

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on December 16, 2020 at 1:00 p.m. This meeting was held by electronic communication means using Zoom and a telephonic connection due to the COVID-19 state of emergency. This meeting was adjourned from December 8, 2020.

SUPERVISORS PRESENT: Mr. Ned Gallaway, Ms. Beatrice (Bea) J. S. LaPisto-Kirtley, Ms. Ann H. Mallek, Ms. Diantha H. McKeel, and Ms. Donna P. Price.

ABSENT: Ms. Liz A. Palmer.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson, Deputy County Executive, Doug Walker, County Attorney, Greg Kamptner, Clerk, Claudette K. Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:01 p.m., by the Chair, Mr. Gallaway.

Mr. Gallaway said the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(16), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster."

Mr. Gallaway said the persons responsible for receiving public comment are the Board of Supervisors of Albemarle County.

Mr. Gallaway said the opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website, on the Board of Supervisors homepage and on the Albemarle County calendar.

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Adoption of Final Agenda.

Ms. LaPisto-Kirtley **moved** to adopt the final agenda. Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price

NAYS: None.

ABSENT: Ms. Palmer

Agenda Item No. 5. Brief Announcements by Board Members

Ms. Mallek said one piece of good news she brought home from the Workforce Board meeting the week prior is that PVCC (Piedmont Virginia Community College) has been awarded the best community college for veterans in the nation for the third year in a row. She commended them for the work they are doing in increasing the certificate programs and providing assistance to veterans.

Ms. Mallek said the bad news from the Virginia Employment Commission was that while nationwide, the country is up to 7 million unemployment claims weekly, in Virginia, they are still at hundreds of thousands of people, with 200,000 participants now. She said that normally, they would be receiving 2,500 contacts a week in a good year, and last March, it jumped to 125,000 almost overnight.

Ms. Mallek said the numbers are now coming down somewhat, but there are still thousands of people who are involved in these programs, many of whom they have seen benefit from the programs in Albemarle. She said there is concern at the state level, as there is in the County, that in 12 days, there will be 300,000 Virginians who will not have any benefits whatsoever if the people in Washington do not get their act together. She said she hoped they would and then, the state and localities will be ready to assist.

Agenda Item No. 6. Proclamations and Recognitions.

There were none.

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board

Mr. Gary Grant, Earlysville area, Rio District, said he had some questions about the current Albemarle County seal, easily answered with just a yes or no. He asked the Board if they did not feel it was time to replace the picture of apples on the seal with a picture of grapes. He said that according to the most recent census of agriculture, there are four times as many Albemarle farms growing grapes than apples.

Mr. Grant asked if they did not feel it was time to replace the picture of the UVA Rotunda on the County seal with something not built by slaves. He said that according to Encyclopedia Virginia, 15 enslaved men in 1825 were forced to manufacture nearly 1 million bricks for the construction of the Rotunda. He asked if instead of the Rotunda on the seal, there could be a picture of Albemarle's grade-separated interchange at Rio and 29, which was built by free men and women who were paid for their work.

Mr. Grant asked if the Board did not think it was time to replace the picture of the horse on the seal with a picture of a deer. He said that according to the most recent U.S. Department of Agriculture Equine Census, there are 2,100 horses owned on Albemarle farms. He said meanwhile, according to the Virginia Department of Wildlife's resources, there were over 4,000 deer harvested by hunters in just one recent hunting season in Albemarle.

Mr. Grant asked the Board if they did not think it was time to replace the picture of the globe on the County seal with something more contemporary. He said this is the internet age, and GPS maps are at their fingertips and in their pockets. He suggested a picture of a cell phone screen rather than a globe.

Mr. Grant said that finally, there are scales of justice in the middle of the seal. He asked how this stock image represents anything unique to Albemarle. He suggested replacing the generic scales with one of the most well-known objects, which is the Board's digital timer of green, yellow, and red lights that beeps when its digits reach 0:00.

Mr. Grant thanked the Board for spending taxpayer money to stream their meetings and for his almost three-minutes of their time, as well as for the curfew-free zone in Albemarle. He wished them a productive meeting.

Mr. Gallaway closed Matters From the Public.

Agenda Item No. 8. Consent Agenda.

Ms. McKeel **moved** to approve the consent agenda. Ms. LaPisto-Kirtley **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price

NAYS: None.

ABSENT: Ms. Palmer

Item No. 8.1. FY 2021 Appropriations.

The Executive Summary forwarded to the Board 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 change to the FY 21 budget due to the appropriations itemized in Attachment A is \$0.00. 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.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve the appropriations for local government projects and programs as described in Attachment A.

Appropriation #2021045	\$0.00
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Source:	General Fund reimbursed expenditures*	\$ 6,853,556.00
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*This appropriation does not increase or decrease the total County budget.

This request is to appropriate \$6,853,556.00 from General Fund expenditures planned to be reimbursed by federal Coronavirus, Aid, Relief and Economic Security (CARES) Act Coronavirus Relief Fund (CRF) funds to establish a Pandemic Response, Recovery, and Reconstitution and Contingency Reserve. This Reserve will support pandemic response, recovery, and reconstitution expenditures such as, but not limited to, human and community services, economic development, technology, and general County services. In addition to pandemic-related expenses, this Reserve may support advancing strategic priorities and providing a contingency for other unanticipated priority needs.

The resolution (Attachment B) authorizes the County Executive to allocate funding to and from this Reserve to appropriate budget line-items for expenditure. In accordance with current practice for other County Executive authorization, all of these transfers or distributions will be reported to the Board of Supervisors as part of the County's quarterly financial reports.

By the above-recorded vote, the Board adopted the attached Resolution (Attachment B) to approve the appropriations for local government projects and programs as described in Attachment A:

* * * * *

**RESOLUTION TO APPROVE
ADDITIONAL FY 2021 APPROPRIATION**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That Appropriation #2021045 is approved;
- 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, 2021; and
- 3) That the County Executive is hereby authorized to allocate funding to and from the Pandemic Response, Recovery, and Reconstitution and Contingency Reserve to appropriate budget line-items for expenditure.

APP#	Account String	Description	Amount
2021045	4-1000-31013-431010-110000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$2,669,440.30
2021045	4-1000-31013-431010-210000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$204,212.23
2021045	4-1000-31013-431010-221000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$381,897.71
2021045	4-1000-31013-431010-231000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$352,553.36
2021045	4-1000-31013-431010-232000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$10,233.72
2021045	4-1000-31013-431010-233000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$7,452.00
2021045	4-1000-31013-431010-241000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$36,242.33
2021045	4-1000-32015-432010-110000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$2,340,620.39
2021045	4-1000-32015-432010-210000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$179,057.45
2021045	4-1000-32015-432010-221000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$326,645.92
2021045	4-1000-32015-432010-231000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$294,139.92
2021045	4-1000-32015-432010-232000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$8,101.98
2021045	4-1000-32015-432010-233000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$11,960.00
2021045	4-1000-32015-432010-241000-1003	APP2021045 - Create Pandemic RRR Reserve	-\$30,998.69
2021045	4-1000-99900-499000-999958-9999	APP2021045 - Create Pandemic RRR Reserve	\$6,853,556.00

Item No. 8.2. Anti-displacement and Tenant Relocation Policy Implementation Guidelines.

The Executive Summary forwarded to the Board states that, on September 18, 2020, the Board adopted a resolution adopting an Anti-displacement and Tenant Relocation policy. This policy commits the County to making all reasonable efforts to ensure that residential redevelopment and rehabilitation activities that receive County funding support or that require Board approval will minimize resident displacement or relocation to cases where no other alternative is available. Additionally, the policy instructs County staff to work with developers and property owners to avoid resident displacement, whenever possible; and when relocation is necessary, to enable displaced residents to move directly to safe, healthy, and affordable replacement housing convenient to their place of employment and/or school.

Staff presented the initial draft of the Albemarle County Anti-displacement and Tenant Relocation Guidelines (Attachment B) to the Board of Supervisors during an October 21, 2020 work session. Based on Supervisor comments provided during that work session, staff has identified a number of guideline items in need of further revision. Adoption of the attached Resolution of Intent will allow staff to begin working on those revisions. This work will be carried out in consultation with the County Attorney’s Office, as well as members of the local developer community. Staff anticipates presenting a revised draft of the Anti-displacement and Tenant Relocation Policy guidelines in the late spring of 2021.

There is no direct budgetary impact specifically related to this information.

Staff recommends that the Board adopt the attached Resolution of Intent (Attachment A) to approve an update to the County Code.

By the above-recorded vote, the Board adopted the attached Resolution of Intent (Attachment A) to approve an update to the County Code:

**RESOLUTION OF INTENT
Anti-displacement and Tenant Relocation Policy Guidelines**

WHEREAS the County of Albemarle is committed to (i) the promotion of housing opportunities for very low-, low-, and moderate-income households and (ii) the preservation of existing communities; and

WHEREAS the County of Albemarle is committed to limiting the negative impacts residential (re)development and rehabilitation projects may have on County residents; and

WHEREAS, on September 18, 2020, the Albemarle County Board of Supervisors adopted a resolution committing the County to making all reasonable efforts to ensure that residential redevelopment and rehabilitation activities that receive County funding support or that require Board approval will minimize resident displacement or relocation to cases where no other alternative is available; and

WHEREAS, the resolution further committed the County to work with developers and property owners to avoid resident displacement whenever possible and, when relocation is necessary, to enable displaced residents to move directly to safe, healthy, and affordable replacement housing convenient to their place of employment and/or school; and

WHEREAS, staff was instructed to draft a set of guidelines to implement the Anti-displacement and Tenant Relocation policy.

