An afternoon-adjourned meeting and a regular night meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 8, 2015, Second Floor, County Office Building, McIntire Road, Charlottesville, Virginia. The afternoon meeting was held at 3:30 p.m., Room 241, and was adjourned from July 1, 2015. The night meeting was held at 6:00 p.m., in the Lane Auditorium.

PRESENT: Mr. Kenneth C. Boyd, Ms. Jane D. Dittmar, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer and Mr. Brad L. Sheffield.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Travis O. Morris.

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Agenda Item No. 1. Call to Order. The meeting was called to order at 3:30 p.m. by the Chair, Ms. Dittmar. Ms. Dittmar noted that the Board would go into Closed Meeting following the meeting with the Planning Commission.

At 3:30 p.m., Mr. Morris called the Planning Commission to order.

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Agenda Item No. 2. **Joint Meeting with Planning Commission**:

PLANNING COMMISSION MEMBERS PRESENT: Mr. Bruce Dotson, Mr. Richard Randolph, Mr. Calvin Morris, Chair; Mr. Tim Keller, Mr. Russell (Mac) Lafferty, Ms. Karen Firehock, and Ms. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia.

ABSENT: Mr. Thomas Loach.

STAFF PRESENT: Deputy County Attorney, Mr. Greg Kamptner Director of Community Development, Mr. Mark Graham, Director of Planning, Mr. V. Wayne Cilimberg, Clerk to Planning Commission, Ms. Sharon Taylor and Principal Planner, Ms. Elaine Echols.

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Item No. 2.1. Development Review Task Force – Implementation of Recommendations

Mr. Mark Graham, Director of Community Development, said he had provided the Board a summary which was shared with the Planning Commission last fall, and gave them a brief presentation. He said he has provided a one-page summary of what has happened within the last 10 years.

He said starting in 2006, the Board formed the Development Process Task Force, and in 2007 the Task Force provided a series of recommended priorities for the County primarily directed at Community Development, which staff worked to implement. He said in 2010, staff presented to the Board on the annual work program and showed that Community Development had completed work on implementing those priorities, except for one that had to do with notifications involving citizen engagement, was delayed because of cuts in staffing and resources.

Mr. Graham said that starting in January 2010, the Board came up with an economic action plan, originally called an Economic Development Action Plan and later called Economic Vitality Action Plan, which set Community Development in another direction. He said they came back and spoke to the Board in June 2010 about additional things that could be done in response to those strategies in that Action Plan and came back again in September 2010 about the rezoning special use permit process.

Mr. Graham said that was followed in August 2011 with a joint work session which had the Architectural Review Board and Planning Commission involved. He said they then worked through a series of ordinance changes, the first of which was the site plan changes which were approved by the Board in October 2012, next was the legislative process changes pertaining to rezoning special use permits, done in December 2012. Mr. Graham noted with the legislative process changes of 2012, a step for a community involvement meeting prior to anything going to public hearing was added in an effort to increase citizen engagement, partially in response to the outstanding priority from the Development Process Task Force to assure there was an opportunity to engage the public long before the idea came to a public hearing.

Mr. Graham stated that in December 2013, they adopted a series of changes for the subdivision process. He said in addition to that, he listed a number of other things that had been done either as part of process improvements or which incorporated process improvements to the ordinance change.

Ms. Dittmar said Mr. Morris had made a point yesterday that there were several people on the Board and Commission who went through that process, and thought that for those who are newer to the Board and Commission they would like to hear about their experiences and how they feel about how the progress is going.

Ms. Mallek said she was the citizen appointee and it was fascinating to her, and Mr. Graham had spent lots of time working through the changes, and staff very successfully made things more linear by consolidating the forms, having a single point of contact, and other improvements. She commented that while it may be faster not to engage citizens, the changes to have the citizen meetings have been hugely

successful, and are appreciated by the development community as well. Ms. Mallek said this provides a conversational chance to really learn what people's thoughts are and to be able to make adjustments before they begin the process of change.

Mr. Boyd said a couple of things are driven not necessarily by the Development Review Task Force but by legislation at both the state and federal levels, such as the wireless service laws, winery legislation, and the dam break, which were based upon the regulations that were imposed upon localities. He said the whole concept behind the Development Review Task Force was an effort to streamline the process for development to get done in this County, because at the time it was taking 18 months to two years to get through the process. He said they were hearing complaints from the development community that this was very expensive because it was a long process, and they put together the Task Force to see if there was some methodology that could be streamlined to make it not so arduous for the developers and businesses. He said if there was a new business that wanted to come here and find a location to build on, it could take them 18 months to two years. He stated he observed a couple of businesses that walked away from doing business in the County, and there may have been some good jobs from those businesses. Mr. Boyd said there are two aspects, to take some of the pressure off and cost that development can contribute in reducing the cost of housing for more affordable housing, and to make an environment that would make it more user friendly to make it easier to do business in the County.

Mr. Bruce Dotson said there was a theme as the Development Review Task Force got underway, and that was to address things that were unnecessarily time consuming or costly. He said what he believes they have done is to review many aspects of both procedures and code with that question in mind, and shifted a number of things from a legislative arena to an administrative arena but with very clear standards so the development community and the regulatory community are seeing what is required and necessary. He said they are moving towards "rigorous efficiency," which does not mean the County is lowering its standards, it is just doing it better.

Ms. Mallek said there is a wide range of timeframes during the process, and with two recent projects, one took eight months start to finish and the other took six years. She said that is just a fact, with both of those projects involving the same staff and same rules, so they just need to continue to try to improve and do the best job they can.

Mr. Boyd said there was never any intention for the Task Force to reduce the quality of life in the community, or what the vision was for the overall community and the saving of the rural areas, but was just a matter of doing it efficiently.

Mr. Morris said that when this Task Force was in place, the County started to have quite a reduction in staff yet was trying to have a rigorous, efficient operation going, and asked Mr. Graham how it is going.

Mr. Graham answered that with the ministerial functions, the site plan and subdivision changes, they are working pretty well, and as far as the citizen and public engagement he believes there is better participation because people are notified earlier and are being informed about the site plan review meetings and know who to call. He said the legislative side of it has been tougher because they have not had a significant number of large or major rezonings come through. Mr. Graham said they have learned with the smaller ones, the process of having a community meeting early on in the process is good for everyone and helps the developer to understand what the concerns are so they are not blindsided when they come to the public hearing. He said it also helps the Planning Commission and Board by having that community input rather than hearing it for the first time at those public meetings, and noted that there are a lot more discussions going on in the front end to help everyone focus on ways to balance all the issues.

Ms. Palmer asked how much of the first community meeting was initiated by the developer or applicant and how much staff was involved.

Mr. Cilimberg replied that under the ordinance and the procedures adopted after that, staff provides the applicant/developer with a form letter they can use, they do not have to follow it exactly, but it outlines information and a list of those that should be notified including the Commissioner and the Board member representing that district, and it is the applicant's responsibility to send the notification. He said at least one staff member attends the community meetings, and they have been able to make sure the meetings are scheduled at the latest within the first forty-six days of review, so they have not delayed when the Commission would have a hearing based on the need to have a community meeting. He said that some applicants have decided by staff's advice or on their own to do a community meeting even before they make their application, the pre-application process is beneficial in that regard because when a particular project in a pre-app meeting is perceived to generate a lot of interest, staff suggests to applicants that they hold a community meeting before making application, as the community meeting might inform them and influence that application. He said in some cases the community meeting will stand on its own as meeting the community requirements, so the applicant will not have to hold one after making application, or they will have another just because they want the community to be aware of anything that may have changed. Mr. Cilimberg said the pre-application process has been value-added for them because it helps an applicant hit the ground running.

Ms. McKeel said that with one of the pre-application meetings in her district, she assumes they will come back with another community meeting with a plan, but from what he is saying they might not. She also stated they scheduled that meeting with the community on a Board meeting night, so she would not have been able to attend because they were rushing it so fast. She said she had just wanted to raise a red flag about that.

Mr. Cilimberg said when an applicant decides to hold a community meeting before application, which is really on their own, and staff is not necessarily giving them all the notification information that will be given once they made application. He said staff would then determine after application if that community meeting had been sufficient to meet the needs and if staff was able to attend, and they could make some judgements. Mr. Cilimberg said he is not stating that every time an applicant made a pre-application community meeting, they do not have to do it once they apply. He said that on occasion, because of the community meeting's timing and the information that went out, and the attendance of staff and Board members being there, staff has said that a community meeting was not necessary, but that is not a standard.

Ms. McKeel said she had another situation where changes were made and staff came back and asked if they felt they needed another community meeting, and she took it to the neighborhood association and they all said "no." She said she would ask that if an applicant had a pre-meeting and suddenly decided not to have the community meeting, staff would notify the Board.

Ms. Mallek said that would be highly unlikely because if they have an early meeting and only invited twelve people who support it, that completely negates the reason they have a community meeting, and they would be required to have another one.

Mr. Cilimberg said that in the last few months, in order to avoid the potential of what is being mentioned, Mr. Benish had all the planners get in touch with the Board Member and Planning Commissioner in that district, if there was a question of whether a second meeting was needed.

Ms. McKeel responded that is what she is looking for, and thanked him.

Mr. Randolph stated this process is still new to residents in the County, and it might be helpful to review the protocol of the community meeting because recently there was a situation where the applicant contacted both Ms. Dittmar and him and asked if they were going ahead and call the meeting and notify everyone about it, so there is a very different expectation. He said there still is some confusion out there, and it might be valuable to look at the checklist to make sure the applicant is well aware that they need to schedule that meeting first and foremost around the facility, but also to make sure it works on the schedule of the Planning Commissioner and the Supervisor so they do not have contending commitments that prevents them from being there. Mr. Randolph said that part of the value-add for the community meeting is to get input early on and hear what people are thinking and help shape some of that thinking and frame some of the issues with the applicant, to either increase the likelihood of success for the applicant or at least identify the objections so that the applicant can tailor the project accordingly to make it more user friendly for community members.

Mr. Morris stated that adding Emily Kilroy to staff was helpful, as she can really coordinate things well and has put together a rather complex presentation of three applications at the last Pantops Citizen's Advisory Council meeting, and it had gone quite well.

Ms. Mallek said that for the four or five different projects which have come through for their community meeting, having it at the advisory council meeting is really great because it is already on their calendars and citizens are used to coming at that time. She said that many people come for something different on the agenda but are pleased to find out that there is something else there they want to know about.

Mr. Cilimberg said that on occasion staff does take initiative to contact the applicant regarding the need for the community meeting, and staff provides information on how the notice should be sent, who should receive that notice, and staff's willingness to work with them to determine a location and date. He said that on occasion staff has found that applicants are talking to others about that meeting, so if a Board member is contacted by the applicant about holding one of these meetings, they really need to be talking to staff and not the Board. He also said staff had recently implemented a policy of copying the Board and Planning Commissioners with the initial notice sent to the applicant telling them they need to hold a community meeting. He also said if they have an issue with a situation, Board members should let staff know so they can help. He also said that as part of the pre-application process, staff is giving detailed comments to applicants after their mandatory meetings so they know what to put in their applications, and that is helping on both ends by providing a check list for them and helping staff get what they need. Mr. Cilimberg stated that staff clears the application before they accept a fee, so no one is having to pay money without knowing their application will be processed right away.

Ms. Dittmar asked Mr. Graham, per Mr. Morris's point, if any part of the timeline is problematic due to resources in the department.

Mr. Graham said staffing can be an issue but it has not been for quite some time. He said there are two reasons: staff getting better, or retention of really good people, perhaps due to the recession. Mr. Graham said they have one of the best staffs he has seen, not just with the County but in any other place he has worked. He said they produce and manage a lot more work than other places, but beyond that the resource allocation goes first to applications. Mr. Graham said he had presented this to the Board previously in the context of a need for additional resources, because where they come from is pulling staff from other work program priorities. He said this means putting them on applications, which means that other work program priorities such as ordinances, amendments or other items will slow down while staff works on the applications, as that is their first priority.

Mr. Boyd said it is important to recognize that as Supervisors and Planning Commissioners they can create work for staff, and years ago they put the policy in place that they would work on applications first and then Board Directives and Planning Commission Directives after that.

Ms. Mallek stated there are some of those Board directives that, if small adjustments are made in processes or ordinances that will save them trouble in the future, then they can find that middle ground in balancing workload. She asked staff not to hesitate to inform the Board when they are approaching that capacity line, because they want people to spend enough time to do a really good job but not be overworked so badly that they will leave.

Ms. McKeel said she remembers at one point when discussing the five-year financial plan and the outlook, she was surprised the Community Development department was only projecting out one new employee while other departments were projecting needs of two to three. She said as Ms. Mallek had pointed out, they do not want to get in a situation where they will not have enough people to do the work.

Mr. Graham said that is an excellent point and when they did those projections, they were looking at the resource requirement for the work that was before them now as well as what may be the Board's interest in the future. He said a great example was that last year they added a Transportation Planner and now they need a Natural Resource Manager, which are on a list of 17 positions developed as potentials depending upon the Board's interests.

Ms. Dittmar asked if it is fair to say that they have implemented the things the Task Force wanted, and that those things are going smoothly and did not need refreshing.

Ms. Mallek said from where they started in 2005, they are doing really well.

Mr. Morris said he hopes that future Boards and Commissions will have an annual or biannual update so they do not start to backslide.

Ms. Mallek said things are always evolving because the legislature made changes that have to be addressed.

Mr. Graham said he truly appreciated the Board Members and Planning Commissioners sharing with staff any concerns or issues they heard, as staff is not perfect in its knowledge.

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Item No. 2.2. Discussion: Comprehensive Plan Implementation

Mr. Cilimberg said the last information the Board had received regarding the implementation of the Comp Plan was in April as a Consent Agenda item that were Planning Commission priorities from about a year earlier, and what they had identified as Board priorities during the review of the Comprehensive Plan with the Board. He said some of the strategies the Planning Commission has worked on has changed or are fundamentally different after the Board did their work, and there may have been one or two of the priorities of the Planning Commission that did not show in the Board's packages only because they did not exist any longer in the form that had been reviewed by the Planning Commission. Mr. Cilimberg said the Board had indicated during the review of the Comp Plan that they appreciated what the Planning Commission had provided the Board, and they wanted to have a chance to finish with the Comprehensive Plan and revisit those priorities. He said they provided those at the end of that process waiting for the adoption of the Plan, and following that they may have identified some things from that work that were important. He said ultimately the staff work on the Plan would be dependent on the work program that Mr. Graham will be submitting to the Board in August. He asked Mr. Graham if he wished to speak on his expectations of the work program's capacity.

Mr. Graham stated that per the current fiscal year, he had provided a brief overview to the Board in February and laid out that the emphasis is expected to be on the small area plan at Route 29 and Rio Road/Places 29 also an update on the Pantops Master Plan which now includes consideration of the Rivanna River Small Area Plan. He said beyond that, they will be resource limited and are looking to future fiscal years. Mr. Graham stated he has tried to present a four of five-year plan to the Board to consider what the priorities are, it will help Community Development for Board members to try to identify those two or three things they feel are important to be completed the next couple of years, and to identify those in August.

Ms. Mallek asked if the list they will focus on is the Comp Plan implementation list or some smaller list that is already in process.

Mr. Graham said that within the current strategies is the list they have, but if they look at the other Comprehensive Plan strategies, if there are issues there that the Board believes are important to be completed within the next few years, they should try to identify those in August.

Ms. Dittmar said that Ms. Mallek's question is relevant in terms of what list they should look at and whether the Planning Commission has already weighed in on it.

Mr. Foley said Mr. Graham had made reference to the Strategic Plan, which pulls some of the priorities out of the Comp Plan implementation plan, which the Board has already looked at but may have not looked at in the context to this discussion. He stated the Strategic Planning Retreat scheduled for September 25 also identifies a section of the Comprehensive Plan on development area policy, which the

Board had said is really critical to discuss. Mr. Foley said in August, Mr. Graham will need to get the input from this meeting and identify what those items are. He said the Board may have to look at this a little more at the Strategic Planning Retreat level, when they have a lot more time to think about major priorities. He said he wants to make sure the Board has the full perspective on the Strategic Plan and even the Strategic Planning Retreat that is coming up. He acknowledged it might make this joint meeting more difficult, but it is important for them to address.

Mr. Graham said he will take all the input he has, which includes what the Board has already done and what has been laid out for the Work Program for the next year, which is primarily focused on the small area plan on Rio Road and Pantops. He said beyond that, there are a number of other strategies laid out, and he will be looking to see what is most critical for the Board because that is how staff will be prioritizing things moving forward.

Ms. McKeel commented it is a shame the timing works out as it does, because there are limited opportunities for the Board and Commission to get around a table together.

Mr. Foley said if there are big picture items this group feels really should be given some consideration, that is probably the best way to approach this, and then Mr. Graham will have to do some work back and forth. He said rather than getting on a specific list, if there are broad issues that need some attention re: implementation and staff work over the course of the next year, they should talk about them. He said a few emails have circulated among certain members, and those are the sorts of things not factored in that should be heard today.

Mr. Boyd said he believes the priorities are driven by budget concerns more so than personnel availability, and he does not know where the money is coming from to do some of the things he would like to see them working towards.

Ms. Mallek said it still is important work for them so they know exactly how much money to get to bring it about, and she hopes he will not be held back by that. She mentioned four particular items for them to think about: the special events category, which she hopes they will address based on what they are seeing in applications coming forward that are creating real dilemmas with the implementation of 15-year-old ordinances compared to the much newer, such as the updated ordinances for wineries and farm breweries; transient lodging and how they might make improvements to address the 300+ places that are under the radar and not paying taxes, are not participating in safety inspections, etc.; the country crossroads businesses that are told to wait until the Comp Plan before moving forward with their plans; and the uses for historic properties, learning centers, and teaching facilities, and what they should do with these enormous properties that are not the size the average family can handle.

Ms. Dittmar said Ms. Mallek has some very specific items to be addressed, and at a very broad level there are resource questions, and asked whether they should get some consensus next in August or wait until September to get to the point where they can give good direction.

Ms. Palmer said she was looking through the implementation plan, and a lot of the items are already in motion, so she has to think back to what degree they are in motion such as the natural resources implementation and TMDL measures that are already underway and funded.

Mr. Graham said it is helpful for him to hear this, as there are issues the Board wants on the table for consideration, so he can make sure they are in the work program.

Ms. McKeel said as they were discussing earlier, there is limited staff time, and resources, but issues such as transient lodging, for her citizens and her neighborhoods, that is becoming really important. She stated that during the budget cycle, it was really important for the Board to hear what positions are most needed in order to accomplish the priorities.

Ms. Dittmar asked Commissioners for their feedback.

Mr. Morris said that the Commission has not yet had time to review the priorities the Board had just adopted as the Implementation Plan as Chapter 13 of the Comp Plan.

Ms. Dittmar noted that it is online.

Mr. Foley said a lot of this has happened really quickly.

Mr. Graham stated it is a lot to ask of the Board to prioritize the whole list, but if there are certain items that keep coming to the top for them, that will be direction to staff as to where to focus their efforts.

Mr. Cilimberg said it might be helpful if they have some ready reference where they can see what the Planning Commission's priorities are and see those priorities that were identified during the Comp Plan work. He said he can provide the list of priorities and noted there are over 400 strategies in the plan, but he has narrowed down 40 priorities. He said he can provide the comparison of what the Commission has identified and what staff thinks they heard the Board identify as a starting point in providing input.

Ms. Dittmar said if there are forty priorities, there are really no priorities, especially given resourcing constraints, and asked if the Commission will have time to discuss this, or if Board members should seek their own Commissioners' feedback.

Mr. Morris said he thinks they can find that time within the next month and half.

Mr. Cilimberg said Mr. Graham will need to provide the Board something within the next week to make an August work session.

Ms. Dittmar said that perhaps they can conference with their own Planning Commissioners.

Ms. Firehock said she is new to this, but her understanding is that there is a Comprehensive Plan which the Planning Commission has adopted, and then they go through the priorities and prioritized them, which were given to the Board, and the Board went through them, and then the Comp Plan was redrafted, so in some respects the priorities have changed, and now they are going to cycle back through them. She noted the time limitations given the Board's timeline for the work session.

Mr. Cilimberg said he can provide strategies that the Planning Commission has identified that are still in the plan, and those that the Board has identified as well. He noted that Chapter 13 is the new list, but what he will send them is the focused list. Mr. Cilimberg said there may be a few that were included last year but are not there anymore as part of the review process, and this is probably the best reference to use at this point to be updated quickly.

Mr. Dotson said maybe an overall topic that actually spans between item 2.2 and 2.3 will be Chapter 13, which is organized for each topic, there are indicators of progress, and a lot of indicators of progress. He said the Planning Commission is obligated under law and procedure to provide an annual report to the Board of Supervisors, and those in the past have been very administrative, how many meetings, how many rezonings, etc. He stated he envisions some subset of those indicators of progress being folded into a "rigorously efficient" annual report for the Planning Commission. He said what this raises is an issue of workflow and timing, which they are seeing at this particular meeting with the priorities list. Mr. Dotson said if the Commission gives an annual report in January or February and it is going to be useful in the budget and CIP process, that is already fairly far along although final decisions have not been made, and strategic planning done in the fall is also out of synch. He suggested the Board looks at the overall workflow and sequence re: how the Board and Commission interrelates, so they will each have a chance to review what the other has done, with timing such that it can fit into the work flow/program.

Mr. Foley said there has been a lot of hard work done on this by everyone around the table, and Mr. Graham usually does his Work Program in January, but he kept putting it off because the Comp Plan was going to drive it significantly. He said the Comp Plan has just been adopted and it will be great to get the Planning Commission's input to the Board of Supervisors so that it feeds into the retreat in September, which will then drive Mr. Graham's work plan. He said the Strategic Planning Retreat will ultimately lead to a work plan for the whole County that will then feed into the budget process, so if the Planning Commission can meet and talk through this so it can be presented for the retreat in September, that will get everyone back on track.

Ms. Mallek suggested having the annual report from the Planning Commission in June and some summer discussions with the two Boards to help it flow along would help too.

Mr. Keller said Mr. Foley's response to Mr. Dotson is excellent. He said there are blank dates that can be meetings, and he believes his fellow Commissioners feel these opportunities can be more discussions rather than just responding to the issues that flows through. He stated he would like to see them use those dates for that purpose, and he believes the joint Planning Commission dialogue is outstanding and a model for the kind of discussions they can have internally, and he hopes in the future they will have the same kind of opportunity with the Board of Supervisors so there is an opportunity for give and take. Mr. Keller said the Board will be holding their strategic retreat in the fall, and the Planning Commission has been interested for a year or more in discussing housing issues. He said they are seeing many issues on the Fiscal Impact Advisory Committee and as Planning Commissioners, and are hearing a lot from developers and citizens about issues of housing and especially affordable housing. Mr. Keller said it would be really interesting to know of the units approved at the Supervisor levels, how many of those are actually affordable housing one year out or five years out, because they are hearing from developers that because of being able to go to market rate, a lot of units approved as affordable housing do not even begin to be affordable housing. He noted there are also the constraints of keeping affordable housing affordable over time, and said that is one example of many of the sorts of things they would like to share or discuss with the Board. He said the second major issue he sees is related to their roles as future planners, in their charge from the state, he encourages them to begin thinking about design guidelines for all the I-64 interchanges. He said it would be good to be ahead of the development, as they have seen enough examples, regardless of where they stand philosophically on the issues, they have not prepared for that development. He said they have interchanges that add to the qualities that people find very important that are noted in the Comp Plan, and they will change, but they can affect their physical form and makeup going forward. He encourages the Board, in their strategic planning, to be thinking how that will be addressed, and whether it will be done in house, done with consultants, or what type of community involvement there will be.

Ms. Dittmar said if the Planning Commission is going to get together before the strategic planning retreat and talk about the key components they would like to help inform the Board for their own thinking, she suggested that Mr. Keller work with the Commission on his ideas to see how they evolve. She stated staff will be meeting with their counterparts in the City of Charlottesville in September, and asked for suggestions as to what they should discuss.

Ms. Mallek said the joint Planning Commission meetings include discussion of the Rivanna River.

Mr. Morris said it is the river, as well as the area of Franklin Street, and with those two items at the forefront of their minds collectively, it made the meeting very productive.

Mr. Keller said everything they discuss in the Comp Plan, economic development, historic resources, natural resources and, from the joint planning effort of the two jurisdictions, the issues of that interface. He also mentioned the steep slope issues, where both the City and the County both have relatively new ordinances. Mr. Keller complimented the staff on their excellent work, and said that both senior to junior staff were articulate with the issues they were facing, and it made him proud to be a County Planning Commissioner.

Mr. Cilimberg noted the Franklin Street discussion centered on an application the Board will be seeing in September, stating it goes to the Planning Commission the following week and has already been once and deferred. He said that in August or possibly July, the Thomas Jefferson Planning District Commission will have another meeting in which they will summarize and bring forth what it has observed as the recommendations or interests in pursuing river corridor initiatives.

Ms. Mallek said on October 2nd and 3rd the River Basin Commission will be hosting a conference in the County Building, featuring out of town speakers as well as lots of opportunities for local people to get involved. She said it will be focused on solving problems with access and other technical issues so hopefully lots of staff who work in that area from around the state will come.

Mr. Cilimberg stated it appears the week deadline is now lifted, and staff will focus with the Planning Commission on discussing this and other items from the implementation plan.

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Item No. 2.3. Discussion: Board/Planning Commission Roles and Protocols

Ms. Dittmar reported the Chairs and Vice-Chairs had met twice in the previous year to discuss the role of the Board of Supervisors and role of the Planning Commission and how they can weave together. She said they went back and forth between the Commission and the Board, and thought the closure on that process would be a brief discussion on how it is working and what the expectations are, which can be used by new members of each body going forward.

Mr. Morris said he likes what Ms. Dittmar had stated, and stated it is important to identify good process so that things are done in a timely manner.

Ms. McKeel said the meetings were very productive, and it is important to remember there will be new Supervisors and new Planning Commissioners, so process and orientation are really going to be important because they really have so much thrown at them. She commented there are some things that rise to the level of critical understanding over other things.

Ms. Dittmar said that sharing what has worked is a good idea. Ms. Palmer asked for additional clarification as to what she means. Ms. Dittmar said the community meetings work well, and Mr. Randolph will get the information first and if the applicant wants to meet with her, she will meet with them and include Mr. Randolph so they do not jump over the Planning Commission process. She said after it goes to the Planning Commission, she will read the minutes and meet with Mr. Randolph in the event there will be a public meeting.

Mr. Randolph said the thing they have tried to work on very hard is that many applicants want to get the ear of the Supervisor because they know the Supervisor is really the decision maker. He said they want to try to rush the process and involve the Supervisor prior to the recommendation coming to the Board from the Planning Commission. He said that Ms. Dittmar, to her credit, has tried to avoid that by saying at this level until a recommendation comes from the Planning Commission, it resides with the Commissioner from that district to hash it out. Mr. Randolph said the Supervisor will then look forward to what the Planning Commission recommends and consult with them. Mr. Randolph said that saves the Board of Supervisors from being involved every step of the way, so it is the role of the Planning Commissioner to serve as a deputy to gain information, consolidate it and pass it onto the Board, and provide perspective when needed. He said this spares the Supervisor from committing their scarcity of time and mental resources and focus on a topic that is premature, because until they get into the body of the deliberative discussions, they are not really sure where all the angles are. Mr. Randolph said it is helpful to have that dialogue, and they have discussed in the past how Planning Commissioners can be more responsive to the community and help the Supervisors be more effective.

Mr. Morris said instead of putting this in stone as a process, it is something that should be left up to the Supervisor and the Supervisor's Commissioner, because not all Supervisors perform the same way, and some would prefer to be the one sitting across the desk and talking to the applicant.

Mr. Lafferty said it would be nice to have an outline as to what the agreement or discussion is, not that they would have to follow it.

Ms. Dittmar said they have memorialized the process somewhat.

