

Chapter 1

The County and Its Boards, Commissions, and Officers: Composition, Powers and Duties

1-100 The county¹

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). Localities have “no elements of sovereignty.” *Sinclair v. New Cingular Wireless*, 283 Va. 567, 576, 727 S.E.2d 40, 44 (2012).

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, the county’s powers are not unlimited. 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 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.

1-200 The board of supervisors

The board of supervisors is the governing body of the county. Its members are elected by the residents of the county.

1-210 Composition

As noted above, the county is governed by the board of supervisors, and the number of members may range between 3 and 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; Albemarle County Code § 2-100 et seq.* Board members are elected for four (4) year terms. *Albemarle County Code § 2-201.*

¹ Because this chapter emphasizes the County of Albemarle and counties generally, a discussion of cities, towns, and their governing bodies is not included.

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 chairman of the board has no significant substantive powers. The only special powers granted to the chairman 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 of 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 entity established by the board of supervisors 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; *Albemarle 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; *Albemarle 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; *Albemarle 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. *Albemarle 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 board members 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. *Albemarle County Code* § 2-401(B).

1-320 Powers and duties

Planning commissions are part of the locality and operate 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).

The 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 board of supervisors 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 on an appeal of the disapproval of 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 board:* Serves as an advisory body to the board of supervisors to promote the orderly development of the county and its environs and to accomplish the objectives set forth in Virginia Code § 15.2-2200.
- *Comprehensive plan:* Prepares and recommends a comprehensive plan for the physical development of the county as provided in Virginia Code § 15.2-2223 *et seq.*
- *Official maps:* At the direction of the board of supervisors, 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 discretion of the board of supervisors, or on its own initiative, annually prepares and revises a capital improvement program based on the comprehensive plan of the county 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 board of supervisors, 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 board of supervisors, or on its own initiative, prepares and recommends amendments to the zoning ordinance including a map or maps showing the zoning districts of the county as provided in Virginia Code § 15.2-2285.
- *Annual report:* Makes recommendations and an annual report to the board of supervisors concerning its operation and the status of planning within the county.

Virginia Code § 15.2-2221.

1-400 The architectural review board

An architectural review board (“ARB”) is an administrative entity 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 locality’s 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. *Albemarle County Code* §§ 18-30.6, 18-34A. The members of the ARB must be

residents of the county and must have a demonstrated interest, competence or knowledge in architecture and/or site design. *Albemarle County Code § 18-34A*.

In Albemarle County, ARB members are appointed for four-year terms and serve at the pleasure of the board of supervisors. *Albemarle County Code § 18-34A*.

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 under Albemarle County Code § 18-34A:

- *Administer the regulations of the overlay district:* Administer the entrance corridor overlay district in accordance with the duties stated in Albemarle 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 Albemarle 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 Albemarle 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 in order 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 City of Virginia Beach, the city council, rather than the circuit court, appoints the BZA. *Virginia Code § 15.2-2308(E)*.

A BZA may consist of five or seven members. *Virginia Code § 15.2-2308(A)*. Albemarle County’s BZA consists of five members. *Albemarle County Code § 18-34.1*. The members of the 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)*. A member whose term expires continues to serve until his successor is appointed and qualifies. *Virginia Code § 15.2-2308(A)*.

Members may not hold any other public office in the locality, except that one member also may be a member of the locality’s planning commission. *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 jurisdiction, 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 jurisdictions. A locality may request that the circuit court appoint up to three alternate members. *Virginia Code § 15.2-2308(A)*.

A BZA member may be removed for malfeasance, misfeasance or nonfeasance in office, or for any other just cause, by the court that appointed him, 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 officers*: 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.

- *Interpretations 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 appointed by the board of supervisors. *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. *Virginia Code §§ 15.2-2259, 15.2-2260*. The agent acts 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 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.