NOW, THEREFORE, BE IT RESOLVED THAT for the purposes of public necessity, convenience, general welfare, and good affordable housing practices, the Albemarle County Board of Supervisors hereby adopts a resolution to consider amending the Albemarle County Code of Ordinances to incorporate the Anti-displacement and Tenant Relocation Policy guidelines.

Item No. 8.3. County Support of Thomas Jefferson Foundation's Grant Proposal for Proposed Property Acquisition in Support of the Planned Rivanna River Greenway.

The Executive Summary forwarded to the Board states that staff are requesting a Letter of Support from the Albemarle County Board of Supervisors for the Thomas Jefferson Foundation's pending grant proposal to the Virginia Outdoors Foundation's "Preservation Trust Fund - Public Access Grant" program. A draft letter is provided as Attachment A.

The deadline for this grant proposal is December 18, 2020. There is no immediate financial obligation associated with the Foundation's grant proposal or with the County's letter of support.

The Thomas Jefferson Foundation's grant proposal is a request for a monetary award that would support the Foundation's intended purchase of a riverfront property along the Rivanna. This riverfront parcel (TMP #78-33D) is an approximately 5-acre portion of the larger historic South Lego Farm. Because of its strategic location, it is critically important to the future construction of the County's long-planned Old Mills Trail extension / Rivanna River Greenway.

The Foundation's (draft) grant application articulates and re-affirms their standing commitment to dedicating to Albemarle County a public right-of-way (in the form of a greenway easement) across TMP #78-33D, and also across the adjoining Shadwell parcels to the east (downstream) identified as TMP #78-28B and TMP #79-7A. The Foundation has previously dedicated a greenway easement on the adjoining upstream parcel (Lego Farm / TMP #78-31A). A location map is provided as Attachment B.

In these ways, the Foundation's pending grant proposal and associated acquisition of this riverfront property TMP #78-33D - and their subsequent dedications of greenway easements to Albemarle County - would complete the County's greenway acquisition efforts along this portion of the Rivanna River. More specifically, these accomplishments would bring the entirety of the County's waterfront along the Rivanna River under County control (via fee simple ownership and/or greenway easement), from Darden-Towe Park in Pantops to the Milton Boat Landing.

The Thomas Jefferson Foundation's (draft) grant proposal provides the following additional details (from the "Project Summary" section):

"The Thomas Jefferson Foundation has an opportunity to acquire the critical missing link parcel in a planned regional trail system that will provide the public access to miles of scenic trail along the Rivanna River. Acquisition of this single parcel, "South Lego (TMP 78-33D0)," and subsequent right of way dedication to Albemarle County will allow for Rivanna River Greenway project to extend east from the urban corridor of Charlottesville/Albemarle extending downriver through Shadwell and Milton. Local, Regional and State plans support this trail and its potential connection to the Fluvanna County's Heritage Trail where future connections to the proposed James River Heritage Trail are possible.

The trail follows historic transportation routes including Three Notch'd road, 19th century-era dams, locks, and canals used in river navigation, as well as an abandoned 19th century C&O Railroad bed. This critical 5-acre parcel is part of Thomas Jefferson's original plantation holdings, and lies between the Lego and Shadwell Quarter Farms. The proposed public trail will travel through these historic sites and pass ruins of Jefferson's Mill ruins, ca. 1807. A trail along this historic route can highlight the stories of enslaved persons and tenants working these plantations, as well as the history of indigenous occupation prior to European settlement. Post emancipation, this corridor continued to be an important route for people and goods along the Rivanna River."

Albemarle County support of the Thomas Jefferson Foundation’s grant proposal would support and advance numerous Comprehensive Plan goals, objectives, and strategies, as detailed below:

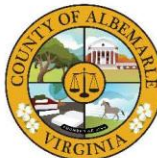
- **Parks and Recreation, Greenways, Blueways, and Green Systems** (Comp Plan S-45), Objective 3: Complete the greenway trail system and provide access to blueways.
- **Transportation** (Comp Plan S-39), Objective 4: Strengthen efforts to complete a local transportation system that includes access to pedestrian and bicycle facilities.
- **Historic, Cultural, and Scenic Resources** (Comp Plan S-18), Objective 4: Promote regional cooperation in preservation and conservation efforts, including the promotion of heritage tourism.

The Albemarle County Comprehensive Plan - Greenways Plans is provided as a reference in Attachment C.

Providing a letter of support involves no immediate budget impact or financial obligation.

Staff recommends the Board approve the submission of the attached draft letter of support.

By the above-recorded vote, the Board approved the submission of the attached draft letter of support:



Beatrice (Bea) LaPisto-Kirtley
Rivanna

Donna P. Price
Scottsville

Ann H. Mallek
White Hall

COUNTY OF ALBEMARLE
Office of Board of Supervisors
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Diantha H. McKeel
Jack Jouett

Liz A. Palmer
Samuel Miller

Ned L. Galloway
Rio

December 16, 2020

Ms. Liz Russell
Thomas Jefferson Foundation
P.O. Box 316
Charlottesville, Va. 22902

Dear Ms. Russell,

The Albemarle County Board of Supervisors is pleased to provide this letter of support for the pending grant proposal from the Thomas Jefferson Foundation (Foundation) to the Virginia Outdoors Foundation’s (VOF) “Preservation Trust Fund – Public Access Grant” program. The Thomas Jefferson Foundation’s grant proposal is a request for a monetary award that would support the Foundation’s intended purchase of a riverfront property along the Rivanna. This riverfront parcel (TMP #78-33D) is an approximately 5-acre portion of the larger historic South Lego Farm. Because of its strategic location, it is critically important to the future construction of the County’s long-planned Old Mills Trail extension / Rivanna River Greenway. The Foundation’s (draft) grant application articulates and re-affirms their standing commitment to dedicating to Albemarle County a public right-of-way (in the form of a greenway easement) across TMP #78-33D, and also across the adjoining Shadwell parcels to the east (downstream) identified as TMP #78-28B and TMP #79-7A. The Foundation has previously dedicated a greenway easement on the adjoining upstream parcel (Lego Farm / TMP #78-31A).

In these ways, the Foundation’s pending grant proposal and associated acquisition of this riverfront property TMP #78-33D - and their subsequent dedications of greenway easements to Albemarle County - would complete the County’s greenway acquisition efforts along this portion of the Rivanna River. More specifically, these accomplishments would bring the entirety of the County’s waterfront along the Rivanna River under County control (via fee simple

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ownership and/or greenway easement), from Darden-Towe Park in Pantops to the Milton Boat Landing.

In the spirit of continuing to work with community partners towards the implementation of Albemarle County's Greenways Plan, the Albemarle County Board of Supervisors is pleased to submit this letter of support for your consideration of this worthy project that will enhance access to this critical community asset.

Sincerely,



Ned L. Gallaway, Chair
Board of Supervisors

NLG/ckb

Doc ID: cc07ab908585b9151dbd569f263eecd006e7f855

Item No. 8.4. County Grant Application/Award Report, Including CARES Funding, **was received for information.**

Item No. 8.5. VDoT Monthly Report (December) 2020, **was received for information.**

Agenda Item No. 9. **Work Session:** Options to Address Blight and Building Maintenance.

The Executive Summary forwarded to the Board states that the Board's FY 20-22 Strategic Plan envisions a community with active and vibrant development areas. It identifies revitalizing "aging urban neighborhoods" as one of the Board's high priorities. A stated goal of the County's Comprehensive Plan is that our Development Areas will be vibrant active places with attractive neighborhoods. The presence of blighted and deteriorated properties can have an economic and environmental impact on property and lead to criminal activities and other public nuisances.

"Blighted property" is defined as a structure or improvement that is dilapidated, or deteriorated because it violates the minimum health and safety standards (*Virginia Code* § 36-3). Though blight is more often considered in the context of development areas; it exists also in the Rural Areas.

As outlined in Attachment A, the Community Development Department (CDD) currently administers several regulations that relate to blight and building maintenance:

- * uncontrolled vegetation (*County Code* § 7-501 *et seq.*)
- * stagnant water (*County Code* § 7-505 *et seq.*)
- * inoperable vehicles (*County Code* § 9-500)
- * trash and refuse (*County Code* § 13-302)
- * safety/health-related upkeep of residential rental properties (Virginia Uniform Statewide Building Code (USBC) § 104.1), and
- * unsafe buildings and structures (*County Code* § 5-300 *et seq.*)

* Zoning Ordinance provisions that prohibit junk yards and the keeping of inoperable vehicles.

In addition, a more recently enabled regulation enforced by the Albemarle County Police Department relates to parking on secondary roads. (*County Code* § 9-102)

Please also see the County Attorney's Inventory of State Enabling Authority to Promote Active and Vibrant Development Areas (Attachment B).

On April 6, 2016, the Board also authorized staff to address problem properties using the County's spot blight abatement authority under *Virginia Code* § 36-49.1:1, discussed in more depth below. This process has been used once, for the property located at 2514 Smithfield Road.

Only 1% of complaints received by CDD (about three or four per year) fall into a property maintenance category of concerns that appear not to be covered by current regulations. These maintenance cases often appear to neighbors as public nuisances. Though aesthetics are often a neighborhood concern, existing enabling authority is not geared toward aesthetics. As a result, this work session will not focus on aesthetics, but on the costs and benefits of three enabled options to address blight and building maintenance.

