- ***CHAPTER 1 - GENERAL PROVISIONS***

ARTICLE 5. FEE SCHEDULE

Sec. 1-504 Zoning fees.

A. *Rules Applicable to Zoning Fees.* The following rules apply to the fees imposed under subsection (B):

1. *Calculation of fees in special circumstances.* In the following special circumstances, the fee(s) required by subsection (B) will be calculated as follows:

   a. *Simultaneous review of special use permit for outdoor display and sales and supporting initial site plan.* The applicant must pay the fee for the special use permit, but not the fee for the initial site plan for outdoor display and sales, when simultaneous review of both the special use permit application and a supporting initial site plan is required.

   b. *Multiple special use permits to establish a single use.* If multiple special use permits are required to establish a single use, the applicant must pay only the largest single fee for a special use permit for all of the special use permit applications.

2. *Pre-existing use fee waiver.* If an applicant applies for a special use permit, the applicable fee will be waived provided that the following conditions are met:

   a. The use applied for does not conform to the zoning prescribed for the district in which the use is situated;

   b. A business license was issued by the county for the applied-for use; and

   c. The holder of the business license has operated continuously in the same location for at least 15 years and has paid all real estate, business license, and personal property taxes related to the use.

B. *Zoning Fee Amounts.* Each of the following applications, permits, or activities is subject to the following fee(s):

Architectural Review Board (ARB)—Minor Board review (Building permits, major amendment)	$700
ARB—Minor Staff Review of County Wide Certificates of Appropriateness (Fencing, Equipment, Lighting)	$265
ARB—Major Staff Review of County-wide certificate of appropriateness (CWCA) (Additions to ARB-approved buildings, Building permits (per review), Minor amendments, Personal Wireless Service Facilities, structures 750 ft or more from EC not taller than 5 stories or located behind a structure that fronts the EC, Other CWCA)	$540
ARB—Major Board review (Conceptual plan; advisory review; preliminary, initial or final site plan)	$1,185
Entrance Corridor—Resubmittal of Any Sign	$65
Entrance Corridor—Review of any Sign	$130

Bond Agreement with Surety—Establish, Amend, Replace, Reduce, or Release a Bond	$285
Board of Zoning Appeals—Variance and Special Use Permit	$590
Floodplain—Floodplain Impact Plan Review or Letter of Map Amendment (LOMA) (topographic plan with floodplain model)	$355
Floodplain—Letter of Map Change review (topographic plan only)	$175
Groundwater Assessment—Tier I	$60
Groundwater Assessment—Tier II	$390
Groundwater Assessment—Tier III	$605
Groundwater Assessment—Tier IV	$1,300
Zoning Determination	$220
Required Notice (per notice)	$235 base fee (at time of application) plus the actual cost of first-class postage and advertisement, once determined
Sign Permits—Architectural Review Board not required (Temporary Signs)	$30
Sign Permits—Architectural Review Board required	$140
Site Development Plan—Additional Fee for Dam Break Inundation Zones	1% of total amount of payment required or $1,000, whichever is less
Site Development Plan—Initial Site Plan, Final Site Plan, Major Amendment and Exception to Drawing Site Plan	$1,775
Site Development Plan—Letter of Revision	$120
Site Development Plan—Preapplication Plan and Minor Amendment	$590
Special Exception	$980
Tier II Personal Wireless Service Facility	$2,155
Site Development Plan—Variation or Exception Under County Code Section 18-32.3.5	$980
Special Use Permit Minor—Home occupation, class B and Day care center	$1,185
Special Use Permit—Farmer's Market	$130
Special Use Permit—All Other Special Use Permits and SUP Amendment (fee includes application and first resubmittal)	$2,365
Special Use Permit—Deferral of Scheduled Public Hearing at Applicant's Request	the actual cost of first-class postage and advertisement, as applicable
Special Use Permit—Telecommunications, Solar	$2,365
Special Use Permit—For each Resubmittal after the First	$590
Zoning Clearance—Home Occupations	$30

