia Code § 15.2-2233 *et seq.*
- **Capital improvement program**: At the direction of the governing body, or on its own initiative, annually prepares and revises a capital improvement program based on the comprehensive plan of the locality for a period not to exceed the ensuing five years as provided in Virginia Code § 15.2-2239.
- **Subdivision ordinance**: At the request of the governing body, or on its own initiative, prepares and recommends amendments to the subdivision ordinance as authorized by Virginia Code § 15.2-2253.
- **Zoning ordinance**: At the direction of the governing body, or on its own initiative, prepares and recommends

amendments to the zoning ordinance including a map or maps showing the zoning districts of the locality as provided in Virginia Code § 15.2-2285.

- **Annual report:** Makes recommendations and an annual report to the governing body concerning its operation and the status of planning within the locality.

Virginia Code § 15.2-2221.

A commissioner may be removed for malfeasance in office. *Virginia Code § 15.2-2212.* *Malfeasance* means doing an act which a person ought not do at all. In addition, a commissioner may be removed by the governing body if the commissioner is absent from any three consecutive commission meetings or is absent from any four meetings of the commission within any 12-month period. *Virginia Code § 15.2-2212.* When a commissioner is removed, the governing body must appoint a successor to serve the unexpired term of the person removed. *Virginia Code § 15.2-2212.*

1-400 The architectural review board

An architectural review board (“ARB”) is an administrative body that may be established by the governing body pursuant to Virginia Code § 15.2-2306.

1-410 Composition

An ARB consists of five members who are appointed by the governing body to administer the Historic Districts Law. *Virginia Code § 15.2-2306.* In Albemarle County, this enabling authority is implemented through the entrance corridor overlay district. *County Code §§ 18-30.6, 18-34.A.* The members of the ARB must be residents of the county and must have a demonstrated interest, competence, or knowledge in architecture, site design, or both. *County Code § 18-34.A.* The members are appointed for four-year terms and serve at the pleasure of the board of supervisors. *County Code § 18-34.A.*

1-420 Powers and duties

An ARB is a creature of statute (Virginia Code § 15.2-2306), and it possesses only those powers expressly conferred by statute. *Norton v. City of Danville*, 268 Va. 402, 407, 602 S.E.2d 126, 129 (2004). An ARB has no implied powers.

In Albemarle County, the board of supervisors has granted the ARB the following express powers and duties under County Code § 18-34A:

- **Administer the regulations of the overlay district:** Administer the entrance corridor overlay district in accordance with the duties stated in County Code § 18-30.6, which include promulgating appropriate design guidelines that must be ratified by the board of supervisors. The key duty of the ARB under County Code § 18-30.6 is to consider requests for certificates of appropriateness, discussed below.
- **Consider requests for certificates of appropriateness:** Consider requests for certificates of appropriateness by determining whether a proposed building or structure, including signs, is architecturally compatible with the historic landmarks, buildings or structures within the entrance corridor overlay district.
- **Recommend areas to be included in overlay district:** Recommend areas to be included within the entrance corridor overlay district.
- **Act as an advisor to other bodies on land use matters:** Act as an advisor to the board of supervisors, the planning commission, and the board of zoning appeals on zoning map amendments, special use permits, site plans, subdivisions, variances, and other matters pertaining to lands within the entrance corridor overlay district.

Under County Code § 18-30.6, the scope of Albemarle County’s ARB’s authority may be defined by both the territory under the ARB’s authority and the extent of its review:

- **Physical reach of the ARB:** The entrance corridor overlay district exists along certain arterial streets in the county identified in the zoning ordinance. These streets are “significant routes of tourist access” to the county or to designated historic landmarks, buildings, structures, or districts in the county or in a contiguous locality. *Virginia Code § 15.2-2306(A)(1)*.
- **Regulatory reach of the ARB:** Within those lands subject to regulation by the ARB, the ARB may issue a certificate of appropriateness for any development requiring a building permit or a site plan for that part of the development that is visible from a designated entrance corridor street. Localities are enabled to require an applicant for a certificate of appropriateness to submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. *Virginia Code § 15.2-2306(A)(1)*. The ARB also reviews projects requiring a special use permit to allow outdoor storage or display within an entrance corridor, and as noted above, acts in an advisory capacity when requested to do so.