Ms. McKeel said that is pretty much how she has been operating, although they have not had that many projects in her district, but she has people contact her about projects in other districts, and her

response has typically been that it has to go to the Planning Commission. She said it is not because she does not want to know about the project, it is that she wants it to go through the process.

Ms. Dittmar said the people send the Supervisor to that seat, but the Supervisor chooses the partnership with the Planning Commissioner, and that is a key relationship. She stated this model also means they are relying on their Planning Commissioners, so the caliber of those individuals is important.

Ms. Palmer said she wonders about Ms. Monteith's feelings about this and how it affects her, because she does not have a Board of Supervisor Member.

Ms. Monteith said that it has been a continuing issue, but she has never had a Supervisor so she does not know if it is a problem. She said that sometimes Commissioners hear things from their Supervisors and she is out of the loop and does not hear those things, so sometimes she is surprised by things others are informed about. Ms. Monteith said that when told to come up with her priorities, she does not have a Supervisor with whom to work with those. She said that she assumes she can give her comments to Mr. Morris, and she depends upon him more than other Commissioners might because she does not have that link to a Supervisor. She clarified for the public that she represents the University of Virginia as a non-voting member of the Planning Commission, and thus does not have a Supervisor or district.

Ms. Palmer said that she knows of things she might ask Ms. Monteith because they are looking at some development or potential changes that are near the University.

Ms. McKeel said one of the things she and Mr. Sheffield had discussed at the last PAC meeting was affordable housing because there is a strong link between Albemarle, Charlottesville and the University relating to affordable housing, and UVA is certainly very important in the community.

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Item No. 2.3. Matters not Listed on the Agenda.

Ms. McKeel asked the Planning Commissioners to think very carefully about the impacts of new developments as it relates to existing older neighborhoods, especially as they bump into each other. She stated there are two projects going on in the Jouett District, one commercial and one residential, and it is interesting seeing some of those impacts. Ms. McKeel stated there are proffers and regulations pertaining to these, as part of a new wave of infill development.

Ms. Firehock said a citizen came to the Planning Commission talking about the Comprehensive Plan and wanting to do some implementing, and he was focused on Dark Skies, which she sees in Chapter 13. She stated that one thing that concerns her as a Commissioner in the County is there are many great ideas in the Comp Plan, but when they are stacked up against priorities such as the small area plans and the schools, things like the Rivanna River and Dark Skies ends up low on the list. Ms. Firehock said that in her past role in Charlottesville as Chair of that Planning Commission, one way they got work done was to have work groups or study groups who worked on an idea, fleshed it out, did the research, and brought forth to staff a more fully fleshed out package or proposal of options. She said there may be other topics as they look at the strategies of Comprehensive Plan implementation that fall off the top tier priority list, and she is suggesting that they leverage the wealth of knowledge in this community, not side-stepping the staff, but doing some heavy lifting so that they can have something more polished as it is brought forward.

Ms. Palmer asked if this is something that has to go through the Board of Supervisors, or if it is something that can be instituted on a Planning Commission Level.

Ms. Firehock said this is something the Planning Commission has already voted on, with agreement this can be proposed.

Ms. Dittmar said it probably needs to be parsed out in terms of if they need any staff support at all and is ad hoc, noting the Board has advisory groups starting at the Board level all the time, but they do require staff time and lots of meetings, follow up and support. She said that distinguishing those that need staff resources is important because of limited staff resources.

Ms. Firehock said they have two hybrids, with one having staff attendance, but some Commissioners are professional facilitators, and the group can take their own meeting notes. She said they would not want the groups to be a burden, but at the same time would not want them to be going rogue.

Ms. Dittmar stated that is the difference between an informal group and one that requires legal notices and everything else that is part of the process.

Ms. Mallek said they did have an example of sort of an ex parte research group, comprised of the Rivanna Conversation Society, a professor at the University of Virginia, and members of the SELC, who did a huge amount of research on storm water, erosion and run-off issues and what the legislative requirements were for all the counties in the Central Virginia area. She said that the group then came to the Board with suggestions of where the hindrances were, where some of the ordinances made problems worse, then brought that information back to the Board. Ms. Mallek said it absolutely expedited renovations of the storm water ordinances in lightning time, and said the staff was able to take that work to bend it and conform it as needed. She commented it was fabulous, so she is very much interested in hearing where this idea from the Commission will go.

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Note: At 4:55 p.m., Mr. Morris thanked everyone and adjourned the Planning Commission portion of the meeting.

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Agenda Item No. 4. Closed Meeting.

At 4:56 p.m., Mr. Sheffield **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to Boards, Committees, and Commissions in which there are pending vacancies or requests for reappointments, to discuss the appointment of the Director of the Department of Social Services, and to discuss the annual performance evaluation of the County Executive; under Subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice concerning agreements relating to the Ivy Landfill; and under Subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice concerning a Rivanna Water and Sewer Authority Agreement. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Agenda Item No. 5. Call Back to Order.

The Chair, Ms. Dittmar, called the meeting back to order at 6:02 p.m.

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Agenda Item No. 6. Certify Closed Meeting.

At 6:02 p.m., Mr. Sheffield **moved** that the Board certify by a recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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NonAgenda. Ms. Palmer **moved** to make the following appointments to boards, committees and commissions:

- **appoint** Mr. Bernard Whitsett to the Citizens Resource Advisory Committee.
- **reappoint** Ms. Mary W. Eubanks to the Jefferson Area Board for Aging Advisory Council with said term to expire May 31, 2017.
- **appoint** Ms. Debra Stone to the Jefferson Area Board for Aging Advisory Council with said term to expire May 31, 2017.

Ms. McKeel **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Mr. Foley stated that as the Board knows, longtime Director of Social Service Department Kathy Ralston had retired on July 1, 2015 after almost 40 years of service to the County. He said they have been through an extensive process to find a replacement for Ms. Ralston, and have developed a profile for the position going forward that included input from focus groups, the Board of Supervisors, citizen groups and the staff with the Department of Social Services, as well as a very extensive interview process that included interviews with members of the community, internal staff, and leadership staff. After this extensive process, he said, he is pleased to make a very strong recommendation that the Board consider the appointment of Phyllis Savides as the new Director of the Social Services Department.

Mr. Foley stated that Ms. Savides currently serves as Assistant Director for Social Services and is responsible for the oversight of Adult and Child Protective Services, Foster Care, Adoption and Benefits Assistance. He said she is a licensed Clinical Social Worker with over 20 years of social work program administration and 16 years in various roles with Albemarle County DSS, and brought with her experience from Region Ten, the City of Charlottesville's Department of Social Services and private practice. Mr. Foley stated that Ms. Savides had received her Bachelors of Arts from the College of William and Mary and Masters in Social Work from the University of Texas. He said Phyllis completed the Leading Educating and Developing Program with the Weldon Cooper Center for Public Service and the Virginia Department of Social Services Local Directors Learning Experience. He said she brought proven experience in building and leading highly effective teams and is committed to ensuring that Albemarle County DSS is a success in achieving its continued status as a high-performance organization, and it is with strong recommendation that he ask the Board to consider this appointment.

Ms. Palmer **moved** to appoint Ms. Phyllis Savides as the Director of the Albemarle County Social Services Department. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

Ms. Savides said she is pleased and honored to stand before the Board, and in August she will have been with Albemarle County for 17 years, and can honestly say it is the best organization for which she has worked. She stated she has been and remains committed to the department's goal of being a high-performing organization. She said that her childhood experiences of growing up in the third world informed her choice of profession, that of social worker. Ms. Savides said she has and continues to be committed to helping the citizens of the County to elevate them from the generational cycle poverty, abuse and neglect and trauma. She said that DSS has always placed a high priority on innovation and high customer service, and she does not intend to change that, but hopes to lead the organization to an even higher level of excellence and maintain the position as a leader in the state. She said she is grateful and thanked them for the opportunity.

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Agenda Item No. 7. Pledge of Allegiance.
Agenda Item No. 8. Moment of Silence.

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Agenda Item No. 9. Adoption of Final Agenda.

Ms. McKeel **moved** to adopt the agenda. Ms. Palmer **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Agenda Item No. 10. Brief Announcements by Board Members.

Mr. Boyd announced that he will be holding a town hall meeting at Grace Episcopal Church, located on Route 231/22, on July 9 starting at 6:30 p.m., in regards to VDOT's trimming of the trees along that route and the proposed development area expansion in the Comp Plan.

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Ms. Mallek reminded Board members of the Defense Enterprise roundtable monthly meeting, which are held at the Battel office in the North Fork Research Park. She said there are always learning opportunities and connections of business people with defense industry agencies that are at Rivanna Station. She stated it is very enjoyable and fun and she believes they appreciate visitors as well.

Ms. Mallek handed out the VTrans Multimodal Transportation Plan (VMTP) draft needs assessment for the Charlottesville-Albemarle Region, which will be folded in as part of the statewide plan as important evidence and support documents for the County's projects when they are being considered for HB2. She asked the Board to look these over and said there will be a final draft before it is presented in Lynchburg at another meeting, and one highlight is related to the Exit 118 Interchange and why that needs to be a priority addition to the funding stream, in order to provide access to hospitals, to businesses, to safety improvements for the interchange and highways of state significance. She stated that she would appreciate the Board's input.

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Mr. Sheffield stated he wants to make sure time is allotted under Matters from the Board to talk about the drawings sent out that relate to the Rio grade-separated intersection. He said he just wants them to consider if they want to take a formal position on the aesthetics of that or have some discussion.

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Ms. Palmer announced that the Planning Commission will have a work session on July 21st regarding the growth area boundary adjustment at the intersection of 29 and I-64 in the Comp Plan, stating there will be another community meeting on July 30th. She said citizens can obtain information on the County website or they can email her or any of the other Board members.

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Ms. Dittmar announced there will be a design contest for the holiday ornament that will go on the state's holiday tree in Washington D.C. She stated there is increased enforcement at the James River in the southern portion of Albemarle County and there was a good presentation at the Town Council meeting with Captain Greg Jenkins, reflecting a great combination of different types of law enforcement working together. She said this effort is not in any way intended to decrease the fun and enjoyment of the river but increase the safety and consideration of the people who live in the area. Ms. Dittmar noted that this year Virginia has fallen out of the top 10 places to do business, and what caused the state to dramatically fall out is the differential of the industry sector, as Virginia is heavy on public sector spending in the state, due to defense and federal government particularly in the Northern Virginia area. She added

that sequestration has hit the state hard, but the dispersion of percentage of public dollars often insulated the state from deep economic highs and lows.

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Agenda Item No.11. Proclamations and Recognitions.

Item No. 11a. Proclamation in Honor of Virginia Organizing 20th Anniversary.

Ms. Dittmar read the following recognition:

Proclamation in Honor of Virginia Organizing's 20th Anniversary

WHEREAS, Virginia Organizing is a non-partisan statewide grassroots organization that is dedicated to challenging injustice by empowering people in local communities to address issues that affect the quality of their lives, especially those who have traditionally had little or no voice in our society, and

WHEREAS, the organization encourages individuals and groups throughout the Commonwealth and in local communities to bring about change by working together and building relationships, and the organization also believes in the enhancement and celebration of diversity in our communities and in our state, and

WHEREAS, among Virginia Organizing's Statement of Beliefs is the belief that all people should be treated fairly and with dignity in all aspects of life, regardless of race, class, gender, religion, sexual orientation, age, ability or country of origin, and

WHEREAS, Virginia Organizing held its first meeting at the Northside Library in Albemarle County on August 19, 1995, and in August of 2015, Virginia Organizing is celebrating 20 years of grassroots organizing and bringing about real change for real people through countless campaigns to improve the quality of life for all Virginians,

WHEREAS, Virginia Organizing has worked with the Albemarle County Board of Supervisors and other officials in Albemarle County on a variety of community issues,

NOW, THEREFORE, BT IT RESOLVED, that we, the Albemarle County Board of Supervisors, PROCLAIM that the 19th day of August, 2015, is

VIRGINIA ORGANIZING DAY

in the County of Albemarle and we encourage others to learn about and support this organization in its efforts.

Ms. Dittmar **moved** to adopt the resolution as read. Ms. McKeel **seconded** the motion:

Mr. Boyd stated he is voting against this resolution because he feels Virginia Organizing is basically a politically motivated group and has participated in political campaigns in the past.

Ms. Mallek stated she had a very different experience, as Virginia Organizing has been very helpful to many community organizations. She stated that one of their representatives had made a presentation to the Ruritan Club at White Hall because they were trying to figure out ways to raise money to be able to replace a roof on a historic building, and had received a lot of interesting information, background and guidance. She said this was the first time she had heard about how Virginia Organizing operates and holds funds for organizations, helping small groups to raise money to accomplish their goals without having to hire their own staff.

Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: Mr. Boyd.

Ms. Dittmar stated the agenda indicates that Mr. Joe Szakos is there to accept the proclamation, but Mr. Szakos has asked for Ms. Susan Berry to accept the proclamation.

Ms. Berry said that it is truly an honor to represent Virginia Organizing, which has made a profound difference in Virginia in the past 20 years. She stated they are proud to have started in Albemarle and they thanked the Board of Supervisors for acknowledging them and for their continued support.

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Agenda Item. No.12. From the Public: Matters not Listed for Public Hearing on the Agenda.

Ms. Nancy Carpenter of the Scottsville District addressed the Board and stated that she will provide additional information on the "Ban the Box" request she has talked about previously. She said she first mentioned that she hoped Albemarle County would join the City of Charlottesville in banning the box on the applications for those County citizens that face certain challenges because of contact with the legal justice system. She said at their meeting the previous week, she had given some reasons why it might be beneficial for the County to do that, and today she is sharing some information gathered by one

of the volunteers at Virginia Organizing who has been contacting some of the larger industries and national companies to see what their policies are. She said she is surprised at some of the large national chains that have a presence here in Albemarle County that do not have the box on their applications: Barnes and Noble, Costco, Wegman's, the United Postal Service, and the University of Virginia Medical Center has no box. Ms. Carpenter said as the County begins its discussions on this, she hopes the information will be of importance as they consider people who are coming back into the community and especially as they review sentencing requirements for the failed "war on drugs" policies. She said as they look at mass incarceration and how nationally the conversation is coming around there are people who do not really belong in incarceration and would be better served by coming back to their community, one way to aid reentry is with employment.

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Mr. Chuck Boldt, resident of the White Hall District, said he addressed the Board in March regarding the cell phone tower that was accessed through his property, and he recalled lots of promises at that time to gain approval. Mr. Boldt said he is there to report the construction has started, but the promises by Crown Castle to resolve issues of access remains. He stated he had also been before them 11 months ago, when the Board approved the New Hope Church site plan, which was done with the assurances by the church to the Board and the neighbors they would work with them on a few issues, the main item being what to do with the VDOT corner landscaping. Mr. Boldt said he and his neighbors are still waiting for answers, and Ms. Mallek has made requests of the church to meet but they have gone unanswered. It is easy to understand why the church will not meet, as they have already gotten what they wanted. He stated there were no conditions attached to the Board's approval, just the assurance given by the pastor to the Board that were promptly ignored as soon as the meeting was over. Mr. Boldt stated this is nothing new, since he and his neighbors have heard lots of broken promises from the church and the County. He said he would like the Board to remember that what happened was because of the Board's actions, and the character of his neighborhood has been changed in a way that cannot be undone.

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Mr. Jeff Werner of the Piedmont Environmental Council thanked Mr. Boyd for holding a town hall meeting and said that they both have received a lot of emails regarding VDOT's tree-clearing process. He said that he knows people out there have said they do not want this to happen, but being pragmatic he suspects that VDOT will do something. Mr. Werner said that in 2007, there was a plan to clear cut the medians on 29 South between I-64 and the Nelson County line, and VDOT agreed to walk the length of the road with Ches Goodall at the PEC's request, with urging from Sally Thomas. He stated that they marked certain trees to be kept, and Ms. Thomas had been particularly interested in the cedar trees and others that were distinct to that stretch of road. He said that VDOT worked with them and they were flexible with their policy, so there may be an opportunity for Route 231/22 area residents, as VDOT had done so in the past.

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Mr. Gary Grant, resident of the Rio District, stated that he hopes his remarks do not come off nasty or angry, and apologized in advance but he is merely frustrated. Mr. Grant said they profess to support open transparent governance, but then they effectively vote in advance in secret on the public business by having the Clerk poll them on proclamations without convening in an open public meeting to discuss and decide on them. He said he learned this week that some of them, at times a majority of them, decide ahead of time outside the public eye whether or not a Board proclamation is to be prepared and placed on the agenda. Mr. Grant said that while pre-meeting private polling is legal under Virginia law, such secrecy, in his opinion, is contradictory to the spirit of the Virginia Freedom of Information Act. He stated it is one thing for the Board to legally talk to each other about issues, but there is something very distastefully different to participate in pre-meeting private polling, defacto secret ballots, through individual messages sent to and compiled by the Clerk. He also expressed concern about the 6-0 votes, but tonight's is 5-1. Mr. Grant asked the Board to discuss and decide on proclamations in the open so frustrated speakers like him will not end up at some future meeting being removed from the tax payer paid armed usher for refusing to criticize them by name. Mr. Grant said that he is going home to listen on the streaming and asked everyone to step up to the microphones and speak up.

Mr. Sheffield said that he and Mr. Grant had a brief email conversation about his concerns, and he said he shares Mr. Grant's concerns that it is a defacto vote. Mr. Sheffield suggested that they bring the matter up under Matters from the Board.

Mr. Dittmar said they can bring a proclamation up formally at a Board meeting to know what it actually states but that will delay it from 30 days to 60 days.

Mr. Sheffield said he wants to be sure they reconsider the process, and he shares Mr. Grant's frustration that it is a little bit of a defacto vote, as it goes on a Board agenda even if one or two members do not respond, and nothing prevents one Supervisor from adding something to the agenda.

Ms. Mallek said the question is whether to put a proclamation on the agenda. Mr. Sheffield said he thought it is best to discuss it later.

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Mr. Bryan Johnson, resident of the Jack Jouett District, addressed the Board and said he wants to talk about a broader set of issues relating to Olivet's application for a proposed preschool, as he had also spoken in 2014 regarding the Regents School and its location on Route 250 near Broomley Drive. He said in spite of the good faith efforts to draft a compromise to address the neighborhood's concerns

about increased traffic in that location, the last school year demonstrated that some of the traffic control procedures at that site have not been entirely successful. Mr. Johnson said incidents involving left turns across 250 continued to be reported to him, despite a specific prohibition against such actions and despite the schools efforts to minimize these incidents. He said he is not in opposition of Olivet School or any particular school; instead he would like to remind the Board that this application is another example of a private school asking to operate a business in a rural area. He said that schools, like any other business, impose costs on their neighbors, and this type of cost shifting is magnified as the school grows. Mr. Johnson stated as they have seen in the last few years, an initial application for a private school to operate for the benefit of 30-40 students can soon grow to a need to house 130 or more students in that same location, in just a few years. He said as they have seen, it is difficult to curtail a school's growth in the rural area once its initial application has been approved. Mr. Johnson said he believes the County should develop a written policy in regards to applications by private schools, more precisely, applications by the proposed landlord of a private school to operate in a rural area, rather than considering these applications on an ad-hoc basis. He said that in addition, he believes applicants should be warned in writing that there is no presumption that the enrollment restrictions will rise if the school elects to increase enrollment in the future. Mr. Johnson said that finally, the Board should consider how another private school might use that space once the current tenant moves to a new location, since these applications relate to the property and not the school.

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Agenda Item No.13. Consent Agenda.

(Discussion: Ms. Dittmar said that Item 13.7 would be pulled from the consent agenda for discussion.

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Regarding Item 13.6, Mr. Sheffield said that he has a question in support of the enhanced speeding fines on Carrsbrook Drive, specifically how they will get the word out other than placing signs. Mr. Foley said staff will do something to get the word out.

Mr. Sheffield said a press release might be worthwhile.

Mr. Boyd said they did the same thing in Fontana, but that was with the intention of catching people speeding.

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Ms. Mallek said that she would need to pull her assigned minutes.)

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Ms. Palmer **moved** to approve the Consent Agenda, with the minutes removed as noted, and removal of Item 13.7. Ms. Mallek **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Ms. Palmer **moved** to defer Item 13.7 to the Board's August 5, 2015 meeting. Ms. Mallek **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Item. No. 13.1. Approval of Minutes: October 1, and November 5, 2014; and February 23, 2015.

Ms. Mallek pulled the minutes of October 1, 2014, pages 36(begin with Item #10) – end, and February 23, 2015, and carried them forward to the next meeting.

Mr. Boyd had read the minutes of November 5, 2014, pages 1-34(end with #13), and found them to be in order.

Mr. Sheffield had read the minutes of November 5, 2014, pages 34 (beginning with #13) – end, and found them to be in order,

By the above-recorded vote, the Board approved the minutes as read.

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Item. No. 13.2. FY16 Budget Amendment and Appropriations.

The executive summary states that Virginia Code § 15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies

to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc. The total increase to the FY 16 budget due to the appropriation itemized below is $773,096.55. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of one (1) appropriation as follows:

- One (1) appropriation (#2016008) to re-appropriate $773,096.55 to the Emergency Communications Center.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve appropriation #2016008 for the ECC as described in Attachment A.

* * * * *

Appropriation #2016008 **$ 773,096.55**

Source:	ECC fund balances	$ 771,096.55
	State revenue	$ 2,000.00

The Emergency Communications Center (ECC) requests that the County, acting as fiscal agent for the ECC, re- appropriate $771,096.55 from ECC fund balances and $2,000.00 in state revenue from FY 15 to FY 16 for the following purposes:

- $496,096.55 for the continuation of the 800 MHZ Radio Augmentation Project, which will provide better system coverage for 800 MHz radio system users;
- $250,000.00 for the replacement of 15 year old dispatch consoles within the Emergency Communications Center;
- $25,000.00 for the repair and replacement of bi-directional antenna (BDA) equipment as needed. BDA equipment provides in-building radio coverage for public safety providers when they are within government buildings in the County, City and University of Virginia; and
- $2,000.00 for training for Public Safety Communications personnel that will be reimbursed by state revenue.

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By the above-recorded vote, the Board adopted the resolution to approve appropriation #2016008 to reappropriate $773,096.55 to the Emergency Communications Center:

RESOLUTION TO APPROVE
ADDITIONAL FY 16 APPROPRIATION

BE IT RESOLVED by the Albemarle County Board of Supervisors:

1) That Appropriation #2016008 is approved; and

2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2016.

COUNTY OF ALBEMARLE
APPROPRIATION SUMMARY

APP#	ACCOUNT	AMOUNT	DESCRIPTION
2016008	3-4110-51000-351000-510100-9999	496096.55	SA2016008 App Fund balance
2016008	4-4110-31060-435600-300204-1003	800	SA2016008 FCC Licenses
2016008	4-4110-31060-435600-312105-1003	3096.43	SA2016008 Consultant Services
2016008	4-4110-31060-435600-312351-1003	10000.00	SA2016008 Permit Fees
2016008	4-4110-31060-435600-331601-1003	9791.00	SA2016008 R & M Equipment
2016008	4-4110-31060-435600-540000-1003	1200.00	SA2016008 Leases & Rentals
2016008	4-4110-31060-435600-800150-1003	264158.20	SA2016008 Labor and Installation
2016008	4-4110-31060-435600-800305-1003	197180.35	SA2016008 Radio System Equipment
2016008	4-4110-31060-435600-999999-1003	9870.57	SA2016008 Contingency
2016008	3-4100-51000-351000-510100-9999	275000.00	SA2016008 App Fund balance
2016008	3-4100-24000-324000-240552-9999	2000.00	SA2016008 Virginia 911 Board Training Funds for PSAP
2016008	4-4100-31040-435600-550100-1003	2000.00	SA2016008 Virginia 911 Board Training Funds for PSAP
2016008	4-4100-31040-435600-800201-1003	250000.00	SA2016008 Dispatch console replacement
2016008	4-4100-31040-435600-800700-1003	25000.00	SA2016008 BDA Equipment Repair/Replacement
TOTAL		**1,546,193.10**	

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Item. No. 13.3. ZMA-2005-00007. Special Exception to Vary Haden Place Application Plan and Code of Development.

The executive summary states that a zoning map amendment was approved for Haden Place (ZMA 2005-00007) on February 14, 2007 that rezoned the property from R-2 to Neighborhood Model District (NMD), inclusive of an Application Plan and Code of Development (Attachment C). The Applicant has requested a special exception to allow a variation from the approved Application Plan and Code of Development to permit ten (10) feet of encroachment within the rear setback for decks and porches on Lots 29 through 34 in Block B of the development (Attachment C; see page A6.2). County Code § 18-

4.11.1 requires that decks and porches project not more than four (4) feet into any required yard and that no such feature be located closer than six (6) feet to any lot line. While the Application Plan permits up to four (4) feet encroachment of the front setback pursuant to County Code § 18-4.11.1, the Application Plan and Code of Development does not specify any permitted encroachment of the rear setback.

County Code § 18-8.5.5.3 allows special exceptions to vary approved Application Plans and Codes of Development upon considering whether the proposed variation: (1) is consistent with the goals and objectives of the comprehensive plan; (2) does not increase the approved development density or intensity of development; (3) does not adversely affect the timing and phasing of development of any other development in the zoning district; (4) does not require a special use permit; and (5) is in general accord with the purpose and intent of the approved application. County Code § 18-33.5(a)(1) requires that any request for a variation be considered and acted upon by the Board of Supervisors as a special exception. Staff opinion is that the requested variation meets the five criteria listed. A detailed analysis is provided in the Staff Report (Attachment A).

There is no budget impact related to this request.

Staff recommends that the Board adopt the attached Resolution (Attachment E) approving the special exception to vary the Application Plan and the Code of Development to permit decks and porches on Lots 29 through 34 in Block B of the development to encroach ten (10) feet into the rear setback.

By the above-recorded vote, the Board adopted the following resolution approving the special exception to vary the Application Plan and the Code of Development to permit decks and porches on Lots 29 through 34 in Block B of the development to encroach ten (10) feet into the rear setback:

RESOLUTION TO APPROVE SPECIAL EXCEPTION FOR ZMA 2005-007, HADEN PLACE

WHEREAS, Haden Place, LLC (the "Owner") is the owner of Tax Map and Parcel Numbers 055F0-14-0B-02900, 055F0-14-0B-03000, 055F0-14-0B-03100, 055F0-14-0B-03200, 055F0-14-0B-03300, and 055F0-14-0B-03400; and

WHEREAS, the Owner filed a request for a special exception to vary the Application Plan and Code of Development approved in conjunction with ZMA 2005-007, Haden Place, to permit decks and porches on Lots 29 through 34 in Block B of the development to encroach ten (10) feet into the rear setback.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary prepared in conjunction with the special exception request, staff's supporting analysis included in the executive summary and the attachments thereto, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3(c) and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Application Plan and Code of Development approved in conjunction with ZMA 2005-007, Haden Place, as described hereinabove.

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Item. No. 13.4. Old Trail Greenway Boundary Line Adjustment.

The executive summary states that the County acquired TMP 055E0-01-00-000H0 at Old Trail Village to be used as part of the greenway trail in Crozet through proffers associated with ZMA 2004-24 (Old Trail Village) on November 8, 2010. The greenway trail is consistent with and complements the Crozet master plan. One section of the trail connects the neighborhoods of Crozet with a safe, hikeable/bikeable, off-road route to three County schools in Crozet. The original plan for the route ensured a suitable alignment between the proposed Old Trail Village subdivision and the schools, with the greenway proffer including an agreement that the developer would build the trail and bridge needed to connect the neighborhood to the school properties. The original development plan for the Old Trail Village subdivision has subsequently been revised, prompting a proposed realignment of a section of the greenway trail.