This work session will focus on the pros and cons of spot blight abatement and two additional tools .

1) Spot blight abatement

Summary: *Virginia Code* § 36-3 defines "blighted property" as a structure or improvement that "endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health or safety standards..." A property-specific uncoded ordinance is adopted for each individual property determined to be blighted. If the owner does not respond with an acceptable abatement plan, the locality may carry out an approved plan to repair or acquire and dispose of the property and place a lien to cover the costs.

Analysis: Though a spot blight abatement can correct health or safety issues, other issues may remain. For example, even if visually unattractive, a plywood covering over a hole in the roof (or wall) is considered a satisfactory blight abatement. Though a spot blight abatement may not fully address neighbors' aesthetic concerns, it does focus on minimum requirements to adequately address public health or safety.

2) Tax Abatement Program to demolish or renovate "derelict" buildings

Summary: Under *Virginia Code* § 15.2-907.1, localities may adopt a tax abatement program to address derelict buildings and require the owners to demolish or renovate them. A "derelict building" is defined as "a building that might endanger the public's health, safety, or welfare and for a continuous period in excess of six months, has been

i) vacant;

ii) boarded up in accordance with the building code, and

iii) not lawfully connected to electric service or required water or sewer service."

Once notified, the owner must provide a plan to demolish or renovate the building. Failure to do so can result in civil penalties. Alternatively, the locality may prescribe, remove, repair or secure any structure that might endanger the public health or safety of other residents.

Analysis: County Code Chapter 5, Article 3 already allows the County to address unsafe buildings and structures. Under that authority, County Building Officials have consistently determined that fencing off the structure or securing openings to the building adequately protect public safety. As the County continues to urbanize, if property eligible for redevelopment is blighted, the County could adopt a tax abatement program under this State enabling authority. However, like spot blight abatement, this program may not address aesthetic complaints because it focuses on minimum requirements to adequately address public health or safety.

3) Property maintenance code

Summary: Localities are enabled to enforce Part III of the USBC, known as the Virginia Maintenance Code (VMC). The VMC requires property owners to reasonably maintain structures on their property and addresses a range of maintenance issues, including:

- * maintenance of the exterior of property, including swimming pools, the exterior and interior elements of buildings, the interior accumulation of rubbish and garbage, and pest elimination (chapter 3);

- * interior lighting and ventilation and occupant load limitations (chapter 4);

- * plumbing systems including adequate sanitary waste elimination (chapter 5);

- * mechanical and electrical systems (chapter 6); and

- * egress and fire safety equipment in public buildings (chapter 7).

Among other requirements, the VMC requires that exterior surfaces be maintained in good condition and that peeling, flaking, and chipped paint be eliminated and surfaces repainted.

If the County elected to enforce the VMC, it would need to take "official action" by adopting an ordinance or resolution stating that it was electing to enforce the provisions of the VMC, before doing so. USBC, Part III, § 104.1. The County would also need to appoint a Code Official (in addition to the existing Building Official).

Analysis: The VMC applies only to properties constructed under the USBC (from 1973 to present). Therefore, many aging structures, perhaps those most in need of repair, would remain unaddressed. For example, because the subject of the prior spot blight abatement (2514 Smithfield Road) was constructed in 1972, it would be exempt from the VMC.

Enabling authority for a partial adoption of the VMC is unclear at best. If a partial adoption is enabled, staff recommends application of the VMC only to smaller lot urban properties (Development Areas) and not to rural properties.

Even partial adoption of the VMC could impose financial hardship on those who may be least able to afford compliance. In addition, the required action may not address aesthetic concerns - the owner may choose simply to board up a portion of the structure.

Implementing a property maintenance (PM) program would involve additional staffing with not only the Code Official but also PM staff responsible for inspections and enforcement. Additional staff resources would depend on the extent of the VMC adopted and whether it was a responsive or proactive program. Localities with similar populations that have adopted the VMC report PM staffs from 2 to 15 full-time equivalents. While the current numbers of property maintenance aesthetic complaints are low, staff would expect complaints to substantially increase with even a partial adoption of the VMC.

One of the strategic plan objectives relating to revitalizing aging urban neighborhoods is to "Implement improvement actions developed from neighborhood inventory data to address neighborhood level needs." This neighborhood inventory from the Thomas Jefferson Planning District Commission is expected soon. Understanding what infrastructure, features and qualities distinguish a thriving aging neighborhood from declining ones will provide key guidance towards achieving this goal.

Of the three options discussed, there appears to be no single solution to address the issue of public nuisance in aging urban neighborhoods. Of the three, a partial application of the Virginia Maintenance Code to smaller properties warrants study for the future in terms of costs and benefits. However, because of the substantial cost to initiate a new program, the current and anticipated volume of cases do not appear to justify it at this time. As County continues to urbanize, staff will continue to monitor and revisit this issue.

Adopting the VMC would create a substantial budget impact. To better estimate resource needs and associated costs, staff would need further Board direction. The extent of the Code adopted and whether it was proactive or responsive would greatly impact the costs of a new program. Additional funding for contracting work necessary under the existing regulations when property owners are not compliant (uncontrolled vegetation, unsafe buildings, etc.) is being considered for next fiscal year.

Staff recommends that the Board accept the information provided for discussion and consideration. We further recommend the Board direct staff to conduct monitoring and evaluation of public nuisance cases that are not addressed through current regulatory tools.

Mr. Andy Herrick, Deputy County Attorney, said he would be leading the presentation. He said he was joined by Ms. Amelia McCulley, Deputy Director of Community Development; Michael Dellinger, Building Official; and several other staff members, including Ms. Lisa Green. He said many County staff members were present who were involved in the drafting of the presentation.

Mr. Herrick said the presentation was about blight and building maintenance and some of the Board's options. He said this is a topic that the Board has considered on several previous occasions. He said most recently, in May of 2019, Mr. Kamptner delivered a presentation about the enabling authority available, including both the County's existing tools they are already using as well as available options for revitalizing aging urban neighborhoods.

Mr. Herrick said he would give some background as to where they are in the importance of this issue, then take a deeper dive into three specific tools that have been before the Board previously for their consideration: spot blight abatement, tax abatement program, and property maintenance code. He said he would conclude with recommendations and then kick it off for board discussion. He said he imagined his presentation would take up very little of the allotted time, and he wanted to allow the Board plenty of time to provide feedback.

Mr. Herrick said that in terms of why this issue is important, the Comprehensive Plan indicates that the "Development areas will be vibrant, active places with attractive neighborhoods." He said the Fiscal Year 20-22 Strategic Plan honed in a little further and identified revitalizing aging urban neighborhoods as one of the Board's high priorities. He said as the staff report indicates, blighted and derelict properties can have negative economic and environmental impacts on the community and can lead to criminal activity and public nuisances. He said the problem really is one that is self-evident and that the Board has recognized in both its Comprehensive Plan and in the Strategic Plan.

Mr. Herrick presented an outline of the existing County regulations that already deal with some of the issues the County is facing. He said County staff is already actively enforcing many of these programs. He said there is an ordinance for uncontrolled vegetation that was adopted several years earlier, and another one for stagnant water that was adopted more recently. He said the County also has

an ordinance regarding inoperable vehicles and one prohibiting trash and refuse. He said the County also enforces safety and health-related regulations regarding residential rental properties as part of the Uniform Statewide Building Code.

Mr. Herrick said the County's building regulations also address unsafe buildings and structures. He said the Zoning Ordinance has provisions that prohibit junkyards and the keeping of inoperable vehicles.

Mr. Herrick said these are just some of the tools that the County is already enforcing. He said Mr. Kamptner's memo from February 11, 2019, Attachment B to the staff memo, has a very comprehensive listing of all the enabling authority, both the ones the County is presently using as well as additional authority the County has at its disposal.

Mr. Herrick said before looking at some of the tools, he wanted to share some of the limiting factors that are common to all of these and perhaps reset expectations somewhat. He said neither the County's existing authority, nor the available tools, can address all problems. He said there is no silver bullet that will magically take care of all the issues that the aging urban neighborhoods are facing. He said most or all of the available tools do not and cannot address concerns like aesthetics, vacancy, or occupancy. He said the County may hear frequently from constituents or citizens about their concerns about aesthetics or vacancy but unfortunately, there are just not tools that address those.

Mr. Herrick said the available tools the County has at its disposal are designed primarily to address safety and habitability rather than appearances. He said there is not an ordinance that deals with an eyesore. He said what the available ordinances deal with more are safety and habitability issues to ensure that structures are sound both for their inhabitants as well as that they are not creating hazards to neighboring properties.

Mr. Herrick said they would take a look at three specific tools, adding that some may be familiar to the Board, having been discussed previously. He said the first of these is spot blight abatement, which may be familiar to the Board since the County has, in fact, engaged in at least one previous spot blight abatement.

Mr. Herrick said a spot blight abatement is a property-specific finding and plan requiring owner action or County remediation at the owner's expense. He said it does not require the adoption of a Countywide ordinance or a broad program. He said if the County has identified a specific property that meets the definition of "blight," County staff would bring to the Board a proposed ordinance for the Board to find the property as being blighted and then demand from the owner a plan to address that blight. He said if the owner fails to abate the blight on the property, then the County can go in and remediate the blight itself at the owner's expense and impose charges on the property to recoup the County's expense in remediating that blight.

