Article 5: Overlay Zoning Districts

Division 5.1 Establishment and Purpose

Section 5.1.1 General

Relationship to other regulations. The regulations in this section supersede any less restrictive conflicting ordinance or regulations.

Section 5.1.2 Purpose and Intent

Overlay Districts impose special regulations in specified areas to accomplish that Overlay District's stated purpose and to promote the general health, safety, and welfare of County residents, consistent with the goals and objectives of the Comprehensive Plan.

Division 5.2 EC Entrance Corridor

Section 5.2.1 Purpose and intent

A. The purpose of the Entrance Corridor Overlay District EC) is to implement Virginia Code § 15.2-2306(A) by:

1. Implementing the Comprehensive Plan's goal to preserve the County's scenic resources, which are essential to the County's character, economic vitality, and quality of life; and
2. Maintaining the visual integrity of the County's roadways through review of new construction along the identified significant routes of tourist access.

B. The intent of this Division is to:

1. Identify the arterial streets and highways that are significant routes of tourist access to the County and to designated historic landmarks, structures, or districts within the County or in contiguous localities; and
2. Require that the erection, reconstruction, alteration, or restoration of structures, including signs, on parcels contiguous to those streets and highways be architecturally compatible with those historic landmarks or structures.

Section 5.2.2 District establishment and boundaries

A. **Establishment.** The EC Overlay District is established on and comprised of the parcels contiguous to the significant routes of tourist access identified in Subsection B.

B. **Entrance Corridor streets.** The following arterial streets and highways are significant routes of tourist access, referred to in this Division as "EC streets":

1. U.S. Route 250 East (Richmond Road).
2. U.S. Route 29 North (Seminole Trail).
3. U.S. Route 29 South (Monacan Trail).
4. Virginia Route 20 South (Monticello Avenue and Scottsville Road).
5. Virginia Route 631 (5th Street and Old Lynchburg Road) from Charlottesville City limits to Virgina Route XX (Hickory Street).
6. Virginia Route 631 (Rio Road West) from U.S. Route 29 North (Seminole Trail) to Route 743 (Earlysville Road).
7. U.S. Route 250 West (Ivy Road and Rockfish Gap Turnpike).
8. Virginia Route 151 (Critzers Shop Road).
9. Interstate Route 64.
10. Virginia Route 20 North (Stony Point Road) from Virginia Route 250 (Richmond Road) to Virginia Route XX (Proffit Road).
11. Virginia Route 22 (Louisa Road) from Virginia Route 250 (Richmond Road) to Virginia Route 231 (Gordonsville Road).
12. Virginia Route 53 (Thomas Jefferson Parkway).
13. Virginia Route 231 (Gordonsville Road).
14. Virginia Route 240 (Three Notch'd Road).
15. U.S. Route 29 Business (Fontaine Avenue).
16. U.S. Route 29/250 Bypass.
17. Virginia Route 654 (Barracks Road) from Charlottesville City limits to Virginia Route XX (Georgetown Road).
18. Virginia Route 742 (Avon Street).
19. Virginia Route 649 (Airport Road) from U.S. Route 29 North (Seminole Trail) to Virginia Route 606 (Dickerson Road).
20. Virginia Route 743 (Hydraulic Road and Earlysville Road) from U.S. Route 29 North (Seminole Trail) to Virginia Route 676 (Woodlands Road).

21. Virginia Route 631 (Rio Road) from U.S. Route 29 North (Seminole Trail) easterly to the Norfolk Southern Railway tracks.

22. Virginia Route 631 (Rio Road) between the Norfolk Southern Railway tracks and Virginia Route 2500 (John W. Warner Parkway).

23. Virginia Route 2500 (John W. Warner Parkway).

C. **Parcels sharing a boundary with an EC street on the applicable reference date.** Each parcel that had a boundary shared at any point with the right-of-way of an EC street on the applicable reference date. The applicable reference dates are:

1. October 3, 1990, for EC streets identified in Subsection B.1 through B.16;

2. November 14, 1990, for EC streets identified in Subsection B.17 and B.18;

3. April 12, 2000, for EC streets identified in Subsection B.19 and B.20;

4. November 2, 2005, for the EC street identified in Subsection B.21;

5. December 5, 2018, for EC streets identified in Subsection B.22 and B.23; and

6. UPDATED DATE OF ARTERIALS ADOPTION

D. **Extent of the Overlay District.** The Overlay District extends across the entire width of each parcel contiguous to an EC street, and to the following depth:

1. If the parcel shared a boundary with an EC street on the applicable reference date as provided in Subsection C, the Overlay District extends to the full depth of the parcel.

2. If the parcel is within 500 feet of an EC street and did not share a boundary with an EC street on the applicable reference date as provided in Subsection C, the Overlay District extends to a depth of 500 feet from the right-of-way of the EC street.

3. *Effect of changes to parcel boundaries.* A subdivision, boundary line adjustment, or any other change to the boundaries of a parcel after the applicable reference date does not reduce the area subject to this Division without a zoning map amendment that changes the boundaries of the EC Overlay District.

Section 5.2.3 Applicability

Certificates of appropriateness. Development within the EC Overlay District that is visible from the governing EC street requires a certificate of appropriateness (COA) as provided in Division 3.8, unless exempt under Section 3.8.1(B). The following development requires a COA:

1. *Building permits.* Each structure or site improvement for which a building permit is required, even if no site plan is required. A building permit will not be approved until the COA is obtained.

2. *Site plans*. Each structure or site improvement for which a building permit is required in a development for which a site plan is required. A site plan will not be approved until the COA is obtained.

Section 5.2.4 Standards

A. **Design guidelines elements**. The Architectural Review Board (ARB) may specify design guidelines to determine whether a structure and its associated improvements are consistent with the applicable design guidelines [cross-reference: current § 32]. The ARB may not authorize any maximum standard to be exceeded or any minimum standard to not be met. The design guidelines include the following:

1. *Architectural features.* The appearance of any architectural feature, including its form and style, color, texture, and materials.

2. *Size and arrangement of structures.* The configuration, orientation, and other limits on the mass, shape, area, bulk, height, and location of structures;

3. *Location and configuration of parking areas and landscaping.* The location and configuration of parking areas, landscaping, and buffering;

4. *Landscaping measures*. Landscaping and screening requirements [cross-reference: current § 32.7.9] requirements to retain existing vegetation and natural features to screen structures, and any landscaping measures the ARB determines necessary to keep structures and associated improvements consistent with the applicable design guidelines*;*

5. *Preservation of existing vegetation and natural features*. The preservation of existing trees, wooded areas, and natural features;

6. *Appearance of signs*. In addition to the applicable sign regulations [cross-reference: current § 4.15], the appropriate style, size, colors, materials, illumination, and location of all proposed signs; and

7. *Fencing*. The location, type, and color of all fencing, including safety fencing.

B. **Design criteria.**

The ARB may establish design criteria for each category of administrative certificate of appropriateness. Structures, sites, improvements, or architectural elements must be consistent with the established criteria to be eligible for the certificate. [cross-reference link to CWCoA criteria]

C. **Land disturbance and preservation.**

1. *Grading or land disturbing activity*. Grading or other land disturbing activity (including trenching or tunneling), except as necessary to construct tree wells or tree walls, must not occur within the drip line of any trees or wooded areas designated on the site plan to be preserved, and must not intrude upon any other existing features designated in the certificate of appropriateness for preservation.

2. *Method for preserving designated features*. An applicant for development subject to this Division must sign a conservation checklist provided by the Director of Planning specifying the method for preserving the designated features. The method must conform to the specifications in Standard and Specification 3.38 at pages III-393 through III-413 of the Virginia Erosion and Sediment Control Handbook, provided that the ARB or the Director of Planning may require alternative methods of tree protection if greater protection is deemed necessary.