In order to provide a suitable alignment between the revised development plan to the school properties, a boundary line adjustment is being proposed. Parks & Recreation staff has been involved in the proposed re-alignment and agrees that it is a much safer alignment for a bike/pedestrian route. The proposed boundary line adjustment would involve the County conveying TMP 055E0-01-00-000H0, a 0.232-acre parcel, to March Mountain Properties, L.L.C., in exchange for TMP 055E0-01-00-000A1, a 0.277-acre parcel, resulting in a net gain of 0.045 acre to be used for the greenway trail. The attached deed (Attachment A) and plat (Attachment B) depict the proposed exchange.

Virginia Code § 15.2-1800 requires that the Board hold a public hearing prior to conveying this interest in County-owned real property.

This proposed exchange of greenway property has no fiscal impact.

Staff recommends scheduling a public hearing on August 5, 2015 to consider the proposed real property exchange.

By the above-recorded vote, the Board scheduled a public hearing on August 5, 2015 to consider the proposed real property exchange for Old Trail Greenway.

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Item. No. 13.5. ZMA-2004-00024. Special Exception to Vary Old Trail Village Code of Development.

The executive summary states that a zoning map amendment was approved for Old Trail Village on September 14, 2005, that rezoned the property from Rural Areas, R-1, and R-6 to Neighborhood Model District, inclusive of an Application Plan and Code of Development. An application for a minor site plan amendment is now under review for this property (SDP 2015-00030). Twenty-one (21) variations to the Application Plan and/or Code of Development have previously been granted. The Applicant has requested a special exception to vary the Code of Development to permit architectural features such as front porches, stoops, and overhangs/eaves on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip. The requested variation is necessary before the site plan amendment can be approved by staff.

County Code § 18-8.5.5.3 allows special exceptions to vary approved Application Plans and Codes of Development upon considering whether the proposed variation: (1) is consistent with the goals and objectives of the comprehensive plan; (2) does not increase the approved development density or intensity of development; (3) does not adversely affect the timing and phasing of development of any other development in the zoning district; (4) does not require a special use permit; and (5) is in general accord with the purpose and intent of the approved application. County Code § 18-33.5(a)(1) requires that any request for a variation be considered and acted upon by the Board of Supervisors as a special exception. Staff opinion is that the requested variation meets the five criteria listed. A detailed analysis is provided in the Staff Report (Attachment A).

There is no budget impact.

Staff recommends that the Board adopt the attached Resolution (Attachment D) approving the special exception to vary the Code of Development to permit architectural features on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip.

By the above-recorded vote, the Board adopted the following resolution approving the special exception to vary the Code of Development to permit architectural features on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip:

RESOLUTION TO APPROVE SPECIAL EXCEPTION FOR ZMA 2004-024, OLD TRAIL VILLAGE

WHEREAS, March Mountain Properties, LLC is the owner of Tax Map and Parcel Numbers 055E0-01-00-00C30, and 055E0-01-00-00C3B, and Ja-Zan, LLC is the owner of Tax Map and Parcel Numbers 055E0-01-3C-000E0 and 055E0-01-3C-000E1 (collectively, the "Owners"); and

WHEREAS, the Owners filed a request for a special exception to vary the Code of Development approved in conjunction with ZMA 2004-024, Old Trail Village, to permit architectural features such as front porches, stoops, and overhangs or eaves on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary prepared in conjunction with the special exception request, staff's supporting analysis included in the executive summary and the attachments thereto, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3(c) and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Code of Development approved in conjunction with ZMA 2004-024, Old Trail Village, as described hereinabove.

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Item. No. 13.6. Enhanced Speeding Fines on Carrsbrook Drive.

The executive summary states that residents of the Carrsbrook Subdivision have expressed concern about cut through traffic and speeding in the subdivision. In an effort to evaluate and resolve speeding issues in the subdivision, the Albemarle County Police Department (ACPD) conducted a speed/traffic study on Carrsbrook Drive (Route 854), which concluded that there is a speeding problem on Carrsbrook Drive. Based on the study results, residents of the subdivision have requested that staff bring forward to the Board of Supervisors for its consideration a request for VDOT to install sign(s) on Carrsbrook Drive alerting motorists that there will be a fine of up to $200 for exceeding the established speed limit pursuant to Virginia Code § 46.2-878.2.

Virginia Code § 46.2-878.2 (see Attachment A) provides that "Operation of any motor vehicle in excess of a maximum speed limit established for a highway in a residence district of a county, city, or town, when indicated by appropriately placed signs displaying the maximum speed limit and the penalty for violations, shall be unlawful and constitute a traffic infraction punishable by a fine of $200, in addition to other penalties provided by law."

It is the Commonwealth Transportation Board's policy (Attachment A) that VDOT, upon a formal request from the local governing body, will install signs on local residential streets, collector streets, and

minor arterial streets with a posted speed limit of 35 miles per hour or lower advising motorists of a maximum punishment of $200, in addition to other penalties provided by law, for exceeding the speed limit in certain residence districts.

Carrsbrook Drive is a paved two (2) lane residential roadway with a 25 miles per hour (mph) posted speed limit. The ACPD conducted a speed/traffic study on Carrsbrook Drive during the period of Tuesday May 26, 2015 through Monday June 1, 2015. The study was conducted on the 400 block of Carrsbrook Drive, monitoring traffic in the area of 414 Carrsbrook Drive, approximately 435 feet north of

Westmoreland Road (Attachment C). Traffic was monitored in both directions. The study found that 26.42% percent of vehicles at the study location exceeded the posted speed limit by 10 mph or more. The Albemarle County Police Department found evidence of a speeding problem at the particular location, and staff recommends that the Board request VDOT to install signs establishing an additional fine of $200 for exceeding the established speed limit on Carrsbrook Drive.

To qualify for sign installation, a highway must meet the following criteria:

1. Meet the definition of local residential, collector, or minor arterial street as defined by VDOT (see Attachment A); and
2. Have a posted speed limit of 35 miles per hour or lower.

Carrsbrook Drive satisfied the above criteria. To establish an enhanced maximum fine on Carrsbrook Drive, the County must first request, by Resolution of the Board, that VDOT install the appropriate signs as required by Virginia Code § 46.2-878.2. The Resolution (Attachment D) and the following supporting data would then be submitted to VDOT:

1. Identification of the neighborhood and specific highway(s) where the signs are requested to be installed;
2. Confirmation that the highway(s) meet the definitions of local residential, collector, or minor arterial streets as defined by VDOT; and
3. Notification that a speeding problem exists and that the increased penalty has community support.

The requested sign(s) would be installed within 60 days after VDOT's approval.

VDOT will pay for providing and installing the signs. The ACPD will be responsible for enforcement, and ACPD staff estimates that this will have no impact on ACPD's staffing or budget.

Staff recommends that the Board adopt the attached Resolution (Attachment D) requesting that VDOT install signs to establish an additional maximum $200 fine for exceeding the established speed limit on Carrsbrook Drive, pursuant to Virginia Code § 46.2-878.2.

By the above-recorded vote, the Board adopted the following resolution requesting that VDOT install signs to establish an additional maximum $200 fine for exceeding the established speed limit on Carrsbrook Drive, pursuant to Virginia Code § 46.2-878.2:

RESOLUTION TO REQUEST ADDITIONAL MAXIMUM $200 FINE FOR SPEEDING ON CARRSBROOK DRIVE

WHEREAS, Carrsbrook Drive (Route 854), is a local residential street as defined by VDOT with a posted speed limit of 25 miles per hour; and

WHEREAS, the County of Albemarle has received a request from the residents of the Carrsbrook Subdivision to request that VDOT install signs on Carrsbrook Drive and to establish pursuant to Virginia Code § 46.2-878.2 an additional maximum fine of $200.00 for exceeding the speed limit, in addition to other penalties provided by law; and

WHEREAS, the Albemarle County Police Department collected speed data on Carrsbrook Drive, and has concluded that there is a speeding problem and acknowledges that it is impacting safety and quality of life for Carrsbrook Subdivision residents; and

WHEREAS, the Albemarle County Board of Supervisors finds that a speeding problem exists on Carrsbrook Drive, and that it creates a potential hazard for residents in the Carrsbrook Subdivision.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that the Virginia Department of Transportation install sign(s) to establish an additional maximum $200 fine for exceeding the speed limit on Carrsbrook Drive.

Item. No. 13.7. Amendment of the 1973 Four Party Agreement Between the City of Charlottesville, Albemarle County, the Rivanna Water and Sewer Authority and Albemarle County Service Authority. ***(Moved to the regular agenda for discussion.)***

The executive summary states that in 1973, the City of Charlottesville, the County of Albemarle, the Rivanna Water and Sewer Authority ("RWSA"), and the Albemarle County Service Authority ("ACSA") executed a service or operating agreement for the RWSA to provide potable water and wastewater

treatment services to its two customers, the City and the ACSA. This agreement, which has remained unchanged since 1973, is commonly known as the “Four Party Agreement.”

At the request of City and ACSA staff, the RWSA has prepared a proposed amendment to the Four Party Agreement (Attachment B) that, if adopted, will change the billing methodology used by the RWSA. Section 8.1 of the Four Party Agreement provides that the Agreement can only be amended or modified with the consent of the City, the County, the RWSA, the ACSA and the Bond Trustee under RWSA’s Agreement of Trust. The proposed amendment was approved by City Council on June 15, 2015 and by the ACSA Board on June 18, 2015, and is scheduled to be presented to the RWSA Board of Directors on July 28.

The proposed amendment will change how the RWSA bills the City and the ACSA for capital debt service costs. Currently, the RWSA includes an amount for debt service in the water and wastewater treatment rates it charges the City and the ACSA. Those wholesale rates are set in advance by the RWSA during its annual budget process, and are based on the estimated amount of water the RWSA anticipates selling, and the estimated amount of wastewater the RWSA anticipates treating, during the ensuing fiscal year. As contemplated by the Four Party Agreement, the rates are set as a specific amount for every 1,000 gallons of water sold and wastewater treated.

The problem with the current methodology is that the amount of water sold and the amount of wastewater treated can fluctuate significantly with the weather. For example, the amount of wastewater treated by the RWSA can increase significantly during wet weather, due to inflow and infiltration in the sanitary sewer collection system. During those times, the RWSA can collect significantly more (and the City and the ACSA pay significantly more) in debt service for payments. At the same time, the wet weather may mean that water usage is lower than anticipated, and that the RWSA collects less than what it needs for water capital project costs. On the other hand, when the amount of water usage is higher than anticipated because of very dry weather, the amount of debt service collected for water capital projects is higher than the amount needed, and the amount of debt service collected for wastewater projects may be too low. These fluctuations present significant challenges for the RWSA, the City, and the ACSA when setting water and wastewater rates based on predictions of future usage.

The proposed amendment would allow the RWSA to use a separate, fixed debt service charge when billing the City and the ACSA for water and wastewater capital costs. Separating the charge for debt service from the water and wastewater rates will mean that the amount of debt service charged and paid will not depend on the volume of water sold or wastewater treated. Weather will no longer be a factor, and because the RWSA knows in advance how much debt service it needs each year, budgeting for debt service will be easier and more accurate for all three entities. The justification for the proposed amendment is further articulated in the document entitled “Considerations for Amendment No. 1 to Service Agreement,” prepared by the RWSA and attached hereto (Attachment A).

The proposed amendment also contains several points of clarification:

- A definition of “Debt Service Charges” is added in Section 1.2;
- The amendments to Sections 7.2 (a) and (b) reinforce the existing rule that debt service charges for capital projects requested solely by the City or the ACSA will be allocated to the requesting party. These amendments also explicitly acknowledge that debt service charges will be allocated as provided in any cost allocation agreement executed by the City and the ACSA;
- Section 7.5 currently states that water and wastewater treatment charges are determined by applying the rates “to the total amount of water delivered to the City and the Service Authority as obtained by their respective customer meter readings.” For over 30 years the parties have implemented this section through the provisions of the “1983 Working Agreement on Urban Area Wholesale Flow Allocation and Billing Methodology between Rivanna, the Service Authority and the City.” This amendment specifically references and incorporates that 1983 Working Agreement as part of the Four Party Agreement;
- Section 7.1 of the Four Party Agreement provides a debt service formula for capital wastewater projects whereby the City pays ½ as much per 1,000 gallons as the ACSA pays, although the parties previously have disagreed on which projects are subject to this provision. The proposed amendment clarifies the application of that formula (to existing facilities as defined in Sections 3.3 and 3.5 and those described on Exhibit 6), in a manner that is consistent with the recent Wastewater Projects Cost Allocation Agreement. The amendment also eliminates the “per 1,000 gallon” metric, because debt service charges will no longer be based on usage or flow. Attachment C shows the affected articles of the 1973 Four Party Agreement with underline and strikeout.

There is no budget impact to the County.

As noted by the RWSA in the “Considerations for Amendment,” the proposed amendment does not change debt service allocations under existing cost allocation agreements between the City and the ACSA, nor does it force allocations where none exist.

Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve the Amendment No. 1 to Agreement to amend the Four Party Agreement dated June 12, 1973 and to authorize the Chair to execute it on behalf of the County in a form approved by the County Attorney.

(**Note:** This item was deferred to the Board's August 5, 2015 meeting)

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Item. No. 13.8. Resolution to accept road(s) in Proffit Ridge Subdivision into the State Secondary System of Highways (Rivanna District*).*

At the request of the Director of Community Development, by the above-recorded vote, the Board adopted the resolution to accept roads in the Proffit Ridge Subdivision into the State Secondary System of Highways.

R E S O L U T I O N

WHEREAS, the street(s) in **Proffit Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **July 8, 2015**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Proffit Ridge**, as described on the attached Additions Form AM-4.3 dated **July 8, 2015**, to the secondary system of state highways, pursuant to §33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of- way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form AM-4.3 is:

1) **Proffit Ridge Lane (State Route 1318)** from Route 1317 (Proffit Crossing) to .118 miles east to Route 1319 (Daventry Lane) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.12 miles.

2) **Daventry Lane (State Route 1319)** from Route 1318 (Proffit Ridge Lane) to .072 miles south to the end of the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.07 miles.

3) **Proffit Crossing Route 1317)** from Route 649 (Proffit Road) to .103 miles south to Route 1318 (Proffit Ridge Lane) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.10 miles.

4) **Proffit Crossing Route 1317)** from Route 1318 (Proffit Ridge Lane) to .09 miles south to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.09 miles.

5) **Daventry Lane (State Route 1319)** from Route 1318 (Proffit Ridge Lane) to .067 miles north, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.07 miles.

Total Mileage – 0.45

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Agenda Item No.14. PUBLIC HEARING: **SP-2015-00009. Olivet Presbyterian Church Preschool (Signs #79& 80).**
MAGISTERIAL DISTRICT: Samuel Miller.
TAX MAP/PARCEL: 04300-00-00-00800.
LOCATION: 2575 Garth Road.
PROPOSAL: Day care/preschool for up to 24 students within the existing church.
PETITION: Day care center, as permitted under section 10.2.2.7 of the Zoning Ordinance (reference 5.1.06).
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).
COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/acre in development lots).
(Advertised in the Daily Progress on June 22 and June 29, 2015)

The executive summary as presented by staff states that at their meeting on May 19, 2015, the Planning Commission voted 6:0 to recommend approval of SP201500009. They recommended that condition #3 recommended by staff be removed.

The County Attorney has prepared the attached Resolution (Attachment D) reflecting the recommendation of the Planning Commission. Please note that some non-substantive modifications have been made to the conditions contained in the Resolution to clarify the conditions. The Planning Commission's Action letter, Staff Report and minutes from the May 19th meeting are also attached.

Staff recommends that the Board adopt the resolution to approve SP201500009 with the conditions listed in the Resolution.

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Ms. Megan Yaniglos, Principal Planner, said this special use permit is requesting to allow a preschool within the existing church with up to 24 students, two classrooms with up to 12 students in each, one for three year olds, and one for four year olds. She said the three-year-old classroom will operate from 9 a.m.-12 noon three days a week and the four-year-old classroom will operate from 9 a.m.-12 noon five days a week. Ms. Yaniglos stated the parcel is located along Garth Road in between Owensville Road and Harmony Drive. She showed the Board an aerial photo of the church and the fellowship hall, and stated that staff found no significant impacts will be created by the proposed pre-school and recommends approval with conditions. She said during the Planning Commission meeting, the Commission recommended that condition #3 restricting the hours of operation from 8 a.m. to 1 p.m. be removed, and she has done that in what is before the Board.

The Chair opened the public hearing.

Ms. Ashley Buford, Member of Olivet Presbyterian Church, stated she has been on the committee to get the preschool off the ground for two years. She said it has been an idea of the church for probably ten years, coming out of their mission committee, as needs grew in their community-wide area and around the church, particularly for kids that cannot afford preschool. Ms. Buford said with the space the building provides, they started looking at it seriously and evaluating the capacity and the student base. She said they agreed that it would work and started it as an in-home daycare, this year with seven students, all who are paying. She said if they are able to open it up to 12 kids per classroom that will allow them to have enough money to scholarship some kids in. Ms. Buford said she appreciates what Mr. Johnson has stated, but the Regents and Olivet schools are two very different schools, and Olivet only wants to remain a small preschool. She also stated the church hosts Boy Scout groups, church meetings and other community activities that generate as much traffic in and out of there as the school will be adding to it.

Mr. Joe Derrico, parent of a child who attends the preschool, said he has seen wonderful development in his child and happens to live in the White Hall District, and he thinks it is a wonderful opportunity to not have to travel all the way to Charlottesville to find a preschool for his child. He said this would also afford the opportunity for many other residents in the area as well, and he hopes the Board will approve this and appreciates their consideration.

There being no other public comments, the public hearing was closed.

Ms. McKeel asked if VDOT has signed off on the entrance. Ms. Yaniglos responded that condition #1 pertains to the site plan, and at that point the applicant will have to meet those requirements.

Ms. Palmer asked if VDOT has done a speed study there recently. Ms. Yaniglos responded that the changes to the entrance deal with site distance and the curvature of the road, and they want a right-in and right-out at the entrance.

Ms. Palmer **moved** to adopt the following resolution to approve SP-2015-00009. Olivet Presbyterian Church Preschool, subject to the recommended conditions. Ms. Mallek **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

RESOLUTION TO APPROVE
SP 2015-09 OLIVET PRESBYTERIAN CHURCH - PRESCHOOL

WHEREAS, Olivet Presbyterian Church is the owner of Tax Map and Parcel Number 04300-00-00- 00800 (the "Property"); and

WHEREAS, Olivet Presbyterian Church filed an application for a special use permit to allow a preschool for up to 24 students within the existing church, and the application is identified as Special Use Permit 2015-00009 Olivet Presbyterian Church - Preschool ("SP 2015-09"); and

WHEREAS, the proposed use is allowed on the Property by special use permit under Albemarle County Code § 18-10.2.2(7); and

WHEREAS, on May 19, 2015, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-09 with two of the three conditions recommended by staff; and

WHEREAS, on July 8, 2015, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-09.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2015-09 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2015-09, subject to the performance standards for this use in Albemarle County Code § 18-5.1.06 and the conditions attached hereto.

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SP-2015-00009 Olivet Presbyterian Church – Preschool - Conditions

1. The maximum number of children shall not exceed twenty-four (24) or the number of students as approved by the Virginia Department of Health or the Virginia Department of Social Services; whichever is less; and
2. The permittee shall obtain written approval of the entrance design from the Virginia Department of Transportation.

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Agenda Item No.15. PUBLIC HEARING: **SP-2014-00019. Virginia Asphalt Services, Inc. (Sign #31.)**
MAGISTERIAL DISTRICT: Scottsville.
TAX MAP/PARCEL: 07700-00-00-00800.
LOCATION: 1536 Avon Street Extended.
PROPOSAL: Request for special use permit under Zoning Ordinance Section 30.6.3.a(2) for outdoor storage, display and/or sales for an equipment storage yard associated with a contractor's office for an asphalt paving company. (No dwellings proposed.) A special exception to 5.1.52 Outdoor Storage in Industrial Districts is also requested to allow alternate screening around the storage area. (An Initial Site Plan is being processed simultaneously with this request under SDP201400073.).
ZONING: Light Industrial – industrial, office, and limited commercial uses (no residential use); Flood Hazard – overlay to provide safety and protection from flooding; Entrance Corridor – overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access; Airport Impact Area – overlay to minimize adverse impacts to both the airport and the surrounding land.
COMPREHENSIVE PLAN: Industrial Service – warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) in Neighborhood Four.
(Advertised in the Daily Progress on June 22 and June 29, 2015)

The executive summary as presented by staff states that at its meeting on May 19, 2015, the Planning Commission voted 6:0 to recommend approval of a special use permit to allow the outdoor storage of equipment used in the Applicant's asphalt paving business (SP201400019) with the conditions recommended by staff. The Planning Commission's Action Letter, Staff Report and Minutes from the May 19 meeting are attached (Attachments A-C).

In addition to the request for the special use permit, the Applicant has requested a special exception to modify a requirement of County Code § 18-5.1.52 to allow landscape screening in place of a solid wall or fence for the proposed outdoor storage area. This special exception requires Board action pursuant to County Code § 18- 33.5, but did not require Planning Commission action. The attached staff report prepared for the Planning Commission includes some details of the special exception request (Attachment A, pgs. 3,4).

The Applicant requested a special exception to modify County Code § 18-5.1.52, Outdoor Storage in Industrial Districts, which states, in part: "Except as otherwise expressly permitted for a particular use, the outdoor storage of parts, materials and equipment in an industrial district shall be subject to the following: a. Storage areas shall be screened by a solid wall or fence, including solid entrance and exit gates, not less than seven (7) feet nor more than ten (10) feet in height."

This provision requires that the storage area be screened on all sides by a solid wall or fence. However, during its review of the special permit request, the Architectural Review Board ("ARB") determined that using a wall or fence to screen the stored equipment from the Entrance Corridor ("EC") was not practical due to the topography of the site. The storage area is approximately 10 feet below the elevation of Avon Street Extended. An effective screening fence would have to be so tall to accomplish effective screening that its height would result in an inappropriate appearance for the EC. The ARB established conditions of approval for appropriate landscaping to accomplish a sufficient level of screening from the EC, including angled views from the EC street into the property. This landscaping would also accomplish screening of the storage area from the immediately adjacent properties to the north and south.

The proposed storage area would be visible from the Willoughby neighborhood, located across Moore's Creek to the west of the subject parcel, particularly during the winter months when the leaves are off the trees. (The ARB does not have jurisdiction over views other than those from the EC, so the ARB has not considered the view of the storage area from Willoughby.) A solid fence could accomplish the required screening in this location, but the fence would need to exceed the 10 foot height limit in order to screen the 12 foot tall equipment, and the fence would be very noticeable in the landscape. A staggered row of evergreen trees would appear more coordinated with other on-site screening and with the character of the creekside. At the community meeting held on April 20, 2015 for this proposal, Willoughby residents in attendance stated a preference for the evergreen screening over a solid fence or wall.

County Code § 18-8.5.1 allows the modification of County Code § 18-4.1.52 requirements upon considering whether: (1) the requirement would not forward the purposes of the Zoning Ordinance or otherwise serve the public health, safety, or welfare; or (2) the modification would satisfy the purposes of the Zoning Ordinance to at least an equivalent degree as the specified requirement. Staff opinion is that the requested modification would satisfy the purposes of the Zoning Ordinance to at least an equivalent degree as the specified requirement.

There is no budget impact related to this request.

Staff recommends that the Board adopt the attached Resolution (Attachment D) approving the special use permit to allow the outdoor storage of equipment used in the Applicant's asphalt paving business, with conditions. Staff also recommends that the Board adopt the attached Resolution (Attachment E) approving the special exception to modify County Code § 18-5.1.52 to allow a landscape screening in place of a wall or fence, with one condition.

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Ms. Margaret Maliszewski, Principal Planner, stated this is a request for a special use permit for outdoor storage in an entrance corridor and a related request for a modification to the screening requirements in an industrial district. She said the subject parcels are located on Avon Street Extended, across from the City's CTS Operations Center, just south of Edgecomb's Auto and across Moore's Creek from the Willoughby Subdivision. She said the applicant proposes to construct a building for equipment storage and maintenance and an outdoor equipment storage area, and the equipment that will be stored is the type used in daily operations of a residential asphalt paving business, such as a dump truck, a bobcat, an asphalt roller and a paver. She said the equipment will have a maximum height of 12 feet and the maximum will include the combined height of small equipment that will be typically stored on top of other vehicles. She said the equipment will be taken off the property during regular business hours for use at job sites, and will be returned to the Avon Street site for overnight and other off hours. Ms. Maliszewski said the special use permit is required specifically because the site fell within the Entrance Corridor Overlay District. She stated the purpose of the requirement is to allow for review of the potential visual impacts of the storage on the corridor, and the intent of the overlay district is to ensure the quality of development is compatible with the County's important scenic, historic and cultural resources.

She said the Architectural Review Board has applied the County's EC design guidelines to the review of this request, and they have no objections to these requests with conditions, which are related primarily to the method of screening. She said screening of storage areas is usually accomplished by some type of fencing or some type of landscaping, or some combination of those two things, but because the location sits approximately 10 feet below the elevation of the street, a fence will have to be so tall to accomplish the screening it will not have the appropriate appearance for the Entrance Corridor. Ms. Maliszewski said the ARB has determined that landscaping can provide the required screening and have the appropriate appearance, so the recommended conditions of approval are to revise the landscaping as shown in the concept plan, to increase the size of shade trees, to provide a staggered row of evergreens at both ends of the storage area (the north and south ends), and to provide evergreen screening trees at a minimum planting height of 8-10 feet.

Ms. Maliszewski said the proposed storage area will be visible from the Willoughby neighborhood located across the creek, particularly during the winter months when the leaves are off the trees. She said the ARB only reviews for views from the entrance corridors, so the ARB review did not address the view from Willoughby. She said the ordinance requires that storage areas in industrial districts be screened on all sides by a solid wall or fence, and a solid fence can accomplish that screening from the neighborhood but it will be very noticeable in the landscape, and landscape screening instead of a solid fence will result in a more consistent appearance. She said Willoughby residents who had attended the community meeting in April stated a preference to the landscape screening over the fence or wall, and in addition to the recommended condition of approval for the SP there is a condition recommended for the special exception, which is the requirement for a staggered row of evergreens along the side of the storage area that faces Willoughby. Ms. Maliszewski said that staff recommends the approval of the SP with the conditions that are listed in the staff report, and the approval of special exception related to the screening in the industrial areas with the recommendation she just mentioned.

The Chair opened the public hearing.

Mr. Mark Keller addressed the Board, stating that he represents Terra Concepts, which is involved in the site plan development as well as the community meetings. He stated that Brian Heilman, owner of Virginia Asphalt Services, is also present to answer any questions.

There being no other comments from the public, the public hearing was closed.

Ms. Dittmar stated that she feels this whole process has gone well, and the neighbors have felt they were included in the process.

Ms. Dittmar **moved** to adopt the following resolution approving SP-2014-00019 with the conditions as presented. Ms. Palmer **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

RESOLUTION TO APPROVE SP 2014-19 VIRGINIA ASPHALT

WHEREAS, Virginia Asphalt Services, Inc. (the "Owner") is the owner of Tax Map and Parcel Number 07700-00-00-00800 (the "Property"); and

WHEREAS, the Owner filed an application for a special use permit for outdoor storage, display and/or sales associated with a contractor's office for an asphalt paving company, and the application is identified as Special Use Permit 2014-00019 Virginia Asphalt ("SP 2014-19"); and

WHEREAS, the proposed use is allowed on the Property by special use permit under Albemarle County Code § 18-30.6.3(a)(2); and

WHEREAS, on May 19, 2015, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2014-19 with the conditions recommended by staff; and

WHEREAS, on July 8, 2015, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-09.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Executive Summary prepared for SP 2014-19 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2014-19, subject to the applicable performance standards for this use in Albemarle County Code § 18-5.1.2 and the conditions attached hereto.