Mr. Herrick said in terms of its use elsewhere, it was difficult for him to find how widespread the use of spot blight abatement as a tool was. He said the County has done this once previously with a property on Smithfield Road, and he knows anecdotally that the City of Charlottesville has engaged in spot blight abatement. He said that because it is such a property-specific program, it was difficult for him to have a comprehensive listing of how many other localities are using this as a tool.

Mr. Herrick said he thinks spot blight abatement's strengths are that it is focused and property specific. He said it is cost-efficient, and the County does have some experience in remediating properties this way. He said it also requires owner involvement since it puts the owner on notice and gives them an opportunity to remediate their own problem before the County takes action.

Mr. Herrick said a limitation of spot blight abatement is that it may not address all aesthetic concerns. He said if an owner chooses simply to board up his property or to secure it, this is sufficient to remediate the blight, even though it may not address all the aesthetic concerns that everyone may have regarding that property.

Mr. Herrick said there would be an opportunity to discuss the tools at the end of the presentation. He said the next tool was the tax abatement program. He said this came to the Board's attention most recently as when Mr. Kamptner was providing a legislative update and noted that the General Assembly recently modified some of the provisions regarding this program to allow more enforcement ability for localities.

Mr. Herrick said it is important to note that this is primarily a tax incentive program rather than a land use program. He said it incentivizes improvements to or demolition of derelict buildings by updating the resulting taxes. He said in other words, for an owner who may be interested in redeveloping a property, it allows them to come in, make improvements to the property whether by redeveloping the property or demolishing existing derelict buildings, and it does not penalize them by raising their taxes. He said the cost of the improvement will not be added to their assessments, and they are able to abate taxes over a period of 15 years.

Mr. Herrick said he was able to find nine other localities in Virginia that are using the tax abatement program, including ones as nearby as Amherst County. He said the strength is that this may incentivize developers and investors who are interested in tax savings on major investments, so if there were specific properties that had significant redevelopment approval and there was an investor interested in making a major investment on the property, and the tax incentives were a draw for that investor, this

would be a program that would be well targeted for major redevelopment projects.

Mr. Herrick said he thinks the program's limitation is that it is really not targeted towards the redevelopment of individual lots. He said in other words, he thinks it is unlikely that many individual property owners will see the tax incentives from this program as being a major incentive for them to keep up their property, if all the other tools at the County's disposal aren't already motivating them to keep up their property. He added that as with some of the other programs, this may not address all the aesthetic concerns.

Mr. Herrick said the last program that they would discuss is the property maintenance code. He said Virginia has a Uniform Statewide Building Code, some provisions of which every locality is required to enforce, and others of which are enforceable at an optional level. He said localities can choose to take action to adopt the maintenance provisions of the Uniform Statewide Building Code. He said it does require a formal adoption, but once a locality has chosen to adopt those maintenance standards, the locality is required to enforce those uniform statewide standards. He said in other words, there is not the ability for a locality to deviate from the uniform statewide standards, making it an all-or-nothing approach in terms of adhering to those standards.

Mr. Herrick said these standards are intended primarily to improve safety and habitability of structures. He said in looking around the Commonwealth, approximately one-third of the localities in the Commonwealth have adopted a statewide maintenance code, and most of those localities are urban.

Mr. Herrick said the strengths of this tool is that it does address a variety of maintenance issues, and it has already been adopted by peer localities. He said it also comes with a number of limitations that the Board would be well-advised to consider, starting with its inflexibility. He said it is a one-size-fits-all approach and does not allow localities to deviate.

Mr. Herrick said the enabling authority for partial adoption is uncertain. He said one of the ideas he has heard suggested is perhaps the ability to say they are going to enforce the maintenance code in some parts of the County, but not others. He said he is not aware of anywhere in the Commonwealth that has taken that approach. He said there have been other localities who have chosen to enforce certain chapters of the Uniform Statewide Building Code, but there has not been a locality he is aware of that has said they will enforce it in one part of their locality but not the other. He said unfortunately, the State Department of Housing and Community Development that promulgates the Uniform Statewide Building Code has not been very clear about whether that sort of geographic limitation or implementation can be made.

Mr. Herrick said another very important drawback is that it would require substantial additional staffing. He said staff's thought is that it would probably require between a 50% to 100% increase over the existing building staff. He said it is not something that the existing building staff can simply be multitasked with, and it would require a significant investment of County resources with additional staffing to properly enforce the maintenance code.

Mr. Herrick said the version of the maintenance code that was in effect at the time the structure was constructed is the maintenance code that applies to that building. He said because there was not a Uniform Statewide Building Code prior to 1972, there is no Uniform Statewide Building Code that applies to pre-1972 structures. He said this is probably a significant limitation in that many of the structures for which they have heard complaints date from that time.

Mr. Herrick said as with other tools, the property maintenance code does not address all aesthetic concerns.

Mr. Herrick said the last concern is one that can easily be overlooked, which is that there is an equity concern that requiring compliance with the statewide building code may impose financial hardships on those least able to afford property improvements. He said it may be that the people who are not keeping up their properties are not doing so because of financial hardship and imposing the property maintenance code would simply complicate that from an equity perspective.

Mr. Herrick presented a slide, noting that he believed it showed an interesting situation. He said there are certain property owners that will aim for minimal compliance, whatever the standard. He said as one might be able to see from the picture on the screen, it depicts some tall grass, but what the owner has done is they actually put rulers or stakes in their front yard to ensure and remind the County enforcement that, in fact, he is staying within the County's ordinance for tall grass. He said this is an owner who has gone for minimal compliance but chooses to not really keep up the property to the standards that perhaps the neighbors would like to see.

Mr. Herrick said there are owners who will strive for minimal compliance, as with the tallish grass, and yet raising the minimum standard increases both the maintenance cost for owners and the enforcement cost for the County. He said the idea is to try to find a balance between reasonable standards that maintain the community's standards with compliance and enforcement costs.

Mr. Herrick said staff included a number of slides of properties that may seem like they are problematic but, in fact, may not be a problem under the existing tools. He said as he indicated previously, aesthetic concerns are not addressed by many of the tools. He said the picture on the screen was of a property that not very sightly, yet it is secured. He said there is nothing that appears to be falling off. He said it does not create a problem with either vermin or trespassers, and therefore, staff's initial

review on this is that this picture would probably not meet the definition of “blight” and would also not be a maintenance code violation. He said it is secure and does not impose a safety danger to itself or to neighboring properties.

Mr. Herrick presented a picture of another property, noting that it has some issues with peeling paint, siding, and shutters. He said those three issues probably do make it a maintenance code violation, even though staff’s take on it is that it is probably not blight. He said as unsightly as those two properties shown were, they were included to illustrate that there is no single remedy that will solve all unsightliness or eyesore properties.

Mr. Herrick said staff’s thoughts and conclusion are that there is no single tool to address all concerns, and especially aesthetic concerns. He said of the three tools discussed, staff recommends that they continue to place most of their focus on spot blight abatement as being the most focused and cost-effective tool. He said it is well suited for individual properties without requiring the County to invest a great deal in additional full-time staffing.

Mr. Herrick said staff is also recommending deferring consideration of tax abatements and/or the property maintenance code unless and until they prove to be cost effective or uniquely suited solutions. He said unless there is a property where they find that spot blight abatement cannot fix, staff’s recommendation would be to continue to use that as the primary tool and to defer consideration of more expensive, larger programs.

Mr. Herrick said he has suggested a few discussion questions to get the Board started, and he was happy to address questions on what he just presented. He said numerous staff members were also on the line. He offered to go back to the slides to take a look at the specific tools.

Ms. McKeel thanked Mr. Herrick and staff for bringing this back before the Board. She said over the years, she has probably been one of the Supervisors who has talked about this the most actively, and she thinks this is because she represents a very dense urban ring area with some of the oldest homes in the County, with many of them going back from before 1972 and around that time. She said they have documented that the Jouett District in the Urban Ring has some of the oldest houses.

Ms. McKeel said she wanted to be clear that she has focused her discussion on neighborhoods, not Rural Areas and not properties of 2 acres to 3 acres. She said she was talking about neighborhoods where people are on top of each other and that this makes a big difference.

Ms. McKeel said she was interested in Mr. Herrick’s discussion about Tool #3 and asked if he had said was “all or nothing.”

Mr. Herrick said this was correct.

Ms. McKeel said Albemarle is one of the very few counties that has a designated Rural Area and Development Area. She said the presentations explain what they cannot do and how limited the tools are. She said she is trying to figure out how to be positive and look at solutions, or at least moving forward, a carrot, or what they can do. She asked if there is case to be made for a county that has a Rural Area and Development Area where they cannot use the all or nothing approach. She asked if an opinion can be asked of the Attorney General, or if this was out of his field. She said she was asking because Albemarle is different from many other counties.

Mr. Herrick clarified that “all or nothing” means that there is not a deviation allowed from the state standard. He said if the state standards say that buildings have to meet a certain standard, then Albemarle could not say, “We adopt all of the Uniform Statewide Building Code, but in this case, we’re going to have a different standard.” He said if the state standards are adopted, the state standards are the ones that would apply.

Mr. Herrick said Mr. Dellinger was on the line and could probably better explain partial adoption of the Statewide Building Code. He said it is possible, as he indicated in the presentation, for localities to adopt certain chapters within as some localities have done. He said they say that they will enforce it as to a certain type or aspect of a structure. He said he was not aware, however, of a locality who said they will enforce it in the eastern half of their locality, but not in the western half, for example.