Zoning Clearance—All other uses	$60
Zoning Clearance—Homestay	$120
Zoning Clearance—Temporary fundraising activity	No Charge
Zoning Clearance—Short duration fill activity	No Charge
Zoning Map Amendment—Amendment Pertaining to Proffers which Do Not Affect Use or Density	$505 application fee plus $235 notice base fee (at time of application) plus the additional cost of first-class postage and advertisement, once determined.
Zoning Map Amendment—Deferral of Scheduled Public Hearing at Applicant's Request	the actual cost of first-class postage and advertisement, as applicable.
Zoning Map Amendment—Resubmittal and Reapplication of a withdrawn application	$1,480
Zoning Map Amendment—(Fee includes initial application and first resubmittal)	$2,960

Comment – Amended to include no fee for short duration fill activity.

Sec. 3.1 Definitions.

The following definitions shall apply in the administration of this chapter:

Clean earth fill. "Clean earth fill" means fill that (i) consists of any soil material that occurs naturally on the surface of the earth that can be dug, plowed, or planted, (ii) can be classified as a soil in accordance with the "Unified Soil Classification System"~~., (iii) contains less than 25 percent rock fragments greater than three inches in diameter, and (iv) contains less than five percent by volume of root or woody material.~~ Clean earth fill must be free of:

1. Any contaminants in toxic concentrations or amounts, in accordance with all applicable laws and regulations; ~~and~~

2. Construction debris and demolition waste, including asphalt, concrete and other materials not found in naturally occurring soils~~.~~;

3. More than five percent by volume of root or woody material; and

4. More than twenty five percent rock.

Comment – amended for clarity.

Clean earth fill activity. "Clean earth fill activity" means the filling and placing of clean earth fill and all associated on site activities including, but not limited to access, vehicle storage, and vehicle maintenance.

Comment – no change proposed.

Direct access road classification. "Direct access road classification," as used in section 5.1.28 is the public or privately maintained road from which the property proposed for fill activity has an entrance that connects directly without using another lot, easement, or internal access road. The public road classification is based on the Virginia Department of Transportation (VDOT) functional classification categories.

Comment – regulations based on road classification added to 5.1.28. A definition is needed.

Drip line. "Drip line" means the area within the outermost circumferences of a tree canopy from where water drips onto the ground, including the soil and roots within that circumference.

Comment – definition is proposed to provide clarity. This definition will apply to both fill operations and wireless applications.

Fill activity. "Fill activity" as used in section 5.1.28 means either clean earth fill activity, inert waste fill activity or borrow area.

Comment – added to provide clarity.

Inert materials. "Inert materials" means solid materials that are physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert materials ~~t~~includ~~inge~~ rock, rubble, concrete, bricks, broken bricks and blocks, ~~and~~ asphalt pavement, crushed glass, porcelain, and similar non-biodegradable construction materials.

Comment – Changed to include additional materials to more closely follow State regulations and terms.

Inert waste fill. "Inert waste fill" means comprised entirely of inert materials. ~~brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals or clean earth fill.~~ Inert waste ~~is nonreactive, physically, chemically and biologically stable from further degradation, and includes fragmented solid material such as rock, concrete, broken bricks, and block.~~ fill includes fragmented solid materials such as rock, concrete, bricks, broken bricks and blocks, asphalt pavement, crushed glass, porcelain and similar construction-derived inert materials. Inert waste fill can include clean earth fill. ~~rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement. Inert waste fill can include clean earth fill.~~

Comment – language added to more closely follow State regulations and terms.

Inert waste fill activity. "Inert waste fill activity" means the filling and placing of inert waste fill and all associated on site activities including, but not limited to, access, vehicle storage, and vehicle maintenance.

Comment – No change proposed. Included only for reference.