3. *Designating and protecting preserved features*. Areas on a site containing features to be preserved must be identified on approved site plans and building plans, and must be clearly and visibly delineated on the site before grading or other land disturbing activity, including trenching or tunneling, begins. Grading, other land disturbing activity, and movement of heavy equipment must not occur within the delineated areas. The visible delineation of the boundaries of the areas to be preserved must be maintained until the County issues a certificate of occupancy. All features designated for preservation must be protected during development.

D. **Outdoor sales, storage, and display of vehicles (reserved)**

E. **Appeals**. A decision of the ARB on an application for a COA, and any other application for review under this Division, may be appealed to the Board of Supervisors as provided in Section 3.13.4. In addition:

1. *Consideration of ARB recommendations*. In acting on an appeal, the Board of Supervisors will give due consideration to the recommendations of the ARB together with any other information the Board deems necessary for a proper review of the appeal.

2. *Public safety facilities*. When considering an appeal pertaining to a public safety facility, the Board of Supervisors may issue a COA if it finds that the facility is a public necessity.

Section 5.2.5 Modifications (reserved)

A. Tree spacing for outdoor display – to be written following adoption of the new outdoor storage and display regulations.

Division 5.3 AIA Airport Impact Area

Section 5.3.1 Purpose and Intent

A. The purpose of the Airport Impact Area ("AIA") Overlay District is to minimize the creation of physical, visual, and other obstructions to the safe operation of the airport, and to minimize adverse airport-related impacts on persons and properties in the vicinity.

B. The intent of the AIA Overlay District is to mitigate negative impacts from:

1. *Airport-related hazards.* Conditions that may endanger lives and property;

2. *Obstructions*. Conditions that reduce the airspace needed for the take-off, landing, and maneuvering of aircraft, reducing the utility of the Charlottesville-Albemarle Airport and the public investment in it; and

3. *Aircraft noise*. Noise from aircraft operations that may adversely affect the health of persons and the peaceful use and enjoyment of property.

Section 5.3.2 District establishment

A. **Establishment.** The AIA Overlay District is established and shown on the Zoning Map, and shown in greater detail on the Airport Airspace Drawing – Part 77, as amended, and the Existing Noise Contours Map (2003), as amended, of the Charlottesville-Albemarle Airport Master Plan.

B. **Extent.** The AIA Overlay District consists of the Airport Protection Area, the Runway Protection Zone (RPZ), and the AIA Noise Impact Area,

C. **Availability**. Copies of the Airport Airspace Drawing – Part 77 and the Existing Noise Contours Map (2003) are available in the office of the Zoning Administrator.

Section 5.3.3 Standards

A. **Airport Protection Area**.

1. *Penetration prohibited.* No building, structure, object of natural growth, or use may penetrate the Airport Protection Area. Penetration includes any use or activity that causes the intrusion of light, glare, smoke, particles, projectiles, radiation, or electrical interference into the imaginary surfaces established for the airport.

2. *Determination.* The Zoning Administrator will consult with the Federal Aviation Administration, the Virginia Department of Aviation, and the Charlottesville-Albemarle Airport Board to determine whether a potential penetration exists.

B. Safety Area.

1. *Permitted uses.* Only agricultural and open space uses that do not involve concentrations of people are permitted in the Safety Area.

2. *Disclosure statement.* A prominent disclosure statement noting this restriction must appear on any plan or plat approved by an Albemarle County official, and on all land transfers, within the Safety Area.

3. *Nonconforming structures and trees.* This Section does not require the removal, lowering, or other change or alteration of a structure or tree that did not conform to these regulations as of the effective date of this Ordinance, and does not interfere with the continuance of a nonconforming use. This Section does not require a change to the construction, alteration, or intended use of a structure whose construction or alteration began before the effective date of this Ordinance and is being diligently pursued.

4. *Markers and lights.* The owner of a nonconforming structure or tree must permit the Charlottesville-Albemarle Airport Board to install, operate, and maintain markers and lights the Airport Board deems necessary to indicate the presence of the airport hazard to aircraft operators in the vicinity of the airport. The Airport Board installs, operates, and maintains these markers and lights at its own expense. The owner must also permit the trimming of a conforming tree as necessary to prevent the tree from becoming nonconforming in the future.

C. Noise Impact Area.

1. *Acoustical performance standards.* A building or structure intended for human occupancy or use that is proposed within the Noise Impact Area must be designed and constructed in accordance with the acoustical performance standards in Table 5.3.3(E).

2. *Certification.* The Building Official must certify that building plans conform to these requirements before construction begins, and must certify "as-built" conformance before issuing a certificate of occupancy.

3. *Disclosure statement.* A plat or plan for land within the Noise Impact Area that is approved by an Albemarle County official must prominently display a disclosure statement that the plat or plan includes land or buildings within the AIA Noise Impact Area.

D. Acoustical Performance Standards

Land Use Category	Maximum Interior Noise Level (dB(A))
Residential	Ldn ≤ 45
Public and quasi-public use: school	Ldn ≤ 45E

Public and quasi-public use: library	Ldn ≤ 45
Public and quasi-public use: church	Ldn ≤ 45
Public and quasi-public use: hospital	Ldn ≤ 45
Public and quasi-public use: auditorium, concert hall	Ldn ≤ 45
Parks and recreation, sports arena	Ldn ≤ 70
Office	Ldn ≤ 55
Commercial: retail	Ldn ≤ 55
Commercial: movie theatre	Ldn ≤ 55
Commercial: hotel, motel	Ldn ≤ 55
Distribution, industry	Ldn ≤ 70
Manufacturing and assembly industry	Ldn ≤ 70

E. **Cluster Development; Bonus Factors.**

A cluster development or bonus-level provision or regulation is permitted in the AIA Overlay District only if the Board of Supervisors determines that the development will reduce, or be no greater than, the hazard and noise impacts anticipated under a standard, conventional development of the underlying zoning district.

Division 5.4 FH Flood Hazard

Section 5.4.1 Purpose and intent

A. **Purpose**. Under the authority of Virginia Code § 15.2-2280, the Flood Hazard Overlay District (FH) is established to:

1. *Prevention of harm.* Prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base; and

2. *Flood insurance*. Address a local need for flood insurance and to participate in the National Flood Insurance Program.

B. **Intent.** The FH Overlay District is intended to prevent the harms described in subsection A by:

1. Regulating uses, activities, and development that, alone or combined with other existing or future uses, activities, and development, would cause unacceptable increases in flood heights, velocities, and frequencies;

2. Restricting or prohibiting certain uses, activities, and development within areas subject to flooding;

3. Requiring uses, activities, and development that occur in areas subject to flooding to be protected against, or flood-proofed against, flooding and flood damage; and

4. Protecting individuals from buying land and structures that are unsuited for their intended purposes because of flood hazards.

Section 5.4.2 District establishment and boundaries

A. **Flood Insurance Rate Map and Flood Insurance Study.** The FH Overlay District consists of all areas of the County within the special flood hazard areas delineated on the Flood Insurance Rate Map for Albemarle County, Virginia and Incorporated Areas and the Independent City of Charlottesville, most recently amended effective on and after May 16, 2016 (the "Flood Insurance Rate Map"), and the Flood Insurance Study for Albemarle County and Incorporated Areas and the Independent City of Charlottesville prepared by the Federal Emergency Management Agency, most recently amended effective on and after May 16, 2016 (the "Flood Insurance Study"), including all subsequent revisions and amendments.