Mr. Herrick said he understands that Albemarle is unique in terms of having a more defined urban area and diverse rural area as well, but he is not aware of clear enabling authority to allow enforcement only in the Development Area but not the Rural Area.

Ms. McKeel said she is trying to get away from the word “aesthetics” because she was not worried about peeling paint. She said she was talking about properties that have literally been abandoned and no one is living in. She said the house Mr. Herrick showed with the high grass, which she is very familiar with, is owned, but the person does not live there and has not lived there in 12-15 years. She said the gutter is now falling off. She said while the grass is high, it is not a matter of the two aesthetic pictures he showed. She said it is right beside other houses in a neighborhood and while it is owned, it is essentially abandoned. She said the same goes for other houses.

Ms. McKeel said she supposed she views this differently than a house that is lived in and has peeling paint. She said she was not trying to monitor peeling paint, but that she was talking about houses that have vultures coming out of the roofs, chimneys that are about to fall over, and birds flying in and out

of the windows. She said these are different houses she was describing that they have had in the Urban Ring.

Ms. McKeel expressed that what the Board receives is information on what they cannot do. She said she was trying to figure out what they can do if there is a problem.

Ms. McKeel said the biggest complaint she has in the Urban Ring is people who live next door to mostly duplexes, but some single-family homes as well, where over the years, people have swooped in and bought them and are using them for rental, but they are not being maintained. She said they do not require the person who lives there to maintain the grass. She said mainly, it is about the people who own and rent these homes and do not maintain them. She said she does not know how to get at that issue, but to her, it is like the broken window syndrome one gets into in cities.

Ms. McKeel said she wanted to hear what the other Board members had to say, but she would grant that staff and the Board have done a lot of things to help, and she appreciates the standing water ordinance very much. She said people were accusing the Board of trying to be the "water police," and that they were going to have people fined for a cup of water in their yards. She said actually, what they have been able to do is provide a healthier community because now, people cannot just ignore a swimming pool right behind someone else's house that is breeding mosquitos, which can be a health hazard.

Ms. McKeel said regarding the most recent secondary parking ordinance, which her Urban Ring is taking advantage of right now, they are clearing away tow trucks, boats, campers, and all kinds of vehicles that are congesting neighborhood roads and parking in front of other people's houses. She said this has also been an excellent tool that she appreciated staff's work on.

Ms. McKeel said the junkyard ordinance is great, except they have been working on a junkyard in the Jouett District since 2008 and it is as bad, if not worse, currently.

Ms. McKeel expressed that she was trying to figure out if there was anything that could be done legislatively. She said Mr. Herrick mentioned the tax abatement program, which is somewhat of a carrot and won't work for some of what she is describing.

Ms. McKeel said she would make one more comment. She said she has had two complaints in the last month about a particular utility company that comes in to do construction work, such as telephone pole replacement, and leaves the telephone pole behind. She said there has been one telephone pole abandoned in the Urban Ring for over a year. She said this is a maintenance problem, and perhaps it was out of this area, but she was talking about some of the challenges they are seeing, and they are not all property owners. She said sometimes, they are companies like tow truck and utility companies, which may be opening up another matter. She said she would hear what the other Supervisors have to say.

Ms. Mallek asked if procedurally, she should go through all three categories, or only address Question #1 first.

Mr. Gallaway asked Mr. Herrick if he wanted the Board to move through the specific discussion points in addition to questions.

Mr. Herrick replied that it was at the pleasure of the Board.

Ms. Mallek said she would go through what she had and if it were to get too confusing, they may have to do it again. She said she had been taking notes and wanted to add to what Ms. McKeel had said.

Ms. Mallek said one of the pictures shown was of a Rural Areas neighborhood built in the 1960's and that behind that house is a swimming pool full of water. She said the house has been abandoned with the furniture and food inside for eight years and yet, the County cannot pump out the pool because it would then fall in. She said there is nothing they can do about the mosquitos in that neighborhood, and it is awful. She said they have had a tremendous number of staff help out there to try to figure it out, and the neighborhoods have completely bent around the axle about this.

Ms. Mallek said this was one example of how it is not so much geography, but how close the houses are together. She said this gets into property maintenance.

Ms. Mallek asked regarding the tax abatement if there are guardrails in place to prevent a landowner from just letting their property fall down so that the County can then give them a tax abatement to destroy it the rest of the way and sell it for a lot of money. She said she did not need an answer for that, but she would like to know more later about what the processes are.

Ms. Mallek said she had a second question about the tax abatement program. She said Mr. Herrick had mentioned describing things as a Gap finance for redevelopment to provide some tax rebate. She asked if this is also available for identifying brownfields that are in the process of being redeveloped, or if this is something that is only available for derelict properties that have not yet begun their redevelopment efforts.

Ms. Mallek said regarding the property maintenance code, the staff concern is one that the Board has been told about for 12 years. She said when thinking about the number of times that staff has to go out to these properties for whom they have looked away, involving multiple staff and multiple trips, whether it is about the restaurant and dead chickens out in Crozet or in a rural neighborhood in

Earlsville, this is a tremendous amount of time that staff already has to spend. She said if there are ways that they can do something better with their rules and therefore give the first visit a chance to be more effective because they actually have something to say about no longer doing something, or else, this may save staff time in the long run. She said she did not have the data to back this up.

Ms. Mallek said her main question she wrote from when she was reading the staff report earlier was about how to get to these other issues they have. She said they know they have problems with abandoned houses everywhere that are dragging down the neighborhoods and damaging the neighbors' ability to sell their houses because buyers see the things happening next door. She said the neighbors do not think it is right, and their lives are impacted. She said it is sad to have to say, with many staff present, "I'm sorry, but we can't help you." She said residents look for local government to say that there are rules and that neighbors' rights should not impact on each other. She said this is an important unsolved issue for her.

Ms. Mallek said she wants to do something, and she thinks that perhaps the property maintenance code is the way to go if the staff can give some particular responses on whether they will get somewhere with the things they have most often in their complaint file that Ms. Green, Ms. McCulley, and Mr. Dellinger hear about all the time.

Mr. Gallaway asked if there was any reaction to this and if the questions were rhetorical. He asked if there were questions, they could be reacting to as they go, since this was a work session.

Mr. Herrick said he was happy to try to address the questions Ms. Mallek raised in terms of the tax abatement program and whether it incentivizes noncompliance. He said in other words, the question is would a property owner intentionally let their property go into the ground in hopes of then getting a tax incentive. He said the program, as it is currently written, is geared towards derelict structures, and there is a definition in the code for derelict structures.

Mr. Herrick said to answer Ms. Mallek's second question, it would not necessarily apply to brownfields. He said there may be other incentives that allow for the remediation of brownfields, but this particular program would not be one of them.

Mr. Herrick said it is his thought that the amount of tax savings at issue for individual dwellings is unlikely to be much of an incentive. He said the tax abatement program is really intended for a major property such as a boarded-up shopping center or major redevelopment. He said this is where the tax abatement program would come into play. He said he just did not see the tax savings on an individual single-family dwelling as being enough to incentivize an owner to keep up the property.

Mr. Herrick said it sounded as though Ms. Mallek's main concern, and a concern the County hears often, is about abandoned or vacant houses. He said for better or for worse, there is just not a law against having a property vacant as long as it is secured. He said if it is boarded up, and as long as it does not invite trespassers or is open to wildlife coming in and out of the roof, for instance, then it is not considered to be blighted. He said if it is secured, regardless of how unsightly it may be, then it is not considered to be a safety issue. He said Mr. Dellinger could probably go through the combinations and permutations of what is and is not secure and what is and is not a safety issue.

Mr. Herrick said this gets back to his earlier point that there is not a law against having an eyesore. He said there are laws against having an unsafe or unsecure structure.

Ms. Mallek asked if as long as there is a pitiful 3-foot fence around the backyard pool with the gate falling off the hinges, this meets the law as far as keeping the neighborhood children from drowning in this abandoned pool.

Mr. Herrick replied that the stagnant water ordinance is intended to prevent the development of mosquitos. He said one way of coming into compliance with this stagnant water is to treat the standing water. He said Ms. Green was on the line and could likely address this better than he, but for instance, one way to abate a stagnant water violation is the use of mosquito dunks. He said there are a number of unused pools that no one would ever want to swim in, but as long as the owner is putting in mosquito dunks or some sort of treatment to abate mosquito development, this meets the requirement.

Mr. Herrick said it is not so much about appearance, even if very unsightly, because it is not creating a health issue as long as the mosquitos are being abated. He added that there may be civil liability issues for an owner that creates an attractive nuisance to their neighbors, but this would be a civil matter between the neighbors.

Ms. Price said she appreciated the presentation, as well as seeing so many people from Community Development in attendance. She said they are familiar with her, as she has called in, and she knows her colleagues have concern areas. She said she was interested in the last comment Mr. Herrick made about attractive nuisance and if this would only be a civil action between neighbors. She said she took from what he said that the County, on its own right, did not have the ability to pursue an attractive nuisance complaint.

Mr. Herrick replied that they did not, to his knowledge. He said where the County's ability to abate structural hazard lies is if there is a building or structure, for example, that is in danger of collapsing into a street or onto a neighboring property. He said if there is an issue of structural soundness, he thinks the County's authority to abate that problem is clearer than simply creating an attractive nuisance.

Ms. Price agreed they were talking about a difference that is a distinction because now, they are talking about a safety issue rather than simply being an attractive nuisance. She said she would accept what Mr. Herrick was saying, at that point.