Short duration fill activity. "Short duration fill activity" means the filling and placing of clean earth fill and inert waste fill on property zoned, RA, Rural Areas, VR, Village Residential and MHD, Monticello Historic District.

Comment – new use proposed in 5.1.28. Definition added for clarity.

Truck round trip. "Truck round trip", as used in section 5.1.28 means one truck entering and leaving a fill site.

Comment – regulations based on truck round trips added to 5.1.28. A definition is needed.

Sec. 4.3 Tree cutting.

a. Outside of ~~In districts other than~~ the RA, Rural Areas district cutting of trees ~~shall be~~ is limited to dead trees and trees of less than six inches in diameter measured at six inches above ground; except that trees may be cleared ~~as an incident to~~ in the preparation of land for the establishment of some other use permitted in the district, provided that:

Comment – amended for clarity.

1. ~~Such~~ The use is exempt from the provisions of section 32 hereof; or
2. A site development plan for such permitted use ~~shall have~~ has been approved ~~in accordance with the provisions of section 32 of this ordinance~~ by the County; or
3. Tree cutting is allowed in compliance with section 5.1.28.

Comment – amended for clarity.

b. The following regulation ~~shall~~ apply in all zoning districts:

1. Unless otherwise specifically approved to accommodate development, ~~pursuant to section 32 hereof,~~ no tree within 15 feet of any perennial stream or water supply impoundment may be cut, except: ~~for~~

   a. ~~d~~Dead trees or trees of less than six inches in diameter measured at six inches above ground; or

   b. ~~in order t~~To provide access for livestock or for another permitted use;

   c. ~~The foregoing p~~Notwithstanding subsections (a) and (b), the zoning administrator may authorize cutting of trees which:

      1. Are deemed by the zoning administrator to pose a clearly demonstrable danger to ~~buildings or other~~ structures or otherwise a danger to public safety; or
      2. Have been specifically recommended for removal following field investigation by the Virginia Department of Forestry as being virulent or pestilent to other trees in the vicinity;

   d. For the purpose of this ordinance, the term "tree cutting" ~~shall be deemed to~~ includes sawing, burning, bulldozing, poisoning, girdling or any other activity which could reasonably be anticipated to result in the death of a tree. ~~Fill and waste areas shall not be deemed a permitted use but preparatory activity to establish a permitted use.~~

Comment – amended for organizational structure.

Sec. 4.3.1 Fill areas, waste areas.

Clean earth fill activity and inert waste fill activity are permitted in all zoning districts. Clean earth fill activity and inert waste fill activity are permitted only in ~~accordance~~ compliance with section 5.1.28 of this ordinance.

(§ 20-4.3.1, 7-3-83; § 18-4.3.1, Ord. 98-A(1), 8-5-98; Ord. 20-18(3), 9-16-20)

Comment – amended for clarity.

Sec. 5.1.28 Clean earth and inert waste fill activity.

a. Applicability. These regulations apply to fill activity and borrow areas. In section 5.1.28 the statement "fill activity" applies to both fill and borrow areas.

Comment – added for clarity and organization structure.

b. Administration of regulations. The Zoning Administrator authorizes the County Engineer to administer this section where specified. The Zoning Administrator will enforce this section in consultation with the County Engineer.

Comment – added for clarity and efficient enforcement.

c. Exemptions. The following are exempt from section 5.1.28:

1. Borrow or fill in association with a permitted use in the Nature Resource Extraction Overlay District;

2. Routine non-agricultural maintenance activities, including planting a garden and landscaping;

3. Importing lime and fertilizer to amend the soil as part of an agricultural operation or the storage, use and disposal of clean earth fill, or inert waste fill generated on the farm;

4. Borrow or fill in connection with development of an approved site plan, an approved subdivision plat, or an approved building permit; and

5. Borrow or fill that is associated with a Planned Development consistent with section 8.5.5.4.

Comment – added to prevent conflict with other provisions of the ordinance and to make clear that routine maintenance and certain agricultural operations are not subject to fill regulations.