The Flood Insurance Rate Map and the Flood Insurance Study are incorporated by reference. The Flood Insurance Rate Map, including all special flood hazard area zones designated on it, is adopted as the zoning map of the FH Overlay District.

B. **New uses and development.** On and after April 2, 2014, land may be developed and a structure may be located, relocated, constructed, reconstructed, enlarged, or structurally altered only in full compliance with this Section, this Chapter, and all other applicable regulations that apply to uses within the County.

C. **Pre-existing uses and development.** Any use or development lawfully existing on April 2, 2014 is nonconforming to the extent that it does not comply with this Section.

D. **Presumption of violation.** Any use, structure, or other development lawfully established after April 2, 2014 without a floodplain development permit, elevation certificate, or other certification or documentation required within the FH Overlay District (collectively, the "documentation") is presumed to be a violation of this Chapter until the documentation is provided to the Floodplain Administrator and determined to satisfy the requirements of the District.

E. **Administration; amendment to district boundaries.**

1. *Interpretation of the Flood Insurance Rate Map.* The Floodplain Administrator interprets, where needed, the exact location of special flood hazard areas, floodplain boundaries (including the approximated floodplain), and regulatory floodway boundaries, as follows:

   a. *Field-surveyed ground above base flood elevation.* Where field-surveyed topography shows adjacent ground elevations above the base flood elevation, the area is regulated as a special flood hazard area unless the applicant obtains a Letter of Map Change removing it from the special flood hazard area.

b. *Field-surveyed ground below base flood elevation.* Where field-surveyed topography shows adjacent ground elevations below the base flood elevation, the area is regulated as a special flood hazard area and is subject to this Section, even if it is not delineated as a special flood hazard area on the Flood Insurance Rate Map.

c. *Approximated floodplain.* In any special flood hazard area where base flood elevation and floodway data have not been identified and the floodplain is approximated, the Floodplain Administrator reviews and reasonably uses other flood hazard data available from federal, state, or other sources, and may use as guidance the Federal Emergency Management Agency publication "Managing Floodplain Development in Approximate Zone A Areas."

d. *Area not identified.* In any area where a special flood hazard area has not been identified, the Floodplain Administrator reviews and reasonably uses other flood hazard data available from federal, state, or other sources.

e. *Precedence*. The base flood elevations and regulatory floodway boundaries on the Flood Insurance Rate Map and in the Flood Insurance Study take precedence over other sources when those sources show reduced regulatory floodway widths, lower base flood elevations, or both.

f. *Other sources showing greater hazard.* Other sources of data are reasonably used when they show increased base flood elevations, larger floodway areas, or both.

g. *Preliminary Flood Insurance Rate Map or Study.* If the Federal Emergency Management Agency has provided a preliminary Flood Insurance Rate Map, Flood Insurance Study, or both:

i. Before a Letter of Final Determination. Preliminary flood hazard data is used where it exceeds the base flood elevations, regulatory floodway widths, or both in existing data, and is deemed the best available data where no base flood elevations or floodway areas are provided in the effective data. Preliminary data may be subject to change or appeal to the Federal Emergency Management Agency.

ii. After a Letter of Final Determination. The preliminary flood hazard data is used and replaces the previously provided data for administering this Section.

2. *Interpretation of district boundaries*. The Zoning Administrator, in consultation with the Floodplain Administrator, interprets the boundaries of

the FH Overlay District, subject to an aggrieved person's right to appeal to the Board of Zoning Appeals.

3. *Amendment of district boundaries*. With the prior approval of the Federal Emergency Management Agency, the Board of Supervisors may amend the boundaries of the FH Overlay District where:

   a. Natural or man-made changes have occurred;

   b. More detailed studies have been conducted by the United States Army Corps of Engineers or another qualified agency; or

   c. An individual documents the need for the change.

Section 5.4.3 Applicability

A. **Territory**. This Section applies to all privately and publicly owned lands within the County that are identified as being within a special flood hazard area on the Flood Insurance Rate Map provided to the County by the Federal Emergency Management Agency.

B. **Relationship to other regulations**. This Section supersedes any less restrictive conflicting regulations.

C. **Disclaimer**. The degree of flood protection sought by this Section is reasonable for regulatory purposes and is based on accepted engineering methods, but does not imply total flood protection. Larger floods may occur, and flood heights may be increased by natural or man-made causes such as ice jams and debris-restricted bridge openings. Therefore:

   1. This Section does not imply that lands or uses outside the FH Overlay District will be free from flooding or flood damage.

   2. This Section is not a waiver of sovereign immunity or any statutory immunity and does not create liability on the part of the County or its officers or employees for any flood damage resulting from reliance on this Section or any decision or determination lawfully made under this Chapter.

Section 5.4.4 Standards and Processes

A. **Letters of Map Change; request.** An owner, developer, or subdivider (collectively, the "owner") may or must request a Letter of Map Change or a Conditional Letter of Map Change as provided by federal law, as follows:

   1. *Letter of Map Amendment (LOMA) or Conditional Letter of Map Amendment (CLOMA).* If survey data shows that a parcel, site, or structure is or will be above the base flood elevation and the owner wants it removed from the special flood hazard area designation, the owner may request a Letter of Map Amendment from the Federal Emergency Management Agency. The

owner must also provide survey data to the Floodplain Administrator in a form and substance satisfactory to the Floodplain Administrator, who records satisfactory data. The owner may request a Conditional Letter of Map Amendment for an undeveloped parcel.

2. *Letter of Map Revision or Conditional Letter of Map Revision; required*. If development or proposed development in the floodplain may change the base flood elevation in any special flood hazard area, encroaches on the regulatory floodway, or would alter or relocate a stream, the owner must request a Letter of Map Revision or Conditional Letter of Map Revision from the Federal Emergency Management Agency. If the request is based on new fill in the floodway fringe where a regulatory floodway is defined, the owner must request a Letter of Map Revision-fill (LOMR-F) or Conditional Letter of Map Revision-fill (CLOMR-F).

3. *Submittal requirements*. The owner must submit to the Floodplain Administrator two copies of the proposed application, together with supporting documentation and models, and the applicable fee, for review and approval before the Floodplain Administrator signs the application as the community official. If the owner must obtain a special use permit for proposed development in the FH Overlay District, the owner must first obtain the special use permit and satisfy all its conditions before the Floodplain Administrator signs the application.

B. **Effect of a Conditional Letter of Map Change**. A Conditional Letter of Map Change informs the owner and others that when the development is completed, and if the owner submits an elevation certificate and as-built drawings certified by a land surveyor or professional engineer showing the development was built as approved, it will qualify for the corresponding Letter of Map Change. The Letter of Map Change must be requested from and issued by the Federal Emergency Management Agency before the map is amended or revised.

C. **Effect of a Letter of Map Change on permitting and uses**. A proposed or pending request for a Letter of Map Change affects permitting and uses as follows:

1. *Letter of Map Amendment or Conditional Letter of Map Amendment*. If the owner has requested or will request a Letter of Map Amendment or Conditional Letter of Map Amendment under subsection (A)(1), the Floodplain Administrator or any other County official or body may act on a pending application and an authorized use may begin, provided the owner has furnished the Floodplain Administrator the survey data on which the Letter is or will be based before it is issued.

2. *Letter of Map Revision or Conditional Letter of Map Revision; optional*. If the owner has requested or will request an optional Letter of Map Revision or Conditional Letter of Map Revision under subsection (A)(2), the Floodplain

Administrator or any other County official or body may act on a pending application and an authorized use may begin. However, if the Letter, once issued, would reduce a design or construction standard or change the special flood hazard area designation from the regulatory floodway to the floodway fringe, any approval may be conditioned so that no use begins until the Federal Insurance Administrator issues the Letter.