Ms. Price said she would ask a clarifying question. She said they often talk about the Rural Areas and the Urban Areas, or Rural versus Development Areas. She asked if the terms "urban" and "development" were synonymous, equal, or equivalent, or if there is a distinction between the two.

Mr. Herrick replied that when the Board indicates it wants to make aging urban neighborhoods a focus, he is not sure whether the intent is to make this synonymous with the County's Development Area or whether there are some other criteria the Board is using when it says that it wants to make it a focus. He said one idea that has been raised in the past is to adopt a property maintenance code for the Development Areas, but not for the Rural Areas. He said that to the extent this idea has been floated, there may be some enabling authority questions.

Ms. Price said she would ask that the Office of the County Attorney and Community Development very specifically clarify for her, other Supervisors, and residents if the terms "urban" and "development" are synonymous, equal, equivalent, or are they simply comparable.

Ms. Price said a second point to make is that, as with all Supervisors, they have both urban or development and rural areas. She said she is troubled by there being a distinction between the standards that they would apply in different areas of the County. She said in her district, one cannot go south on Route 20 past Mill Creek before running into the first derelict, collapsing building. She said these are everywhere, including Rolling Road and Jefferson Mill Road. She said she thinks it would be a significant disadvantage to both the Rural and the Urban or Development Areas if they were differentiate in terms of the standards they would want to apply.

Ms. Price said that candidly, she finds it troubling that the Comprehensive Plan might focus on these safety issues, which is different than aesthetics. She said aesthetics are very subjective, whereas she believes safety is much more objective. She said she is concerned if they are looking at having safety standards that apply in one area but do not in the other. She said they should apply throughout the entire County.

Ms. Price said in the materials provided to the Board, on page 3 of 4 about a third of the way down, the language says, "Enabling authority for partial adoption of the Virginia Maintenance Code is unclear, at best." She said Mr. Herrick addressed this in his presentation. She said it then says, "If a partial adoption is enabled, staff would recommend application only to smaller-lot urban properties in the Development Area and not to Rural properties," to which she would say, "No." Ms. Price said if they are to have standards, the standards should apply Countywide.

Ms. Price said that in her understanding of the three possible approaches, the spot blight abatement sounds like a special bill that legislature would do. She said often, in Congress, there is a special bill for one particular individual. She said her concern with that is that it can come across as a favoritism or as a burden provided to individuals rather than being more uniform application around the County.

Ms. Price said she is not unmindful, however, of the comments that Mr. Herrick indicated with regard to the necessity to substantially increase the amount of personnel required if they were to go to a property maintenance code. She said she does not know enough about the code to be able to address, at this point, the comment that was made that they could adopt certain chapters of the code, but not other chapters, and so she suspects that she and other Supervisors probably need to be better educated on what the different chapters include so that they would then be able to be more informed and make an analysis of whether that would be an approach.

Ms. Price said she also had some questions on the tax abatement program. She said in the written materials, three requirements were listed that, in addition to a building that might endanger the public's health, safety, or welfare and for a continuous period, has been (1) vacant; (2) boarded up in accordance with the building code, for which she did not know exactly what the requirements were; and then, the inclusive "and" of (3) not lawfully connected to electric services or required water or sewer services. She said she thinks that based upon the rest of the discussion, the tax abatement program is likely only going to be limited to larger properties where there will be significant redevelopment.

Ms. Price said when she lived in Italy, the codes there for buildings were that if the property was being remodeled or renovated, then the property owner did not have to pay property taxes. She said throughout the country, there was scaffolding around buildings for years, and no work was being done. She said she thinks this addresses one of the concerns that was raised that they might be encouraging people to abuse that sort of situation. She said based on Mr. Herrick's discussion, however, this is probably the least likely.

Ms. Price said as she looks at the three, she thinks the property maintenance code would be the fairest and provide the most consistency and uniformity, but she recognizes the substantial expense from the County's standpoint.

Ms. Price said a comment or area she had not yet addressed is that she thinks they also have to look at the economic impact on the property owners, as she suspects this is the same throughout the

County. She said she knows that in her district, she has an inordinate number of individuals who simply cannot afford some of the improvements that they would all like to be able to make to their property, and so as an equity matter, they will want to be careful not to burden property owners, particularly in this economic environment resulting from the pandemic, and imposing a financial burden upon them that they are not able to meet.

Ms. Price said that at the same time, every single day, no matter where she drives in her district, she is driving by buildings that she thinks are safety hazards and that have attractive nuisances, which are likely to draw children or other individuals to them and very likely have the buildings collapse upon them. She said she appreciates County staff bringing up this topic, as it is something that has been on her mind as of late. She said Community Development and other agencies in the County are aware due to some of the complaints she has filed on behalf of constituents. She said it is clearly an area they have to look at. She said she thinks they have to do something.

Mr. Gallaway asked if there was any reaction.

Mr. Herrick said he took notes on Ms. Price's comments and could respond. He said her thought was that if the property maintenance code were applied, it should be applied Countywide. He said in terms of a chapter-specific approach, he believed Mr. Dellinger was probably more familiar with the details of the property maintenance code and could better address what chapter applies to what, and what the dynamics might be if the Board were interested in pursuing adopting certain chapters, but not others, of the code. He said he was not prepared to discuss that at this meeting, but it was something they could look into if there was interest on the part of the Board.

Ms. LaPisto-Kirtley said Ms. Pethia could address some of these issues. She said she, too, was concerned about the fact that they do have lower-income people who will not be able to comply, and the question is what to do about that. She said she understands there are programs, and Ms. Mallek had said something about programs through perhaps the Department of Health and Safety that would provide some assistance there. She said she thinks the Board needs to be cognizant of that.

Ms. LaPisto-Kirtley said she had a question about abandoned buildings. She said whether or not animals are coming in and out of the buildings they have seen, the buildings certainly have rodents coming in and out, which she sees as a health and safety issue. She said she wonders whether or not this couldn't be addressed as a health and safety issue to be able to go after some of these buildings and make sure that they are secure and boarded up.

Ms. LaPisto-Kirtley said she does see that with many of the issues, the County will probably have to ask the state for some additional assistance, not necessarily monetary, but in giving the County the ability to address some of these concerns.

Ms. LaPisto-Kirtley asked Mr. Herrick if a building is falling down into itself, if it is considered blight.

Mr. Herrick replied that this is a matter where they likely need to look at the specific case and whether it is a danger. He said if there are residents there, this would be a danger and something that the Building Official could address. He said they would need to look at the specifics of whether it was in danger of falling over on any other property.

Mr. Herrick said to get at Ms. LaPisto-Kirtley's earlier question about wildlife or rodents coming in and out of a property, if a property is not secured and is a haven for rodents that is then affecting other properties, then this is definitely an issue that County staff can address. He said the spot blight the County did previously, in fact, was largely based on the fact that there was wildlife coming in and out of an unsecured building. He said this is something that can be addressed through spot blight.

Ms. LaPisto-Kirtley said she saw in the Summary of Existing Regulations (Attachment A) a lot of removing and prohibiting things, but she was not sure how much they are able to act on it, which surprised her. She said in terms of, "Prohibiting abandoned or unattended vehicles," Ms. Green knows that there are issues with a constituent having abandoned vehicles everywhere. She said in terms of, "Prohibiting tall grass, weeds, uncontrolled vegetation, etc. on vacant, undeveloped parcels," there are these laws, but the question is if they are able to do anything about it. She mentioned, "Prohibiting and dumping or disposing of refuse on private property."

Mr. Herrick replied that these are the tools for which they currently have ordinances and are currently enforcing. He said Ms. McCulley appeared to have something to add on that.

Ms. Amelia McCulley, Deputy Director of Community Development, said she wondered if it would be helpful to give the example Ms. LaPisto-Kirtley just asked about regarding a house that is open with animals and vermin running in and out of it and ask the Building Official if the current regulations for unsafe structures and buildings would apply and how he would look at that.

Mr. Michael Dellinger, Building Official, asked Ms. McCulley if she could rephrase the question.

Ms. McCulley said there is a situation in this example where there is a house, whether in a neighborhood or in the Rural Areas, where doors are open and animals, and potentially children, are getting in the house.

Mr. Dellinger said they could go back and look at the County ordinance itself, which they can apply to owner structures like this. He said this County ordinance is not part of the state building code ordinance, and they can use this as a tool to take care of those situations, as well as the spot blight abatement.

Mr. Dellinger said the fire code calls an "unsafe structure" any structure that is open. He said whenever there is a complaint that has a building that is open, with the doors or windows open, the fire official's office contacts County staff to let them know. He said they have to look at the tools in their "toolbox" to see which ones that they can actually apply and which ones they have the right to apply. He said if they are not enforcing the property maintenance code and there is an owner structure without a tenant in it, then they have to go to a different tool.

Ms. LaPisto-Kirtley asked if the County can have the structure removed or leveled.

Mr. Dellinger replied that they can do this. He said there is a building like this one he is currently working on, and the owner does not have the resources to tear the house down or remove it. He said at that point, the County has to get bids to take it down. He said if the owner is cooperative, that is one thing, but if they are not, then the County has to go through the legal process of going through the magistrate and getting the inspection warrant work. He said nothing is a quick fix, and even with property maintenance, they are often looking at six months before they can do any type of enforcement.

