

ORDINANCE NO. 09-18()

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE IV, PROCEDURE, AND ARTICLE V, VIOLATION AND PENALTY, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article IV, Procedure, and Article V, Violation and Penalty, are hereby amended and reordained as follows:

By Amending:

- Sec. 3.1 Definitions
- Sec. 34.3 Appeal to the board of zoning appeals

By Amending and Renaming:

- Sec. 31.1 ~~Enforcement, zoning administrator~~ Designation of zoning administrator; authority
- Sec. 36.1 Violations —~~generally~~

By Amending, Renumbering and Renaming Where Noted (old section number first, followed by name, followed by new section number):

- Sec. 31.2.2 Building permits Sec. 31.2 (part) and Sec. 31.3 (part) Zoning permits
- Sec. 31.2.3.1 Certificate of occupancy Sec. 31.4
- Sec. 31.2.3.2 Zoning ~~compliance~~ clearance Sec. 31.5
- Sec. 31.2.4 Special use permits Sec. 31.6
- Sec. 31.2.4.1 Reserved to board of supervisors Sec. 31.6(part)
- Sec. 31.2.4.2 Application Sec. 31.6(part)
- Sec. 31.2.4.2.1 Limitation of filing new application after original denial Sec. 31.6(part)
- Sec. 31.2.4.2.2 Withdrawal of application Sec. 31.6(part)
- Sec. 31.2.4.3 Conditions Sec. 31.6(part)
- Sec. 31.2.4.4 Revocation Sec. 31.6(part)
- Sec. 31.2.5 Review of public ~~uses for compliance~~ features to determine substantial accord with the comprehensive plan Sec. 31.7
- Sec. 37.1 Criminal penalties Sec. 36.4
- Sec. 37.2 Civil penalties Sec. 36.3
- Sec. 37.3 Injunctive relief and other remedies Sec. 36.5

By Repealing:

- Sec. 31.1.1 Enforcement of board of zoning appeals decisions
- Sec. 31.1.2 Enforcement of minimum requirements
- Sec. 31.1.3 Interpretation by zoning administrator
- Sec. 31.2 Permits (heading only)
- Sec. 31.2.3 Certificates of occupancy; zoning compliance clearance (heading only)

By Repealing But Moving Substance Into a New Section (old section number and name first, followed by new section number):

- Sec. 31.2.1 Permits required; conformance Sec. 31.2(part), Sec. 31.3(part) and Sec. 36.1(part)
- Sec. 31.2.3.3 Authority not to issue certificate of occupancy or zoning compliance clearance Sec. 31.3(part) and Sec. 31.4(part)
- Sec. 36.2 Notice of violation Sec. 36.2
- Sec. 36.3 Remedies not exclusive Sec. 36.2
- Sec. 36.4 Complaints regarding violations Sec. 36.2

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

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Building code. The term “building code” means the Virginia Uniform Statewide Building Code.

...

Building permit. The term “building permit” means a permit issued by the building official under the building code that is subject to the fees stated in Albemarle County Code § 5-201.

...

Certificate of occupancy. The term “certificate of occupancy” means a certificate issued by the building official and the zoning administrator after final inspections under the building code and this chapter certifying that a building or structure is in compliance with the building code and this chapter.

...

Chapter, this. The term “this chapter” means chapter 18 of the Albemarle County Code, also known as the Albemarle County zoning ordinance, and all applicable proffers, special use permits and their conditions, certificates of appropriateness and their conditions, variances and their conditions, application plans, codes of development, site plans, zoning compliance clearances, waivers, modifications and variations and their conditions, and all other approvals and their conditions authorized by this chapter.

...

~~Code, The.~~ The Code of Virginia as the same may be amended from time to time.

...

Site. The term “site” means one or more lots, or any part thereof, including one or more lots shown on a subdivision plat, site plan, or application plan. References in this chapter to “premises,” “land,” “lands,” “lots” or “parcels” are to a site.

...

Virginia Code. The term “Virginia Code” means the Code of Virginia, 1950, as amended, including the latest edition or supplement unless otherwise indicated. References in this chapter to the “Code of Virginia” and the “Code” are to the Virginia Code.

...

Zoning administrator. The term “zoning administrator” means the officer designated to administer and enforce this chapter, or his or her designee.

...