d. Short duration fill activity

1. Short duration fill activity is allowed if it meets all of the following:

a. The parcel, including any adjoining parcels under the same ownership or management, is zoned Rural Areas;

b. The property is either an aggregate of at least 21 acres or is enrolled in the use-value tax deferral program for the agricultural or horticultural categories; and

c. The inert fill is being used as a substitute for conventional aggregate. Examples include, road surfaces, subbase for road construction, stabilization of landing areas used for forestry or where necessary to stabilize surfaces and prevent erosion as determined by the County Engineer to stabilize surfaces and prevent erosion.

2. Short duration fill activity must comply with all of the following regulations:

a. The applicable regulations of the summary table in section 5.1.28(e);

b. Section 5.1.28(f) subsections (1), (2), (3), (4), (8), (10), (12), (13), and (14);

c. A zoning clearance must be obtained per section 31.5.

d. Any special exception is reviewed for compliance with section 5.1.28(j)

Comment – new use necessary to comply with §15.2-2288 of the Code of Virginia and to support agricultural activities.

e. Summary Table

	Direct Access Road	**Maximum # of Truck Round Trips Per Day Allowed**	**Maximum Duration within 1 year period (beginning no earlier than 1 year from the last date of fill activity, if any)**	**Days and Hours of Operation**
Short duration fill activity	Principal Arterial, Minor Arterial, Major Collector, Minor Collector	Unlimited	60 days	Monday-Saturday 7am-7pm
	Local Street or Privately maintained road, street or shared driveway	15	60 days	Monday-Saturday 7am-7pm
Fill Activity	Principal Arterial	Unlimited	6 months	Monday-Friday 7am-7pm
	Minor Arterial	25	6 months	Monday-Friday 7am-7pm
	Major Collector	15	6 months	Monday-Friday 7am-7pm
	Minor Collector/Local Street or Privately maintained road, street or shared driveway	Only permitted by Special Use Permit	Only permitted by Special Use Permit	Only permitted by Special Use Permit

Comment – added to establish permitted levels of activity based on type of activity and road classification. Maximum duration replaces language in 5.1.28(b)(5). Hours of operations for fill activity moved from 5.1.28(b)(3). Hours for short duration fill activity is new.

~~a~~f. Regulations applicable to all fill activity. ~~Each clean earth fill activity or inert waste fill activity not established and operated in conjunction with a permitted use under section 30.4 of this chapter or established and operated in conjunction with an approved site plan or subdivision~~ All clean earth fill activity, inert waste fill activity, borrow area and short duration fill activity, regardless of the area involved are subject to the following requirements:

Comment – deleted language has been moved to 5.1.28(c)

1. Drainage

~~1~~a. Each ~~active~~ fill area ~~shall~~ must be shaped and sloped ~~so that no~~ to minimize undrained pockets or stagnant pools of water. ~~are created to the maximum extent reasonably practicable as determined by the program authority.~~

Comment – amended for clarity.

b. ~~a~~All ~~undrained pockets and~~ stagnant pools of water resulting from drainage ~~shall~~ must be chemically treated ~~as required by the Virginia Department of~~ to eliminate breeding places for mosquitoes and other insects. ~~Slope may not exceed 3:1. The height of fill may not exceed eight feet above natural grade.~~

Comment – Treatment required for control of mosquitoes. Slope regulations moved to 5.1.28(f)(2). Height limitation removed due to difficulty in enforcement.

2 Maximum fill slope. The fill slope may not exceed 3:1 or 33 1/3%.

Comment – moved from 5.1.28(a)(1).