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SP-2014-00019 Virginia Asphalt - Conditions

1. The development of the site shall be in general accord with the plan entitled "Virginia Asphalt Services Landscape/Screening Plan" revised 2-17-2014 and prepared by Terra Concepts, PC/Alan Franklin PE, LLC, (hereafter referred to as the "Concept Plan") as determined by the Director of Planning and the Zoning Administrator, and subject to the following conditions. To be in general accord with the Concept Plan, development and use shall reflect the following major elements within the development essential to the use, as shown on the Concept Plan:
   a. Building location
   b. Sales, storage and display area size and location

   Minor modifications to the plan that do not conflict with the elements listed above may be made to ensure compliance with the Zoning Ordinance and ARB requirements.
2. Equipment shall be sold, stored, or displayed only in areas indicated for sales, storage, or display on the Concept Plan.
3. The site shall be landscaped in general accord with the Concept Plan, except that:
   a. Evergreen screening tree height shall be eight (8) to ten (10) feet minimum at planting.
   b. Shade trees along Avon Street Extended shall be three and one-half inches (3½") caliper minimum at planting.
   c. Shade trees along the entrance drive shall be two and one-half inches (2½") caliper minimum at planting.
   d. A staggered row of evergreens shall be provided along the south side of the sales/storage/ display area or the south side of the parcel.
   e. A staggered row of evergreens shall be provided along the north and west sides of the entrance drive and asphalt paved area.
   f. The ARB may require landscaping that is in excess of its design guidelines, Albemarle County Code § 18-32.7.9, or both, in order to mitigate the visual impacts of the proposed use on the Entrance Corridor.
4. Maximum height of equipment to be sold, stored or displayed shall not exceed twelve (12) feet. This height includes equipment sold, stored or displayed on parked vehicles. Other than equipment sold, stored or displayed on parked vehicles, equipment shall not be elevated.

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Ms. Dittmar **moved** to adopt the following resolution approving the special exception to authorize the modification of County Code Section 18-5.1.52 subject to the condition as outlined in the resolution. Ms. Palmer **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 14-19 VIRGINIA ASPHALT**

WHEREAS, Virginia Asphalt Services, Inc. is the owner of Tax Map and Parcel Number 07700-00-00-00800 (the "Property"); and

WHEREAS, the Owner filed an application for a special use permit for outdoor storage, display, and/or sales associated with a contractor's office for an asphalt paving company, which application is identified as Special Use Permit SP 2014-19 Virginia Asphalt ("SP 2014-19"); and

WHEREAS, on May 19, 2015, the Planning Commission recommended approval of SP 2014-19 with conditions; and

WHEREAS, Albemarle County Code § 18-5.1.52(a) establishes that outdoor storage areas shall be screened by a solid wall or fence, including solid entrance and exit gages, not less than seven (7) feet nor more than ten (10) feet in height, which may be modified by special exception; and

WHEREAS, the Owner has requested a modification to allow screening to be provided by landscaping.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Executive Summary, the Planning Commission staff report prepared in conjunction with the application, all of the factors relevant to the special exception in County Code § 18-33.9, and the information provided at the Board of Supervisors meeting, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.52 to allow the use of landscape screening instead of screening in the form of a solid wall or fence, subject to the condition attached hereto.

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SP 2014-19, Virginia Asphalt Special Exception - Condition

1. In addition to the landscape screening required for SP201400019, a staggered row of evergreens, eight (8) to ten (10) feet minimum at planting, shall be provided along the west side of the equipment sales/storage/display area.

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Agenda Item No 16. PUBLIC HEARING: **ZTA-2015-00003 BZA/Variances**. Ordinance to amend Secs. 18-3.1, Definitions, 18-31.2, Building permit applications, 18-32.3.5, Variations and exceptions, 18-32.4.2.8, Effect of approval of initial site plan on other future and pending approvals, 18-32.5.2, Contents of an initial site plan, 18-32.5.4, Groundwater assessment information, 18-32.6.4, Dam break inundation zones; engineering study and mapping information, 18-32.7.4.1, Erosion and sediment control, stormwater management, and other water regulations; water pollution; soil characteristics, 18-32.7.4.2 Easements for facilities for stormwater management facilities and drainage control, 18-34.1, Board of zoning appeals; appointment and organization, 18-34.2, Powers and duties of the board of zoning appeals, 18-34.3, Appeal to the board of zoning appeals, 18-34.4, Application for variances, 18-B34A.134A.1, Architectural review board; appointment and organization, 18-B34A.234A.2, Powers and duties of the architectural review board, 18-36.1, Violations, 18-36.2, Enforcement, 18-36.3, Civil penalties, 18-36.5, Injunctive relief and other remedies; repealing Secs. 18-31.7, Review of public features to determine substantial accord with the comprehensive plan, 18-34.5, Procedure, 18-34.6, Decision of board of zoning appeals; and adding Secs. 18-32.4.2.9, Approval of early or mass grading prior to initial site plan approval, 18-32.4.3.9, Duty to comply, 18-34.5, Special use permits, 18-34.6, Interpreting a district map, and 18-34A.3, Design guidelines, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend the definition of "variance," (18-3.1), clarify the scope of review for building permits in the neighborhood model district (NMD) (18-31.2), repeal review of proposed public facilities as being in substantial accord with the comprehensive plan (18-31.7), clarify the matters that may be varied or excepted (18-32.3.5), amend 18-32.4.2.8 and 18-32.7.4.1) and add (18-32.4.2.9) regulations that are consistent with regulations in Chapter 17 pertaining to early or mass grading, require additional information on site plans within the NMD (18-32.5.2), add an express duty to comply with an approved site plan by maintaining a site as it was approved (18-32.4.3.9), update cross-references to State and County regulations (18-32.5.4, 18-32.6.4, 18-32.7.4.2), reorganize and update the regulations pertaining to the establishment and powers of the board of zoning appeals (BZA) and the standards and procedures for the matters considered by the BZA (18-34.1 through 18-34.6), reorganize and update the regulations pertaining to the establishment and powers of the architectural review board and the procedure for adopting design guidelines (18-34A.1 through 18-34A.3), amend the scope of matters that are a violation of the chapter (18-36.1), amend the information to be included in a notice of violation (18-36.2), prohibit imposition of civil penalties while a violation is appealed to the BZA (18-36.3), and expressly identify the board of supervisors as authorized to seek injunctive relief in an enforcement proceeding (18-36.5). *(Advertised in the Daily Progress on June 22 and June 29, 2015)*

The executive summary as presented by staff states that on July 1, 2015, General Assembly bill HB 1849 will be enacted into State law. This law alters criteria relating to variances and appeals as well as revises proceedings before the Board of Zoning Appeals (BZA). A brief background on the role of the BZA and a comparison of their actions to those of other Boards and Commissions is provided (Attachment B). On March 17 the Planning Commission adopted the attached Resolution of Intent to undertake ordinance amendments to ensure compliance with State law once the legislation takes effect (Attachment A).

As noted in our report for the resolution of intent, we are also using this opportunity for updates, clarifications and corrections to related regulations. This will be generally explained within the discussion and is specifically explained with the annotations in the draft ordinance (Attachment D).

- Variances, Appeals and BZA Process: The Virginia Code (through HB 1849) establishes new procedural requirements for BZA as well as a new definition and criteria for variances. This amendment provides for all types of applications before the BZA such as variance, appeal and interpretation of a district map. Attachment C outlines those changes.
- Variation or Exception for Site Plan Improvement Requirements: Regulations that arise from the subdivision or site plan enabling authority are eligible for administrative approval with appeal to the Commission and Board. Because their authority originates from those and not the general zoning regulations, they are not required to be special exceptions approved only by the Board. This amendment clarifies this distinction.
- Architectural Review Board (ARB) Appointment, Organization and Procedures and Design Guidelines: Section 34A is reorganized and reformatted for consistency with other provisions. A new section is added (Section 34A.3 Design Guidelines) to better describe the process for developing and approving design guidelines.
- Violations: Section 36 is updated for consistency with the Virginia Code.
- Housekeeping / Minor Technical Changes: These changes include updating Code Sections (both Virginia Code and County Code) listed as cross-references. They also include amendment to the site plan regulations consistent with the new State requirements for stormwater management. Amendments to BZA application procedures are provided for consistency with other application procedures (for filing, checking for completeness, resubmittal, withdrawal, etc.).

Staff recommends that the Planning Commission provide feedback on the attached draft ordinance (Attachment D) and direct staff to schedule the zoning text amendment for public hearing.

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Ms. Amelia McCulley, Zoning Administrator, said the proposed revisions are stylistic, not substantive, and will address things such as consistency of capitalization of terms throughout the document. She said the ordinance amendment is primarily a housekeeping amendment to implement new Virginia Code amendments and to update and clarify related ordinance sections, which staff does when in the process of ordinance amendment anyway. Ms. McCulley said there was a work session with the Commission on May 12 and a public hearing on June 2, and they recommended approval of the draft ordinance that is represented in Attachment C.

Ms. McCulley said the Board of Zoning Appeals does not interact much with the Board of Supervisors, although their annual report is provided each year. She said that in Albemarle County, special use permits heard by the Board of Zoning Appeals are limited to signs, offsite signs and electronic message signs, and in some locations Boards of Zoning Appeals hear all other types of special use permits. She said the BZA in Albemarle issues a fairly high number of official determinations of zoning violations, so they end up being the majority of appeals that the Board of Zoning Appeals hears. She said in the past 25 years, they have had no applications for the BZA to interpret the zoning district map. Ms. McCulley said with the County Attorney's Office, they have worked really hard to fix reoccurring variances. She said that she found prior to 2000, they averaged 52 variances a year, and after 2000 they had an average of 13 variances per year, and in the last two years there have been no variances. She said that means things are working well, explaining they are fixing problems that they have, but are also having very honest conversations with applicants and encouraging them to choose any alternative but a variance.

Ms. McCulley said the implementation of House Bill 1849 is the primary purpose of this ordinance amendment, and that relates to some process revisions in terms of the Board of Zoning Appeals, a new definition for variance and new criteria for variances. She said while they seize the opportunity to update the regulations in terms of the Architectural Review Board, they clarify the process that is involved with design guidelines being approved and effective. Ms. McCulley said it clarifies the steps, the first being advertising notice, the second being ARB approval, and the third being the Board ratification. She said the third thing is related to site plans, and is a clarification that technical requirements of a site plan, things that are very clearly articulated as a change from the default requirements, such as curb and gutter, travel way width, those may be administratively approved as part of that site plan process. Ms. McCulley said that is consistent with the Supreme Court ruling, but this housekeeping amendment clarifies this within the site plan code, as it was unclear prior to now. She recommends the Board adopt the ordinance as Mr. Kamptner has distributed.

Mr. Sheffield asked if there is a difference between the May version and the July 7 Version. Mr. Greg Kamptner, Deputy County Attorney, explained that parts of this ordinance were drafted a few months ago and there is a stylistic change that happens, so the changes are made to be consistent with the current style of the zoning ordinances as far as capitalization and section references to the County Code.

Ms. Mallek asked if there is any change in hardship based upon this new legislation or this document. Mr. Kamptner said there is a change, and he thinks the General Assembly believes it is lowering the standards for variances, but the standard finally adopted by the General Assembly is still a very high standard. He stated that "hardship" is one of the alternative criteria that the BZA will consider; the other is if there is an unreasonable restriction that prevents the reasonable use of the property, and

that is also a very high standard. He said it is similar to language in the prior state law, it was rarely used, and almost every variance case that has resulted in a published opinion is based on a hardship standard.

Ms. Mallek said one of the things that has been discussed before the Board for the last several years is the need to increase the types of people who have standing to come before the BZA, and asked if there has been any change to that. Mr. Kamptner said there is no change in those who have been identified to have standing to challenge a BZA decision, but there is a Virginia Supreme Court decision from 2014 that appears to significantly ratchet up what the plaintiff must allege in order to establish standing. He noted that merely alleging proximity to a piece of property is not going to be enough.

Ms. Mallek asked if it is an even higher standard to be agreed than the already very high standard. Mr. Kamptner explained they just have to allege how they are being aggrieved, but just being a next door neighbor will not necessarily give them standing to appeal a BZA decision.

Ms. Mallek said there has been a presumption that the only one that is able to appeal something is the applicant, and there has been very little opportunity for citizens to go forward; they are usually told by the BZA that they cannot participate. Mr. Kamptner said it has never been the requirement that next door neighbors can appeal, they simply have to allege they are persons aggrieved, and it is the alleging how they are aggrieved that has changed under state or court interpretation.

Ms. Mallek said there is one part in this language that says any person can appeal a decision made by a zoning administrator or anyone else on staff, but when the neighbors get to the BZA they are often told it is not a zoning question it is a subdivision question and therefore they cannot participate in the appeal. She said she is trying to find a way to simplify this so if there are concerns they need to be addressed with more directives. Mr. Kamptner said this ordinance further clarifies site plan regulations to ensure they are consistent under state law, because under state law design standards can be varied or accepted by the locality and by state law, and third parties who object to those actions do not have standing to appeal. He said that is a function of state enabling authority, not County ordinance.

Ms. Mallek said the consequence unanticipated on her part, when they voted to make more things administrative rather than legislative, was that the situation was created where neighbors had no standing. Mr. Davis said site plans and subdivisions have never been legislative.

Ms. Mallek said she is referring to the time when many of those decisions regarding the site plan were here at the Board level. Mr. Davis said those were still ministerial decisions that were not subject to third party appeal to courts or BZA. He emphasized there is a difference between appealing a Zoning Administrator's determination and appealing a site plan approval or a subdivision plat approval. He said that subdivision plan approvals and site plans can only be appealed by the applicants, whereas the determination made by a Zoning Administrator can be appealed by anyone who is aggrieved by that decision, to the Board of Zoning Appeals. He said those rules are not something the County can change, as those are mandated by state law and cannot be changed by local ordinance.

Ms. Mallek asked how the presumption of correctness affects the ability to make a correction if one were indicated at the BZA, because it sounds as though the decision that was made originally by staff which is then being appealed is assumed to be perfect. Mr. Kamptner responded it is merely a presumption of correctness, so it shifts the burden to the appellant, and they have to make their case and demonstrate why the administrative decision at the staff level is incorrect. He said it just shifts the burden to the person who is actually appealing the decision to make their case, and it is not an overwhelming presumption. He emphasized the provision is right out of the state statue, so there is no discretion to vary from that standard.

At this time, the Chair opened the public hearing.

Mr. Chuck Boldt, resident of the White Hall District, reminded the Board the state statute that underlines this discussion suggests that any decision can be appealed. He said he would like to think that Chapter 18 entitled Zoning means that anything in that chapter can be appealed, but it is not sounding like that is possible by listening to what is happening. He said there is a BZA, but nothing really comes to it, and in the last two and half years it has met 11 times, which is 25% of its scheduled meetings, and has heard 6½ cases. Mr. Boldt stated the half case was the New Hope Church, but there is nothing that could happen because he had no standing. Mr. Boldt said this is the point Ms. Mallek was making, and it appears to him that the deck is stacked against anyone other than the developer or applicant. He said those who are affected by it, who see poor decision making going on, have no forum to come and talk unless it is before the Board to take three minutes to talk. Mr. Boldt said that one nice thing about the BZA is that they have equal time and can make a case. He stated he would like the Board to consider expanding what will be allowed to go to the BZA because he thinks that part of the problem now is that too few issues get there because too few people have any standing. He said if he does not like what happens at the BZA, there is no appeal process which brings it back to the Board. Mr. Boldt said the Board has given away a lot of their decision making and oversight on finding some general accord and administrative decisions, and he is a victim of that. He said the Board could do nothing because the County Attorney has stated the Board has given that power away, and he hopes they will take steps to take the power back to provide the oversight that is necessary.

There being no other comments from the public, the public hearing was closed.

Ms. McKeel said she wonders if not having many variances for appeal means they might be missing something. Mr. Kamptner said that for the 2000s, the BZA was meeting twice a month because

there were so many appeals and determinations being made. He said the fact that there are no appeals is not because people do not have standing to bring appeals, it is because the zoning decisions that can otherwise be appealed are not being appealed. He said the reason the BZA does not hear variances is because the zoning ordinance is functioning in a way which is not putting landowners in the position where variances are not their only relief from the otherwise overly restricted circumstances. Regarding the limitation on appeals of a site plan, regulations limit variations and exceptions only to the improvements that are required under section 32.7, which is part of the site plan regulations that refers to what the design requirements are for a parking space, so if a typical size is 18 feet x 8 feet, and the applicant wants to reduce a parking space to 17 feet, it is the variation or exception process that allows this. Mr. Kamptner stated the site plan regulations are unique because they are in the zoning ordinance, but the enabling authority for site plans is almost entirely under the state subdivision law. Mr. Kamptner said that site plans in most ways function as subdivision plats and are guided by the state subdivision law not the state zoning law, so the rights of third party appeals under the state subdivision law have been limited by the General Assembly. He said this ordinance follows the enabling authority available to them, and the Board does not have the latitude to expand the authority of the BZA. Mr. Kamptner emphasized the courts have said that BZAs are creatures of statute and they can only exercise the powers that the General Assembly says they can exercise.

Ms. Mallek said they do not even get to appoint them, they are appointed by the court, completely separated from the Board. She said the solution is to go back to having very thorough conditions, not boiler plate site plans. Mr. Kamptner said the types of variations or modifications in zoning regulations come to the Board through the special exception process and there is a right to appeal those decisions.

Ms. Mallek **moved** to adopt the following ordinance, as presented. Ms. Palmer **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

ORDINANCE NO. 15-18(5)

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

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

By Amending:

Sec. 3.1	Definitions
Sec. 31.2	Building permit applications
Sec. 32.3.5	Variations and exceptions
Sec. 32.5.2	Contents of an initial site plan
Sec. 32.5.4	Groundwater assessment information
Sec. 32.6.4	Dam break inundation zones; engineering study and mapping information
Sec. 32.7.4.2	Easements for facilities for stormwater management facilities and drainage control
Sec. 34.2	Powers and duties of the board of zoning appeals
Sec. 34A.1	Architectural review board; appointment and organization
Sec. 34A.2	Powers and duties of the architectural review board
Sec. 36.1	Violations
Sec. 36.2	Enforcement
Sec. 36.3	Civil penalties
Sec. 36.5	Injunctive relief and other remedies

By Amending and Renaming:

Sec. 32.4.2.8	From: Effect of approval of initial site plan on other future and pending approvals	To: Effect an approved initial site plan has on certificates of appropriateness and early or mass grading
Sec. 32.7.4.1	From: Erosion and sediment control, stormwater management, and other water regulations; water pollution; soil characteristics	To: Stormwater management; water pollution; soil characteristics
Sec. 34.1	From: Board of zoning appeals; appointment and organization	To: Board of zoning appeals; establishment and organization
Sec. 34.3	From: Appeal to the board of zoning appeals	To: Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals
Sec 34.4	From: Appeal to the board of zoning appeals	To: Variances

By Adding:

Sec. 32.4.2.9	Approval of early or mass grading prior to initial site plan approval
Sec. 32.4.3.9	Duty to comply
Sec. 34.5	Special use permits
Sec. 34.6	Interpreting a district map
Sec. 34A.3	Design guidelines

By Repealing:
Sec. 31.7 Review of public features to determine substantial accord with the comprehensive plan
Sec. 34.5 Procedure
Sec. 34.6 Decision of board of zoning appeals

Article I. General Regulations

Section 3

Definitions

Sec. 3.1 Definitions

Variance: A reasonable deviation from those provisions regulating the shape, size, or area of a lot, or the size, height, area, bulk, or location of a structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the purpose of this chapter; provided that a variance shall not include a change in use. (Added 10-3-01)

(§ 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13; Ord. 13-18(5), 9-11-13; Ord. 13-18(6), 11-13-13, effective 1-1-14; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(2), 3-5-14)

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

Article IV. Procedure

Section 31

Administration and Enforcement

Sec. 31.2 Building permit applications

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

a. *Review*. The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Within each neighborhood model district, the director of planning shall also review each building permit application to determine whether the proposed structure conforms to the architectural and landscape standards in the approved code of development.

b. *Information to be submitted; number of copies*. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.

c. *Approval*. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.

d. *Circumstances when building permit shall not be approved*. The zoning administrator shall not approve a building permit in the following circumstances:

1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.

2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code section 17-1000 until the applicant complies with Albemarle County Code section 17-1001.

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

e. *Other information for building official*. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

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

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

Section 32

Site Plans

Sec. 32.3.5 Variations and exceptions

The requirements of section 32 may be varied or excepted as follows:

a. *Exception from requirement to provide certain details in site plan*. The agent may except certain details of a site plan and any amendment to a site plan otherwise required by sections 32.5 and 32.6 as provided herein:

1. *Request for exception*. A developer requesting an exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable finding in subsection (a)(2).

2. *Finding.* An exception may be approved if the agent finds that unusual situations exist or that strict adherence to requiring the details in sections 32.5 or 32.6 would result in substantial injustice or hardship. This finding shall be supported by information from the site review committee that all of the details required by sections 32.5 and 32.6 are not necessary for its review of the proposed development, and from the zoning administrator, in consultation with the county engineer, that the details waived are not necessary to determine that the site is developed in compliance with this chapter and all other applicable laws.

3. *Action by the agent on a request.* The agent may approve or deny the request. In approving an exception, the agent shall identify the details otherwise required by sections 32.5 and 32.6 that are excepted.

b. *Variation or exception from any requirement of section 32.7*. Any requirement of section 32.7, including any requirement incorporated by reference in section 32.7 except for those requirements applicable to signs under section 32.7.8(A), may be varied or excepted in an individual case as provided herein:

1. *Request for a variation or exception*. A developer requesting a variation or exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable findings in subsections (b)(2) and (b)(3). When a variation is requested, the developer also shall describe the proposed substituted technique, design or materials composing the substituted improvement. The request should be submitted before the site review committee considers the initial site plan. The agent may request that the site review committee provide information and a recommendation on any request for a variation or exception.

2. *Findings required for a variation*. The agent may approve a request for a variation to substitute a required improvement upon finding that because of an unusual situation, the developer's substitution of a technique, design or materials of comparable quality from that required by section 32.7 results in an improvement that substantially satisfies the overall purposes of this chapter in a manner equal to or exceeding the desired effects of the requirement in section 32.7.

3. *Findings required for an exception*. The agent may approve a request for an exception from any requirement of section 32.7 upon finding that: (i) because of an unusual situation, including but not limited to the unusual size, topography, shape of the site or the location of the site; or (ii) when strict adherence to the requirements would result in substantial injustice or hardship by, including but not limited to, resulting in the significant degradation of the site or to adjacent properties, causing a detriment to the public health, safety, or welfare, or by inhibiting the orderly development of the area or the application of sound engineering practices.

4. *Findings required for a variation or exception of any requirement of section 32.7.5.2*. If the developer requests a variation or exception of any requirement of section 32.7.5.2, the agent shall consider whether the requirement would unreasonably impact the existing above-ground electrical network so that extensive off-site improvements are necessary. In approving a variation or exception, the agent shall find, in addition to the required findings under subsection (b)(2) or (b)(3), that requiring undergrounding would not forward the purposes of this chapter or otherwise serve the public interest and that

granting the variation or exception would not be detrimental to the public health, safety, or welfare, to the orderly development of the area, and to the land adjacent thereto.

5. *Action by the agent on a request; conditions*. The agent may approve, approve with conditions, or deny the request. If a request is approved, the agent shall prepare a written statement regarding the findings made. If a request is denied, the agent shall inform the developer in writing within five (5) days after the denial, and include a statement explaining why the request was denied. In approving a request, the agent may impose reasonable conditions deemed necessary to protect the public health, safety, or welfare.

c. *Appeals*. The decision of the agent may be appealed as provided in section 32.3.6.

(§ 32.3.5, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.2 (part), 5-1-87; § 32.2.2, 12-10-80) (§ 32.3.5; § 32.5.1, 12-10-80) (§ 32.3.10, Ord. 01-18(4), 5-9-01; § 32.3.11.4, 5-1-87) (§ 32.7.9.3, 5-1-87))

State law reference – Va. Code §§ 15.2-2241(9), 15.2-2242(1).

Sec. 32.4.2.8 Effect an approved initial site plan has on certificates of appropriateness and early or mass grading

An approved initial site plan affects the following pending and future approvals:

a. *Issues pertaining to a certificate of appropriateness*. An approved initial site plan that has complied with the architectural review board's requirements identified under section 32.4.2.2(b) shall be deemed to be consistent with the applicable design guidelines pertaining to the elements of sections 30.6.4(c)(2), (3) and (5) delineated in section 32.4.2.2(b)(1).

b. *Early or mass grading*. On any site within a conventional or planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17, subject to the following: (i) no grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; (ii) the developer has satisfied the conditions of approval identified by the agent in the letter required by section 32.4.2.5(d); and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

(§ 32.4.2.8, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference – Va. Code §§ 10.1-563, 15.2-2241, 15.2-2286(A)(4), 15.2-2306.

Sec. 32.4.2.9 Approval of early or mass grading prior to initial site plan approval

On any site within a planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17 prior to initial site plan approval, subject to the following:

a. The erosion and sediment control plan measures, disturbed area, and grading are in conformity with the conceptual grading plan and measures shown on the application plan as determined by the county engineer, after consultation with the director of planning; provided that if, after consultation with the director of planning, the county engineer finds that there is not enough detail on the application plan to ensure that the proposed grading and other measures are consistent with the application plan, the early or mass grading shall not be approved until the final site plan is approved

b. No grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

State law reference – Va. Code §§ 15.2-2241, 15.2-2286(A)(4), 15.2-2306, 62.1-44.15:55.

Sec. 32.4.3.9 Duty to comply

Each site, if it is developed, shall be developed and maintained in compliance with the approved final site plan.

State law reference – Va. Code §§ 15.2-2240, 15.2-2246, 15.2-2286(A)(8).