Zoning clearance: The term “zoning clearance” means a written determination by the zoning administrator that a proposed use or structure complies with this chapter. References in this chapter to “zoning compliance clearance” are to a zoning clearance.

...

Article IV. Procedure

Section 31. Administration, and Enforcement and Interpretation

Sec. 31.1 Enforcement, zoning administrator Designation of zoning administrator; authority

~~This ordinance shall be administered and enforced by an officer to be known as the zoning administrator who shall be appointed by the board of supervisors of Albemarle County, Virginia. The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance and the bringing of legal action to ensure compliance with this ordinance, including injunction, abatement or other appropriate action or proceeding. The zoning administrator shall be guided in all of his actions pursuant to this ordinance by the purposes, intent and spirit of this ordinance and the standards set forth in sections 1.4 through 1.6 of this ordinance. The zoning administrator may be assisted in the enforcement of this ordinance by the local office of the Virginia Department of Health, sheriff and all other officials of Albemarle County pursuant to their respective fields.~~

~~In addition, the zoning administrator shall maintain the zoning map, and such map shall be kept current and shall reflect amendments as soon as practicable after adoption by the board of supervisors.~~

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

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

7. Making decisions and determinations as to whether a pending site plan, subdivision plat, building permit application or any other application subject to review and approval by the county or the program authority complies with this chapter.

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

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

~~Sec. 31.1.1 Enforcement of board of zoning appeals decisions~~

~~It shall be the duty of the zoning administrator to see that the decisions of the board of zoning appeals are complied with.~~

~~Sec. 31.1.2 Enforcement of minimum requirements~~

~~In enforcing the minimum requirements in districts, the zoning administrator shall notify by registered mail any person responsible for an alleged violation, stating the reason why it is believed that a violation exists in fact.~~

~~Sec. 31.1.3 Interpretation by zoning administrator~~

~~In case of any dispute over the meaning of a word, phrase or sentence, whether defined herein or not, the zoning administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this ordinance as set forth in section 1; provided however, that an appeal may be taken from any such determination as provided in section 34.3.~~

~~Sec. 31.2 Permits~~

~~Sec. 31.2.1 Permits required; conformance~~

~~Buildings or structures shall be started, reconstructed, enlarged or altered only after a building permit has been obtained from the building official. No building permit or certificate of occupancy shall be issued in violation of zoning or other local ordinances. (Amended 10-3-01)~~

~~(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)~~

~~Sec. 31.2.2 Building permits~~

~~The zoning administrator shall review each application for a building permit to ensure that the building or structure proposed is in accordance with the terms of this ordinance. No permit shall be issued for any construction for which a site development plan is required to be approved by the commission in accordance with section 32.0 of this chapter unless and until such plan shall have been so approved. Thereafter, any item shown on such plan as approved shall be deemed *prima facie* in accordance with the terms of this ordinance. No permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § 17-400 until the applicant complies with Albemarle County Code 17-401. (Amended 2-5-05)~~

~~Each applicant shall provide a copy of the most recent plat of record of the land to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description thereof.~~

~~Any other information which the zoning administrator may deem necessary for consideration of the application may be required. If the proposed building or use is in conformity with the provisions of this ordinance, a permit~~

shall be issued to the applicant by the zoning administrator. ~~One (1) copy of the drawing shall be returned to the applicant with the permit.~~

~~(§ 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05)~~

Sec. 31.2 Building permit applications

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

- a. Review. The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.
- b. Approval. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.
- c. Circumstances when building permit shall not be approved. The zoning administrator shall not approve a building permit in the following circumstances:
 1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.
 2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code § 17-400 until the applicant complies with Albemarle County Code § 17-401. (Amended 2-5-05)
 3. No building permit shall be approved in violation of any provision of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
- d. Other information for building official. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

~~(§ 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05)~~

Sec. 31.3 Zoning permits

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

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

c. Approval. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the zoning permit application.