Mr. Dellinger said if they declare the building unsafe and it has to be razed, the County will raze the property, and they would put a lien on the taxes. He said the problem that happens here, which happened in other jurisdictions he was in, is that some families may have 6-8 children that are still tied into that piece of property. He said it could be their mother's house and they do not want their mother's house to be gone, which is a mental health issues, and so they will let it continue to deteriorate. He said the County then goes in and razes the structure and put a lien on the property, but now, there are eight different heirs to deal with that are involved to sell the property, and so it goes on for years with the taxpayer money being tied up in the property before it is actually sold.

Ms. LaPisto-Kirtley asked if a lien would not be put on the house itself so if they ever tried to sell, the monies to repay the County would come out of the sale of the house.

Mr. Dellinger said he would let Mr. Herrick address how the liens go on the properties.

Mr. Herrick asked if this was in terms of property maintenance code enforcement.

Ms. LaPisto-Kirtley asked if the County has to raze the house or structure, if they could put a lien on it so that if and when it is ever sold or developed, the lien will have to be paid if sold or developed.

Mr. Herrick said this is one of the benefits of the spot blight abatement; that it does allow the County to improve, repair, or demolish the house and then recover its costs through a lien.

Ms. McCulley said she could make a follow-up point that she believed was important. She asked Mr. Dellinger if the house itself is structurally sound, and can be secured, if the County would raze the building or have it secured from entry.

Mr. Dellinger replied that they would have it secured from entry.

Ms. LaPisto-Kirtley said she was talking about a house that has collapsed into itself.

Mr. Dellinger said this is a whole different scenario than what is even in the property maintenance code. He said they were now getting into an unsafe structure. He said that with the issues staff sees in a county that is both rural and urban, with farms that have buildings that are falling down on top of themselves, they have look at what they can apply. He said as Ms. Price mentioned, they have to have something that will be equal across the board. He said when dealing with a farm structure, this is completely exempt from the Building Code, and so any of those types of enforcement they would do through the County ordinances are actually being done on behalf of the Board of Supervisors.

Ms. McCulley said that in addition to the spot blight abatement, which is an ordinance adopted for that particular property, in Chapter 5, they have "unsafe buildings and structures," which is a code that the Building Official currently uses for situations such as what Ms. LaPisto-Kirtley described.

Ms. LaPisto-Kirtley said her other question was what they could do, as Supervisors, to aid in enforcement of what they have, and if they need to be more stringent, if they need to go to the state.

Mr. Dellinger replied that he believes the County has the tools to do it. He said with some of the properties the Board discussed, some are ones the Board has brought to staff's attention while others are ones that staff has not even received complaints on in the past. He said they look at what they have in front of them and take action based on what they have. He said if there is a situation where someone is living in a dangerous or unsafe structure, staff will of course apply more attention towards that than a structure that is perhaps out in the Rural Area that is not much of a safety hazard other than if someone were to trespass on the property.

Ms. LaPisto-Kirtley said this could happen with children and unsecured swimming pools.

Mr. Dellinger agreed. He said when talking about swimming pools, the Building Code talks about a safety barrier. He said they realize it is a barrier, but if someone wants to get into a swimming pool, they will do what they can to get into it. He said there was a situation in 2019 in the Howardsville area where a person trespassed in a quarry and drowned, despite there being No Trespassing signs up.

Mr. Dellinger said unfortunately, this is what they deal with, but staff does the best they can and use the tools they have. He said they talk about putting up a barrier to keep people out. He said if it is an unsafe structure where the gate needs to be secured, staff can make this occur, but they cannot do much more than this other than having Ms. Green's group deal with the stagnant water or even going to the Health Department, as they will deal with the stagnant water issue as well.

Ms. Lisa Green, Manager of Code Compliance, said the Health Department will not deal with the stagnant water. She said this is why the County put the stagnant water ordinance in place. She said one of the issues they have had is that once the stagnant pool has been treated, then there is not a zoning violation. She said this is why it still looks that way, but it has been treated, so it is in compliance with the stagnant water ordinance.

Ms. Green told Ms. Price that regarding the trailer with beer cans flowing out of it, if staff receives a complaint and goes there, this is where they will invoke their ordinance for junkyards on the exterior of the structure. She said if there is a complaint on this, this is something they can address for sure.

Ms. Green said as staff discussed with the Board in November, staff can go to the property and it gets cleaned up, and then it is not in compliance, staff abates the violation, staff goes away and then six months later, it happens again, and so it is a "hamster wheel" where staff is running in circles. She said they do have some mechanisms in place, however, and they do and do not dismiss the fines at that point.

Ms. Green said that to Ms. Price's point, there is a lien that could last forever. She said if the property has then changed hands without a sale, then the lien is still in place.

Mr. Gallaway said his questions were rhetorical, with a different slant. He said he did not mean to be a smart aleck about this, but throughout this, they have been talking about aesthetics and eyesores and how those cannot be applied, and he finds it interesting that the ARB spends so much time scrutinizing paint colors when they do a development project, the Board is being told they cannot address eyesores. He said this is a contradiction that never sits well with him, that they are applying aesthetics, judgment, and subjective qualities, and a lot of time and fees go into that. He said to then say it cannot be applied elsewhere, he did not know if this was due to a legal conundrum.

Mr. Kamptner said it is about the state enabling authority that they have expressly for entrance corridors and historic districts.

Mr. Gallaway asked if it is different for a house that is viewable from an entrance corridor.

Mr. Kamptner said residential use, particularly single family, is exempt. He said he believed everything except multifamily is excluded from the entrance corridor regulations.

Mr. Gallaway said he supposed it was a built-in contradiction by the state. He said aesthetics matter, and he supposed this was a state issue that has to be taken on.

Mr. Gallaway addressed Ms. Green, Mr. Dellinger, and Ms. McCulley, noting that he heard examples about situations and how there are tools available to staff now in the County Code. He asked if this was a manpower or enforcement piece. He said when he hears a Supervisor ask, "What can we do," if there are instances dealing with current ordinances, not including the example where someone cleans up and it is a problem six months later, but the ones past that point where there is a manpower issue in seeing some of these through, or if certain cycles have to play out.

Mr. Dellinger replied that this was a good assumption of what they have. He said another issue in these instances is the monetary need to take care of these. He said many of these people do not have the resources, and with the example Ms. LaPisto-Kirtley gave about a building falling into itself, if the owner has not done anything about it at that point, then they do not have the resources to do anything. He said it is a \$7,000 to \$10,000 bill, and at that point in time, if the County is going to take care of these, then they are going to also have to come up with the funds to be able to do these projects. He said this will be the Board's decision on what they want and to find the funds for staff. He said staff is more than willing to do whatever the Board desires.

Mr. Gallaway said he understood and that he had a final comment to make. He said it was not lost on him that in one of the regulations about the 12 inch weeds, there was a conversation a few months earlier where the Board allowed properties that are in the medians of the roads to basically not apply to this ordinance. He said it is VDOT-owned and not resident-owned, and it is not being taken care of. He said in some cases, it is twice or three times the 12-inch mark. He said perhaps he will put up rulers to see what they look like. He asked if VDOT is exempt from the County holding them to this piece where they go in and charge them for the clean-up. He asked if VDOT is not in violation of the ordinance.

Mr. Herrick replied that since it is state-owned property, the County standards would not apply to it.

Mr. Gallaway said the state is then exempt from that, then tells the County about aesthetics. He

asked the other Supervisors if they had final questions or comments.

Ms. McKeel said she appreciated the discussion and agreed with almost everything that was said. She said this is a real conundrum. She said to address some of what Ms. Price said, she does not often focus on "Rural Area" versus "Development Area" because she knows they have areas within both. She said they constantly used to say, however, that they have a Development Area, and they want people to live there. She said if they do not keep up the Development Area and make the neighborhoods in the Development Area attractive in places that have a quality of life, noting that it did not mean "expensive," people flee. She said this was why she was coming back to the Development Area because they are telling people they want them to live there, yet they are not providing the ordinances or help for people to want to stay in the Development Area.

Ms. McKeel told Ms. Price that she understood the Rural Area concerns and that there are neighborhoods everywhere. She said her focus, however, has been on the question of if they are to keep people living in the Development Area, how they will do that.

Ms. McKeel said the affordability piece is exactly right, and she struggles with how to balance the people who buy these homes or duplexes and then rent them. She said she understands the need for balance between keeping them affordable while providing for the renters a quality of life as well as the neighbors beside them.

Ms. McKeel pointed out that she did not think, in Albemarle County's history, they have ever razed a house or any kind of building. She said perhaps they have, but certainly not in the past 20-25 years. She said she did not think this was a viable option because they have never done this. She said perhaps they could.

Ms. McKeel said in this community, there are at least a few land hoarders, and she does not know how to get at that. She said there are people in the Samuel Miller, Jack Jouett, and Scottville Districts who have the money to buy up properties or inherit them and do not take care of the properties they have. She said this is a whole other issue, but it is a problem.

Ms. McKeel commented that in her experience, at least in some of the neighborhoods she is struggling with, it is amazing the difference that just putting a sidewalk in will make. She said this is something the County can do as far as identifying the neighborhoods where they can invest in something that, while costing money, is not beyond the pale. She said she keeps going back to the Hydraulic and Barracks Road areas. She said they put in a sidewalk, and it is amazing the difference it makes. She said the same renters and owners may still be there, but the property improves as a result of that sidewalk. She said sometimes, it is not just a matter of trying to force somebody, and perhaps there is a carrot that goes along with that investment of public funds in a neighborhood.

Ms. Mallek said she wanted to clarify one thing from her perspective regarding the Comprehensive Plan questions and rural versus urban. She said there has always been an understanding that there are more services, such as water and sewer, in the urban area, and she agrees completely that many different decisions impact the quality of life, and they will kill of the goose that laid the golden egg if they do not make all those decisions well to keep the growth areas attractive so that people do come.