Sec. 32.5.2 Contents of an initial site plan

Each initial site plan shall contain the following information:

a. *General information*. The name of the development; names of the owner, developer and individual who prepared the plan; tax map and parcel number; boundary dimensions; zoning district; descriptions of all proffers, special use permits and conditions thereof, special exceptions and conditions thereof, variances and conditions thereof, application plans, codes of development and bonus factors applicable to the site; magisterial district; county and state; north point; scale; one datum reference for elevation (if section 30.3, flood hazard overlay district, applies to any portion of the site, United States Geological Survey vertical datum shall be shown and/or correlated to plan topography and show existing and proposed ground elevations); the source of the topography; departing lot lines; minimum setback lines, yard and building separation requirements; the source of the survey; sheet number and total number of sheets; and the names of the owners, zoning district, tax map and parcel numbers and present uses of abutting parcels.

b. *Information regarding the proposed use*. Written schedules or data as necessary to demonstrate that the site can accommodate the proposed uses, including proposed uses and maximum acreage occupied by each use; maximum number of dwelling units by type including the number of bedrooms for multi-family dwellings; gross residential density; square footage of recreational areas; the percentage and acreage of open space; maximum square footage for commercial and industrial uses; maximum floor area ratio and lot coverage for industrial use; maximum height of all structures; schedule of parking including the maximum amount required and the amount provided; the maximum amount of impervious cover on the site; and if a landscape plan is required, the maximum amount of paved parking and other vehicular circulation areas.

c. *Phase lines*. If phasing is planned, phase lines and the proposed timing of development.

d. *Topography and proposed grading*. Existing topography (up to twenty [20] percent slope, maximum five [5] foot contours, over twenty [20] percent slope, maximum ten [10] foot contours) for the entire site with sufficient offsite topography to describe prominent and pertinent offsite features and physical characteristics, but in no case less than fifty (50) feet outside of the site unless otherwise approved by the agent; proposed grading (maximum five [5] foot contours) supplemented where necessary by spot elevations; areas of the site where existing slopes are steep slopes.

e. *Landscape features*. The existing landscape features as described in section 32.7.9.4(c).

f. *Watercourses and other bodies of water*. The name and location of all watercourses and other bodies of water adjacent to or on the site; indicate whether the site is located within the watershed of a public water supply reservoir.

g. *Onsite sewage system setback lines*. The location of onsite sewage system setback lines from watercourses including intermittent streams and other bodies of water.

h. *Floodplain and related information*. The boundaries of the flood hazard overlay district, the base flood elevation on the site, the elevation of the lowest floor, including any basement, and for any structures to be flood-proofed as required by section 30.3, the elevation to which the structures will be flood-proofed.

i. *Streets, easements and travelways*. The existing and proposed streets, including proposed bike lanes, access easements, alley easements and rights-of-way, and travelways, together with street names, state route numbers, right-of-way lines and widths, centerline radii and pavement widths.

j. *Existing sewer and drainage facilities*. The location and size of existing water and sewer facilities and easements, the storm drainage system, drainage channels, and drainage easements.

k. *Proposed sewer and drainage facilities*. The proposed conceptual layout for water and sewer facilities and the storm drainage system, indicating the direction of flow in all pipes and watercourses with arrows.

l. *Existing and proposed utilities*. The location of other existing and proposed utilities and utility easements, including existing telephone, cable, electric and gas easements.

m. *Ingress and egress*. The location of existing and proposed ingress to and egress from the property, showing the distance to the centerline of the nearest existing street intersection.

n. *Existing and proposed improvements*. The location and dimensions of all existing and proposed improvements including buildings (maximum footprint and height) and other structures; walkways; fences; walls; trash containers; outdoor lighting; landscaped areas and open space; recreational areas and facilities; parking lots and other paved areas; loading and service areas; signs; and the proposed paving material types for all walks, parking lots and driveways.

o. *Areas to be dedicated or reserved*. All areas intended to be dedicated or reserved for public use under sections 32.7.1.1, 32.7.1.2 and 32.7.1.3, and shall include a note on the plan stating that the land is to be dedicated or reserved for public use.

p. *Landscape plan*. A landscape plan that complies with section 32.7.9, if it is required to be submitted with the initial site plan.

q. *Traffic generation figures*. If deemed appropriate by the agent due to the intensity of the development, estimated traffic generation figures for the site based on current Virginia Department of Transportation rates; indicate the estimated number of vehicles per day and the direction of travel for all connections from the site to a public street.

r. *Symbols and abbreviations*. A legend showing all symbols and abbreviations used on the plan.

s. *Additional information*. The agent may require additional information to be shown on the initial site plan as deemed necessary to provide sufficient information for the agent and the site review committee to adequately review the plan.

t. *Dam break inundation zones.* The limits of a dam break inundation zone.

u. *Additional information for site plans within the neighborhood model district*. Each site plan for a planned development within the neighborhood model district shall contain the following additional information: (i) the site plan pertains to at least one block; (ii) a phasing plan; and (iii) building elevations for all new or modified structures.

((§ 32.5.6, 5-1-87, 2-6-02) (§ 32.4.5, 12-10-80); § 32.5.2, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(1), 3-5-14; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2286(A)(8).

Federal law reference – 44 CFR § 60.3(b)(3)

Sec. 32.5.4 Groundwater assessment information

The application for an initial site plan shall include draft groundwater management plans and aquifer testing workplans required by sections 17-1003 and 17-1004, if applicable. The requirements of sections 17-1003 and 17-1004 shall be satisfied prior to final site plan approval.

(§ 32.5.4, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.5.7, Ord. 04-18(4), 12-8-04, effective 2-8-05))

State law reference – Va. Code § 15.2-2121.

Sec. 32.6.4 Dam break inundation zones; engineering study and mapping information

If the proposed development is located wholly or partially within a dam break inundation zone, the developer shall submit with the final site plan the following:

a. *Engineering study*. If the Virginia Department of Conservation and Recreation determines that a plan of development proposed by a developer would change the spillway design flood standards of an impounding structure pursuant to Virginia Code § 10.1-606.3, the developer shall submit an engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act in Virginia Code § 10.1-604 *et seq*. and the Virginia Impounding Structure regulations in 4VAC50-20-10 *et seq*. The engineering study shall be reviewed and acted upon by the Virginia Department of Conservation and Recreation as provided in Virginia Code § 15.2-2243.1.

b. *Mapping information*. The developer shall provide the dam owner, the county, and any other affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.

(Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference--Va. Code §§ 10.1-606.3, 15.2-2243.1.

Sec.32.7.4.1 Stormwater management; water pollution; soil characteristics

Each site plan shall comply with the following:

~~a~~. *Stormwater management*. Each site plan shall comply with all applicable requirements of chapter 17.

b. *Water pollution*. In addition to the provisions of section 4.14 and other applicable laws, each site plan shall provide for minimizing the pollution of downstream watercourses and groundwater where on-site measures are deemed warranted by the county engineer. In determining whether and what measures, if any, are warranted, the county engineer shall consider the character of the proposed use including, but not limited to, whether petroleum products, pesticides, poisons, synthetic organic compounds, or other substances would be stored or used on the site which, if improperly stored or inadvertently discharged, may reasonably be anticipated to pollute surface water or groundwater.

c. *Soil characteristics*. In reviewing site plans, the site review committee shall refer to the U. S. Department of Natural Resource Conservation Service, Soil Survey of Albemarle County,

Virginia, August, 1985 in commenting on soil suitability for the intended development and, in particular, Table 10 Building Site Development, Table 12 Construction Materials, and Table 16 Soil and Water Features. If soils are rated as “poor” or “severely limited” for a proposed use, or where high seasonal water table and/or hydrologic group D soils are encountered, the site review committee shall notify the agent of these conditions and provide recommendations for special design measures.

(§ 32.7.4.1, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.7.4, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.1, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.2, 5-1-87) (§ 32.7.4.3; § 32.5.14, 12-10-80) (§ 32.7.4.4, 5-1-87))

State law reference – Va. Code §§ 10.1-2108, 15.2-2241(3), 15.2-2283, 62.1-44.15:24 *et seq*.

Sec. 32.7.4.2 Easements for facilities for stormwater management facilities and drainage control

The agent shall require each developer to dedicate easements to the county for facilities for stormwater management and drainage control as follows:

a. *Easements required*. The following easements shall be required:

1. An easement for all stormwater management facilities and drainage control improvements located on the site shall be established whenever the improvement is designed, constructed, or both, beyond a street right-of-way or access easement, and shall extend from all drainage outfalls to an adequate channel as defined in 9VAC25-840-10 that satisfies the minimum standards in 9VAC25-840-40(19) to the boundary of the site.

2. An easement along any natural stream or man-made waterway located on the site that will be used for drainage purposes.

b. *Area of easement*. The area of each easement shall be sufficient, as determined by the county engineer, to: (i) accommodate the facilities and the drainage characteristics from each drainage outfall from a drainage control facility; and (ii) allow access to a natural stream or man-made waterway to allow widening, deepening, relocating, improving, or protecting the natural stream or man-made waterway for drainage purposes.

c. *Right of ingress and egress*. Each easement shall include the right of ingress and egress for installation, maintenance, operation, repair, and reconstruction of any improvement within the easement. The agent also may require that an easement be provided through abutting land under the same ownership as the site.

d. *Compensation not required*. The board of supervisors shall not be required to compensate the developer for any easement or any improvements thereon.

e. *Not considered part of street width*. No easement shall be considered part of any required street width.

(§ 32.7.4.2, Ord. 12-18(6), 10-3-12, effective 1-1-13)

State law reference – Va. Code § 15.2-2241(3).

Section 34

Board of Zoning Appeals

Sec. 34.1 Board of zoning appeals; establishment and organization

A board of zoning appeals (the “board”) is hereby established, subject to the following:

a. *Members and their appointment*. The board shall have five (5) members. Each member shall be appointed by the Albemarle County Circuit Court.

b. *Eligibility*. Each member shall be a qualified resident of Albemarle County.

c. *Term; vacancies; serving beyond expiration of term*. Members shall be appointed for terms of five (5) years and any member may be reappointed for successive terms. The original appointments were made in staggered terms so that the term of one member expires each year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

d. *Holding other public office prohibited*. A member may not hold any other public office within the county except that one member may be a member of the commission.

e. *Organization*. The board shall elect at its annual meeting a chairman, who shall preside over all meetings, a vice-chairman, who shall act in the absence of the chairman, and a secretary. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not vote on any matter. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.

f. *Quorum*. A quorum shall be a majority of all the members of the board.

g. *Resources; obtaining services*. Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary for transaction of its business. The board may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.

h. *Compensation*. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

i. *Removal from office*. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Albemarle County Circuit Court, after hearing held after at least fifteen (15) days' notice.

State law reference – Va. Code §§ 15.2-2308, 15.2-2309.

Sec. 34.2 Powers and duties of the board of zoning appeals

The board of zoning appeals (the "board") shall have the following powers and duties:

a. *Meet and conduct business; continued meetings due to inclement weather*. To regularly meet to conduct its business as provided in section 34.1 and this section. The board also may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. The finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for the meeting shall be conducted at the continued meeting and no further advertisement is required.

b. *Appeals*. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer, and to hear and decide appeals from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter, exclusive of section 32, as provided in section 34.3.

c. *Variances*. To consider and approve variances as provided in section 34.4.

d. *Special use permits*. To consider and approve special use permits for certain signs under sections 4.15.5 and 4.15.5A, and to revoke a special use permit previously approved, as provided in section 34.5.

e. *Interpret a district map* To hear and decide applications to interpret a district map where there is any uncertainty as to the location of a district boundary, as provided in section 34.6.

f *Power to administer oaths and compel attendance of witnesses*. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses for any hearing on an appeal under section 34.3 or any application for a variance under section 34.4.
State law reference – Va. Code § 15.2-2309.

Sec. 34.3 Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals

An appeal from any order, requirement, decision or determination made by an administrative officer, and an appeal from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter (collectively, a "decision"), exclusive of any decision made under section 32, shall be considered by the board of zoning appeals (the "board") as follows:

a. *Standing to appeal*. An appeal to the board may be taken by any person aggrieved or by any county officer, department, board or bureau affected by any decision of the zoning administrator or an administrative officer.

b. *Time in which to appeal decision*. Any appeal shall be received by the zoning administrator and the board within thirty (30) days after the date of the decision; provided that any appeal of a notice of violation involving temporary or seasonal commercial uses, parking commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations, shall be received by the zoning administrator and the board within ten (10) days after the date of the decision.. The date of the decision shall be the date of the letter or written notice, provided that the time in which to appeal an order or a notice of violation shall not commence unless and until the recipient is provided the notice required by section 36.2(d).

c. *Form of the appeal*. Any appeal shall be in writing and shall state the grounds for the appeal.

d. *Where appeal must be submitted*. An appeal must be submitted to the zoning administrator and to the board. An appeal received by the county's department of community development shall be deemed to have been received by both the zoning administrator and the board.

e. *Payment of fees*. The submitted appeal shall be accompanied by the applicable fee required by section 35.1. An appeal shall not be deemed to have been received until the required fee is paid.

f. *Effect of filing appeal*. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that, by reason of the facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. If the zoning administrator makes such a certification, the proceedings shall not be stayed unless either the board or the Albemarle County Circuit Court grants a restraining order on application and on notice to the zoning administrator and for good cause shown.

g. *Transmittal of information*. The zoning administrator shall promptly transmit to the board all the papers constituting the record upon which the action appealed from was taken.

h. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the appeal:

1. *Scheduling the hearing on the appeal*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (j).

2. *Notice of the hearing.* The board shall give notice of the hearing as well as written notice to the parties to the appeal. The notice shall be given as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the appeal, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the appellant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the appeal. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the appellant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an appeal, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

i. *Procedural requirements at the hearing*. The following procedures apply at the board's hearing on the appeal:

1. *The right to equal time for a party to present its side of the case*. The board shall offer an equal amount of time in a hearing on the case to the appellant or other person aggrieved and the county staff.

2. *The administrative officer's required explanation*. The administrative officer whose decision is being appealed shall explain the basis for his decision.
3. *The presumption of correctness*. At the hearing, the administrative officer's decision is presumed to be correct.

4. *Burden of proof.* After the administrative officer explains the basis for his decision, the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.

j. *Time for decision*. The board shall schedule a reasonable time for the hearing on an appeal so that it may make its decision within ninety (90) days after the date the appeal was filed. This ninety (90) day period is directory, not mandatory.

k. *Factors to consider when acting*. The board's decision shall be based on its judgment of whether the administrative officer's decision was correct. The board also shall consider any applicable ordinances, laws, and regulations in making its decision. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

l. *Action by the board; vote required*. The board may reverse or affirm, wholly or partly, or may modify, the decision appealed from. The concurring vote of three (3) members of the board is required to reverse any decision. if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

m. *Effect of decision on owner; appeals from notices of violation or written orders*. A decision by the board on an appeal from a notice of violation or a written order of the zoning administrator shall be binding upon the owner of the lot that is the subject of the appeal only if the owner was provided written notice of the zoning violation or written order. The owner's actual notice of the notice of zoning violation or written order, or active participation in the appeal hearing, shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

n. *Judicial review*. Any action contesting a decision of the board shall be as provided in Virginia Code § 15.2-2314.

o. *Appeals of decisions made under section 32*. Any appeal of a decision made under section 32 shall be brought only as provided in section 32.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2311, 15.2-2312, 15.2-2314.

Sec. 34.4 Variances

An application for a variance shall be considered by the board of zoning appeals (the "board") as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the "applicant"). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Criteria to establish right to a variance*. Information pertaining to the criteria to establish the right to a variance in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the variance, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The following procedures apply at the board's hearing on the application:

1. *The right to equal time for a party to present its side of the case*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

2. *Burden of proof.* The applicant has the burden to prove by a preponderance of the evidence that his application meets the definition of a variance in Virginia Code § 15.2-2201 and the criteria in subsection (i).

i. *Criteria to establish basis to grant a variance*. The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:

1. *Good faith acquisition and hardship not self-inflicted*. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

2. *No substantial detriment*. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

3. *Condition of situation not general or recurring*. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

4. *Use variance prohibited*. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.

5. *Special use permit or special exception not available*. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant variance*. The concurring vote of three (3) members of the board is required to grant a variance.

m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:

1. *Nature of conditions*. The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.

2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.

n. *Effect of granting variance; expansion of structure*. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

o. *Withdrawal of application*. An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. *Request to withdraw by applicant*. An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

2. *When application deemed withdrawn*. An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

p. *Resubmittal of similar denied application*. An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

q. *Judicial review*. Any action contesting a decision of the Board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Sec. 34.5 Special use permits.

An application for a special use permit authorized by sections 4.15.5 and 4.15.5A shall be considered by the board of zoning appeals (the “board”) as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Factors to be considered for acting on the application*. Information pertaining to the factors to be considered for a special use permit in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that

constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

i. *Factors to consider when acting*. The board shall reasonably consider the following factors when it is reviewing and acting on a special use permit:

1. *No substantial detriment*. The proposed special use will not be a substantial detriment to adjacent lots.

2. *Character of district unchanged*. The character of the district will not be changed by the proposed special use.

3. *Harmony*. The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in sections 4 and 5, as applicable, and with the public health, safety, and welfare.

4. *Consistency with comprehensive plan*. The proposed special use will be consistent with the comprehensive plan.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant special use permit*. The concurring vote of three (3) members of the board is required to grant a special use permit.

m. *Conditions*. In granting a special use permit, the board may impose conditions, as follows:

1. *Nature of conditions*. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit.

2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a special use permit shall be deemed to be essential and nonseverable from the permit itself and any condition determined to be invalid, void or unlawful shall invalidate the permit.

n. *Revocation of permit*. The board may revoke a special use permit that it previously granted if it determines, after a hearing, that there has not been compliance with the terms or conditions of the permit. The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail.

o. *Withdrawal of application*. An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. *Request to withdraw by applicant*. An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

2. *When application deemed withdrawn*. An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

p. *Resubmittal of similar denied application*. An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

q. *Judicial review*. Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Sec. 34.6 Interpreting a district map

An application to interpret a district map shall be considered by the board of zoning appeals (the “board) as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the "applicant"). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Factors to be considered for an application*. Information pertaining to the factors to be considered for interpreting a district map in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing to the owners of the lots that are affected by the question and as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or

attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

i. *Factors to consider when acting*. The board shall reasonably consider the following factors when it is reviewing and acting on an application to interpret at district map:

1. *Uncertainty in district boundary*. Whether there is any uncertainty as to the location of a district boundary, provided that the board shall not have the power to change substantially the locations of district boundaries that are established by ordinance.

2. *Intent and purpose of section or district*. The board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant special use permit*. The concurring vote of three (3) members of the board is required to change a district boundary.

m. *Withdrawal of application*. An application may be withdrawn, or be deemed to be withdrawn, as provided herein:

1. *Request to withdraw by applicant*. An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.

2. *When application deemed withdrawn*. An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

n. *Resubmittal of similar denied application*. An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

o. *Judicial review*. Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Section 34A

Architectural Review Board (Added 10-3-90)

Sec. 34A.1 Architectural review board; appointment and organization

An architectural review board (the "board") is hereby established, subject to the following:

a. *Members and their appointment*. The board shall have five (5) members. Each member shall be appointed by the board of supervisors.

b. *Eligibility*. Each member shall be a qualified residents of Albemarle County and shall have a demonstrated interest, competence or knowledge in architecture, site design, or both.

c. *Term*. Members shall be appointed for terms of four (4) years and shall serve at the pleasure of the board of supervisors. Initial appointments shall be for two (2) members for four (4) years and three (3) members for two (2) years.

d. *Organization*. The board shall elect at its annual meeting a chairman, who shall preside over all meetings, and a vice-chairman, who shall act in the absence of the chairman. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.

e. *Quorum*. A quorum shall be a majority of all the members of the board.

f. *Resources; obtaining services*. Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary to transact its business. The board may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.

g. *Compensation*. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.2 Powers and duties of the architectural review board

The architectural review board (the "board") shall have the following powers and duties:

a. *Meet and conduct business*. Regularly meet to conduct its business as provided in section 34A.1 and this section.

b. *Review initial site plans*. Review initial site plans and provide requirements and recommendations as provided in section 32.4.2.2(b).

c. *Review and act on certificates of appropriateness*. Review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the entrance corridor street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.

d. *Promulgate design guidelines*. Promulgate design guidelines as provided in section 34A.3.

e. *Provide recommendations and act as advisor.* Recommend areas to be included in the entrance corridor overlay districts and streets to be designated as entrance corridor streets, and act as an advisor to the commission, the board of supervisors and the board of zoning appeals on any applications for approval under this chapter or chapter 14.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.3 Design guidelines

The architectural review board (the "board") shall promulgate design guidelines it determines to be appropriate for one or more entrance corridors:

a. *Review and act on certificates of appropriateness*. The board shall review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the entrance corridor street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.

b. *Promulgation*. The board shall promulgate design guidelines by an affirmative vote to approve the guidelines.

c. *Notice of promulgation*. Before the board acts on any design guidelines, notice that design guidelines are being considered for approval shall be advertised as provided in Virginia Code § 15.2-2204.

d. *Ratification*. After the board has promulgated the design guidelines, it shall forward them to the board of supervisors for ratification. The board of supervisors may ratify the design guidelines in whole or in part. If the board of supervisors decides to ratify the design guidelines, it shall do so by an affirmative vote to confirm the architectural review board's approval. Any design guidelines not ratified by the board of supervisors shall be returned to the architectural review board for reconsideration, modification or other action.

e. *Effect of ratification*. Any design guideline shall become effective only after it has been ratified by the board of supervisors.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Section 36

Violations

Sec. 36.1 Violations

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

a. *Uses*. Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

b. *Structures or improvements*. Any structure or improvement and, within the flood hazard overlay district, any development as that term is defined in section 30.3.5, that is established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

c. *Structures without building permits*. Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

d. *Use of structure or site without certificate of occupancy*. Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

e. *Requirements and standards*. The failure to comply with any other requirement or standard of this chapter.

(§ 36.1, 12-10-80, 12-20-80; Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09; Ord. 14-18(1), 3-5-14)

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

Sec. 36.2 Enforcement

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

a. *Investigation*. Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.

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

c. *Subpoenas duces tecum (court order to produce records)*. Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).

d. *Notice of violation; exception*. If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing, permitting the violation, or both, if the ~~z~~oning ~~a~~dministrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(~~a~~).

   1. *Contents of notice*. The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within the applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; (iv) the applicable appeal fee; (v) a reference to where additional information may be obtained regarding filing an appeal; and (vi) the time within which the violation shall be abated.

2. *Delivery of notice*. The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.

e. *Remedies*. In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

(§36.2, 12-10-80; §36.3, 12-10-80; § 36.4, 12-10-80; Ord. 09-18(3), 7-1-09)

State law reference – Va. Code § 15.2-2204, 15.2-2286(A)(4), 15.2-2311.

Sec. 36.3 Civil penalties

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

a. *Procedure*. Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.

b. *Minimum elements of a civil summons or ticket*. A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.

c. *Amount of civil penalty*. Any violation of this chapter shall be subject to a civil penalty of two hundred dollars ($200.00) for the initial summons, and a civil penalty of five hundred dollars ($500.00) for each additional summons arising from the same set of operative facts.

d. *Maximum aggregate civil penalty*. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars ($5,000.00). After the civil penalties reach the five thousand dollar ($5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.

e. *Each day a separate offense; single offense in 10-day period; stay*. Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.

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

g. *Civil penalties are in lieu of criminal penalties*. A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.

h. *Violations excluded*. Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term “land development” means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project’s compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

i. *Assessment of civil penalties during appeal period*. No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided under section 34.3(b).

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

State law reference – Va. Code §§ 15.2-2209, 15.2-2311.

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be in an action by the board of supervisors seeking injunctive or other appropriate relief.

(§ 37.3; Ord. 00-18(5), 6-14-00)

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

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Agenda Item No. 17. **PUBLIC HEARING: ZTA-2015-00006. Wireless; ZTA 2015-00007 Wireless; ZTA 2015-00008 Wireless.** Ordinances that would amend Sec. 18-5.1.40, Personal wireless service facilities; collocation, replacement, and removal of transmission equipment, of Chapter 18, Zoning, of the Albemarle County Code, as follows:

*(**Note:** All three items associated with these public hearings were advertised in the Daily Progress on June 22 and June 29, 2015)*

Item No. 17.a. **ZTA-2015-00006. Wireless – Antenna size and mounting standards**. This ordinance would amend Sec. 18-5.1.40 by increasing the maximum antenna size allowed from 1152 to 1400 square inches, and by increasing the maximum distance an antenna may project from the structure to which it is attached from 12 inches, measured from the face of the antenna, to 12 inches for the closest point and 18 inches for the farthest point, measured from the back of the antenna.

The executive summary as presented by staff states that an application has been filed to increase the by-right permitted size of antenna from 1,152 square inches to 1,400 square inches and to modify the way standoff for the antenna is measured. Currently the by-right permitted standoff is 12 from the face of the tower to the face of the antenna. The applicant's proposal is 12 inches from the face of the tower to the back of the antenna. The Planning Commission had previously discussed potentially adopting a resolution of intent for these changes. However, prior to the Planning Commission adopting a resolution of intent an application from the public was received.

The applicant has submitted a justification for this request which is included as Attachment A. The current by-right permitted size for antenna and the standoff were generated during the original development of the County's Personal Wireless Services Facilities Plan in the late 1990s. The standard was based on the equipment and mounting standards used at that time and projected to be used in the future. In the 15 years since the adoption of the standard there have been substantial changes in technology and in the demands of the system. Everyone is familiar with the pattern of miniaturization of electronics. The wireless industry is no exception to this pattern of miniaturization. The natural assumption would be that this process would result in smaller and smaller antennas. This has not been the case. Modern antennas perform many more tasks than older equipment is able to accommodate. The miniaturization process has slowed the rate that equipment size has increased. In other words, a significant increase in capability is possible with a smaller increase in size than would occur without miniaturization. This need for increased capability is driven by several factors. One factor is the increased demand that users have. The public demands ever greater coverage and functionality from wireless services. Another factor is the legal requirement that service providers have to maintain and serve "legacy systems". Not all wireless phones work on the same frequency or even the same type of operating system. The wireless providers must continue to cover all types of users. They must continue to serve older phones while expanding service to cover newer phones. The changing technology and demand for service are generating the need to increase antenna size. Currently, approval of antenna more than 1,152 square inches requires a special exception. Multiple requests have been approved and staff is unaware of any requests that have been denied.

The increase standoff requested by the applicant allows for downtilt of the antenna and accommodation of the increased antenna depth. Previously in this report it has been discussed that the antenna sizes are increasing. This is not only an increase in the overall surface area of the antenna but also in the thickness of the antenna. Currently the standoff permitted is 12 inches and is measured from the face of the tower to the face of the antenna. With the increased thickness of the antenna there is insufficient room to adequately mount and route cabling to the antenna. The increased antenna depth also does not allow for angling of the antenna to focus the antenna to the desired coverage area or to provide for downtilt. Both of these are shown on Attachment D. By titling the antenna downward a significant improvement in the coverage provided may be achieved. This titling allows the signal to be targeted to a focused area instead of being more diffused which results in lessened performance and potential interference with other sites. When the original standards for antenna standoff were developed downtil was not used by any service providers. This is another example of how the County ordinance has not addressed changing technological requirements. Staff has clarified with the applicant that the request submitted is intended to change the measurement so that as long as any portion of the antenna is within 12 inches of the face of the tower the requirement

has been met. Staff is concerned that this does not establish any maximum standoff. Without maximum standoff the depth and downtilt angle of the antenna would be unlimited. Staff is recommending a maximum standoff of 18 inches measured from the face of the tower to the face of the antenna. This is graphically shown on Attachment D. As with antenna size, the current by-right permitted standoff distances may be modified with the approval of a special exception.

Multiple requests have been approved and staff is unaware of any requests that have been denied.

Staff has also analyzed this request for consistency with the 1996 Telecommunications Act. The relevant provisions of The Act are included as Attachment B. Staff does not believe that the current ordinance is in violation of The Act. A complete limit in the size and mounting standards for equipment without the allowance for a special exception would likely be in violation of The Act. However, if a special exception request were denied it would have to be evaluated to determine if the County had:

- unreasonably discriminated among providers of functionally equivalent services, or
- prohibited or had the effect of prohibiting the provision of personal wireless services

One intent of the County's Wireless Policy and Ordinance was to make a reasonable accommodation of existing and foreseen technology. It has not been updated in 15 years to reflect changes in technology. Staff opinion is that the proposed amendments would reasonably allow all technologies to be deployed throughout the County without sacrificing the primary goal of the Wireless Policy which is to minimize visibility. Staff opinion is that the proposed amendment is consistent with the goals of the Wireless Policy.

This amendment has no negative budget impacts.

Staff recommends approval of the applicant's proposed amendment with the inclusion of a maximum standoff.

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Mr. Bill Fritz, Chief of Special Projects, addressed the Board and stated this application deals with the antenna size and mounting standards, and said the antenna size has been increasing since the adoption of the initial ordinance of 2004. He said the trend of miniaturization of electronics will make one think the antennae will be getting smaller and not larger; however, the antennae used today performs significantly more duties than older antennas and must provide services not only to the newest mobile devices but also older legacy devices. Mr. Fritz said the trend of miniaturization has slowed the rate of increase in antennae size which results in fewer antenna overall and smaller antenna than what will otherwise occur. He said what this particular application will do is change the way they measure setback; the current measurement method is to the face of the antenna, and the proposed measurement method will be to the back of the antenna, still 12 inches, but changing it from the back to the front. Mr. Fritz stated this is an application filed by a member of the public, and they provided some information which has been included in this presentation. He said the difference between the proposed size of 1,400 square inches and the existing size of 1,152 square inches is 248 square inches. Mr. Fritz said the applicant provided some photographs of mock antennas of different sizes and took pictures at 50 feet, then showed what the difference would be for the 1,152 size being on the right and 1,400 being on the left. He said the photos were taken at 50 feet, 100 feet and at 150 feet, and they also took some photographs of existing towers.