~~Sec. 31.2.3 Certificates of occupancy; zoning compliance clearance (Amended 9-9-92; 10-3-01)~~

~~Sec. 31.2.3.1 Certificate of occupancy~~

~~It shall be unlawful to use or permit the use of any structure or premises, or part thereof, hereafter created, erected, changed, converted, altered or enlarged, wholly or partly in its use or structure, until a certificate of occupancy indicating completion of the work for which a permit was issued, is issued therefor by the zoning administrator. Final inspection approval or approvals may serve as the certificate of occupancy for any addition or alteration to a structure for which a certificate of occupancy has already been issued. The certificate shall show that the structure, premises or part thereof, and the proposed use thereof, is in conformity with the provisions of this chapter. (Amended 10-3-01)~~

~~When structures are completed and ready for occupancy prior to the completion of all improvements required by the site plan, and the zoning administrator determines that the site may be occupied consistently with the public health, safety and welfare: (Amended 10-3-01)~~

~~a. Except as provided in subsection (c), the owner may provide a certified check, bond with surety satisfactory to the county, a letter of credit satisfactory to the county, or other form of surety satisfactory to the county approved by the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements related to the structure for which the permit is sought, within one (1) year. Upon the providing of such bond with surety, a permit may be issued for the occupancy of those structures already completed. (Added 10-3-01)~~

~~b. The board of supervisors may extend the period of the surety if the applicant demonstrates that the extension is required because of adverse weather conditions or other unusual circumstances beyond the applicant's control, rather than the applicant's failure to diligently pursue completion or other reasons. (Added 10-3-01)~~

~~e. A certificate of occupancy shall not be issued, and a surety shall not be accepted, if the zoning administrator determines that improvements directly related to health and safety, such as fire hydrants and safe and convenient access to public roads, have not been completed and are not operational. (Added 10-3-01)~~

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

Sec. 31.4 Certificates of occupancy

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

a. Review. Prior to issuance of a certificate of occupancy, the zoning administrator shall review the certificate to ensure that the building, structure and improvements comply with this chapter.

b. Approval. If the proposed building, structure and improvements, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the certificate of occupancy. The final zoning inspection approval or approvals may serve as evidence of the zoning administrator's approval of the certificate of occupancy for any addition or alteration to a building or structure for which a certificate of occupancy has previously been issued or is not required under the building code.

c. Certificate of occupancy where improvements not completed. Upon the request of a developer, the zoning administrator may approve a certificate of occupancy where the buildings or structures shown on

a site plan are completed in compliance with the building code and this chapter before all improvements required by the site plan are completed, as follows:

1. Required findings. The zoning administrator may approve a certificate of occupancy upon finding that: (i) the improvements still to be completed and operating are not directly related to health and safety, such as fire hydrants and safe and convenient access to public roads; and (ii) the site may be occupied without endangering life or public health or safety prior to full completion of the improvements required by the site plan.
2. Surety. Before issuing a certificate of occupancy, the zoning administrator may require the developer to provide a certified check, bond with surety, a letter of credit, or other form of surety, all of which shall be in a form satisfactory to the county attorney, in an amount sufficient for and conditioned upon the completion of the improvements within one (1) year. Upon the request of the developer prior to the expiration of the surety, the zoning administrator may extend the period of the surety if the developer demonstrates that an extension is required because of adverse weather conditions or other unusual circumstances beyond the developer's control, rather than the developer's failure to diligently pursue completion or other reasons.

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

d. Circumstances when certificate of occupancy shall not be issued. The zoning administrator shall not issue a certificate of occupancy in the following circumstances:

1. No certificate of occupancy shall be issued in violation of this chapter. (Amended 10-3-01) (§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01)
2. No certificate of occupancy shall be issued if, after review of any building, structure or site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)

e. Other information for building official. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure does not comply and, therefore, a certificate of occupancy should not be issued by the building official.

Sec. 31.2.3.2 Zoning compliance clearance

~~An occupant shall obtain a zoning compliance clearance from the zoning administrator when: (1) a new commercial or industrial use is first established on a parcel; (2) an existing commercial or industrial use is changed or intensified; or (3) the occupant of a non-residential use changes. The zoning compliance clearance shall be issued only if the zoning administrator determines that the structure or premises and its use comply with the requirements of this chapter. For purposes of this section, production agriculture is not a commercial or industrial use; a home occupation is a commercial use. (Added 9-9-92; Amended 10-3-01)~~

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)

Sec. 31.5 Zoning clearance

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

a. When required. A zoning clearance shall be required in the following circumstances:

1. New use. Prior to establishing a new non-residential, other than an agricultural, use.

2. Change or intensification of existing use. Prior to changing or intensifying an existing non-residential, other than an agricultural, use.

