

**ALBEMARLE COUNTY CODE**

**CHAPTER 18**

**ZONING**

**SECTION 31**

**ADMINISTRATION AND ENFORCEMENT**

**Sections:**

- 31.1 DESIGNATION OF ZONING ADMINISTRATOR, AUTHORITY**
- 31.2 BUILDING PERMIT APPLICATIONS**
- 31.3 ZONING PERMITS**
- 31.4 CERTIFICATES OF OCCUPANCY**
- 31.5 ZONING CLEARANCE**
- 31.6 SPECIAL USE PERMITS**
- 31.6.1 RESERVED TO BOARD OF SUPERVISORS**
- 31.6.2 APPLICATION**
- 31.6.3 CONDITIONS**
- 31.6.4 REVOCATION**
- 31.7 REVIEW OF PUBLIC FEATURES TO DETERMINE SUBSTANTIAL ACCORD WITH THE COMPREHENSIVE PLAN**
- 31.8 SPECIAL EXCEPTIONS**

**31.1 DESIGNATION OF ZONING ADMINISTRATOR, AUTHORITY**

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

**ALBEMARLE COUNTY CODE**

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).

(§ 31.1, 12-10-80; Ord. 09-18(3), 7-1-09)

**31.1.1 – 31.1.3 (Repealed 7-1-09)**

**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.
3. No building permit shall be approved in violation of any provision of this chapter.

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.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); Ord. 09-18(3), 7-1-09)

**31.2.1 – 31.2.5 (Repealed 7-1-09)**

**ALBEMARLE COUNTY CODE**

**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.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); § 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01 (part); Ord. 09-18(3), 7-1-09)

**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.

**ALBEMARLE COUNTY CODE**

- 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.
  - 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.
- 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.

(§ 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01; § 31.2.3.3, 9-9-2; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09)

**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.
  - 5. *Commencement of extraction activity.* Prior to commencing any natural resource extraction activity within the natural resources overlay district.
- 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.
- d. *Notice to the owner if the applicant is not the owner.* Within ten (10) days after receipt of a request for a zoning clearance by an applicant who is not the owner of the lot and/or structure to which the zoning clearance pertains, and prior to acting on the request, the zoning administrator or the applicant, at the zoning administrator's request, shall give written notice of the request to the owner. Written notice mailed to the owner's last known address as shown on the current real estate tax assessment records shall satisfy this notice requirement. If the zoning administrator requests that the applicant provide the written notice, the applicant shall provide satisfactory evidence to the zoning administrator that the notice has been given.
- e. *Commercial and industrial uses defined.* For the purposes of this section 31.5, agriculture composed of horticulture, viticulture, silviculture or other gardening which may involve the tilling

**ALBEMARLE COUNTY CODE**

of soil for the raising of crops and the keeping of livestock and/or poultry is not a commercial or industrial use, and a home occupation is a commercial use.

- f. *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 31.5 or a zoning clearance.

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09 ; Ord. 11-18(1), 1-12-11; Ord. 11-18(8), 8-3-11)

**31.6 SPECIAL USE PERMITS**

(§ 31.2.4, 12-10-80; Ord. 09-18(3), 7-1-09)

**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, and with the public health, safety and general welfare.

(§ 31.2.4.1, 12-10-80; Ord. 09-18(3), 7-1-09)

**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. 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 Virginia Code § 15.2-2204 and section 33.8 of this chapter.

- a. *Limitation of filing new application after original denial.* Upon denial by the board of supervisors of any application filed pursuant to section 31.6.2 above, substantially the same petition shall not be reconsidered within twelve (12) months of the date of denial.
- b. *Withdrawal of petition.* An application shall be withdrawn, or be deemed to be withdrawn, as provided herein:
  - 1. An application filed pursuant to section 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.

**ALBEMARLE COUNTY CODE**

2. 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 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.

(§ 31.2.4.2, 12-10-80, 5-5-82, 6-19-96; Ord. 01-18(6), 10-3-01; § 31.2.4.2.1, 6-19-96; § 31.2.4.2.2, 6-19-96; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09)

**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. 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.

(§ 31.2.4.3, 12-10-80; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09)

**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 31.6.3. 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.

(§ 31.2.4.4, 12-10-80; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09)

**31.7 REVIEW OF PUBLIC FEATURES TO DETERMINE SUBSTANTIAL ACCORD WITH THE COMPREHENSIVE PLAN**

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.

(§ 31.2.5, 12-10-80; Ord. 09-18(3), 7-1-09)

*ALBEMARLE COUNTY CODE*

**31.8 SPECIAL EXCEPTIONS**

The board of supervisors reserves unto itself the authority to consider and act upon special exceptions as follows:

- a. *Matters requiring a special exception.* Notwithstanding any other section of this chapter:
  - 1. Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board.
  - 2. Any requirement for a decision by the planning commission required by this chapter shall be considered and acted upon by the board. For the purposes of this section, a decision by the planning commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any action provided in section 32 enabled under Virginia Code § 15.2-2242(1).
- b. *Consideration and action.* In acting upon a special exception, the board shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the board shall not be required to make specific findings in support of its decision.
- c. *Conditions.* In approving a special exception, the board may impose reasonable conditions to address any possible impacts of the special exception.
- d. *Time for action.* A request for a special exception shall be acted on by the board within ninety (90) days after the date of the request, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.
- e. *Request.* Each request for a special exception shall be made as provided under the applicable section of this chapter.

(Ord. 12-18(1), 2-8-12)