Mr. Fritz said the photos show the differences between antenna sizes is visible, and the applicant took the photo simulation from greater and greater distances and can speak to what those distances were. He said the initial application the applicant made was to have the setback be 12 inches measured to the back of the antenna as opposed to the front of the antenna, and staff has actually modified the applicant's request, to add a maximum distance because the antenna were mounted at an angle to provide directional ability to provide coverage. He said what the applicant proposes is the antenna can be mounted up to 12 inches away from the face of the tower, but not more than 18 inches, so they cannot be radically angled in one direction or another; they are also tilted downward, which allows them to have a downward tilt that is more efficient in providing services. Mr. Fritz reiterated the maximum standoff will be 12 inches to the back of the antenna, but no more than 18 inches. He said the Planning Commission had voted 7-0 to recommend approval of this text amendment, and had also adopted a resolution of intent to consider an increase in the size of an antenna beyond the scope of this amendment, and to consider additional changes in offset and tower diameter. He said the work on the consideration for additional changes has not been scheduled or commenced, and is based on a presentation made at the Planning Commission. Mr. Fritz said that staff and the Planning Commission are recommending approval.

Ms. Palmer asked if there are differences between the different companies and what they need for their towers. Mr. Fritz responded that based on the information staff is receiving from the industry, Verizon when they came to the Planning Commission had asked for 1,800 square inches as opposed to the 1,400 Ntelos had asked for. He said part of that is based somewhat on the different service providers because they operate within different bands; they also have to provide different legacies, as some have older and some do not have as old of legacies. He stated they are doing different things which can drive the need for different antenna sizes, and so the answer is yes, they do use different sizes.

Ms. Palmer stated she is not necessarily promoting bigger sized antennae, it just seems they may be passing something that favors one company over another. Mr. Fritz said it does not necessarily favor one company over another, and if a company wants to go above the 1,152 square inches they will come for a special exception. He noted there have been a number of special exceptions and all have been approved, with different sizes for different companies.

Ms. Mallek asked if they are considering the 1,800 size tonight. Mr. Fritz said they are just considering the 1,400, and the change in how the setback is measured, both the 12 inches to the back and no more than 18 inches. He said the applicant has asked for 1,400 and 12 inches, and staff asked for 18 inches.

Ms. Mallek said she finds the 1,800 outside diameter very compelling because it prevents the box that is two feet deep from being set [inaudible].

The Chair opened the public hearing.

Ms. Valerie Long with the law firm of Williams Mullen addressed the Board representing nTelos Wireless. Ms. Long said they appreciate the Board's willingness to treat these three applications separately, as they are truly three separate and independent applications. She stated that one in particular, nTelos, had submitted for an individual property, and they paid the fee and went through the process. She said that Ms. Palmer was correct there are different intended needs for different carriers, for the differences that Mr. Fritz explained, and nTelos needs just shy of 1,400. Ms. Long said that nTelos has been working with Mr. Fritz and other members of staff for several years now regarding the need for larger antennas, and staff has been extremely receptive of that and supportive of the increased size as an update, given the technology changes. She said they have been patient and are excited that increases to be part of one of the comprehensive packages of Zoning Text Amendments that have been coming before the Board over the last few years, but unfortunately because some of those provisions have been delayed, those increases have not been enacted. She said nTelos has been waiting to upgrade their antennas for just about a year and cannot wait any longer so they took advantage of the opportunity to present their own Zoning Text Amendment and did so in March. Ms. Long said they did not want to ask for more than what they need, so they asked for just less than 1,400. She stated they did not want to overreach and certainly there are other carriers that might prefer larger, so nTelos would, of course, be comfortable with an increase, but asked that the Board take action on this particular proposal if they are agreeable to the concept.

Ms. Long presented an image of a typical flush-mounted antenna on a tree top monopole facility, which is the standard in the County. Ms. Long said this Zoning Text Amendment has two components; the first will be to increase the panel area to 1,400 square inches, and the difference in size is only 248 square inches over what was currently approved. She showed what the size is compared to a standard size piece of paper, to give them an idea of the small scale they are requesting. She stated the second proposal will increase the mounting distance, and presented images of some of the antennae nTelos is proposing on its facility upgrades, so the thickness of the antennas is what is driving the need for the amendment. She said they are very comfortable with the proposal as it was amended by staff, and she wants to show some of the photo simulations that demonstrate what it will look like. Ms. Long pointed out the facility on the left of the image presents one of the existing constructed facilities, and the one on the right is a photo simulation showing the slightly thicker antennas. She noted it is still flush mounted and has a little bit more space to accommodate the brackets, with the distance measured inside the panel antenna, the backside rather than the front side.

Ms. Laurie Schweller of LeClair Ryan, representing Verizon Wireless, addressed the Board and stated they fully support this requested amendment and appreciate the urgency of nTelos' submission. Ms. Schweller stated they went through a process of upgrading Verizon's Albemarle County sites in 2012 and 2013, and came before the Board frequently to request approval of special use permits that will now likely need a special exception, which will require staff and Board time. Ms. Schweller said Verizon fully supported this application and have put in their application for a slightly larger maximum square inch antenna because one of the four technologies Verizon uses, the LTE, their 4G service, uses an antenna that is about 300 square inches larger than the other ones. She said that each of the four are a different size, and hopefully they will be able to show that to the Board at another time. She said at this time, she wishes to express their full support for this amendment.

There being no further public comment, the Chair closed the public hearing.

Ms. Palmer **moved** to adopt the proposed ordinance to approve ZTA 2015-0006 as presented. Ms. McKeel **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

ORDINANCE NO. 15-18(6)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article II, Basic Regulations, is hereby amended and reordained as follows:

By Amending:
Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities; collocation, replacement, and removal of transmission equipment

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan, in a manner that complies with Section 704 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)) for new personal wireless service facilities and collocations and replacements that result in a substantial change in the physical dimensions of an eligible support structure; and to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455) and 47 CFR § 1.40001 for collocations and replacements that do not result in a substantial change in the physical dimensions of an eligible support structure. Each personal wireless service facility and the transmission equipment of any other wireless service shall be subject to the following, as applicable:

a. *Application for approval*: An application providing the following information shall be required for each personal wireless service facility (hereinafter, “facility”) and transmission equipment that will be collocated or replace existing equipment on an eligible support structure:

Application Requirements	Type of Application			
	I	II	III	C/R
1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.	X	X	X	X
2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.	X	X	X	X
3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.	X	X	X	X
4. *Plans and supporting drawings, calculations, and documentation.* Except where the facility will be located entirely within an eligible support structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations, and documentation shall show:	X	X	X	X
(a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).	X	X	X	X
(b) *Elevation and coordinates.* The benchmarks and datum used for elevations shall coincide with the State Plane VA South US Survey Feet based on the North American Datum of 1983 (NAD 83), and the benchmarks shall be acceptable to the county engineer.	X	X	X	X
(c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other equipment.	X	X	X	X
(d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.	X	X	X	X
(e) *Topography.* Except where the facility would be attached to an eligible support structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.		X	X	
(f) *Trees*. The caliper and species of all trees where the dripline is located within fifty (50) feet of the facility. The height, caliper, and species of any tree that the applicant is relying on to provide screening of the monopole or tower. The height, caliper and species of the reference tree. The caliper and species of all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.	X	X	X	
(g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing, and landscaping.	X	X	X	X
(h) *Location of accessways.* The location of all existing vehicular accessways and the location and design of all proposed vehicular accessways.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

b. *Development requirements*. Each facility or transmission equipment may be established upon approval as provided in subsection (c) provided that the application satisfies the applicable requirements of subsection (a) and demonstrates that the facility or transmission equipment will be installed and operated in compliance with all applicable provisions of this chapter, and the following:

Development Requirements	Type of Application			
	I	II	III	C/R
1. *General design.* The facility shall be designed, installed, and maintained as follows:				
(a) *Guy wires*. Guy wires are prohibited.	X	X	X	
(b) *Outdoor lighting*. Outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law.	X	X	X	
(c) *Ground equipment*. Any ground equipment shelter not located within an eligible support structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent.	X	X	X	
(d) *Whip antenna*. A whip antenna less than six (6) inches in diameter may exceed the height of the facility, the eligible support structure, or the existing building.	X	X	X	
(e) *Grounding rod*. A grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the eligible support structure, or the existing building.	X	X	X	
2. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an eligible support structure, or an existing building shall be subject to the following:	X	X	X	
(a) *Number of arrays*. The total number of arrays of antennas shall not exceed three (3). All types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.	X	X	X	
(b) *Size*. Each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand four hundred (1400) square inches.	X	X	X	
(c) *Projection*. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall the closest point of the back of the antenna be more than twelve (12) inches from the facility, structure, or building, and in no case shall the farthest point of the back of the antenna be more than eighteen (18) inches from the facility, structure, or building; and	X	X	X	
(d) *Color*. Each antenna and associated equipment shall be a color that matches the facility, structure or building.	X	X	X	
3. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.	X	X	X	
4. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

c. *Applicability of other regulations in this chapter.* Except as otherwise provided in this subsection, each facility or transmission equipment shall be subject to all applicable regulations in this chapter:

Applicability of other Development Requirements in this Chapter	Type of Application			
	I	II	III	C/R
1. *Building site.* Notwithstanding section 4.2.3(a), a facility is not required to be located within a building site.	X	X	X	X
2. *Vehicular access*. Vehicular access to the facility site or tower site shall be subject to the requirements of section 4.2 and shall not be exempt under section 4.2.6(c).	X	X	X	X
3. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney as to addressing development on the part of the abutting parcel sharing the common lot line that is within the monopole or tower's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.	X	X	X	X
4. *Area, bulk, and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.	X	X	X	X
5. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.	X	X	X	X
6. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32, and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

d. *Performance standards and requirements for approved applications*. In addition to the applicable development requirements in subsections (b) and (c), the following performance standards and requirements shall apply to facilities, as applicable:

Performance Standards and Requirements	Type of Application			
	I	II	III	C/R
1. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.		X		
2. *Tree conservation plan; compliance; amendment.* The installation, operation, and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation, and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.	X	X	X	
3. *Completion of installation; submitting certifications of compliance*. Within thirty (30) days after completion of the installation of the facility, the applicant shall provide to the agent prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the tower or monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the tower or monopole and its width does not exceed a diameter of one (1) inch.	X	X	X	
4. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a tower or monopole's use for personal wireless service or any service facilitated by transmission equipment is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility and any transmission equipment shall be disassembled and removed from the facility site within ninety (90) days after the date its use for personal wireless service or any service facilitated by transmission equipment is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

e. *Application review and action*. Each application shall be reviewed and acted on as follows:

Application Review and Action	Type of Application			
	I	II	III	C/R
1. *Nature of review and action.* The nature of the review and action on submitted applications are as follows:				
(a) Ministerial review and approval by the department of community development to determine compliance with applicable requirements of this section.	X	X		X[1]
(b) Legislative review and approval of a special use permit by the board of supervisors, subject to the applicable requirements of this section and of sections 33.4 and 33.8; to the extent there is any conflict between the time for action in this subsection and in section 33.4, this section shall prevail.			X	
[1]Notwithstanding any other provision of this chapter, an application for an exempt collocation shall not be subject to review by the architectural review board and a certificate of appropriateness shall not be required therefor.				
2. *Time for action*. The application shall be acted upon within:				
(a) 60 days.	X	X		X
(b) 90 days.	S[2]			
(c) 150 days.		S[2]	X	
[2]If the application requires a special exception, the time for acting on the special exception applies to the entire application.				
3. *Calculating the time for action*. The time for action on an application shall be calculated as follows:				
(a) *Commencement*. The time for action on an application shall begin on:				
(i) The date the application is received in the department of community development.	X			X
(ii) The submittal date established for this type of application by the director of planning.		X	X	
(b) *Determination of completeness*. Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required by this section. If any required information is not provided, the department shall inform the applicant within the thirty (30) day period of the information must be submitted in order for the application to be determined to be complete.	X	X	X	X
(c) *Resubmittal*. Within ten (10) days after a resubmittal is received, the department of community development shall determine whether the application includes all of the applicable information required by the initial notice of incompleteness. If any required information was not provided, the department shall inform the applicant within the ten (10) day period of the information must be submitted in order for the application to be determined to be complete. Second or subsequent notices that information is missing may not include information that was not identified in the original notice of incompleteness.	X	X	X	X
(d) *Tolling*. The running of the time for action shall be tolled between the date the department informs the applicant that its application is incomplete and the date on which the department receives all of the required information from the applicant.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to an alternative review period that applies when an application for a special exception accompanies the application.

f. *Collocation or replacement that would result in a substantial change to an eligible support structure*. Any collocation or replacement of transmission equipment that would result in a substantial change in the physical dimensions of an eligible support structure shall be subject to the procedures and standards for a Tier I facility. A special exception shall be required for any substantial change that

does not satisfy the standards for a Tier I facility. Any collocation or replacement approved for an eligible support structure by special use permit prior to October 13, 2004 shall not reclassify the eligible support structure as a Tier I, II, or III facility.

g. *Removal of transmission equipment on any eligible support structure*. Any transmission equipment on any eligible support structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.

h. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.

i. *Administration of special use permits for facilities approved prior to October 13, 2004; conditions*. If any condition of a special use permit for an eligible support structure approved prior to October 13, 2004 is more restrictive than a corresponding standard in this section, the corresponding standard in this section shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in this section and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.

j. *Mobile personal wireless service facilities*. Mobile personal wireless service facilities ("MPWSF") shall not be subject to any requirements of section 5.1.40, and are otherwise permitted by right in any zoning district, subject to the following:

1. *Zoning clearance required; temporary non-emergency event*. The owner shall obtain a zoning clearance under section 31.5 prior to placing a MPWSF on any site for a temporary non-emergency event. The MPWSF may be placed on the site for a maximum of seven (7) consecutive days, and shall not be placed on any site for any temporary non-emergency event more than twice in a calendar year.

2. *Zoning clearance required; declared state of emergency*. If a state of emergency is declared by the President of the United States, the Governor of the Commonwealth of Virginia, or the board of supervisors, the owner shall obtain a zoning clearance under section 31.5 within forty-five (45) days after placing a MPWSF on any site. The MPWSF may be placed on the site for the duration of the state of emergency.

(§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04; Ord. 13-18(3), 5-8-13; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15)

Item No. 17.b. **ZTA-2015-00007. Wireless – Public notice**. This ordinance would amend Sec. 18-5.1.40 by requiring written notice to landowners of all parcels abutting a proposed Tier I or Tier II facility, or an Exempt Collocation. Currently, written notice is provided to abutting landowners for Tier I facilities requiring a special exception and Tier II facilities.

The executive summary as presented by staff states that the Board of Supervisors has expressed interest in amending the ordinance to provide public notice for all administrative actions involving personal wireless service facilities ("Wireless Facilities").

The proposed amendment would require mailed notice for all wireless facilities. Currently notice is provided for only discretionary actions, Tier II, Tier III and projects requesting special exceptions. This amendment includes providing notice for Tier I applications and exempt collocations. Because of an FCC decision, exempt collocations must be approved and shall not be denied and the action must be taken within 60 days. Tier I applications and exempt collocations are processed as building permit applications. No notices are currently provided for any type of building permit application. The County can provide notice and act on the request within the required timeframe. If notified individuals are opposed to a project there is no mechanism for appeal. Processing exempt collocations with an appeal provision likely could not occur within the 60 day period that County has to approve the request.

This amendment would create a unique situation for administratively approved projects. Wireless facilities would be the only administratively reviewed projects that have a public notice provision. Staff recommends that an alternative method of providing notice for all types of projects be evaluated. This could utilize GIS, County View or some other type of development tracking software. This would enable the public to be able to be aware of any application anywhere in the County. Individuals would be able to select the type of project they are interested in or any project within a certain area of the County.

This amendment request does not expand beyond notice to abutting owners. If the Board desires to expand notice beyond abutting owners, staff recommends that the discussion include all types of projects. Staff cannot justify providing more notice for none discretionary items than would be provided for discretionary items like rezonings or special use permits.

Increased notice will likely result in staff responding to increased requests for information about proposed projects. While the impact on resources may not individually be significant the cumulative effect will have adverse impact on the County's ability to provide services or expand services.

Staff recommends denial of this amendment and recommends a comprehensive analysis of ways to increase opportunities for citizen involvement in all types of activity within the County.

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Mr. Fritz said this is the wireless amendment dealing with public notices, and said the Board of Supervisors has expressed interest in amending the ordinance to expand notification, so this is a County-initiated text amendment. He stated these projects are exempt collocations that are attachments or modifications to structures currently used as wireless facilities, and Tier One applications are attachments to existing structures that may not be existing facilities. Mr. Fritz said currently notice is provided for Tier One applications if a special exception is proposed; it is also provided for Tier Two, which are tree top applications; and Tier Three, which are special use permits. He noted that exempt colocations and Tier One applications must be approved with minimal standards, and the standards for the two types of applications are different but they are both treated like building permits. He said there is no notice for any type of building permit currently, and if this amendment is approved, a building permit to demolish an existing building, regrade the site and rebuild a new structure which will receive no notice, but attachment of intended existing structure will get a notice. Mr. Fritz said that during the Planning Commission review, they asked how much time is involved in preparing these notices, and he pulled together the information and believes it is at least a minimum of a week's worth of time for a staff person per year; it can be as much as two weeks and that is based on the historical information over the last three years.

He said staff supports offering the public increased opportunities to be aware of proposals they may be interested in, and recommended that the County investigate methods of making the public aware of all types of applications made. He said some localities utilize a robust GIS system integrated with an application tracking system to allow the public to investigate development proposals by type or location. Mr. Fritz said this will allow a user to self-define a neighborhood and see what is going on around them, and they will be able to pull up more detailed information on the proposal and both staff and applicant contact information. He said the Planning Commission recommends denial of this amendment by a vote of 7-0; however, the Planning Commission expressed interest in providing notice in addition to making information available. He said that, for example, the posting of property where building permits have been issued and requiring contractors to identify themselves to the neighbors was discussed by the Commission. Mr. Fritz said he has spoken with the building official, and requiring posting of property with building permit information is possible under the building code, but requirements of the contractors to identify themselves to neighbors is not required. He said staff is recommending they look at it comprehensively how they can provide notice and use a tracking system, and the Commission went beyond that and wants to push out notifications beyond that.

Ms. Mallek asked if they do not post building permits for these things, because when she had work done on her house she had to post a building permit with a phone number, so in case disaster struck the neighbors had someone to call. Mr. Fritz said the building official has the authority to have the building permit posted on the property. He said there are other ways that notice can be available, and he does not require the property to be posted, but can, and that will not require an amendment. He said it may be something the Board wants to discuss with the building official, or he can go back and discuss it with him, so that can be handled administratively.

Ms. Mallek said in his presentation Mr. Fritz gave an example of tearing down an existing pole and putting up a new one, with new antennas but the same sizes, and asked for clarification that this will not have any notice. Mr. Fritz clarified the proposal is to require notice to abutting owners for exempt collocations or Tier One locations, and an exempt code location is an existing wireless facility, most commonly a tower but also a building or a water tower. He said if the structure is already supporting some previously approved communications equipment then it can be done as an exempt collocation. He stated if the building has nothing on it now, such as a tall building or water tank and the applicant wants to add an antenna on it, which will be a Tier One application. He confirmed that neither of those two currently have a notice provision, but if they are putting an antenna on a new tall building that does not have any equipment on it and wants to make the antenna larger than otherwise permitted, that will be a special exception, and Tier One special exceptions did get a notice.

Ms. Palmer said her understanding from discussion with the Planning Commissioner is they thought the notification was a good idea but they wanted to look at it more comprehensively, and asked what the timeline for that will be. Mr. Fritz said he does not know but at the Board's next meeting, Mr. Graham is bringing the Work Program to the Board, so they will have to fit it into that. He said this particular text amendment is done outside the normal process itself and they pushed it through as quickly as possible, which is part of the reason they do not have some of the information the Commission wanted at their meeting. He said this is the type of thing if they will follow the normal process, they will want to engage the community to find out the best ways to provide notice. Mr. Fritz said there may be different types of notices they will want to provide a written notice for, others to provide an A-mail notice for, and other options. He said he knows the Commission and the Board have in the past talked about expanding the notices beyond the abutting property owners. Mr. Fritz said staff has done research on what the impact of going out an eighth of a mile, a quarter of a mile, and so forth and what that will do to the total number of people who would receive notice. He said this would be a week or two weeks of staff time per year if they really want to expand notice, and there will be different costs depending on the level of notice.

Ms. Palmer asked for confirmation that this is just abutting neighbors in this particular one for the collocations, and that is just sending them a letter. Mr. Fritz confirmed that it is just for abutting, and explained there will be a written description provided for situations that are more complicated, a legal description so they can identify what it is, the contact information, development of the map that shows the abutting property owners, verification of the addresses, and printing, stuffing and mailing the letters.

Ms. Mallek asked why the applicant would not do that. Mr. Fritz responded the Board has gone back and forth over the years on this issue, because of staff impacts, or verification that the applicant has done it. He said regardless of which one does it, staff has to provide the information on the property owners.

Ms. Mallek asked why it is so difficult, because the information is in the GIS. Ms. Fritz said it is not difficult per se, but he wants the Board to know the time impact as it is an expanded service. He noted the County will collect fees for the service.

Ms. Mallek said she is not interested in having notice for building permits for things that are perfectly legal, but she is concerned about those things having a bigger visual impact. Mr. Fritz said under this scenario, they can be sending notices for an older tower that has no conditions on it that limits its visual impact so it does not have any concealment elements. He said they can be sending notices to the abutting property owners that the applicant will be adding antenna to this, but because it is an exempt colocation they must approve that application anyway, and if it meets the standards of the ordinance, it must be approved administratively.

The Chair opened the public hearing.

Mr. Bob Toplin from the Key West Neighborhood said he believes it is wise to opt for public notice in these matters, because this is not just a building permit in the typical sense, it is a wireless facility. He said as they have seen in the past, neighbors and people are concerned and want to learn about these things as they can affect the visual appearance of their neighborhood, community values and property values. Mr. Toplin said there are other concerns, as it is not the standard building permit issue, and he supports the Board and Commission's effort for notification.

Ms. Jennifer Greeson from the Samuel Miller District addressed the Board and stated as someone who lives in a neighborhood with cell phone towers, she can speak to the need for notice. She said what they are discussing is construction that is not related to the by-right zoning use in a residential or rural district, it is commercial or industrial construction in a residential or rural district, so the scale of this construction is completely different. She stated that sometimes this means 120-foot crane trucks blocking roads, so the scale is quite massive. Ms. Greeson said the tower companies have no relationship to the neighborhoods in which they are doing the work; they are not residents working on their own property, nor are they a utility or service provider that directly serves the neighborhood where the work is going on. She said what this means is they have no compunction to be courteous or identify themselves while doing the construction work. She said that posting notice on a tower will not do much good, because neighbors will have to go to the tower site to see it, and mail notices is pretty simple and courteous and helps the business get done better.

Mr. Dave Vanderwerf addressed the Board and stated that wireless facilities are really different than other building permits and has a larger impact than by-right uses, so greater notice is worthwhile. He said he believes it is very important to consider the opportunity to take action that will put in place notice protections for abutting owners for this type of use. Mr. Vanderwerf said it is important to note that the exempt collocation is a really new category now that the FCC has imposed its rule and as a ministerial action it would help for the public to be aware so they can be sure those actions are happening in a way that are in accord with the FCC. He said that the FCC sets a shot-clock as well, and that would allow citizens to be sure that actions are taken in a timely matter, as it is important that citizens be sure they can keep track of this process.

There being no other comments from the public, the public hearing was closed.

Mr. Boyd said even if they offer a public comment period, this particular request cannot be denied, so it is a fruitless to come and complain about doing this because the County cannot stop it anyway. He said he does not want to give false hope, and he believes what the Planning Commission is wanting to do is to study it a little bit more and come back with something a little more comprehensive to where it might be a meaningful report, and that is why they denied it.

Ms. Palmer asked what the legal requirement for them is if they just want to notify the abutting neighbors that there is going to be some construction on that property, or on that cell tower. Mr. Kamptner said this is not a state mandated type of notice, so the contents of the notice can be whatever the Board decides.

Mr. Fritz stated what they envision will be to provide enough information, less information than a legal ad, that will be a description to inform the reader to know where the property is, how it is identified, and what is going on. He said it does not take a huge amount of time, but it will take some time to craft the description so when it is received they know it is going from point A to point B and so forth, along with other details and contact information.

Ms. Palmer asked if they are going to do something for this particular situation while staff looks at the whole overarching situation, what the minimum amount will be just to notify abutting neighbors when

work is going to be done, given that staff does not know how long this will take because their work has not yet been defined for next year. Mr. Fritz replied that he looks at all the applications they received over the last four years to see what the numbers will be and tries to assign a time value to how long it will take to generate the maps, mailings, brief written description, etc., and that is where he comes up with the estimate of about a week's worth of work per year, but it can be two weeks during some years based upon the pattern of permits received.

Ms. Mallek said if there is an accompanying piece of paper the applicant can fill out that can then be duplicated and sent out to the neighbors, it seems like it can happen more simply with a link where people can find it if they have more questions. Ms. Mallek said she is very persuaded by the comments that were made about the construction traffic and some of the older properties that do not have access of their own, so it is very important that they put out the word especially when there needs to be an easily available contact number.

Mr. Boyd asked why they cannot just craft an ordinance that the cell phone company will have to send out these notices, and they would provide the contact information.

Ms. Palmer said Mr. Fritz has said the County staff will still have to follow up.

Ms. Mallek said contractors who want to have burning are required to contact everyone within 500 feet and they have to show mailing receipts that proves that it happened, so they can either pay and have staff do it or do it themselves and verify they have done it.

Ms. Dittmar said another benefit of having the vendor responsible is that they sometimes subcontract out and will be able to get ahold of their contractor directly. She said that additionally it does not raise an expectation by having it issued on County stationery.

Mr. Fritz said he believes staff can craft an ordinance quickly that includes a timeframe as to when an applicant will have to do that, and the information that will need to be contained within any notice.

Mr. Davis said the proper motion will be to refer it back to the Planning Commission for their consideration.

Ms. Palmer asked if Ms. Greeson would comment on that approach. Ms. Greeson suggested the Board approve what is before them, which simply requires notice, and then have staff work out the process by which notice will be issued.

Ms. Dittmar said her preference would be to send this back to the Planning Commission so they can get full input from the wireless vendors.

Mr. Boyd agreed, stating they need to write the ordinance to ensure there is a verification process in place.

Mr. Davis stated the ordinance, as drafted, requires the agent to send notice, so it would need to be redrafted anyway.

Ms. Palmer **moved** to refer ZTA-2015-0007 back to the Planning Commission for redrafting and review. Mr. Boyd **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

Mr. Kamptner asked for clarification if the wireless companies' obligation to provide notice will pertain only to the exempt collocations, because currently the notice provision applies to several types of applications.

Board members responded that it should apply to the exempt collocations, and the Tier One applications.

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Item No. 17.c. **ZTA 2015-00008. Wireless.** Replacement of wooden pole with metal pole. This ordinance would amend Sec. 18-5.1.40 by requiring a special exception to replace a wooden monopole with a metal monopole if the monopole is located closer in distance than its height to any lot line and the document authorized by Sec. 18-5.1.40(c)(3) does not exist. Currently, such a replacement is allowed by right.

The executive summary as presented by staff states that on June 2, 2015, the Planning Commission recommended denial of ZTA 2015-08 by a vote of 5:2. The Planning Commission's Action Letter, Staff Report, Minutes, and information presented at the June 2 meeting are attached (Attachments A-D).

The amendment would require a special exception to replace a wooden monopole with a metal monopole if the monopole is located closer in distance than its height to any lot line if the document authorized by Sec. 18- 5.1.40(c)(3) (e.g., a fall zone easement) does not exist. Currently, such a replacement is allowed by right.