The certificate of appropriateness is a certification that the proposed development is consistent with the ARB’s design guidelines. The ARB may issue a certificate if the proposed development satisfies the requirements for issuance and the design guidelines.

In issuing a certificate, the ARB may impose certain conditions or require modifications to the extent they are authorized in the design guidelines such as: (1) the appearance of any architectural feature including motif and style, color, texture, and materials; (2) limitations on the mass, shape and height of buildings and structures; (3) the location and configuration of parking areas; and (4) landscaping and buffering requirements. The certificate of appropriateness also may require any additional landscaping to ensure that the design guidelines are satisfied, and identify the existing trees, wooded areas, and natural features to be preserved.

1-500 The board of zoning appeals

A board of zoning appeals (“BZA”) is a public body established by the governing body pursuant to Virginia Code § 15.2-2308.

1-510 Composition

In most localities, the members of a BZA are appointed by the circuit court. *Virginia Code § 15.2-2308(A)*. In localities within two judicial circuits, the court appoints the members with the concurrence of the locality. *Virginia Code § 15.2-2308(A)*. In the cities of Portsmouth and Virginia Beach, the city councils, rather than the circuit courts, appoint the members of the BZA. *Virginia Code § 15.2-2308(E)*.

A BZA may consist of five or seven members. *Virginia Code § 15.2-2308(A)*. A locality may request that the circuit court appoint up to three alternate members. *Virginia Code § 15.2-2308(A)*. Albemarle County’s BZA consists of five members with no alternates. *County Code § 18-34.1*. The members of a BZA must be residents of the locality and are appointed for five-year staggered terms. *Virginia Code § 15.2-2308(A)*. Members may be reappointed to succeed themselves. *Virginia Code § 15.2-2308(A)*. Members whose terms expire continues to serve until their successors are appointed and qualify. *Virginia Code § 15.2-2308(A)*.

Members may not hold any other public office in the locality, except that any elected official of a town may serve on the BZA of the county in which the member also resides, and one member of a locality’s planning commission may be a member of the locality’s BZA. *Virginia Code § 15.2-2308(A)*. A planning commissioner is not appointed to the BZA in Albemarle County.

By ordinance, localities may create a joint BZA consisting of two members who are residents of each participating locality, plus one member from the area at large. *Virginia Code § 15.2-2308(B)*. The members are

appointed by the circuit courts of the respective localities.

A BZA member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for any other just cause, by the court that appointed the person, following a hearing held after at least 15 days' notice. *Virginia Code § 15.2-2308(D)*. *Malfeasance* means doing an act which a person ought not do at all; *misfeasance* is the improper doing of an act that a person might lawfully do; *nonfeasance* means the omission of an act that a person ought to do.

1-520 Powers and duties

The BZA is a creature of statute and it possesses only those powers expressly conferred by statute. *Board of Zoning Appeals of Fairfax County v. Board of Supervisors of Fairfax County*, 276 Va. 550, 552, 666 S.E.2d 315, 316 (2008) (holding that the BZA does not have the power to sue because that power is not expressly granted by statute); *Board of Zoning Appeals of James City County v. University Square Associates*, 246 Va. 290, 294, 435 S.E.2d 385, 388 (1993); *Board of Zoning Appeals of Fairfax County v. Cedar Knoll, Inc.*, 217 Va. 740, 743, 232 S.E.2d 767, 769 (1977). The BZA has no implied powers. The BZA's powers and duties include the following:

- Appeals of decisions by the zoning administrator or an administrative officer: Hear and decide appeals from any order, requirement, decision, or determination made by the zoning administrator or an administrative officer in the administration or enforcement of the zoning ordinance.
- Variances: Hear and decide applications for variances.
- Special use permits: Hear and decide applications for special use permits if the power is delegated to the BZA by the governing body.
- Interpret the district map: Hear and decide applications to interpret the district map where there is any uncertainty about the location of a district boundary.