3. *Letter of Map Revision or Conditional Letter of Map Revision; required*. If the owner has requested or will request a required Letter of Map Revision or Conditional Letter of Map Revision under subsection (A)(3), the Floodplain Administrator or any other County official or body may not act on a pending application and no use may begin until the Federal Emergency Management Agency issues the Letter of Map Revision and all requirements of 44 CFR § 65.12 are satisfied.

D. **Floodplain development permit**. In addition to any other permit required under this Chapter, no use, structure, or other development (collectively, the "development") within the FH Overlay District may commence until the owner first obtains or provides the following:

1. *Floodplain development permit*. A floodplain development permit for any development, issued by the Floodplain Administrator. Issuance certifies that:

   a. The owner submitted documentation that the proposed development is authorized within the District as proposed and approved and complies with all applicable state and federal laws;

   b. The development is authorized only in strict compliance with this Section, this Chapter, and all other applicable laws, including the Virginia Uniform Statewide Building Code, the Subdivision Ordinance, and the Water Protection Ordinance;

   c. The Floodplain Administrator has reviewed the site and is assured it is reasonably safe from flooding, based in part on documentation of the elevation of the lowest floor (including any basement) of new and substantially improved structures and, where a structure is flood-proofed, the elevation (in relation to the datum shown on the effective Flood Insurance Rate Map) to which it is flood-proofed;

   d. The development does not adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or other drainage facility or system; and

   e. For development in the regulatory floodway, or in a riverine floodplain where the floodway is not mapped, the owner has submitted a no-rise certificate, on a form provided by the Floodplain Administrator,

composed of a professional engineer's certification that the development will not increase flood levels, based on the technical data required by subsection (F).

2. *Grading permit*. A grading permit for fill in the floodway fringe, issued only if the Floodplain Administrator determines the proposed fill satisfies subsection (G).

3. *Permit to relocate or alter a watercourse*. Before altering or relocating any channel or watercourse within the FH Overlay District, the owner must obtain all required permits from the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission. In riverine areas, the owner must notify all affected adjacent jurisdictions, the Virginia Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management, the Federal Emergency Management Agency, and any other public agency required to be notified. The flood-carrying capacity within the altered or relocated portion must be maintained.

4. Building permit. A building permit for any structure within the FH Overlay District, issued only if:

   a. The building permit includes the existing and proposed ground elevations, the boundaries of the FH Overlay District, the base flood elevation on the site, the elevation of the lowest floor (including any basement), and, for structures to be flood-proofed, the flood-proofing elevation;

   b. The owner submits an elevation certificate to the Floodplain Administrator, certifying that the lowest floor is elevated at or above the freeboard elevation, on the Federal Emergency Management Agency Elevation form or a form provided by the Floodplain Administrator; and

   c. For a non-residential building, the owner submits a flood-proofing certificate composed of a professional engineer's certification that the building was properly flood-proofed as required by subsection (H), on the Federal Emergency Management Agency Elevation form or a form provided by the Floodplain Administrator.

E. **Encroachment standards; determining impact on base flood elevation**. Any use, structure, or other development authorized under the use table in subsection (I) is subject to the following:

1. *Within the floodway in Zone AE*.

   a. Any encroachment — including new construction, substantial improvements, fencing crossing a stream channel, or other

development, but excluding fill — is prohibited unless the owner demonstrates in a floodplain impact plan that the proposed encroachment will not increase the water surface elevation of the base flood within the County during the base flood discharge. Fill is prohibited in the regulatory floodway regardless of whether the owner demonstrates no increase in the water surface elevation.

b. An encroachment — including fill, new construction, substantial improvements, or other development — that would increase the water surface elevation of the base flood may be allowed only if the owner first applies, with the Floodplain Administrator's endorsement, for a Conditional Letter of Map Revision under subsection (A) and receives the approval of the Federal Emergency Management Agency.

c. All new construction and substantial improvements must comply with the applicable construction standards in subsection (H). A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision to replace an existing manufactured home if the anchoring, elevation, and encroachment standards in subsection (H) are satisfied. [DRAFTING NOTE — Pohl comment 230: this allows a replacement manufactured home (a habitable structure) in the District, though the use table in subsection (I) permits no habitable structures. See habitable-structure reconciliation note at subsection (H).]

2. *Within Zone AE or AH where the floodway is not designated*.

a. Any encroachment — including fill, new construction, substantial improvements, fencing crossing a stream channel, or other development — is prohibited unless the owner demonstrates in a floodplain impact plan that the cumulative effect of the encroachment, combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood by more than one foot within the County during the base flood discharge.

b. An encroachment that would increase the water surface elevation of the base flood by more than one foot may be allowed only if the owner first applies, with the administrator's endorsement, for a Conditional Letter of Map Revision under subsection (A) and receives the approval of the Federal Emergency Management Agency.

3. *Within Zone A where the floodway is not designated and the floodplain boundary is approximated*. To determine the location of the floodway and floodplain and the base flood elevation:

a. The base flood elevation and floodway are determined for the proposed development using information from federal, state, and other

acceptable sources when available, including the United States Army Corps of Engineers Floodplain Information Reports and the United States Geological Survey Flood-Prone Quadrangles. If the base flood elevation cannot be determined from these sources, the applicant must determine it by:

i. Obtaining base flood elevation data from other sources or developing it using detailed methodologies comparable to those in a Flood Insurance Study, for subdivisions, site plans, and other proposed development exceeding 50 lots or five acres, whichever is less; or

ii. Providing hydrologic and hydraulic analyses; the Floodplain Administrator may require a floodplain impact plan.

b. In the approximated floodplain, the applicant must use technical methods that reflect currently accepted non-detailed technical concepts, such as point-on-boundary, high water marks, detailed methodologies, or hydrologic and hydraulic analyses. The applicant must submit studies, analyses, computations, and other information to the Floodplain Administrator in sufficient detail for a complete review, and the Floodplain Administrator may require a floodplain impact plan.

4. *Any zone; additional information*. The Floodplain Administrator may require a hydrologic and hydraulic analysis for any development. When base flood elevation data is used, the lowest floor must be elevated to or above the freeboard elevation.

F. **Encroachment standards; fill in the floodway fringe**. Any fill in the floodway fringe authorized by special use permit under the use table in subsection (I), in addition to any condition of the special use permit and any applicable encroachment standard in subsection (E), is subject to the following:

1. *Minimize obstruction*. The fill must be designed and constructed to minimize obstruction to and effect upon the flow of water so that: (i) the fill will not, in the Floodplain Administrator's opinion, increase the base flood elevation above that authorized in subsection (E); and (ii) no fill is placed in the regulatory floodway.

2. *Protect against erosion*. The fill must be effectively protected against erosion by vegetative cover, riprap, gabions, bulkhead, or another method acceptable to the Floodplain Administrator. Any structure, equipment, or material installed to protect against erosion must be firmly anchored to prevent dislocation during flooding.

3. *Non-polluting*. The fill must be of a material that will not pollute surface water or groundwater.

4. *Additional information*. The Floodplain Administrator may require the owner to submit additional topographic, engineering, and other data or studies needed to determine the effect of flooding on a proposed structure or fill, and the effect of the structure or fill on the flow of water during a flood.

5. *Certification*. No fill activity may occur until the owner submits a site plan for review and the Floodplain Administrator certifies that subsections (F)(1) through (4) and all other applicable requirements of the County Code are satisfied.

G. **Construction standards.** The following standards apply to any structure authorized under the use table in subsection (I) within the FH Overlay District and its special flood hazard area zones.