The Planning Commission's recommendation for denial of ZTA-2015-08 was due to the concerns expressed in staff's analysis and the following:

- This amendment will result in additional review costs to the County and increased review times.
- It will not prevent the replacement of decaying poles or result in the removal of any previously approved sites.
- Questioned whether there are reasonable grounds to justify denial of replacement of a wood pole with a metal pole.
- The amendment is proposed to address a single case and that is not the best way to conduct public policy.
- Concern about penalizing the telecommunications industry for improving the durability and safety of poles by moving from wood to metal poles. The County would be creating a standard where they are saying the County is going backwards in terms of use of wood, when clearly the tensile strength of metal and the ability of metal to collapse far exceeds the capability of wood.

Since the Planning Commission's recommendation, staff has met with Supervisors Palmer and Mallek and with citizens who are concerned about older wooden monopole facilities that are located in residential areas that may not meet current ordinance standards. The citizens' representative has stated that the proposed ordinance would provide for additional review of any proposed new monopole designed to replace an existing wooden pole facility, and would provide an opportunity for the Board to assess impacts on adjacent property owners that may result from the proximity of a proposed new metal monopole. By implementing a requirement for a special exception, the Board would be in a position to impose conditions to mitigate any negative impacts.

The citizens' representative has also stated that this proposed ordinance would not affect the repair or replacement of an existing wooden pole facility with a like wooden monopole, and that it would enable the Board to (1) take into account any change of circumstances affecting older wooden pole facilities before approving a new metal monopole on the same site; and (2) require any new metal monopole to meet all of the design criteria for Tier II facilities, including criteria that require screening and minimization of visual impacts.

Staff acknowledges that replacing a wooden monopole with a metal monopole where the monopole is located close to the lot line may warrant additional review in order to ensure that abutting and nearby parcels are not materially adversely impacted. The proposed ordinance has been revised to provide that the Tier II, rather than the Tier I, criteria would be applied to the review of the special exception.

Staff recommends that the Board not adopt the attached Ordinance (Attachment E). However, if the Board adopts the attached Ordinance, staff believes that the additional scrutiny over the few facilities in residential areas should not adversely impact staff resources.

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Mr. Fritz reported this ZTA deals with the replacement of wood poles with metal poles, and said that currently a wood pole may be replaced by a metal pole by right, with only a building permit required. Mr. Fritz said under the current ordinance new poles may be located closer to the property line than the height of the pole, if an easement on the adjoining property is obtained or if the Board grants a special exception. He said previous ordinances allowed poles to be located closer if a waiver was granted by the Planning Commission. Mr. Fritz said this amendment will require replacement of wood poles approved with a waiver or special exception to receive a new special exception or obtain an easement on the adjoining property. He stated this ordinance would not impact the replacement of old wood poles with new wood poles, and no ordinance amendment could affect that; the applicant can always rely upon the original approval to allow the replacement of an old wood pole with a new wood pole. Mr. Fritz said the regulatory difference between wood and metal poles is nonexistent, as they are subject to the same design requirements except that with metal, the cabling must be routed inside the poles while wood poles have the cables visibly mounted on the outside. Mr. Fritz said both poles can be extended in height, and staff is aware of wood poles having extensions mounted on the top that have raised the overall height to account for tree growth; no metal poles have been extended in height. He said extensions may be easier to do with a metal pole than with a wooden pole; however, even an extension of a metal pole is difficult due to the limitation that the top of the pole is 18 inches in diameter, and this makes extensions difficult. He said the issue of capacity has come up during the review of this text amendment, and it is not possible to say that metal poles can always hold more antennas than wood poles; however it is likely that a metal pole can be designed with the structural ability to hold more weight than a wood pole that is not engineered. Mr. Fritz said staff does not see the use of metal poles is likely to result in increased use of a particular site, due to the fact that height, not weight-bearing capacity, is the limiting factor for tree top facilities, and as antennae are added they are lower and lower on the pole. He said as the height decreases, the effectiveness of the facility drops that installation makes no sense. Mr. Fritz said the type of pole, wood or metal, makes no difference in this calculation.

Mr. Fritz said the Commission voted 5-2 not to support this amendment, and following the Planning Commission's action staff has met with two Board members and interested members of the public. He stated as a result of those meetings, the language before the Board is slightly different than what was before the Planning Commission, and a language revision distributed to them by Mr. Kamptner is just to make the process very clear and remove any dispute that can arise. He said the language before the Planning Commission will require the Board to consider a special exception if the 1:1 setback

requirements are not met, and the language before the Board will require them to consider a special exception if the 1:1 setback were not met and the proposal will be reviewed as if it were a new Tier 2 facility, so it effectively expands the review.

Ms. Palmer thanked staff and said that, having spent a lot of time on this, one of the issues is that they have tried to push this through quickly and that created problems with explanations to the Planning Commission. She said that what she has come to understand is that it is not just looking at the difference between a wood and metal pole, and also having a chance to review a tower that does not meet the current standards and it does not have an easement if it is within the fall zone. She said what this does is give them the ability to look at it again, and if the applicant wants to change it to metal they can impose special conditions such as a row of trees to screen it. She said this is not necessarily denying it when it comes before the Board, but they would be able to add special conditions to give it additional screening. Ms. Palmer said they do not know how many of these will come up and as an example, someone who is building a cul-de-sac and happens to have a tower nearby, they may not recognize that it is within the fall zone and the property does not have an easement, so suddenly there will be people before the Board asking for some screening.

The Chair opened the public hearing.

Ms. Jennifer Greeson from the Samuel Miller District stated she has two cell phone towers next door, which is a nice one-acre yard in a really nice residential subdivision. She said when they learned of the existence of these towers, they were shocked because the County has strict zoning standards. She said that by necessity, neighbors started to educate themselves on what it would mean to have this next door and met with County staff, and heard from them several times that the site in Bellair would not get approved today because it does not comply Tier Two criteria, they do not have adequate screening and do not meet setback from the lot line. She said these towers were approved prior to 2003 which was when the uniform standards were adopted and they are grandfathered in. Ms. Greeson said the bright side is that these towers were established by special use permits, which were thoughtfully constructed. She said in the 2013 overhaul of the Wireless Ordinance, they were surprised and dismayed to learn that all of those careful conditions had been voided and are now gone. Ms. Greeson said all of those sites that were approved prior to 2003 no longer had those careful restrictions on their future growth and development, and further the 2013 ordinance put in a provision about building steel towers on the sites of existing wooden towers by right. She said so that anywhere there is an existing wooden pole, industry can come in and build a new steel tower with no review. She said there is no reason for this, as the County has the right to review those sites and make sure they comply with criteria, but the 2013 ordinance gives that up, so there is currently no review to ensure that an existing wooden pole site meets basic criteria for siting and screening before allowing additional construction on the structure of that site. Ms. Greeson said she believes it is important for the County to re-assert some control over these pre-2003 approved sites, and this amendment is an important step. She said Mr. Kamptner has very carefully crafted the ordinance so it only captures sites that the County knows for a fact do not meet the current criteria and do violate setback, and she knows the sites in her neighborhood encroach upon another property owner's rights. Ms. Greeson emphasized these sites should come back before the Board before additional construction is allowed upon them, and said there are other older wireless sites that do not meet the current ordinance standards.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Board and urged them to adopt these changes, stating that whether the change applies to a few towers or hundreds is irrelevant, as visual impacts matter and include the width of the towers as well as heights. He said a few years ago he was asked to summarize the County's tower policy, and he wrote, "Albemarle had long been the leader in regulating the siting and visual impacts of towers. In 2000, the County won a landmark decision when a federal court found that the denial of a tower due to its visibility did not violate the Federal Communications Act. This established that localities across the country could regulate the visual impact of towers as long as restrictions do not unreasonably limit service." He stated that in 2000, the Board adopted their policy which set guidelines for wireless facilities; in 2001 the County adopted regulations to implement that policy. Mr. Werner said a critical component of the policy was that it does not limit the number of towers; in fact, it encourages them and an expedited review process allows more and encourages more. He said to further protect the community resources such as scenic byways, mountain tops, and historic districts, the County also established avoidance areas in which the Board is able to review the towers. Mr. Werner quoted from their policy, "The most important guideline for siting wireless facilities is visibility. The definition of a well sited facility is that it would be virtually invisible to most viewers. A poorly sited facility is one that has visual impact. The degree to which a facility can be made invisible or the degree to which it has visual impact is often the most important standard by which it can be evaluated." Mr. Werner said that, in essence, is their policy and why it became a model for localities across the country, but since the policy's adoption it has been under an almost constant attack with seemingly minor tweaks here and there to the regulations. He said the changes have been so mired in techno-speak that it is no wonder the loopholes keep getting larger and the policies simple bedrock goals seem to get diminished. Mr. Werner said the proposal before the Board tonight will address one of those loopholes and restore some of the promise that the visual impact of every tower will be scrutinized, particularly if a wood pole is replaced with a wire metal pole. He stated County residents have every right to expect the Board's oversight and the necessary public involvement so as to maintain some control of the siting of towers, over the loopholes in the regulations, and most importantly over the detrimental visual impact of these towers.

Mr. Maynard Sipe addressed the Board, stating he is a land use attorney representing Ms. Greeson and Mr. Vanderwork. He said the purpose of this ordinance is directed at addressing older sites that are generally not compliant, and if the site is compliant with Tier 2 criteria it will not have an issue and

will not be encompassed in this. He said the older sites are not compliant because they do not comply with the setback standard that has been in place for over a decade. Mr. Sipe said also this provides that they will review it under the Tier 2 standards and that is what was done prior to the year 2013, so this allows a means to address impacts on the public and also on adjacent properties through this special exception process. He noted this adds protection to homeowners and all landowners who would be under the exact same circumstances where there is a tower next to them that does not meet the setback. Mr. Sipe said this ordinance was narrowly drawn to focus on those sites that do not meet the setbacks or have an easement for a setback, because those sites are closer in proximity to the adjacent properties or homeowners, and those sites are more likely to have impacts. Mr. Sipe said the ordinance addresses a category or a class of sites, so it is not just one site and it has been shown that there are other sites of this type. He noted that staff in, their report, talked about four sites that had been replaced, wooden poles, and out of two that had replacement with metal poles, one of them met the criteria for not having sufficient setback. He stated staff estimated there are three dozen or maybe more sites out there that are in this category, so the Board may have more property owners coming to them with similar issues so it is an important and appropriate ordinance to adopt. Mr. Sipe said that by requiring the Tier-2 review in this special exception it really does affect the outcomes on specific sites, if necessary. He added if a site complies with the Tier-2 criteria, then it should generally be approved and not have an issue, but if a site is not meeting those criteria that the Board has set forth as a standard for tree top sites, then they can mitigate any impacts it has with the special exception. Mr. Sipe stated he does not think it would have any impact on service, and staff has indicated that wooden poles will be allowed to be replaced and maintained. He said even if impacts are shown, they are looking at approving a site with conditions that mitigated impacts on the neighbors, and he would ask for the approval of this.

Ms. Valerie Long with the law firm of Williams Mullen, representing AT&T and nTelos, addressed the Board and said that both companies have towers next to the Greeson's property. She said the two facilities, particularly the first one nTelos built, was held up to be the "gold standard" at the time the County first started asking the carriers to use tree-top facilities. She said that nTelos was the first carrier to voluntarily use tree-top facilities, before the ordinance existed, before a lot of the court cases came down; they are a local company and did it voluntarily, working with staff. Ms. Long said this was one of the first two sites she worked on in the County, starting in 1999, and when AT&T met with staff, they said that to do what nTelos had done, and it worked out great and is exactly what they wanted. She said AT&T had a lease with the adjacent parcel, which at the time was a large wooded parcel, and is now partially owned by the Greeson Family. Ms. Long said it was where AT&T was originally going to put the pole because it was a large wooded parcel and it provided great screening. She said staff asked them to change the application and put it on the adjacent parcel to minimize the amount of tree clearing that was needed. Ms. Long said they said put it there, there was a lot of trees on the adjacent site, it will be well screened, it was a single landowner, and the adjacent land owner had no objections, there was no opposition. She stated it worked very, very well, and was visually well screened for many years until the adjacent parcel was sold and subdivided. She said the new owners bought the lot and took the trees down, it was not AT&T nor nTelos that removed them. Ms. Long's concern is that this amendment has been clearly narrowly drafted solely for this property, and the record is very clear on that. She said she has strong concerns that AT&T, in particular, is being punished with this ordinance for a situation they did not create nor did nTelos. Ms. Long said it has been mentioned that there are a number of other sites that would be affected by this and that is true, but she wonders where those affected landowners are. She said it is clear that this is the only parcel that has had a problem with this, as they are the only ones who are present at the meeting. Ms. Long stated she is sympathetic to the landowners, they built a house, they had to cut down trees for a septic field, but that was not the fault of the carriers. She said if it is truly about safety, and that is what the record reflects, that it was originally about safety, but tonight the discussion all of sudden has shifted to visual impact. Ms. Long said if it is about safety, the record is clear, metal poles are far superior for safety and convenience. If it is about convenience and avoiding disruption of a neighborhood, she said that wooden poles have a lifespan of 20 years maximum. Ms. Long said these carriers need to come in and replace these wooden poles, and if they have to keep these wooden poles forever, which they can and will do, then they will have to replace them more often. She said the disruption of bringing in a giant wooden pole on a giant flatbed truck is far worse than bringing in a metal pole in segments that can be brought in on a much smaller flatbed truck.

Ms. Sally Thomas of the Samuel Miller District addressed the Board and said she agrees that the poles were the model when they were built, and the County appreciated the initial pioneers who came up with the design and anything she says is not in criticism of that. She stated the visual attractiveness of this County is tenuous, not like the grand vistas of the Pacific Northwest, and it can be ruined. She said they are not in charge of things like hurricanes, but they are in charge of some things and when they can be in charge, they need to be so as much as possible. Ms. Thomas said this seems like a small thing, but it is a chance to return a small piece of control that was taken away, and she hopes they will adopt this motion.

Mr. Joel Loving of the Bellair Neighborhood addressed the Board and stated he is not an adjoining property owner but do see the tower every day as he leaves his residence. He said these cell towers can affect an entire neighborhood, not just the immediate neighbors. He said when there is a dense neighborhood such as Bellair, they are one or two-acre lots, and they are not talking about a rural area but a densely populated neighborhood. Mr. Loving said there are plenty of families that notice these "tower upgrades" as they have been called, which really means enlargements, and they see these tower complexes every time they go up and down the street. He said Bellair residents are affected by all the cabling and digging every time an upgrade has been made, and not every area of the County should be treated in the same blanket manner in respect to cell towers. He said the Board of Supervisors represents their constituents, and rural residents may not have the same issues, so the Board of Supervisors should have oversight of these upgrades if they want to properly represent their constituents.

There being no other comments from the public, the Chair closed the public hearing.

Ms. Palmer stated she is very much in favor of this, she has spent a lot of time learning about this situation, and this is in no way trying to limit what a company can do, and if the company would like to change it to a metal tower, they still can. She said what it means is that it can come before the Board and there can be additional conditions on it so there can be additional screening. Ms. Palmer emphasized it is not to say that it has to stay wood forever, it just gives the Board the opportunity to put some special conditions on it. She stated staff has put in the executive summary that they do not think it will adversely affect staff resources, and she would very much like to see this approved so when the next situation comes before the Board they can ask for screening.

Ms. Mallek said she supports it also because it is a way to slowly bring properties more into compliance with the standards they have today. She said with the special exception, it will not be coming to the Board for public hearing and will not be cumbersome in that way.

Mr. Boyd stated he does not support it and feels they are crafting an ordinance to accommodate a single situation. He said it will be additional work and cost for the Board to increase the cell service in this community, which he cannot support, and said he agrees with the Planning Commission.

Ms. Palmer said this is a little different than what the Planning Commission has seen.

Mr. Boyd said it is not much different.

Ms. Dittmar said Mr. Rick Randolph is her Planning Commissioner and he has said the same thing, that it is one singular or property owner changing a whole ordinance. She said she appreciates what Ms. Thomas has said in terms of limited resource of time, but that will be for other Board members to consider. She asked staff's opinion if this ordinance is based on just one property, as the Planning Commission and Mr. Boyd has alleged.

Mr. Fritz said staff has done some research and there were two wood poles that had been replaced by metal, and one of those two would have been impacted by this, so they know of at least one historically that has been done in the last eight years. He said their best guess is there are probably a dozen to two dozen that may be affected by this, but no more than two dozen.

Ms. Dittmar asked if metal poles can fall in a safer way, so they will not go onto an adjacent property. Mr. Fritz said their fail points are more known so they would know if the tower is going to fail it will fail in a predictable pattern. He stated with a wood pole, basically they are trees and they will not know where the weak parts of the tree will be, it could be up high and it could be down low.

Ms. Dittmar said one approach would be to require them to have that certification, but she does not know how expensive it would be.

Ms. Mallek said it would need to be designed before they go up, and they cannot do that to an old pole. She noted it is like having an engineered beam to hold up your house, you do not take an old one and turn it into an engineered one.

Ms. Palmer said she thinks they need to look at this ordinance as a replacement that gives the Board the opportunity to impose special conditions such as screening on a tower facility. She stated she is convinced this is not about keeping a wooden pole forever becoming a metal pole, a company can still do this, and it just gives the Board a chance to review it as a Tier 2 review so they can say they want more screening or whatnot. Ms. Palmer stated this gives them the opportunity to comment and place special conditions on an applicant to reduce the impact. She emphasized they are not trying to keep these wooden poles from ever becoming metal poles, and what they are trying to do is have some Board discretion.

Ms. Mallek said she believes this is meeting the current set of standards but it is still ministerial, so the staff is going to do this and it will go to the Planning Commission and then to the Consent Agenda. She said there are some standards that those doing poles now are already meeting and the older ones will be asked to come part way in that direction to fill the gap of noncompliance. Ms. Mallek stated the material does not make any difference to her, it is the lack of screening.

Mr. Boyd asked staff of the dozen or two dozen that are out there, how many circumstances are similar to Bellair's right now where they are in fall zones in the concentrated neighborhoods. Mr. Fritz said they would only be in the fall zone, so the estimates provided are for the number of wood poles out there and how many do not meet the 1:1 setback and got special exceptions, which typically happened more commonly in the late '90s and early 2000s, and ultimately they moved away. He stated staff had done some research when they were looking at the one in Key West and found that there were five or six that were in areas with a similar number of residential units within the same 400-500 feet.

Mr. Boyd asked if this might be a discouragement for companies to replace the wooden poles, which might create a safety situation as they may let it go longer or stretch the length of time for it to last.

Ms. Palmer said this is just for those in the fall zones without an easement. She said there are ones in the fall zones with easements that will not affect this. She said they can change it over to a metal, it just gives the Board a chance to ask for additional screening or something, but is not a huge impediment to them changing over to metal.

Ms. McKeel asked how they would require additional screening. Mr. Fritz said the way it is written as part of the reason why they added the last section, by virtue of it becoming a Tier 2 facility, the provisions provide for screening and sighting to decrease visibility, and that is where the screening comes in.

Ms. McKeel asked if they are going to require additional screening, then the site where this pole might be would no longer work. Mr. Fritz said the screening pertains to the ground equipment, and it will depend on the leased area available, the slope of the property, the relationship of the base station to the property, etc., and some older sites were approved prior to the screening provisions they had in place. He said the site in Bellair is an example of that, and there are other sites that have minimal ground-based screening.

Ms. McKeel asked if this change will take care of that. Mr. Fritz said under the proposed language, which will be something that can be considered.

Mr. Boyd stated he thought they had heard from the applicant that it was built with trees around it and had met all the standards, then someone bought the property and cut down all the trees.

Mr. Fritz said the condition had a limitation that trees within a certain distance of the tower could not be removed by the applicant. He said the issue on the Bellair property is that condition said it was within "x" feet of the tower, but the applicant did not control the property within "x" feet, that went onto an adjoining property. Mr. Fritz said these are reviewed to make sure the trees they rely on for screening are actually under the control of the property the tower is on. He said they did not do that initially and thought, "the tower was going to be there, the trees are going to stay there," but that is not always going to happen. Mr. Fritz said there is a tower on Airport Road, not a stealth tower at all, and there was a condition there that the trees within 200 feet of the tower remained, but the applicant only controlled the first 50 feet within the tower, and now all those trees are gone.

Ms. Palmer **moved** to adopt the following ordinance to approve ZTA-2015-00008 dated July 8, 2015. Ms. Mallek **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: Mr. Boyd and Ms. Dittmar,

ORDINANCE NO. 15-18(7)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article II, Basic Regulations, is hereby amended and reordained as follows:

By Amending:
Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities; collocation, replacement, and removal of transmission equipment

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan, in a manner that complies with Section 704 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)) for new personal wireless service facilities and collocations and replacements that result in a substantial change in the physical dimensions of an eligible support structure; and to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455) and 47 CFR § 1.40001 for collocations and replacements that do not result in a substantial change in the physical dimensions of an eligible support structure. Each personal wireless service facility and the transmission equipment of any other wireless service shall be subject to the following, as applicable:

a. *Application for approval*: An application providing the following information shall be required for each personal wireless service facility (hereinafter, "facility") and transmission equipment that will be collocated or replace existing equipment on an eligible support structure:

Application Requirements	Type of Application			
	I	II	III	C/R
1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.	X	X	X	X
2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.	X	X	X	X
3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.	X	X	X	X
4. *Plans and supporting drawings, calculations, and documentation.* Except where the facility will be located entirely within an eligible support structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations, and documentation shall show:	X	X	X	X
(a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).	X	X	X	X
(b) *Elevation and coordinates.* The benchmarks and datum used for elevations shall coincide with the State Plane VA South US Survey Feet based on the North American Datum of 1983 (NAD 83), and the benchmarks shall be acceptable to the county engineer.	X	X	X	X
(c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other equipment.	X	X	X	X
(d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.	X	X	X	X
(e) *Topography.* Except where the facility would be attached to an eligible support structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.		X	X	
(f) *Trees*. The caliper and species of all trees where the dripline is located within fifty (50) feet of the facility. The height, caliper, and species of any tree that the applicant is relying on to provide screening of the monopole or tower. The height, caliper and species of the reference tree. The caliper and species of all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.	X	X	X	
(g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing, and landscaping.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

b. *Development requirements*. Each facility or transmission equipment may be established upon approval as provided in subsection (c) provided that the application satisfies the applicable requirements of subsection (a) and demonstrates that the facility or transmission equipment will be installed and operated in compliance with all applicable provisions of this chapter, and the following:

Development Requirements	Type of Application			
	I	II	III	C/R
1. *General design.* The facility shall be designed, installed, and maintained as follows:				
(a) *Guy wires*. Guy wires are prohibited.	X	X	X	
(b) *Outdoor lighting*. Outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law.	X	X	X	
(c) *Ground equipment*. Any ground equipment shelter not located within an eligible support structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent.	X	X	X	
(d) *Whip antenna*. A whip antenna less than six (6) inches in diameter may exceed the height of the facility, the eligible support structure, or the existing building.	X	X	X	
(e) *Grounding rod*. A grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the eligible support structure, or the existing building.	X	X	X	
2. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an eligible support structure, or an existing building shall be subject to the following:	X	X	X	
(a) *Number of arrays*. The total number of arrays of antennas shall not exceed three (3). All types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.	X	X	X	
(b) *Size*. Each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty two (1152) square inches.	X	X	X	
(c) *Projection*. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) from the facility, structure or building; and	X	X	X	
(d) *Color*. Each antenna and associated equipment shall be a color that matches the facility, structure or building.	X	X	X	
3. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.	X	X	X	
4. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.	X	X	X	
5. *Ground equipment shelter; fencing.* Any ground equipment shelter not located within an existing building shall be fenced only with the approval of the agent	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to a special exception.

c. *Applicability of other regulations in this chapter.* Except as otherwise provided in this subsection, each facility or transmission equipment shall be subject to all applicable regulations in this chapter:

Applicability of other Development Requirements in this Chapter	Type of Application			
	I	II	III	C/R
1. *Building site.* Notwithstanding section 4.2.3(a), a facility is not required to be located within a building site.	X	X	X	X
2. *Vehicular access*. Vehicular access to the facility site or tower site shall be subject to the requirements of section 4.2 and shall not be exempt under section 4.2.6(c).	X	X	X	X
3. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney as to addressing development on the part of the abutting parcel sharing the common lot line that is within the monopole or tower's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.	X	X	X	X
4. *Area, bulk, and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.	X	X	X	X
5. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.	X	X	X	X
6. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32, and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

d. *Performance standards and requirements for approved applications*. In addition to the applicable development requirements in subsections (b) and (c), the following performance standards and requirements shall apply to facilities, as applicable:

Performance Standards and Requirements	Type of Application			
	I	II	III	C/R
1. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.		X		
2. *Tree conservation plan; compliance; amendment.* The installation, operation, and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation, and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.	X	X	X	
3. *Completion of installation; submitting certifications of compliance*. Within thirty (30) days after completion of the installation of the facility, the applicant shall provide to the agent prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the tower or monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the tower or monopole and its width does not exceed a diameter of one (1) inch.	X	X	X	
4. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a tower or monopole's use for personal wireless service or any service facilitated by transmission equipment is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility and any transmission equipment shall be disassembled and removed from the facility site within ninety (90) days after the date its use for personal wireless service or any service facilitated by transmission equipment is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

e. *Application review and action*. Each application shall be reviewed and acted on as follows:

Application Review and Action	Type of Application			
	I	II	III	C/R
1. *Nature of review and action.* The nature of the review and action on submitted applications are as follows:				
(a) Ministerial review and approval by the department of community development to determine compliance with applicable requirements of this section.	X	X		X[1]
(b) Legislative review and approval of a special use permit by the board of supervisors, subject to the applicable requirements of this section and of sections 33.4 and 33.8; to the extent there is any conflict between the time for action in this subsection and in section 33.4, this section shall prevail.			X	
[1]Notwithstanding any other provision of this chapter, an application for an exempt collocation shall not be subject to review by the architectural review board and a certificate of appropriateness shall not be required therefor.				
2. *Time for action*. The application shall be acted upon within:				
(a) 60 days.	X	X		X
(b) 90 days.	S[2]			
(c) 150 days.		S[2]	X	
[2]If the application requires a special exception, the time for acting on the special exception applies to the entire application.				
3. *Calculating the time for action*. The time for action on an application shall be calculated as follows:				
(a) *Commencement*. The time for action on an application shall begin on:				
(i) The date the application is received in the department of community development.	X			X
(ii) The submittal date established for this type of application by the director of planning.		X	X	
(b) *Determination of completeness*. Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required by this section. If any required information is not provided, the department shall inform the applicant within the thirty (30) day period of the information must be submitted in order for the application to be determined to be complete.	X	X	X	X
(c) *Resubmittal*. Within ten (10) days after a resubmittal is received, the department of community development shall determine whether the application includes all of the applicable information required by the initial notice of incompleteness. If any required information was not provided, the department shall inform the applicant within the ten (10) day period of the information must be submitted in order for the application to be determined to be complete. Second or subsequent notices that information is missing may not include information that was not identified in the original notice of incompleteness.	X	X	X	X
(d) *Tolling*. The running of the time for action shall be tolled between the date the department informs the applicant that its application is incomplete and the date on which the department receives all of the required information	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to an alternative review period that applies when an application for a special exception accompanies the application.

f. *Collocation or replacement that would result in a substantial change to an eligible support structure*. Any collocation or replacement of transmission equipment that would result in a substantial change in the physical dimensions of an eligible support structure shall be subject to the procedures and standards for a Tier I facility. A special exception shall be required for any substantial change that

does not satisfy the standards for a Tier I facility. Any collocation or replacement approved for an eligible support structure by special use permit prior to October 13, 2004 shall not reclassify the eligible support structure as a Tier I, II, or III facility.

g. *Removal of transmission equipment on any eligible support structure*. Any transmission equipment on any eligible support structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.

h. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.

i. *Administration of special use permits for facilities approved prior to October 13, 2004; conditions*. If any condition of a special use permit for an eligible support structure approved prior to October 13, 2004 is more restrictive than a corresponding standard in this section, the corresponding standard in this section shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in this section and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.

j. *Mobile personal wireless service facilities*. Mobile personal wireless service facilities ("MPWSF") shall not be subject to any requirements of section 5.1.40, and are otherwise permitted by right in any zoning district, subject to the following:

1. *Zoning clearance required; temporary non-emergency event*. The owner shall obtain a zoning clearance under section 31.5 prior to placing a MPWSF on any site for a temporary non-emergency event. The MPWSF may be placed on the site for a maximum of seven (7) consecutive days, and shall not be placed on any site for any temporary non-emergency event more than twice in a calendar year.