Virginia Code § 15.2-2309. The BZA also is required to keep a full public record of its proceedings and submit a report of its activities to the governing body or bodies at least once each year. *Virginia Code § 15.2-2308(C)*.

The BZA does not have the power to rezone property. See *Foster v. Geller*, 248 Va. 563, 568, 449 S.E.2d 802, 806 (1994) (reversing trial court and upholding decision of the BZA, which determined that the decision of the director of planning and community development to issue a development permit was erroneous because it did not comply with the requirements of the zoning ordinance for development of substandard land). A BZA is authorized to interpret the zoning ordinance. *Town of Jonesville v. Powell Valley Village Limited Partnership*, 254 Va. 70, 74, 487 S.E.2d 207, 210 (1997). However, a BZA does not have the authority to rule on the validity of a zoning ordinance, which is a determination within the sole province of the courts. *Powell Valley Village, supra*.

1-600 The zoning administrator

The zoning administrator is an officer whose office is established by the locality's zoning ordinance. *Virginia Code § 15.2-2286(A)(4)*.

The primary duty of the zoning administrator is to administer and enforce the zoning ordinance on behalf of the governing body, and the office has all necessary authority to do so. *Virginia Code § 15.2-2286(4)*. The zoning administrator's powers and duties include: (1) interpreting the zoning ordinance; (2) ordering in writing that a violation of the zoning ordinance be abated; (3) ensuring compliance with the zoning ordinance by bringing appropriate legal actions; (4) if authorized by the zoning ordinance, reviewing and approving modifications; and (5) in specific cases, making findings of fact and, with the concurrence of the locality's attorney, conclusions of law, regarding vested rights under Virginia Code §§ 15.2-2307 and 15.2-2311(C). *Virginia Code § 15.2-2286(A)(4)*.

Like the BZA, the zoning administrator does not have the authority to rule on the validity of the zoning ordinance. *Town of Jonesville v. Powell Valley Village Limited Partnership*, 254 Va. 70, 74, 487 S.E.2d 207, 210 (1997).

1-700 The subdivision agent; the site plan agent

A locality may designate an agent to review and act on subdivision plats and site plans, which allows the agent to act in lieu of the locality's planning commission on these matters. *Virginia Code §§ 15.2-2259, 15.2-2260.*

Roles of the Albemarle County Board of Supervisors, Planning Commission, and Architectural Review Board on Various Land Use Matters			
Land Use Matter	Board of Supervisors	Planning Commission	Architectural Review Board
Comprehensive plan amendments	Final action	Recommendation to BOS	Advisory on matters within the Entrance Corridor Overlay District (“ECOD”)
Zoning text amendments	Final action	Recommendation to BOS	Advisory on matters within the ECOD
Zoning map amendments (rezonings)	Final action	Recommendation to BOS	Advisory on matters within the ECOD
Special use permits	Final action (except those delegated to the BZA)	Recommendation to BOS (except those delegated to the BZA)	Advisory on matters within the ECOD
Special exceptions	Final action	Recommendation to BOS if referred to PC	Advisory on matters within the ECOD
Variances	None	None	Advisory (to BZA) on matters within the ECOD
Site plans	Final action if appealed from PC decision (if disapproved by PC)	Final action unless appealed to BOS (if disapproved by PC)	Advisory on matters within the ECOD
Subdivision plats	Final action if appealed from PC decision (if disapproved by PC)	Final action unless appealed to BOS (if disapproved by PC)	Advisory on matters within the ECOD
Certificates of appropriateness	Final action if appealed from ARB decision	None	Final action unless appealed to BOS
Approval of private street under the Subdivision Ordinance	Final action if appealed from PC decision (if disapproved or approved with objectionable conditions)	Final action unless appealed to BOS (if disapproved or approved with objectionable conditions)	Advisory on matters within the ECOD

Note: Site plans and subdivision plats are approved administratively. Site plans and subdivision plats disapproved by the agent, or approved with objectionable conditions, may be appealed by the developer to the commission and thereafter to the board. Disapproved site plans and subdivision plats may be challenged in circuit court in lieu of pursuing administrative appeals.