1. *General standards — any special flood hazard area*. Any structure and related improvement in any special flood hazard area zone must:

   a. Be built according to the Virginia Uniform Statewide Building Code and anchored to prevent flotation, collapse, or lateral movement (new construction and substantial improvements);

   b. Use materials and utility equipment resistant to flood damage (new construction and substantial improvements);

   c. Use methods and practices that minimize flood damage (new construction and substantial improvements);

   d. Design and locate electrical, heating, ventilation, plumbing, air conditioning, and other service facilities, including duct work, to prevent water from entering or accumulating within components during flooding;

   e. Design new and replacement water supply systems to minimize or eliminate infiltration of flood waters;

   f. Design new and replacement sanitary sewage systems to minimize or eliminate infiltration of flood waters and discharges into flood waters;

   g. Locate and construct on-site waste disposal systems to avoid impairment or contamination during flooding; and

   h. For any historic structure undergoing repair or rehabilitation that constitutes a substantial improvement, comply with the requirements of the FH Overlay District that do not preclude the structure's continued historic designation. The owner must provide documentation from the Secretary of the Interior or the State Historic Preservation Officer if a specific requirement will cause removal from the National Register of Historic Places or the State Inventory of Historic Places. Any relief must

be the minimum necessary to preserve the historic character and design.

2. *Buildings in Zones A, AE, and AH*. Where base flood elevations have been provided in the Flood Insurance Study or generated by a certified professional:

   a. *Existing residential building*. Any substantial improvement of a residential building, including a manufactured home, must have the lowest floor, including the basement, elevated to or above the freeboard elevation.

   b. *Non-residential building*s. Any new construction or substantial improvement must either: (i) have the lowest floor, including basement, elevated to or above the freeboard elevation; or (ii) in Zone AE or AH, be flood-proofed instead, so that all building components below the freeboard elevation are watertight with walls substantially impermeable to water and structural components able to resist hydrostatic and hydrodynamic loads and buoyancy. A registered professional engineer or architect must certify compliance, and the Floodplain Administrator must maintain the certification, including the flood-proofing elevation in relation to mean sea level.

   c. *Drainage path*s. Within Zone AH, adequate drainage paths around structures on slopes must be established and maintained to guide floodwaters around and away from proposed structures.

3. *Buildings in Zone AO*.

   a. *Existing residential building.* Any substantial improvement must have the lowest floor, including the basement, elevated at least as high as the flood depth number specified in feet on the Flood Insurance Rate Map above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including the basement, must be elevated at least two feet above the highest adjacent grade.

   b. *Non-residential building*s*.* Any new construction or substantial improvement must either: (i) have the lowest floor, including the basement, elevated as high as the flood depth number specified in feet on the Flood Insurance Rate Map above the highest adjacent grade, or, if no number is specified, at least two feet above the highest adjacent grade; or (ii) be completely flood-proofed, including utility and sanitary facilities, to the freeboard elevation so that space below is watertight with walls substantially impermeable to water and structural components able to resist hydrostatic and hydrodynamic loads and buoyancy. A registered professional engineer or architect must certify compliance.

c. *Drainage paths.* Adequate drainage paths around structures on slopes must be established and maintained to guide floodwaters around and away from proposed structures.

4. *Space below the freeboard elevation — Zones A, AE, AH, and AO*. Any fully enclosed area below the freeboard elevation (the "enclosed area") in new construction or a substantially improved structure, where base flood elevations have been provided, must:

   a. *Use*. Be used only for parking vehicles, building access, or limited storage of maintenance equipment not otherwise prohibited by the use table in subsection (I), used in connection with the premises.

   b. *Access*. Provide access limited to the minimum necessary for parking vehicles (garage door), limited storage (standard exterior door), or entry to other areas of the structure (stairway or elevator).

   c. *Construction materials*. Be constructed entirely of flood-resistant materials below the freeboard elevation.

   d. *Openings*. Include openings to automatically equalize hydrostatic flood forces on walls by allowing floodwaters to enter and exit, either certified by a professional engineer or architect or meeting these minimum criteria:

      i. At least two openings on different sides of each enclosed area;

      ii. Total net area of all openings at least one square inch for each square foot of enclosed area subject to flooding;

      iii. Openings in each enclosed area if a structure has more than one;

      iv. The bottom of all required openings no higher than one foot above the adjacent grade;

      v. Openings may be equipped with screens, louvers, or other coverings that permit the automatic flow of floodwaters in both directions; and

      vi. Foundation enclosures made of flexible skirting do not create enclosed areas and do not require openings; masonry or wood underpinning, regardless of structural status, is an enclosure and requires openings.

5. *Recreational vehicles*. Any recreational vehicle in Zone AE or AH where base flood elevations have been provided must either: (i) be stored on the lot for fewer than 180 consecutive days and be fully licensed and ready for highway use; or (ii) satisfy all requirements for new construction in subsections (G)(1) and (2). A recreational vehicle is ready for highway use if

it is on its wheels or jacking system, attached to the site only by quick-disconnect utilities and security devices, and has no permanently attached additions.

6. *Fences*. Any fence crossing a stream channel that, as determined by the Floodplain Administrator, may block the passage of floodwaters or catch debris during a flood must be designed and constructed as a breakaway fence that gives way at one end under a specified amount of pressure to swing parallel to the flow and minimize resistance to floodwaters and catching debris.

7. *Accessory structures*. Accessory structures in the floodplain must comply with the non-residential structure requirements in this subsection or, if not elevated or dry flood-proofed, must:

    a. Not be used for human habitation;

    b. Be no more than 200 square feet in total floor area;

    c. Be constructed with flood damage-resistant materials below the base flood elevation;

    d. Be constructed and placed to offer the minimum resistance to the flow of floodwaters;

    e. Be anchored to prevent flotation;

    f. Have electrical service and mechanical equipment elevated to or above the base flood elevation; and

    g. Be provided with flood openings that meet the following:

        i. At least two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each enclosure must have flood openings on exterior walls;

        ii. Total net area of all flood openings at least one square inch for each square foot of enclosed area (non-engineered), or engineered flood openings designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters (which may be satisfied by an individual certification or an ICC Evaluation Service Evaluation Report);

        iii. The bottom of each flood opening one foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening; and

        iv. Any louvers, screens, or other covers that allow the automatic flow of floodwaters into and out of the enclosed area.

Section 5.4.5 Use table.

The use tables use the following symbols:

1. "P" means the use is permitted by right, subject to all applicable use standards and other regulations of this Ordinance;
2. "SP" means the use is permitted only with an approved special use permit, subject to all applicable use standards and other regulations of this Ordinance;
3. "AC" means the use is permitted only as an accessory use to a permitted primary use; and
4. A blank cell means the use is not permitted in that district.