~~2~~3. Restricted area of fill. ~~No f~~Fill ~~area shall be located either within~~ may not be placed in any of the following areas:

a. Critical slopes or preserved steep slopes,

b. ~~t~~The flood hazard overlay district, except as ~~authorized~~ allowed by section 4.23 and 30.3 of this chapter,

c. ~~or in a~~Any ~~stream~~ riparian buffer area as defined by ~~Chapter 17 of the Code of Albemarle~~ section 4.23 of this chapter, or

d. ~~on any h~~Hydric soil~~s~~ areas as identified by the United States Department of Agriculture.

Comment – reorganization of existing language. Current regulations included in section 4.2.3(b) prohibit fill activity on critical or preserved slopes. Language added here for clarity and ease of reference.

4. Lateral support. Fill activity must be done safely in a way that keeps the ground stable,preventing sliding, sinking or collapse. It should also be done so as to reduce the risk of hazards to people, animals, nearby property, and public or private streets streets.

Comment – reorganization of language in 5.1.28(b)(4).

5. **Setbacks to fill activity (except for access).** Fill activity must be set back a minimum of:

a. 150 feet from any entrance corridor street.

b. 75 feet from all property lines (unless adjoining lots are under the same ownership) in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights-of-way unless adjoining lots are under the same ownership: and

c. 50 feet from all non-residential property lines, unless adjoining lots are under the same ownership.

Comment – reorganization of language in sections 5.1.28(a)(6), (a)(7), and (a)(8).

6. **Setbacks to fill activity access.** Fill haul roads and access points must be at least 50 feet from property lines and 100 feet from dwellings on adjacent property, unless under the same ownership as the property being filled. No setback is required from a public street right-of-way, privately maintained road, private street, or shared driveway.

Comment – reorganization of language in section 5.1.28(a)(7).

7. **Trees**. The following provisions apply to fill activity related to trees, even if they conflict with Section 4.3. In all other instances, the requirements of Section 4.3 apply. These provisions do not apply to properties within the Rural Areas (RA), Village Residential (VR) or Monticello Historic zoning districts (MHD):

a. No fill activity may occur within the drip line of any tree;

b. Tree trunks with a diameter up to 36 inches measured at 6 inches above ground may be cut, provided a plan or narrative required by section (G) is approved; and

c. Tree canopy for area(s) disturbed by fill activity must be established, or re-established, and maintained in compliance with section 32.7.9.8 of this chapter.

Comment – reorganization of language in sections 5.1.28(A)(10), (a)(12), and (a)(15).

~~3~~8. Final grading and stabilization.

a. Each fill and borrow area ~~shall~~ must be ~~reclaimed~~ stabilized within seven days of completion of the fill activity~~;~~. ~~or such later time authorized by the program authority for reclamation activities of a seasonal nature.~~ The County Engineer may extend this period for stabilization activities.

b. ~~Reclamation~~ Stabilization must ~~shall~~ include, but not be limited to, ~~restoring the area so that it approximates natural contours;~~ shaping and sloping the area to ~~satisfy the requirements of subsection (a)(1); and~~ minimize erosion, prevent ponding of water, and to establish~~ing~~ a permanent vegetative ground cover.

c. Fill involving inert waste must be covered with a minimum of two feet of clean earth fill for stabilization. The County Engineer may allow a minimum depth of one foot of clean earth fill, if the area is unlikely to be used for buildings or pavement. The County Engineer may allow inert waste fill to remain uncovered if it is used for road surfaces or where necessary in the opinion of the County Engineer to stabilize surfaces and prevent erosion

Comment – reorganization of language in sections 5.1.28(A)(3), and (a)(4).

~~4. Inert waste fill must be topped with clean earth fill to a minimum depth of two feet in order to allow for permanent stabilization and reclamation; and establishing a permanent vegetative ground cover; provided that the program authority may reduce the minimum depth of clean earth fill to one foot if the area is unlikely to be redeveloped.~~

Comment – moved to 5.1.28(f)(8).