3. Change of occupant. Prior to a new occupant taking possession of an existing non-residential, other than an agricultural, use.

4. Specific buildings, structures or uses. Prior to establishing any building, structure or use for which a zoning clearance is required under section 5.

b. Approval. If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.

c. Circumstance when zoning clearance shall not be issued. The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01

d. Commercial and industrial uses defined. For the purposes of this section 31.4, production agriculture is not a commercial or industrial use, and a home occupation, class A or class B, is a commercial use. (Added 9-9-92; Amended 10-3-01)

e. Effect of renumbering and renaming. Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.4 or a zoning clearance.

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)

~~Sec. 31.2.3.3 Authority not to issue certificate of occupancy or zoning compliance clearance~~

~~Notwithstanding sections 31.2.3.1 and 31.2.3.2, nothing contained herein shall be deemed to obligate the zoning administrator, following review of any building or premises, to issue a certificate of occupancy or zoning compliance clearance in any case in which the zoning administrator determines that additional improvements are necessary as precedent to issuing a certificate of occupancy or a zoning compliance clearance to protect the public health or safety, whether or not the improvements are shown on the approved site plan. (Added 9-9-92; Amended 10-3-01)~~

~~(§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)~~

Sec. 31.2.4 31.6 Special use permits

Sec. ~~31.2.4.1~~ 31.6.1 Reserved to board of supervisors

The board of supervisors hereby reserves unto itself the right to issue all special use permits permitted hereunder. Special use permits for uses as provided in this ordinance may be issued upon a finding by the board of supervisors that such use will not be of substantial detriment to adjacent property, that the character of the district will not be changed thereby and that such use will be in harmony with the purpose and intent of this ordinance, with the uses permitted by right in the district, with additional regulations provided in section 5.0 of this ordinance, and with the public health, safety and general welfare.

Sec. ~~31.2.4.2~~ 31.6.2 Application

Application for a special use permit shall be made by the filing thereof by the owner or contract purchaser of the subject property with the zoning administrator, together with a fee as set forth in section 35.0 of this ordinance.

No such permit shall be issued unless the board of supervisors shall have referred the application therefor to the commission for its recommendations. Failure of the commission to report within ninety (90) days after the first meeting of the commission after the application has been referred to the commission shall be deemed a recommendation of approval. Provided, however, any day between the date an applicant requests or consents to a deferral or continuance of the consideration of the application by the commission until the date of the deferred or continued hearing by the commission shall not be counted in computing the ninety (90) day review period. The board of supervisors may extend the review period upon a request by the commission.

The board of supervisors shall act upon such application and render a decision within a reasonable time period.

No such permit shall be issued except after notice and hearing as provided by ~~section 15.2-2204 of the Code and Virginia Code § 15.2-2204~~ and section 33.8 ~~of this chapter POSTING OF PROPERTY~~. (Amended 5-5-82; 6-19-96)

Sec. ~~31.2.4.2.1~~ Limitation of filing new application after original denial

a. Limitation of filing new application after original denial. Upon denial by the board of supervisors of any application filed pursuant to section ~~31.2.4.2~~ 31.6.2 above, substantially the same petition shall not be reconsidered within twelve (12) months of the date of denial. (Added 6-19-96)

Sec. ~~31.2.4.2.2~~ Withdrawal of petition

b. Withdrawal of petition. An application shall be withdrawn, or be deemed to be withdrawn, as provided herein: (Added 10-3-01)

- a1. An application filed pursuant to section ~~31.2.4.2~~ 31.6.2 above may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application 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 commission or the board. Substantially the same application shall not be reconsidered within twelve (12) months of the date of the withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply. (Added 6-19-96; Amended 10-3-01)
- b2. If the applicant requests that further processing or formal action on the application be indefinitely deferred, the application shall be deemed to have been voluntarily withdrawn by the applicant if the commission or the board does not take action on the application within twelve (12) months after the date the deferral was requested. Upon written request received by the director of planning ~~and community development~~ before the application is deemed to be withdrawn, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. (Added 10-3-01)

(§ 31.2.4.2.2, 6-19-96; Ord. 01-18(6), 10-3-01)