The uses and structures permitted by right, permitted by special use permit, and prohibited in the FH Overlay District are as follows:

Use or structure	Regulatory floodway	Floodway fringe
Agricultural, natural resources, and recreational uses and structures		
Agricultural uses, limited to field crops, pasture, grazing, livestock, raising poultry, horticulture, viticulture, and forestry; no primary or accessory structures permitted under this classification	**P**	**P**
Structures accessory to a permitted agricultural use; no accessory structures having habitable space permitted		**P**
Recreational uses including, but not limited to, parks, swimming areas, golf courses and driving ranges, picnic areas, wildlife and nature preserves, game farms, fish hatcheries, hunting, fishing and hiking areas, athletic fields, and horse show grounds; no primary or accessory structures permitted under this classification	**P**	**P**
Structures accessory to a permitted recreational use; no accessory structures for human habitation permitted		**P**
Sod farming	**SP**	**SP**
Topsoil, sand, and gravel removal	**SP**	**SP**
Flood and water related uses and structures		
Flood warning aids and devices, water monitoring devices, and similar uses	**P**	**P**

Flood control, stormwater conveyance, or environmental restoration projects that: (i) are designed or directed by the County, a soil and water conservation district, or a public agency authorized to carry out flood control or environmental restoration measures; or (ii) are reviewed and approved by the Department of Community Development under the Water Protection Ordinance with no changes to the base floodplain elevation or horizontal limits to the floodplain	**P**	**P**
Dams, levees, and other facilities/improvements for flood control or for the public drinking water supply	**SP**	**SP**
Engineered facilities/improvements, including, but not limited to, retaining walls and revetments made of non-natural materials such as concrete, constructed along channels or watercourses for water conveyance or flood control	**SP**	**SP**
Water related uses such as boat docks and boat liveries	**SP**	**SP**
Hydroelectric power generation	**SP**	**SP**
Public utility and telecommunications uses and structures		
Electric, gas, oil, and communications facilities, including poles, lines, pipes, meters, and related facilities for distribution of local service, owned and operated by a public utility, but excluding tower structures	**P**	**P**
Water distribution and sewage collection lines and appurtenances owned and operated by the Albemarle County Service Authority, but excluding pumping stations and holding ponds; public water and sewer transmission lines, main or trunk lines, and interceptors, but excluding treatment facilities and pumping stations, owned or operated by the Rivanna Water and Sewer Authority	**P**	**P**
Pump stations for water or wastewater, including power supply and control devices, holding ponds, and other appurtenances	**SP**	**SP**
Electrical transmission lines and related towers; microwave and radio-wave transmission and relay towers	**SP**	**SP**
Tier I and Tier II personal wireless service facilities attached to an existing structure		**P**
Tier III personal wireless service facilities		
Stream crossings and grading activities		

Stream crossings for a driveway serving only one single-family dwelling that could not be accessed by any other means, that: (i) meet the applicable requirements of Sections 17-406 and 17-604; and (ii) demonstrate, in a floodplain impact plan, to the floodplain administrator's satisfaction that construction of the crossing will have no impact on the elevations or limits of the floodplain beyond the limits of the subject parcel	**P**	**P**
Pedestrian trails, including, but not limited to, (1) pedestrian and multi-use paths within County-owned or operated parks and greenways, and (2) any footbridges necessary to cross tributary streams, watercourses, and swales, that: (i) meet the applicable requirements of Sections 17-406 and 17-604; and (ii) demonstrate, in a floodplain impact plan, to the floodplain administrator's satisfaction that construction of the crossing will have no impact on the elevations or limits of the floodplain	**P**	**P**
Bridges, ferries, and culverts not serving single-family dwellings	**SP**	**SP**
Grading activities or uses not involving a stream crossing, in compliance with the Water Protection Ordinance; provided it is demonstrated, in a floodplain impact plan, that the grading or use will have no impact on the elevations or limits of the floodplain, and any cut or fill is only to level areas for playfields, correct erosion problems, build trails, or other fine grading activities with no impact on the floodplain. Fine grading is a balanced site (cut/fill) with no changes to the base floodplain elevation or expansion of the horizontal limits of the floodplain		**P**
Grading activities not involving a stream crossing, including cut or fill, in compliance with the Water Protection Ordinance, but which the floodplain administrator determines will or may cause the base flood elevation to rise or the horizontal limits of the floodplain to expand		**SP**
Miscellaneous structures *		
Aircraft landing strips; structures other than the landing strip, aircraft parking, and aircraft storage are prohibited	**SP**	**SP**
Fences	**P**	**P**
Structures accessory to uses permitted by right in the regulatory floodway, excluding structures having habitable space; any such structure must be flood-proofed and anchored per Section 5.1.4(G)		**SP**

B. **Uses not listed**. A use or structure not listed in the use table in subsection (H) is prohibited in the FH Overlay District.

C. **Prohibited uses.** The following uses and structures are prohibited as either primary or accessory uses in the FH Overlay District:

1. Storage of gasoline, kerosene, and other petroleum products;
2. Storage of flammable liquids, dynamite, blasting caps, and other explosives;
3. Storage of pesticides and poisons and other similar materials;
4. Storage of machinery and motor vehicles, except as accessory to a use allowed by right or by special use permit;
5. Storage of junk;
6. Tier III personal wireless service facilities; and
7. Any structure having habitable space, including any manufactured home, regardless of the structure's proposed use, whether it qualifies as a dwelling unit, and whether it is a primary or accessory structure.

Section 5.4.6 Nonconforming uses and structures

Any pre-FIRM structure or use that lawfully existed before December 16, 1980 but does not conform to the requirements of the FH Overlay District may continue, subject to the following:

A. **Expansion or enlargement**. Existing uses and structures may not be expanded or enlarged.

B. **Improvement that is not a substantial improvement**. An existing use or structure may be modified, altered, repaired, reconstructed, or improved (collectively, the "improvements"), but not enlarged or expanded, where the improvements are not a substantial improvement, provided the improvements:

1. Are authorized by the nonconformity provisions of this Chapter; and
2. Comply with the Virginia Uniform Statewide Building Code.

C. **Improvement that is a substantial improvement.** An existing use or structure may be modified, altered, repaired, reconstructed, or improved (the "improvements") where the improvements qualify as a substantial improvement, provided:

1. The entire use or structure complies with the requirements of the FH Overlay District and all other applicable laws; and
2. The entire structure complies with the Virginia Uniform Statewide Building Code.

D. **Historic structure; substantial improvement.** Any historic structure undergoing repair or rehabilitation that constitutes a substantial improvement must comply with the requirements of the FH Overlay District that do not preclude the structure's continued historic designation. The owner must provide documentation from the Secretary of the Interior or the State Historic Preservation Officer if a specific requirement will cause removal from the National Register of Historic Places or the State Inventory of Historic Places. Any relief must be the minimum necessary to preserve the historic character and design.

Section 5.4.7 Variances

The Board of Zoning Appeals is authorized to consider and act on applications for variances, subject to the following:

A. **Eligibility**. A variance may be issued:

1. For new construction and substantial improvements to be erected on a lot of one-half acre or less contiguous to and surrounded by lots with existing structures constructed below the base flood elevation; the Board of Zoning Appeals may, upon good cause shown, consider a variance application for a lot larger than one-half acre; or

2. For new construction, substantial improvement, or other development necessary for a water-dependent facility not otherwise authorized by a special use permit, provided all applicable requirements of the FH Overlay District that are not varied are satisfied and the structure or development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

B. **What may be varied**. The following may be varied within the FH Overlay District: (i) any requirement of this Chapter eligible to be varied under the variance provisions of this Chapter and Virginia Code § 15.2-2309; (ii) any minimum encroachment standard in subsections 5.1.4(E) and (F); (iii) any minimum construction standard in subsection 5.1.4(G); or (iv) any standard applicable to nonconforming uses and structures in Section 5.1.5. No part of the use table in subsection 5.1.4(H), and no administrative or procedural requirement of the FH Overlay District, may be varied.

C. **Procedures**. The procedures and requirements for applying for and acting on a variance application are as provided in the variance provisions of this Chapter.

D. **Factors to be considered**. In considering a variance application, the Board of Zoning Appeals must consider the following factors in addition to those in the general variance provisions of this Chapter:

1. The danger to life and property from increased flood heights or velocities caused by encroachments. No variance may be granted for any proposed

use, development, or activity within any regulatory floodway that will cause any increase in the base flood elevation.