~~5. The zoning administrator, or the program authority for those fill areas subject to subsection (b), may require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county or the program authority at the owner's expense should the owner fail, after notice is given to perform required reclamation work specified in the notice. The amount of the bond or other surety shall be based on unit pricing for new public or private sector construction in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost to initiate and complete the reclamation of the borrow, fill or waste area, and to comply with all other terms and conditions of the plan or narrative required by subsection (b). If reclamation work is required to be taken by the county or the program authority upon the failure of the owner to do so, the county or the program authority may collect the reasonable cost of the work directly from the owner, to the extent that the cost exceeds the unexpended or unobligated amount of the surety. Within 60 days after the reclamation work is completed and inspected and approved by the county engineer, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner.~~

Comment – moved to 5.1.28(i).

~~6. Fill activity (except for access) must be set back a minimum of 150 feet from any entrance corridor street~~.

Comment – moved to 5.1.28(f)(5).

~~7. Fill activity (except for access) must be set back a minimum of 75 feet from all property lines in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property. No setback is required if adjoining lots are under the same ownership. The access to a fill activity is not subject to the setback from public street right of way.~~

Comment – moved to 5.1.28(f)(5).

~~8. Fill activity must be set back a minimum of 50 feet from all non-residential property lines. No setback is required if adjoining lots are under the same ownership.~~

Comment – moved to 5.1.28(F)(5).

~~9. Minimum lot size for fill activity is five acres. Multiple parcels under the same ownership and with the same zoning designation may be considered as a single lot for the purpose of achieving the minimum lot size.~~

Comment – minimum lot size regulation removed.

~~10. No fill activity may occur within the drip line of any tree.~~

Comment – moved to 5.1.28(f)(7).

~~11~~9. Maximum fill area. ~~The maximum area for f~~Fill activity ~~on any parcel in existence on September 16, 2020~~ in districts other than the RA, Rural Areas, VR, Village Residential and MHD Monticello Historic districts is limited to a maximum of two acres. ~~Determining~~ The fill area ~~for fill activity~~ includes all ~~locations~~ areas used, or designated to be used, for fill, vehicle storage and vehicle maintenance but does not include area used ~~for~~ exclusively for access.

Comment – amened to remove maximum area limit in RA, VR and MHD

~~12. Notwithstanding section 4.3 of this chapter, trees may be cut, provided a plan as required by subsection (b) is submitted. However, no tree of 36 inches or greater in diameter may be cut.~~

Comment – moved to 5.1.28(f)(7).

~~13. If a private street, shared driveway or access easement is used, the applicant must demonstrate that the access is adequate for the proposed activity and that the applicant has the right to use the access. In order for access to be deemed adequate, the owner must limit vehicles associated with the fill activity to not more than 56,000 pounds. In addition, the access must meet the standards of section 4.6.6 of this chapter and have a surface adequate to accommodate a vehicle weighing 56,000 pounds. The owner may increase the weight of vehicles associated with the fill activity to a maximum of 80,000 pounds, provided that the access meets the standards of section 4.6.6 of this chapter and has a surface adequate to accommodate a vehicle weighing 80,000 pounds.~~

Comment – regulation removed.

~~14~~10. Entrance onto public road. No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the ~~highway~~ public road.

Comment – amended for clarity.

11. Days and hours of operation. Except in cases of a public emergency as determine by the County Executive, fill activity is limited to the hours listed in the summary table in section (e).

Comment – amended to allow emergency operations.

12. Transporting fill. All fill materials must be transported in compliance with County Code section 13-301 of the Code of Albemarle. Before a transporting vehicle leaves the parcel(s) on which the fill activity is located, it must be cleaned so that no materials outside of the vehicle's load-bed can be deposited on public or private streets or driveways.

Comment – moved from 5.1.28(b)(1).

13. Dust and debris. The fill area and any privately maintained access roads must be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.

Comment – moved from 5.1.28(b)(2).

14. Summary table. All fill activity must comply with the provisions in the summary table in section (e).

Comment – added to refer to the regulations in 5.1.28(e).