2. *Zoning clearance required; declared state of emergency*. If a state of emergency is declared by the President of the United States, the Governor of the Commonwealth of Virginia, or the board of supervisors, the owner shall obtain a zoning clearance under section 31.5 within forty-five (45) days after placing a MPWSF on any site. The MPWSF may be placed on the site for the duration of the state of emergency.

(§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04; Ord. 13-18(3), 5-8-13; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15)

Agenda Item No. 18. Policy Relating to Private Use of Public Signs.

The executive summary as presented by staff states that Albemarle Health Care Center LLC (AHCC) has approached staff with a request to locate an off-site sign on County property near the Monticello Fire Station to serve AHCC's new business. To avoid a proliferation of billboards, the County's sign ordinance restricts off-site signs by requiring most of them to have a special use permit issued by the Board of Zoning Appeals. To obtain such a permit, the owner must demonstrate that it has exhausted all possible locations and sign types for an on-site sign, and that no on-site sign face located at the site entrance would be visible from the street providing direct access to the site entrance within one hundred (100) feet of the site entrance.

Staff initially advised AHCC of the three-step process used to approve a previous request by the Church of the Incarnation for an off-site directional sign on County property:

1. Request permission of the Board of Supervisors (as owner of the property) to be a co-applicant on the application for a special use permit.
2. Seek issuance of a special use permit from the Board of Zoning Appeals.
3. Obtain a sign easement or license from the County, subject to Board of Supervisors' approval.

This process is intended to ensure that permits for off-site signs, especially on County property, are granted sparingly and serve public purposes.

Because the Virginia Department of Transportation (VDOT) certified that the prior request of the Church of the Incarnation was needed to improve traffic safety, staff recommended approval of the Church's request based on it serving a public purpose. However, after examining the site of AHCC's request, VDOT has determined that an off-site sign is not needed near the Monticello Fire Station to improve traffic safety. In addition, staff determined that the requested AHCC sign cannot be approved under the current standards for off-site signs.

Taking a different approach, AHCC has asked for its signage to be placed on a "public sign." County Code § 18-3.1 defines a "public sign" as: "…a sign that is erected and maintained by a town, city,

county, state or federal government or an authority thereof, and any lawful road name or number sign regardless of whether it was publicly or privately erected or maintained." A public sign is exempt from a sign permit but must meet other applicable zoning requirements. Private use of a public sign may even be more problematic now due to a June 18, 2015 United States Supreme Court decision in Reed v. Town of Gilbert, which relates to content-based sign regulations. As a result of this decision, staff will undertake a comprehensive amendment to the sign ordinance after a resolution of intent is adopted. The Commission will consider the resolution on July 14.

Public property is expected to be utilized for public purposes. As stewards of public property, staff is of the opinion that both private signs located on public property and public signs must serve an identified public purpose and must not conflict with future public use.

Before allowing private signs on County property, staff recommends evaluating requests on the following criteria:

1) Does the applicant have any other reasonable alternatives?
2) Does the proposed private sign conflict with any current or future public use of the property?
3) Is there an identified public purpose for the private use of the public property?

These criteria should ensure that the use of public property serves a public purpose, as intended.

Offsite signage for businesses is limited and strictly controlled by the zoning ordinance. Public signs cannot be used as an alternative to a private sign to avoid zoning restrictions and requirements. After a complete review, staff has determined that under applicable zoning ordinance requirements for a private or public sign, AHCC would not meet the current zoning requirements to have an offsite sign located at the Monticello Fire Station.

Staff anticipates there would be some minimal budget impact related to the approval of evaluation criteria for public sign requests that serve private purposes because criteria would help staff be more efficient in evaluating requests.

If the Board has any additions or revisions to the stated criteria for private signage on public property, staff requests that input.

Because staff is still determining the sign ordinance changes required by the recent United States Supreme Court decision in Reed, it is somewhat premature to determine whether the comprehensive sign regulation amendment could allow an AHCC private off-site sign on County property. Once that issue is fully analyzed, staff can return to the Board for it to decide whether it would be appropriate to amend the Zoning Ordinance to provide for possible approval of this particular private sign on County property.

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Mr. Ron Higgins, Deputy Zoning Administrator, stated this item has been brought before them in a general sense, but also prompted by an applicant's request for a sign related to a new development on Founders Place off of Mill Creek Drive in the southern part of the County. He said they had asked if they could place an offsite sign by special permit, and they asked about an analysis of that request, but it turned out the sites they had requested are all public property. Mr. Higgins said the County has pretty clear criteria for offsite signs, and there was a great deal of work done by the County to refine the special permit standards, what they now call "bundle signs offsite" and "directional signs offsite." He said those criteria were adopted by the Board after revisions requested by the BZA for more clarity and streamlining. He said that one criteria for offsite signs is if an applicant has no alternative location to place a freestanding sign, and the other is if a sign is not visible 100 feet from an entrance on the street of direct access. Mr. Higgins said in this particular case, this facility sits on a street that will be a public street, coming off of another street, Mill Creek Drive, but they can and will be able to see their sign within 100 feet of that entrance. He said staff went through the criteria with them and went through the process, and they did not meet the criteria for an offsite special permit sign. Mr. Higgins stated they arranged for a time to sit down and walk through those criteria to see how that would work and they presented what they called a "public sign." Mr. Higgins said they were told that staff would come back and analyze it and see if that was another way to approach it. He said staff found that public signs have to meet the same criteria for offsite signs, even though they do not require an actual sign permit for public signs, they are not exempt from height, size, location, setbacks, offsite special permits. He said that is where they ended up with that process.

Mr. Higgins said they have only had a couple of examples, and Church of the Incarnation is the one that keeps coming up. Mr. Higgins said when they look at a private sign on County property, staff recommends they have all the criteria satisfied, one is that there is no other alternative, and another is that the proposed private sign not conflict with any current or future public use of the property. He said an interesting example is that if they allow a private sign on their public property and later were to use that public property, that private sign's square footage would be deducted from the ability of a public entity to have the same amount of signage, and it would be reduced. Mr. Higgins said the third criteria is there is an identified compelling public purpose, a compelling private use of public property. He stated with The Church of the Incarnation, they were approached by VDOT and were told that the location of the sign where they wanted to place it was unsafe. He said the church had a compelling safety reason to want to have their sign there, and they only had two places for their sign: one was unsafe, and the other one was on County Property. Mr. Higgins stated staff had analyzed it for use of the public property, and that particular one had a detention facility the County maintained. He stated that General Services analyzed it

and made sure the property could still be maintained even with the sign there, and it did not interfere with their ability in taking care of that property, and said they met the criteria. Mr. Higgins said if the Board has additional criteria or revisions to these criteria, that would be helpful to the staff.

Mr. Higgins said the County is still determining what has happened to the country in the Reed case that was decided by the US Supreme Court, which had to do with the location of signs, and if they were being treated differently based upon content. He said since staff is still trying to absorb the new legal ruling, they would like some time to answer the question as to whether this private sign should be on public property or if the private sign should be a public sign. Mr. Higgins said if they get that clarified, the County Attorney's Office has a resolution of intent going to the Planning Commission on July 14 to open up the process and begin discussing what level of comprehensive sign regulation is needed. He said once that is analyzed, then they can come back to the Board and they can decide whether it is appropriate to amend the ordinance also in order to provide possibilities for private use of public property. Mr. Higgins said the case threw a curve ball at them, and a sign would still have to go through the special use permit process, and neither a public sign or a private sign would meet the criteria currently in the ordinance. He asked that the Board allow more time for staff, particularly the County Attorney's Office, to explore this further.

Ms. Dittmar stated they have two things going on here, a specific request for a sign, which she would recommend they not get into, and a review of the larger issue of private use of public signs. She said they will have to really understand what the Planning Commission thinks about this and have the best advice they can in regard to the Supreme Court ruling, and recommended that they delay decision on this.

Mr. Davis clarified that their action will be to accept staff's recommendation and defer it until a recommendation comes back from the Planning Commission.

Mr. Boyd **moved** to accept staff's recommendation and defer the policy relating to private use of public signs until a recommendation came back from the Planning Commission.

Ms. Amelia McCulley, Zoning Administrator, noted this was a two-tiered approach: the use of public property, and the offsite sign regulations. She said for the first aspect, the County has existing criteria; the second requires further staff review.

Mr. Sheffield **seconded** the motion. Roll was called, and the motion passed by the following recorded vote:

AYES: Mr. Boyd, Ms. Dittmar, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Sheffield.
NAYS: None.

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Agenda Item No. 19. **Presentation:** Piedmont Virginia Community College Annual Report.

Dr. Frank Friedman, President of Piedmont Virginia Community College, addressed the Board and noted that the four County representatives on the PVCC Board members were Debbi Goodman, Sean Moynihan, Bruce Dotson and Steven Davis. He reported that last year they had 7,800 students take credit courses, with 38% or about 2,800 from Albemarle County. Dr. Friedman said that of those 2,800 or so in credit courses, 680 were still in high school for the dual-enrollment program, which continues to grow tremendously. Dr. Friedman said those DE students do not have to pay for those courses, and their tuition equivalent would be approximately $660,000 of college credits at no cost.

Dr. Freidman reported their Kid's College Program has been operating for the last three or four years, and PVCC has been doing programs for kids from third to ninth grade, most in science and technology but some in the arts also, and this summer they had 1,200 kids over the course of the summer, with 100-150 a week in those STEM programs. He stated the children do all sorts of hands on things, robotics, developing video games and things like that that get them engaged in science and technology. Dr. Friedman said PVCC also has a program with the City of Charlottesville called Growing Opportunities, which identifies unemployed or underemployed individuals and brought them into this program using resources that may come from the Workforce Investment Act, DSS, City subsidies, as well as scholarships. He stated the program put them through short-term training for identified jobs that were waiting for them, and they have done this twice for bus drivers, JAUNT, University of Virginia transit system and CAT; one program for electricians; one for certified nursing assistants; and one for office administrative personnel. Dr. Friedman said the program has graduated 32 individuals, almost all of whom have gotten jobs in those fields. He stated it has been a really successful program and is similar to the program that Ridge Schuyler is running. Dr. Friedman said he is bringing this to the Board's attention in case it is something they may be interested in the future, as it is something PVCC would be happy to work with them on. He stated the Board's colleagues in the City can explain how they have been involved with it. Dr. Friedman stated it is a really good program because the employers are at the table and identified the jobs that are available, so the participants know when they get their certifications, they will be ready for those jobs.

Mr. Sheffield said this program is piloted through the City's Economic Development Office. Dr. Friedman acknowledged that it is.

Mr. Sheffield stated this is something he had mentioned before, and he wants Faith McClintic to look at. He mentioned that with this last class, there was a lot of County applicants who were denied

because they lived in the County, not the City. Dr. Friedman said that is why if the Board is interested, PVCC would love to expand it.

Mr. Sheffield said he is thinking of Albemarle County Schools, as they are always poaching JAUNT's bus drivers and always have a shortage.

Ms. Palmer asked about the Kid's College Program and the associated fees. Dr. Friedman said there is a fee, but they have extensive scholarships for low-income individuals, and one of the Rotary Clubs has provided thousands of dollars in scholarship money to help low-income kids. He said their fees are about $100 per week and it has really expanded, with 800 last summer and 1,200 this summer.

Ms. McKeel asked Dr. Friedman to send information on the Growing Opportunities program. Mr. Foley said it can come to his office.

Ms. Dittmar asked where they are on somehow making it more financially viable for everyone. Dr. Friedman said that higher education is handled differently by each state, in Virginia the community colleges are only funded for credit instruction, which is why he always told the Board they have this many credit students and this many non-credit students. He said that only credit students are funded in Virginia, but it is non-credit courses that often leads to industry certifications, such as the program just described, CDL licenses and things like that. Dr. Friedman said PVCC gets no funding for that, and it is just how Virginia has set up higher education; when he was in Texas, they were funded equally for non-credit as credit because they viewed it as work force development. He said Virginia does not do it that way, North Carolina does, Maryland does, and Virginia does not. Mr. Friedman said when they heard the Virginia Community College Chancellor speak, his number one legislative agenda item was to develop a proposal to take before the Governor and General Assembly this coming session for Virginia to begin funding non-credit instruction, but where that will go and how that will go, he does not know. He said the Chancellor is charged by the General Assembly to bring the proposal forward this fall, so that is in legislation that was passed last session, and he and staff have been working on that. Dr. Friedman said the town hall meeting the Board attended was one of about 20 the Chancellor had done to gather ideas on how to put that together.

Ms. Dittmar asked if it is valuable for them to weigh in on this, if they become a little more educated on this. Dr. Friedman replied yes but it is too early at this time, but if they would like he will keep them abreast and work on the timing with them.

Ms. Dittmar said if it is going to be introduced in the next General Assembly, they have to vote it into their platform in November. Dr. Friedman said he believes the proposal will be ready in September, and he will be able to share it with the Board at that time.

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Agenda Item No. 20. **Presentation:** Charlottesville-Albemarle Technical Education Center, (CATEC).

Mr. Steve Koleszar, Chairman of the CATEC Board and Scottsville Magisterial District School Board member, stated he has great hopes that with the concepts developed in their strategic plan and their new leadership team, they can take CATEC to the next level, not just in K-12 education but also in workforce development. He introduced Catherine Lee, Strategic Planning and Workforce Development Officer and Greg Smith, Dean of Students.

Ms. Catherine Lee said she is the Strategic Planning and Workforce Development Officer, having been there about a month and a half, and she is excited to be there because there had been a pretty thorough strategic planning process that predates her joining the team. She said it is exciting to be there at a time when many partners are committed to taking it to the next level and actually do the implementation work to take it off the ground. Ms. Lee said that CATEC has been open for approximately 40 years, and has had a great impact on Charlottesville and Albemarle County. She said that moving forward there is opportunity to work with Charlottesville City Schools, Albemarle County Schools, PVCC, and with economic development and workforce efforts across central Virginia, as well as employers to look at the demand types of employments and train high schoolers and adults to be ready and prepared for different types of employment and meeting that demand. She said in the next few months they will be looking at convening committees locally to develop the curriculum for two new academies at CATEC, integrated with the feeder schools and with PVCC for dual enrollment in the areas of medicine and health sciences and in information and engineering technology. Ms. Lee said they are very excited about this opportunity, and have done a lot of work on real estate development and related workforce and employment and local hire ordinances and requirements in other cities. She said she is very excited to work with Dr. Friedman and PVCC, and the Board will be hearing back from all of them.

Mr. Craig Smith, Dean of Students, stated he had started to work at CATEC the previous week, moving here from the Manassas area, and is very excited about all the things going on at CATEC. He stated they have a lot of work to do and a lot of good things already happening and a lot more to happen in the future. He said with his job as the Dean of Academics, he is primarily overseeing the day-to day management of the school, serving as somewhat of a principal of the school, and he feels very privileged to be a member of the team.

Mr. Koleszar said Mr. Smith had doubled enrollment in technical education in Manassas where he was working previously, and hopes that more students will take advantage of the opportunities locally.

Ms. Mallek asked if someone can address the funding issues for adults, as she understands there is a difference between funding that is available to help with tuition for adults if they are taking classes at PVCC vs. those at CATEC, and if shifting some of those classes over there to make that funding available is even being considered. Mr. Koleszar said he cannot speak to Ms. Mallek's specific question, but as part of their strategic plan he would like to see CATEC become more involved as a workforce development hub for adults as well as for students.

Dr. Friedman said that Mr. Koleszar's description is accurate; right now CATEC has evening programs for adults in many of their curricular areas and they are administrative entity for the apprenticeship program. He said it has been that way forever, it varies throughout Virginia how that is handled, in most locations it is handled by the K-12 system, that is unlike many other states where that is the responsibility of the Community College. Dr. Friedman said he had made it known to the Superintendents Dr. Adkins and Dr. Moran that they would be interested in having a discussion in the future about PVCC taking over the adult degree programs. He said this is not a hostile takeover by any means, but he has let them know that PVCC is interested. Dr. Friedman said the big advantage is to the student, and said the federal Pell Grants are only available if the programs are offered by an institute of higher education, so CATEC students would not be eligible. He stated in some cases employers are paying for students to attend, such as through the apprenticeship program, but for those who are paying their own way there is an advantage to qualifying for the Pell Grants. Dr. Friedman said in working together to focus first on the high-school age kids, they will get to discussions about adult students down the road.

Ms. Dittmar and Ms. Mallek expressed concern about when "down the road" will be.

Ms. Mallek stated it was explained to her that CATEC's labs are set up for training, but thinking outside the box, PVCC can offer the lecture course to allow students to get the federal money, and have the lab work done at CATEC. Dr. Friedman said PVCC is ready to do that work at any time, but the decision rests with the schools.

Ms. Dittmar stated the schools are tasked with serving K-12, so the responsibility for the very necessary adult education and retraining must rest somewhere, and in some localities, local government is taking that on. She said she had recently learned about a "50 Plus" initiative, and wants to know how they can get started with those types of things. Mr. Koleszar said they are ready to work with PVCC on the adult education issues through their new strategic planning. He stated that CATEC has an adult education mission and has been successful with that, but is ready to take it to the next level. He stated that both CATEC and PVCC have separate employer advisory committees, but they will integrate those to have one to serve the entire spectrum.

Ms. Dittmar stated that adult ed classes are generated by enough interest, and they have a powerful mechanism by which to get the work done. Mr. Koleszar said they are "chomping at the bit" to get the work done.

Ms. Dittmar and Ms. Mallek stated they are ready to move beyond the thinking that it will happen sometime later on.

Dr. Friedman stated there is a regional adult education program known as TJ-ACE for students in adult basic education (GED), involving seven school systems, and they have approached PVCC and asked if the College would take the program on. He said they are in the final stages of developing an MOU that will go to the board of TJ-ACE and if approved, PVCC will take over the adult basic education responsibilities in July 2016. Dr. Friedman stated this is different than adult workforce education, which is what the Board is interested in, and said they will need to make the same kind of move in that area.

Ms. McKeel said she is very hopeful for the new leadership at CATEC, and she has been a longtime proponent of having a better synergy between CATEC and PVCC. Dr. Friedman said as they create these types of programs, they will need to assess whether they have proper facilities, and they will be getting to a point when they have to face some decision points about facilities, which will ultimately be a part of this initiative. He stated that PVCC will be amenable for a joint-use facility at some location, including the existing campus, but they are very far away from that being an actuality.

Mr. Koleszar noted it is the programs that will drive the facilities.

Ms. Mallek asked what the timeframe is for the two new programs.

Ms. Lee said in the strategic plan there are some proposed academies and operational transition points, and they are pretty much on schedule with some adjustment on implementation. She stated that in coordination with PVCC and dual-enrollment courses with high schools, and focused programming based on community interest, they are on track to begin those in fall 2016.

Agenda Item No. 21. **Presentation:** Charlottesville Works Initiative.

Mr. Ridge Schuyler stated the Charlottesville Works Initiative is a nonprofit affiliate of the Charlottesville-Albemarle Regional Chamber of Commerce, with a goal of eliminating poverty. He said they are making an intentional effort to identify individuals in the community and getting them into real jobs, not theoretical or advisory. Mr. Schuyler stated that County staff has made the GIS maps he is using, and stated that Albemarle County's median family income is $89,000, but it is not spread evenly

throughout the County and varies based on Census tracts. He said part of the effort is defining "struggle," which he defines as the inability to meet basic needs. Mr. Schuyler stated that for a single mom with two children, to meet basic needs that mom would need to make $27,000 a year to pay for food, shelter, clothing and utilities, and minimum-wage jobs pays about $14,500. He said in order to have a job, people need to get there, and the cost of a bus pass plus childcare requires that mom to make $37,000 per year, or $17.50 per hour. Mr. Schuyler stated the Census Bureau indicates there are 3,861 families in Albemarle County that do not earn enough to be self-sufficient, which equals about 17% of the County's families. He said in terms of numbers, there are families in every magisterial district who cannot meet their basic needs.

Mr. Schuyler said in order to get to the solution, they need to harness what they have, and create what they do not. He stated that to solve poverty, they need jobs, and money comes from employment. Mr. Schuyler said the jobs that pay $30,000 or more that do not require a college degree, include 10,000 office or administrative support occupations; there are 6,200 healthcare practitioner jobs; 2,450 high-end retail jobs; 2,100 production occupations; 2,000 construction extraction; 2,000 installation, maintenance and repair jobs. He stated that PVCC and CATEC are needed for exactly this reason, to train these workers. Mr. Schuyler said the goal of the initiative is to identify the people needing these jobs and link them to employers, and help them find the skills and training they need to be ready for those positions. He emphasized it always starts with the job, and then charting a pathway from the person to that job.

Mr. Schuyler stated it is not as simple as just helping people find jobs though, as people need childcare, transportation, healthcare, proper clothing, stable shelter, etc., and if a person does not have any one of those things, they will not get or keep that job. He emphasized those services exist in the community, and they need to be coordinated and offered in the background of that person with the goal of getting that person a job. He said his initiative has identified nine aspects in order to make this work: the job itself, which needs to pay $25,000 or more; actionable intelligence about the job, i.e. job specifics; a way to reach people who need the jobs, using agencies to help identify people based on their capabilities; resource providers; coordination of those providers behind that person, through the use of technology; contingency money; quality control via certification; tracking of wage data; and ongoing peer support. Mr. Schuyler stated that while there is an emphasis on technical skills training, but the number one thing employers are looking for are soft skills, showing up to work on time, being flexible in thinking, having a work ethic, and those need to be considered as part of workplace readiness as a precursor to other skills. He emphasized that poverty ends at the interview table, and all of their work should be focused on how to get people through the interview process and into jobs that will sustain them.

Mr. Sheffield asked if the Chamber or another source cannot provide the "actionable intelligence" regarding job information. Mr. Schuyler said some of that information is collected by the Virginia Employment Commission, but his initiative also built an application to do a survey, and it has been tested but is not yet uniform. He stated that employers actually like this approach, because it is job-driven and driven by their needs, and allows them to essentially "custom order" their applicants, but the employer needs to provide that actionable intelligence about their open jobs.

Mr. Sheffield stated JAUNT is always hiring drivers, but there is also heavy turnover, and once they get a commercial driver's license (CDL), they can make a lot more money. Dr. Friedman stated what Mr. Schuyler is describing is what the Workforce Investment Act of 1999 and One-Stop Center are supposed to do, so that individuals do not have to run around seeking services, including finding jobs that are posted. He said if it is working the way it was initially designed, it would be doing what Mr. Schuyler has described.

Ms. Mallek said it is five state agencies, not the social services people who have the intelligence on these families.

Mr. Schuyler noted he is not recommending setting aside the One-Stop, but making it more effective. He said to take advantage of the center, people out in the community need to be reaching out to the people who qualify for the jobs that are in the center, because they do not believe there is much hope for them to find a job.

Ms. Mallek asked if the Goodwill is a partner. Mr. Schuyler said that they are.

Mr. Boyd stated that work ethic is also really important, because a lot of small businesses would like to hire a $15-20 an hour employee, but they do not always get the value out of that employee.

Mr. Schuyler said this is why it is important to have a net out in the community to identify people who actually want these jobs and will be good at it.

Mr. Boyd said people know how to game the system, and they can make more money getting food stamps and WIC and child support than they can working a bottom-level job, and asked how they will get beyond that. Mr. Schuyler said there are people who will get out no matter what burdens you place in front of them, and once they see their peers traveling a different path, they are motivated to do the same. He stated when he worked for Congressman Periello, he would have people walk across Garrett Square and tell them, "I just want a damn job."

Ms. Dittmar asked if there is a suggestion or takeaway from this presentation, in terms of moving things forward. Mr. Schuyler responded that sometimes it's just getting the critical number of people or employers for buy-in of a particular concept, and said the gap he feels needs to be filled have to do with the soft skills and workplace readiness. He stated the City's Office of Economic Development has done a

study of employers and asked them why people do not get an entry-level job with their company, and the #1 response is that people do not show up for the interview. Mr. Schuyler said his assessment of why that happens is that people have given up hope and do not feel they will get the job, and one of the things his program has added in their workplace training is one-on-one mental health counseling, because it is often despair or anger that keeps people from feeling confident enough to get a job. He stated in their limited model, this was found to make a huge difference, and he suggests that in the local workforce academies and places like CATEC fold in soft skills training.

Mr. Sheffield said the readiness training will provide stability, but people will move on, and the City's "Go" training weeds out people who do not want to work.

Dr. Friedman said if Albemarle makes it a priority and talks with the Economic Development Office and DSS, and brings them to the table with PVCC and Charlottesville Works, that will help get things started.

Mr. Foley asked Mr. Schuyler to follow up with him.

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Agenda Item No. 22. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Dittmar stated the Board has looked at its proclamations carefully when making the change to bring the process to where it is now, and many localities around the Commonwealth have taken them out of their agendas completely. She asked Mr. Davis to comment on the ethics of what they have been doing in terms of polling Board members ahead of time.

Mr. Davis stated it is specifically allowed in the Freedom of Information Act to pole Board members, and the documents with which they are communicating are open to public record. He said all the process for proclamations does is get something before the Board that at least a majority of them wants to consider.

Mr. Sheffield said in a sense it is a defacto vote, because if four of them indicate to the Clerk by email they are in favor of a proclamation to go on the agenda, it can be assumed they will vote for it.

Ms. Dittmar stated it is not necessarily assumed that everyone will vote for it.

Mr. Boyd said that 10 years ago, they did not have as many proclamations brought before them, and now it seems they are getting 4 or 5 a month.

Mr. Sheffield stated he is less concerned about the proclamations themselves, and more about the polling process by email.

Ms. McKeel expressed concern that the listening public will now think they are doing something secretively.

Mr. Davis said even the speaker, Mr. Grant, acknowledged they are not doing anything illegal.

Mr. Boyd said Mr. Grant even said it is not illegal, but just that it is not in the spirit of transparency.

Mr. Foley asked how staff should handle these as they come forward, and if the Chair should just decide whether or not they want it on the agenda.

Mr. Sheffield said it is a new issue, and perhaps they need time to think about it.

Mr. Davis stated the process of polling has been used for a very long time and is done by all other localities, because there has to be a way to get the sense of the Board as to whether an item should go on the agenda. He noted the Board's Rules and Procedures will be taken up again in January, so that will be the typical time to consider it.

Board members agreed.

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Mr. Sheffield stated the Southern Environmental Law Center as part of the PDAP group has come up with architectural drawings of the grade-separated interchange at Rio, and he feels that VDOT will probably do some of it. He said if the Board takes some action to endorse those ideas as a concept, it might be a catalyst for VDOT to incorporate something that is more aesthetically pleasing.

Mr. Foley said the question is whether the Board wants to schedule this to be on a future agenda.

Mr. Sheffield stated it is important for this Board to give an opinion.

Ms. Palmer stated this is a fantastic idea, and while the Board cannot endorse it, she would not want the work of a private group to get lost.

Mr. Foley agreed to put it on the August agenda.

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Ms. Mallek asked if the Board would like to consider whether County facilities should be allowed to have a minimal amount of alcohol such as wine tasting allowed in rented community facilities or for tenants in those facilities, such as the Greenwood Community Center, because currently it is not permitted even as an unopened bottle. She asked them to think about whether this is something they might want to discuss in the future, and to contact her by email.

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Agenda Item. No. 23. From the County Executive: Report on Matters Not Listed on the Agenda.

There was no report.

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Agenda Item No. 24. Adjourn.

With no further business to come before the Board, the meeting adjourned at 10:24 p.m.

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Chairman

Approved by Board

Date: 11/11/2015

Initials: EWJ