2. The danger that materials may be swept onto other lands or downstream to the injury of others.

3. The proposed water supply and sanitary sewage systems and their ability to prevent disease, contamination, and unsanitary conditions.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

5. The importance of the services provided by the proposed facility to the community.

6. The requirements of the facility for a waterfront location.

7. The availability of alternative locations not subject to flooding for the proposed use.

8. The compatibility of the proposed use with existing and reasonably anticipated development.

9. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.

10. The safety of access by emergency and non-emergency vehicles to the site in time of flood.

11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

12. The historic nature of a structure and whether the proposed repair or rehabilitation will preclude the structure's continued historic designation.

13. Accessory structures within the floodplain greater than 200 square feet but not greater than 600 square feet that do not meet all requirements for non-residential structures in subsection 5.1.4(G) must secure a variance before a permit is issued, and must comply with the accessory structure criteria in subsection 5.1.4(G). No variance may be granted for an accessory structure exceeding 600 square feet.

E. **Referral for technical assistance**. The Board of Zoning Appeals may refer any application and accompanying documentation to the Floodplain Administrator for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for flood protection.

F. **Findings**. A variance may be issued if the Board of Zoning Appeals finds:

1. The owner has demonstrated good and sufficient cause consistent with this Section;

2. The failure to issue the variance would result in undue hardship;

3. The variance will not: (i) result in unacceptable or prohibited increases in flood heights; (ii) result in additional threats to public safety; (iii) result in extraordinary public expense; (iv) create a public or private nuisance; (v) cause fraud or victimization of the public; or (vi) conflict with County regulations;

4. The variance is the minimum required to provide relief; and

5. For a historic structure, in addition to findings (1) through (4), the proposed repair or rehabilitation will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design.

G. **Notice to owner.** The Board of Zoning Appeals must notify the applicant in writing that issuing a variance to construct a structure below the base flood elevation increases the risks to life and property and will result in increased flood insurance premium rates. Providing this information on a variance application form satisfies this notice requirement.

H. **Recordkeeping.** A record must be maintained of the notification under subsection (G) and of all variance actions, including justification for issuance. Any variance issued must be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

I. **Use variances.** No variance may be issued to authorize a use in the FH Overlay District that is not otherwise expressly authorized.

Division 5.5 NR Natural Resource Extraction

Section 5.5.1 Purpose

The Natural Resource Extraction Overlay District (NR) is created to provide for the use of spring water for off-site consumption, and of sand, gravel, stone, or another mineral deposit within the County, in a manner compatible with adjacent land uses.

Section 5.5.2 District Establishment

A. **Minimum establishment requirements.** An NR Overlay District may be established where:

1. A deposit of sand, gravel, stone, or another mineral exists;

2. A use permitted in the district is unlikely to create an effect adverse to public health, safety, or welfare, or to the value of an adjacent property; and

3. An existing road will not require trucking operations through a developed residential area, or an area likely to be developed for residential use, during the extractive operation.

B. **Procedure.**

1. *Minimum area for establishment*. The minimum area for the establishment of an NR Overlay District is 20 acres.

2. *Zoning map amendment*. An NR Overlay District may be established by zoning map amendment, per Division 3.3.

Section 5.5.3 Standards and Procedures

A. **Zoning permit.**

1. *Permit required.* The operator of a natural resource extraction activity must apply for a zoning permit per Division 3.9.

2. *Periodic review; revocation*. The Zoning Administrator will review each zoning permit for a natural resource extraction activity annually. If a permit for the natural resource extraction activity issued by the Virginia Department of Mines, Minerals and Energy or the Virginia Department of Environmental Quality expires or is terminated, the zoning permit will be revoked.

B. **Maximum lot coverage.** A natural resource extraction operation, together with parking areas, access roads, and driveways, must not occupy more than 80 percent of the total site.

C. **Yard and building locations.** A natural resource extraction operation, including an associated use or structure, must be located:

1. At least 100 feet from a public road right-of-way or from an adjoining property within a residential district; and

2. At least 200 feet from a contiguous property that is subdivided into residential lots of one acre or less and is not under the ownership or control of the applicant, and at least 200 feet from an occupied dwelling.

D. **Additional Uses Permitted Within the NR Overlay District**

The use tables use the following symbols:

1. "P" means the use is permitted by right, subject to all applicable use standards and other regulations of this Ordinance;

2. "SP" means the use is permitted only with an approved special use permit, subject to all applicable use standards and other regulations of this Ordinance; and

3. "AC" means the use is permitted only as an accessory use to a permitted primary use.

The following uses are permitted within the NR Overlay District in addition to the uses permitted in the underlying zoning district:

Use	NR Overlay District
Removal of soil, sand, gravel, stone, or another mineral by excavating, stripping, quarrying, or another mining operation, except borrow areas and borrow pits over 50,000 cubic yards.	P
Accessory use to a use permitted by right, such as blasting, washing, grading, sorting, stockpiling, or grinding, if located on the site of the main use	AC
Concrete batching plant	SP
Asphalt mixing plant	SP
Mining or milling of uranium or another radioactive material	SP
Extraction of oil or natural gas	SP
Coal mining	SP
Deep mining	SP
Accessory use to a use permitted by special use permit, or an off-site accessory use to a use permitted by right, such as blasting, washing, grading, sorting, stockpiling, or grinding	AC
Spring water extraction or bottling that does not involve pumping water to the surface	SP

E. Hours of operation.

1. Operations involving industrial-type power equipment are limited to the hours of 7:00 a.m. to midnight, except during a public emergency as determined by the County Executive.

2. Blasting operations are limited to Monday through Friday, between 8:00 a.m. and 5:00 p.m.

F. Public improvements; internal roads.

1. An operation must not generate an unusual traffic hazard or the need for an improvement to a public street or another public facility at public expense.

2. An internal access road must be surfaced with a bituminous or other dust-free surface for a distance of 300 feet from a public road.

G. **Transportation of excavated materials.** A vehicle transporting excavated materials must be loaded so the material cannot unintentionally discharge, and must be cleaned of material outside the load bed before entering a public road.

H. **Collections of water.** The operator must avoid creating an undrained pocket or stagnant pool of water from surface drainage to the maximum extent practicable, and if unavoidable, must spray it in accordance with Virginia Department of Health requirements to eliminate mosquito and insect breeding.

I. **Blasting; vibration and overpressure limits.**

1. Ground vibration from surface blasting may not exceed the limits in 4VAC25-40-880, measured as provided in that regulation.

2. Air overpressure resulting from surface blasting may not exceed 133 decibels, measured at the closest boundary line of a lot that abuts the NR Overlay District and is not itself within an NR Overlay District, using the procedures in Section [Noise Ordinance].

Division 5.6 SS Scenic Streams

Section 5.6.1 Purpose

The Scenic Streams Overlay District (SS) conserves elements of the County's scenic beauty along scenic waterways.

Section 5.6.2 District Establishment

An SS Overlay District applies to the entire length of the Moormans River, from the bottom of the Charlottesville Water Supply Dam at Sugar Hollow to the confluence of the Moormans River with the Mechum River.

Section 5.6.3 Applicability

Applicability of SS Overlay District regulations are measured from the edge of the stream at mean annual flow level.

Section 5.6.4 Standards

A. **Yard and building locations.** Except as otherwise expressly provided in this Section, a building or structure, other than a necessary accessory appurtenant fence or wall, may not be constructed within 65 feet of the edge of a designated stream.

B. **Cutting restrictions.**

1. *Within 65 feet of stream.* Forested areas within 65 feet of the edge of a designated stream may not be cut to reduce the area of the forest canopy by more than 25 percent on a parcel, as determined aerial photographs of the area that existed on _____(date of adoption), as determined by the Zoning Administrator.