~~15. Except for properties zoned Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD), tree canopy for area(s) disturbed by fill activity must be established and maintained in compliance with section 32.7.9.8 of this chapter.~~

Comment – moved to 5.1.28(f)(7).

~~b~~g. Area of fill activity over 2,500 square feet. Any fill activity with an aggregate area greater than 2,500 square feet requires a plan or narrative, subject to the prior approval of the ~~program authority~~ County Engineer, that satisfies the requirements of ~~subsection (a) and the following provisions:~~ section 5.1.28.

Comment – amended for clarity.

~~1. All materials shall be transported in compliance with section 13-301 of the Code of Albemarle. Before a transporting vehicle leaves the parcel or parcels on which the fill area is located, it shall be cleaned so that no materials outside of the vehicle's load-bed can be deposited on a public or private street.~~

Comment – moved to 5.1.28(f)(12).

~~2. The fill area and the access roads thereto shall be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.~~

Comment – moved to 5.1.28(f)(13).

~~3. Fill activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m., except in cases of a public emergency as determined by the director of emergency services for the county.~~

Comment – moved to 5.1.28(f).

~~4. Fill activity shall be conducted in a safe manner that maintains lateral support, in order to minimize any hazard to persons, physical damage to adjacent land and improvements, and damage to any public street because of slides, sinking, or collapse.~~

Comment – moved to 5.1.28(f)(4).

~~5. The placement of fill shall be completed within one year of its commencement, except for reclamation activities and any other activities associated with the final stabilization of the area. The program authority may extend the date of completion upon the written request of the applicant, demonstrating that factors beyond the control of the applicant prevented the completion within the one-year period. The program authority may then extend the permit for a period of time that, in its sole discretion, is determined adequate to complete the work.~~

Comment – replaced by time limits in 5.1.28(e).

~~6.~~ In ~~lieu~~ place of a plan or narrative, the ~~program authority~~ County Engineer may accept a ~~contractual agreement~~ written agreement between the Virginia Department of Transportation and its contractor for a public road project; if the agreement satisfies ~~provided that the program authority determines~~

~~that the agreement satisfies at least to an equivalent extent~~ the applicable requirements and intent of this section.

Comment – amended for clarification.

h. Area of fill activity over 10,000 square feet. Even if it is a listed exemption in County Code section 17-301 of any fill activity with an aggregate area greater than 10,000 square feet must still comply with the erosion and sediment management regulations of Chapter 17 of the County Code.

Comment – new language to reflect recent ordinance amendments.

i. **Performance bond.**

1. The County Engineer may require the owner to submit a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, in an amount sufficient to initiate and maintain appropriate conservation actions to mitigate impacts from the fill activity. When a bond or other surety is required, the owner must submit a request for an estimate of the surety amount to the County Engineer.

2. The amount of the bond or other surety is based on unit pricing for new public or private sector construction in Albemarle County, Virginia with an allowance for estimated administrative costs and inflation, which will not exceed 25 percent of the estimated costof the conservation actions.

3. If stabilization work is required to be taken by the County upon the failure of the owner to do so, or the County Engineer determines that the owner, after written notice, failed with the time specified in the notice to initiate, maintain or complete appropriate conservation actions, the County may make use of monies guaranteed by the surety instrument, and the County may collect the reasonable cost of the work directly from the owner, to the extent that the cost exceeds the unexpended or unobligated amount of the surety. Within 60 days after the stabilization work is inspected and approved by the County Engineer, the bond or other surety, or any unexpended or unobligated portion will be refunded to the owner.

Comment – Clarified, moved and reorganized from 5.1.28(a)(5).

~~c. Inert waste fill activity is not permitted in the Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD) zoning districts without approval of a variation or exception as permitted in section 33.43 of this chapter.~~

Comment – uses cannot be permitted by special exception. Need for a special use permit has been added to 10.2.2 (RA), 11.3.2(MHD) and 12.2.2(VR).