Sec. ~~31.2.4.3~~ 31.6.3 Conditions

The board of supervisors may impose upon any such permit such conditions relating to the use for which such permit is granted as it may deem necessary in the public interest and may require a bond with surety or other approved security to ensure that the conditions so imposed shall be complied with. ~~Such~~ The conditions shall relate to the purposes of this ordinance, including, but not limited to, the prevention of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substance or condition; the provision of adequate police and fire protection, transportation, water, sewerage, drainage, recreation,

landscaping and/or screening or buffering; the establishment of special requirements relating to the building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building height and/or other particular aspects of occupancy or use. Except as the board of supervisors may otherwise specifically provide in a particular case, any condition imposed under the authority of this section shall be deemed to be essential to and nonseverable from the issuance of the permit itself. (Amended 10-3-01)

(§ 31.2.4.3, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. ~~31.2.4.4~~ 31.6.4 Revocation

Any special use permit issued pursuant to this chapter may be revoked by the board of supervisors, after notice and hearing pursuant to Virginia Code § 15.2-2204, for willful noncompliance with this chapter or any conditions imposed under the authority of section ~~31.2.4.3~~ 31.6.3. If the use, structure or activity for which a special use permit is issued is not commenced within twenty-four (24) months after the permit is issued, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate. For purposes of this section, if the use authorized by the permit requires the construction of one or more structures, the term “commenced” means starting the lawful physical construction of any structure necessary to the use authorized by the permit within twenty-four (24) months after the permit is issued. The board of supervisors may, as a condition of approval, impose an alternative period in which to commence the use, structure or activity as may be reasonable in a particular case. A determination that a permittee has commenced a use, structure or activity under this section is not a determination that the permittee has acquired a vested right under Virginia Code § 15.2-2307. (Amended 10-3-01)

(§ 31.2.4.4, 12-10-80; Ord. 01-18(6), 10-3-01)

Sec. ~~31.2.5~~ 31.7 Review of public uses for compliance features to determine substantial accord with the comprehensive plan

~~No street, park or other public area, or public structure, or public utility, public building or public service corporation other than railroads, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may establish such conditions of approval as deemed necessary to insure compliance with the comprehensive plan.~~

~~Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.~~

~~The foregoing notwithstanding, the provisions of section 15.2-2232 of the Code shall apply to any such review.~~

If a public facility subject to Virginia Code § 15.2-2232 is not already shown on the comprehensive plan, the commission shall determine whether the location, character and extent of the public facility subject is in substantial accord with the comprehensive plan as provided by Virginia Code § 15.2-2232.

Sec. 34.3 Appeal to the board of zoning appeals

Appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator, and with the board of zoning appeals, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action

~~appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.~~

An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator, or from any order, requirement, decision or determination (collectively, the “decision”) made by any other administrative officer in the administration or enforcement of this chapter, as provided herein.

- a. Time for filing appeal. A notice of appeal (an “appeal”) shall be filed within thirty (30) days after the decision appealed, provided that an appeal of a decision pertaining to temporary or seasonal commercial uses shall be filed within ten (10) days after the decision if the notice of violation states that the ten (10) day appeal period applies.
- b. Filing and contents of appeal. An appeal shall be filed with the zoning administrator and with the board of zoning appeals. The appeal shall specify the grounds for the appeal.
- c. Transmittal of record. Upon the filing of an appeal, the zoning administrator shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.
- d. Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board of zoning appeals that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the zoning administrator and for good cause shown.
- e. Payment of fee. No appeal shall be processed, no record shall be required to be transmitted as provided under section 34.3(c), no proceedings shall be stayed as provided under section 34.3(d), and the time for which the appeal must be heard and acted on by the board of zoning appeals shall not begin, until the fee required by section 35 is paid. The failure of the appellant to pay the required within the time for filing an appeal shall not be a basis to refuse to accept the appeal or to dismiss the appeal.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2311(A), (B).