2. *Within 15 feet of stream.* The following activities are prohibited within 15 feet of designated stream:

   a. Constructing of a structure;

   b. Cutting a living tree measuring more than six inches in caliper measured six inches above ground level;

   c. Grading or otherwise physically altering the immediate environs of the stream, except for a use listed in Section 5.6.C.

C. **Uses permitted within 15 feet of a designated stream in an SS Overlay District.**

The use tables use the following symbols:

1. "P" means the use is permitted by right, subject to all applicable use standards and other regulations of this Ordinance;

2. "SP" means the use is permitted only with an approved special use permit, subject to all applicable use standards and other regulations of this Ordinance; and

3. "AC" means the use is permitted only as an accessory use to a permitted primary use.

The following uses are permitted within 15 feet of a designated stream in an SS Overlay District:

Use	Permission
Cutting or removal of a tree, if necessary to prevent an obstruction of the stream or to eliminate a danger to public health, safety, or welfare	P
Fence	P
Maintenance of an existing ford or bridge	P
Navigational or drainage aid	SP
Flood warning aid or device	SP

Water monitoring device	SP
Bank erosion structure	SP
Boat dock, pier, or wharf	SP
Bridge, causeway, or other similar structure designed for pedestrian or vehicular access, subject to the additional findings below	SP
Use or structure immediately appurtenant and necessary to a use listed in this table	AC

D. **Additional findings for a bridge, causeway, or similar structure.** A special use permit use for a bridge, causeway, or other similar structure may be granted only if the Board of Supervisors finds, by clear and convincing evidence, in addition to the factors considered under Section 3.5.3.G, that:

1. The bridge or other structure is to be located at the site of an existing bridge, ford, or other stream crossing;
2. The existing crossing is regularly used, and the bridge or other structure is to be used, as the sole means of access to one or more existing, lawfully occupied dwellings;
3. No alternative means of access to the dwellings is physically practicable;
4. No such alternative means of access has been abandoned, aliened, or otherwise relinquished by the voluntary act or omission of the owner of the land on which the dwellings are located since December 10, 1980;
5. The bridge or other structure is necessary to prevent, eliminate, or substantially alleviate a hazard to the life or property of a County resident;
6. The bridge or other structure is designed to pose the minimum practical disruption of the stream environment consistent with this Section; and
7. The bridge or other structure complies with all applicable state and federal law.

Division 5.7 Steep Slopes

Section 5.7.1 Purpose and Intent

A. **Purpose.** The Steep Slopes Overlay District is created over land in the Development Areas to protect steep slopes identified in the Comprehensive Plan as requiring additional care in development design before development occurs

B. **Intent.** The intent of the Steep Slopes Overlay District is to:

1. Protect the integrity of steep slope areas;

2. Protect downstream land and waterways from the adverse effects of unregulated disturbance, including rapid or large-scale movement of soil or rock, excessive stormwater runoff, and degradation of surface water; and

3. Enhance and preserve the character and beauty of steep slopes in the Development Areas.

State law reference(s)—Virginia Code §§ 15.2-2280(1), (2), 15.2-2286(A)(4).

Section 5.7.2 District Establishment

A. **Establishment.** The Steep Slopes Overlay District consists of the privately and publicly owned land in the County depicted as managed or preserved slopes on the series of maps titled "Steep Slopes Overlay District." The County adopts these maps as the Zoning Map of the Steep Slopes Overlay District.

B. **Relation to critical slopes regulations.** The critical slopes regulations elsewhere in this Chapter do not apply within the Steep Slopes Overlay District.

C. **Types of slopes.**

1. *Preserved slopes.* Preserved slopes have characteristics that warrant their preservation by the prohibition of disturbance except in the limited conditions provided in Section 5.7.4. Preserved slopes should be preserved to the maximum extent practical.

2. *Managed slopes.* Managed slopes are those slopes where development may occur, if design standards are satisfied to mitigate the impacts caused by the disturbance of the slopes.

Section 5.7.3 Applicability

A. **Managed slopes.** A slope has the characteristics of a managed slope if any of the following apply:

1. The contiguous area of steep slopes is limited or fragmented;

2. The slope is not associated with or abutting a water feature, including a river, stream, reservoir, or pond;

3. The slope is not natural, but is manufactured;

4. The slope was significantly disturbed before June 1, 2012;

5. The slope is within a lot that received prior single-family residential approval; or

6. A prior County action disturbed the slope, or allowed the slope to be disturbed.

B. **Preserved slopes.** A slope has the characteristics of a preserved slope if any of the following apply:

1. The slope is part of a contiguous area of 10,000 square feet or more, or part of a close grouping of slopes whose aggregate area is 10,000 square feet or more, even if individual slopes in the group are smaller than 10,000 square feet;

2. The slope is part of a system of slopes associated with or abutting a water feature, including a river, stream, reservoir, or pond;

3. The slope is part of a hillside system;

4. The Comprehensive Plan identifies the slope as a resource designated for preservation;

5. The Comprehensive Plan identifies the slope as a resource;

6. The slope has significant value to the Entrance Corridor Overlay District; or

7. A prior County action preserved the slope, including through an easement, a proffer, or a condition restricting land disturbing activity on the slope.

Section 5.7.4 Standards

A. **Design standards.** Land disturbing activity to establish a use or structure on a managed or preserved slope must comply with the grading standards in Section [ ] (Grading).

B. **Permitted uses**

1. *Managed slopes.* Uses are permitted on managed slopes in accordance with the by right and by special use permit permissions of the underlying zoning district.

2. *Preserved slopes*.
The use table uses the following symbols:

a. "P" means the use is permitted by right, subject to all applicable use standards and other regulations of this Ordinance;

b. "SP" means the use is permitted only with an approved special use permit, subject to all applicable use standards and other regulations of this Ordinance; and

c. "AC" means the use is permitted only as an accessory use to a permitted primary use.

The uses permitted by right and by special use permit on preserved slopes are as follows:

Use	Preserved slopes
Single-family detached or single-family attached dwelling unit lawfully in existence prior to March 5, 2014.	P
First single-family detached dwelling unit on a lot of record lawfully in existence prior to March 5, 2014.[1]	P
Public facilities necessary to allow the use of the lot.[1]	P
Public or private pedestrian and bicycle trails.	P
Any use permitted as accessory to a residential use in the underlying zoning district.	AC
Water, sewer, energy, and communications distribution facilities.[1]	P
Any use or structure approved by the Board of Supervisors in a zoning map amendment whose location is expressly authorized in an approved application plan, code of development, or an accepted proffer, in a special use permit authorized in the underlying district regulations, or in a legislative modification authorizing a waiver or modification of the requirements of Section [ ]; provided that the legislative action is still valid and that the use or structure complies with all requirements and conditions approved or imposed in conjunction with the legislative zoning action.	P
private facilities such as accessways, utility lines and appurtenances, and stormwater management facilities.[1]	SP

C. Boundary Amendments

[1] Provided the use cannot be located outside of the preserved slopes.

1. *Board-initiated*. The Board of Supervisors may amend the boundaries of the Steep Slopes Overlay District, including the designation of land as managed or preserved, under Section 3.2.

2. *Applicant-initiated.* An applicant may submit a zoning map amendment application to remove land from the Steep Slopes Overlay District per Section 3.2. In addition to the standard zoning map amendment application materials, the applicant must also submit field-run topography prepared by a licensed engineer, surveyor, or landscape architect demonstrating that the land to be removed does not contain slopes of 25 percent or greater.

Section 5.7.5 Modifications

The County Engineer may approve modifications to subsection 5.7.4(B)(2) to permit any use or structure allowed by right or by special use permit in the underlying district, if the applicant submits new topographic information based on more accurate or better technical data, demonstrating that the slopes are less than 25 percent.