~~d~~j. Variation or exception. The Board of Supervisors may approve a variation or exception from any requirement of this section other than those listed by special use permit in the summary table in section (e).

Comment – moved from 5.1.28(c) and clarified to reflect requirements in 5.1.28(e).

1. A variation or exception from any requirement of this section may be approved upon a finding that any of the ~~following~~ relevant factors are satisfied: (i) the proposed fill activity would further agricultural use of the property; (ii) the variation or exception would allow for a more natural appearance of the site after the fill activity has occurred; (iii) a reduction in setback from the entrance corridor is recommended by the Architectural Review Board; (iv) the variation or exception is

supported by the abutting owners impacted by the variation or exception; and (v) approval of any variation or exception is consistent with an approved and valid initial or preliminary site plan or any other land use decision of the County~~;~~. ~~(vi) the proposed fill activity will be of limited duration (less than 90 days) and involve not more than 10,000 cubic feet of fill within any 12 months.~~

Comment – amended for clarity and to reflect requirements in 5.1.28(e).

2. The agent will provide ~~written~~ notice by first class mail or ~~by~~ hand delivery at least five days before the Board hearing to the following:

   a. ~~owner or o~~Owners~~, their agent or the occupant,~~ of each parcel involved;

   b. ~~to the o~~Owners~~, their agent or the occupant,~~ of all abutting property and property~~y~~ies ~~immediately~~ directly across the ~~street or~~ road from the property proposed for fill, whether within Albemarle County or another locality; and

   c. ~~affected, including those parcels which lie in other localities of the Commonwealth; and, i~~If ~~any portion of the affected~~ property proposed for fill is located within a planned unit development, then notice will be provided to ~~such~~ the incorporated property owners associations. ~~within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent.~~

   ~~3~~d. A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required waives the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

Comment – amended for clarity and to add property in adjoining jurisdictions.

(§ 5.1.28, 7-6-83; Ord. 01-18(6), 10-3-01; Ord. 02-18(5), 7-3-02; Ord. 20-18(3), 9-16-20)

Sec. 10.2.2 By special use permit.

The following uses shall be permitted by special use permit in the RA district, subject to the applicable requirements of this chapter:

61. Inert waste fill activity.

Comment – new language.

Sec. 11.3.2 By special use permit.

The following uses shall be permitted by special use permit in the MHD:

12. Inert waste fill activity.

Comment – new language.

Sec. 12.2.2 By special use permit.

The following uses shall be permitted by special use permit in the VR district, subject to the applicable requirements of this chapter:

19. Inert waste fill activity.

Comment – new language

Sec. 31.5 Zoning clearance.

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

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

1. *New use*. Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), or prior to commencing a clean earth fill activity or inert waste fill activity, even if involving a short duration fill activity. ~~other than a~~An agricultural use that is not associated with a fill activity does not require a zoning clearance unless one is required by section 5.1.28.

Comment – amended to reflect the new use of short duration fill activity.

2. *Change or intensification of existing use*. Prior to changing or intensifying an existing non-residential use, including those provided in subsections (a)(6) and (a)(7), other than an agricultural use.

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

6. *Events and activities at farm wineries, farm breweries, farm distilleries, and agricultural operations*. Prior to the first time that a specific class of event or activity is held at a farm winery, farm brewery, farm distillery, or agricultural operation, if a zoning clearance is required under sections 5.1.25(b), 5.1.57(b), 5.1.58(d), and 5.1.59(b).

7. *Outdoor amplified music.* Prior to the first time that outdoor amplified music is generated at an event or activity at a farm winery, farm brewery, or agricultural operation, as provided in sections 5.1.25, 5.1.57, and 5.1.58, respectively.

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 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, production agriculture, production silviculture, and agricultural operations are neither commercial nor industrial uses; 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; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15; Ord. 20-18(3), 9-16-20)