Article V. Violation and penalty

Sec. 36.1 Violations --generally

~~Any building erected contrary to any of the provisions of this ordinance or contrary to any condition imposed upon any conditional rezoning, issuance of a special use permit or approval of a site plan, and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this ordinance or any condition imposed upon any conditional rezoning, issuance of a special use permit or approval of a site plan, shall be a violation of this ordinance and the same is hereby declared to be unlawful. The zoning administrator may initiate injunction, mandamus, abatement, criminal warrant or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this ordinance. (Amended 12-20-89)~~

The following are violations of this chapter and are declared to be unlawful:

- a. Uses. Any use of a structure, improvement or land, established, that is conducted, operated or maintained in violation of any provision of this chapter or any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.
- b. Structures or improvements. Any structure or improvement that is established, conducted, operated or maintained in violation of any provision of this chapter or any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter.
- c. Structures without building permits. Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.
- d. Use of structure or site without certificate of occupancy. Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

(Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01))

Sec. 36.2 Notice of violation

~~Upon becoming aware of any violation of any provisions of this ordinance, the zoning administrator shall serve notice of such violation on the person committing or permitting the same, and if such violation has not ceased within such reasonable time as the zoning administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.~~

Sec. 36.3 Remedies not exclusive

~~The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.~~

Sec. 36.4 Complaints regarding violations

~~Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the zoning administrator. He shall record properly such complaint, immediately investigate and take action thereon as provided by this ordinance.~~

Sec. 36.2 Enforcement

The zoning administrator is authorized to enforce this chapter as follows:

- a. Investigation. Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.
- b. Inspection warrants and search warrants. The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.

- c. Subpoenas duces tecum. Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).
- d. Notice of violation; exception. If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing and/or permitting the violation if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(a).
1. Contents of notice. The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; and (iv) the time within which the violation shall be abated.
 2. Delivery of notice. The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.
- e. Remedies. In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

Sec. 36.3 Civil penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

- a. Procedure. Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.
- b. Minimum elements of a civil summons or ticket. A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
- c. Amount of civil penalty. Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.

- d. Maximum aggregate civil penalty. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.
- e. Each day a separate offense; single offense in 10-day period. Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
- f. Option to prepay civil penalty and waive trial. Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- g. Civil penalties are in lieu of criminal penalties. A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.
- h. Violations excluded. Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term “land development” means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 of Albemarle County Code or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project’s compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)

State law reference – Va. Code § 15.2-2209.

Sec. 36.4 Criminal penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter that results in injury to any person, or to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in section 36.3(c) has been reached and who continues to violate any provision of this chapter as provided in chapter 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act continues to violate this chapter as provided in section 36.2, shall be subject to the following:

- a. The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).
- b. If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor

more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).

c. Notwithstanding sections 36.4(a) and (b), any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of up to seven thousand five hundred dollars (\$7,500.00). However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of the dwelling unit against a tenant to eliminate an overcrowding condition in accordance with chapters 13 or 13.2 of title 55 of the Virginia Code, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall not be punishable by a jail term.

(§ 37.1; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2286(A)(5).

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be by injunction or other appropriate relief.

(§ 37.3; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2208.

Sec. 37.0 Penalties and remedies (Amended 6-14-00)

Sec. 37.1 Criminal penalty

~~Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this chapter or any site plan or other detailed statement or plan submitted by one of the above described persons and approved under the provisions of this chapter, shall be subject to the following:~~

A. ~~— The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).~~

B. ~~— If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).~~

(Ord. 00-18(5), 6-14-00)

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

Sec. 37.2 Civil penalty

~~Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this chapter or any site plan or other detailed statement or plan submitted by him and approved under the provisions of this chapter, shall be subject to the following:~~

~~A. — Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the first violation, and a civil penalty of five hundred dollars (\$500.00) for each subsequent violation arising from the same set of operative facts (Amended 3-16-05; Amended 7-5-06).~~

~~B. — Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00) (Amended 3-16-05; Amended 7-5-06).~~

~~C. — Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.~~

~~D. — A violation enforced under section 37.2 shall be in lieu of any criminal penalty and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter. (Amended 7-5-06)~~

~~E. — Section 37.2 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development within the meaning of Virginia Code § 10.1-603.2; or (ii) for violation of any provision of the zoning ordinance relating to the posting of signs on public property or public rights of way. (Amended 7-5-06)~~

~~(Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)~~

~~State law reference — Va. Code § 15.2-2209.~~

Sec. 37.3 Injunctive relief and other remedies

~~Any violation of this chapter may be restrained, corrected, or abated as the case may be by injunction or other appropriate relief.~~

~~(Ord. 00-18(5), 6-14-00)~~

~~State law reference — Va. Code § 15.2-2208.~~