Ms. Mallek said she knew no one was suggesting this, but a completely separate issue for her was a standard of habitation. She said just because someone is not low-income and renting something doesn't mean they shouldn't have a decent place to live, and it should be incumbent upon the owner to not be allowed to rent something that is falling down and victimize the people who can afford to only live there. She said this is a hideous prospect, and she does not know which of the many state agencies are even involved with that. She said she supposed it was what Ms. Stacey Pethia was getting at with the inspection program she was suggesting as far as affordable housing is concerned.

Ms. Mallek said she saw through the chat that in response to an earlier question she had asked about regarding DHCD cost-sharing programs, Mr. Dellinger said Ms. Pethia did have information about that. She said she did not know if Ms. Pethia was attending the meeting or if she could answer the Board in an email afterwards.

Ms. Price told Ms. McKeel that she totally agreed with her. She said if they do not keep the urban or development area attractive, then it will dramatically and adversely impact the County. She said there is a substantial distinction between a house that looks to be in disrepair, if one is on 20 or 60 acres out in the County where it is not as visible, versus if they were 20 feet away from it in an urban area.

Ms. Price said she thinks this really goes to an underlying problem that the system has established that Mr. Gallaway and Mr. Dellinger were addressing, which is that when a development is being proposed and approved, the Board has the ability to impose a degree of standards that they are not later able to enforce upon existing properties. She said this is really where part of the problem is.

Ms. Price said that when a developer is building something, they have financial resources that the County can make sure they do it right. She said they do not have the same ability to enforce maintenance later on, and they recognize that for many of their residents, they do not have the financial resources that a developer has to make some of the improvements that should be made. She said this is part of the conundrum that the County is going to have to deal with.

Ms. Price said she is more concerned with the safety aspect than she is the aesthetic aspect. She said likely most of the Supervisors are because once they are start getting into aesthetics, they are getting so subjective, such as what color can one paint their house, and she does not think this is a place where anyone has thought about going. She said she sees that they have to be able to eliminate houses that have been abandoned for decades, as she sees every day as she drives through the County, and there has to be a way. She said based upon everything she heard that day, however, it appeared to her that the spot blight abatement is the most likely mechanism that the Board has available today, and even with that, it is not going to solve all their problems. Ms. Price thanked staff for their work, noting that there is still more work to do.

Ms. LaPisto-Kirtley said she had one concern, which was about what Mr. Gallaway mentioned about being able to enforce VDOT to cut and maintain the roads properly. She said she ran into a situation on a private, commercial road, Rolkin Road, which is a two-lane road, and found out that there were bushes and tree branches that went out about 4-5 feet into the road at a low level, and one is actually forced to go into the other lane to go around it, or else one's car would go through it.

Ms. LaPisto-Kirtley said that when she called VDOT about this, they said it is a private road that they cannot do anything about, and it is on the developer or whoever owns it. She said this is where the Giant shopping center is. She said she thought to herself that someone will get injured or go through this at night if they do not see the bushes. She said this was about 20 feet long by about 4 feet out of bush branches going into the road. She asked if there was something the Board could do, noting that she saw Ms. McCulley shaking her head. She said she does know that someone went out there with a pair of long clippers and did their own clipping, but they could not go very high.

Ms. Green said she could address this. She said she and Mr. Bart Svoboda went out to look at this particular section of road, and it is adjacent to a private road. She said the part Ms. LaPisto-Kirtley was speaking about was actually on VDOT property, and so staff will need to work out the details with them on that.

Ms. Green said they do have a section in the Zoning Ordinance that relates to private roads that are on site plans, which speaks to maintenance for site plans. She said this is something they can have them take a look at if this is indeed a private road within a site plan.

Ms. LaPisto-Kirtley said she was told by VDOT that Rolkin Road is a private road.

Ms. Green acknowledged Ms. LaPisto-Kirtley's comment. She said it goes from private to the VDOT right-of-way, and staff ascertained that the location in question was VDOT right-of-way, and so staff will talk with VDOT about those locations.

Ms. McKeel said one of the things that the Board is doing is that they are approving developments right now with private roads, and in 10-15 years, those property owners will not be able to keep up the expense of the maintenance of those roads. She said as those roads deteriorate, they cause some of the problems the Board is talking about. She said there are neighborhoods now in Albemarle County, Fluvanna, and all surrounding counties that are on private roads, and one cannot even sell the houses in those neighborhoods because the roads have not been maintained.

Ms. McKeel said the Board has to discuss whether or not they want to continue to allow private roads. She said they have to make sure that these roads are taken into the VDOT system so that the millions of dollars it takes to keep them maintained is there and is not put back on the owners of those houses.

Ms. LaPisto-Kirtley asked Ms. McKeel if this because although the developer can develop the roads to VDOT's regulations, they cannot put as many homes there due to perhaps the County's regulations if it is an actual VDOT road as opposed to a private road that is built to VDOT standards. She said she hopes the Board is not demanding something of developers that then causes them to make the road private.

Ms. McKeel said VDOT will say that it is up to their standards, they will take it into the system. She said this was a discussion for another meeting, but something she thinks the Board needs to talk about.

Mr. Jeff Richardson, County Executive, said he knows Mr. Kamptner recently talked about what he believes might be an interest level from Board members to talk in the future about public and private roads and what their responsibilities are. He said staff will be happy to take that direction and come back in 2021 to work this into their list of priorities, at a high priority level. He said they can talk about where they have been, where they are as a County government, and what their options could be moving forward, specifically around public and private roads and how this has evolved.

Mr. Kamptner said it is a fascinating topic. He said as Ms. McCulley would recall, about 10-15 years earlier, there were some issues, and the reason there are some developments with private roads is that at the time, VDOT's design requirements and road width requirements were incompatible with the County's neighborhood model type of development they were trying to achieve. He said he did not know where they were now, but that is one of the reasons why they do have private roads.

Mr. Kamptner said long-term, in the Development Areas, this is not the way they should be going. He said the roads in the Development Areas need to be fully supported by taxpayers and maintained by

the state.

Ms. McCulley said she believed they were dealing with a lot of older roads and prior codes and right now, the default is absolutely to have it be a new public road. She said there are some cases with mixed use where VDOT will not accept roads because of parking and so forth, but staff can bring forward further information on that.

Ms. McKeel said she would push back somewhat because currently, there are two developments coming to the County that are supposed to be affordable, and the original proposal was for private roads. She said she will push back on this because she can say she has approved numerous developments with private roads since she has been on the Board of Supervisors. She said they really need to talk about this.

Mr. Gallaway addressed Mr. Richardson and said that when they hear a resource question as Mr. Dellinger referred to, this is probably something to flag for a budget conversation. He said he was not saying that in the coming year, they would have much ability to do so, but they at least need to know what is on the list to discuss. He said he did not know if it was a reserve to handle blight properties, but this at least has to be flagged. He said perhaps the same was true about public spaces and medians. He said he could not imagine there was money to deal with those maintenance issues right now, but it could be a place where they have to have a conversation that may be separate from the blight piece.

Mr. Gallaway said if there were no objections from the Supervisors, he would think this is a conversation that would need to happen during budget time. He asked Mr. Richardson if he agreed.

Mr. Richardson said yes. He asked Mr. Gallaway if he was asking for Board input.

Mr. Gallaway addressed the Board and said that if they are hearing about existing issues where there are ordinances in place that allow them to do something, and they then run into the fact that there is not money allocated to do it, then it seems appropriate to discuss this during budget time. He noted he was not saying that they are going to put money there, since they have to see what else is on the list and how it all plays out, but if they do not put it on the table and have it on the list, then it never gets discussed. He asked if there were any objections to doing this during budget season.

Ms. McCulley noted that staff has put money in their department budget request to fund some of these clean-up cases, because they seem to be increasing.

Mr. Gallaway said this was good to know. He said they will want to highlight things like during budget time, so everyone is aware, and then see to what extent the numbers are.

Ms. Mallek said that for the past 12 years, the reason they have not had a maintenance code is the cost. She said the Board has never been given what the cost is. She asked if they could itemize the maintenance code and personnel changes. She said if there are three people now and they need to go to five, this is different than if they needed an extra 10. She said she did not know what a 100% increase really meant because she did not know exactly which categories of staff they were talking about.

Ms. Mallek said this is an important part of the discussion that we need to be able to make a decent decision on because it seems like they are not going to make any headway on many of these issues with the structure they have now. She said the spot blight seems to be working now, only to get the buzzards out, but it does not fix the house that the buzzards were living in. She said if 30% of the counties are doing something different than what Albemarle is doing, then there must be a reason why, and she would love to find out more about this.

Ms. Mallek said she needed to know what the details of what the costs are because she is convinced that with the multiple trips that the many staff have made to these properties, doing it right the first time might save them a lot of money.

Ms. McKeel added that VML has a document that she saved that talks about how at the time this document was created, Lynchburg has done the best work around blighted properties. She said Lynchburg had a code enforcement taskforce. She said this might be something to look at, but as Ms. Mallek and Mr. Gallaway were saying, this may require staff, which gets to what Ms. Mallek said. She said if they want to do something like this, the question is to what it would take.

Mr. Gallaway said the Board had allowed an additional 30 minutes on this topic and suggested wrapping up. He addressed Ms. McCulley and said the Board was asking to make sure there was a consensus. He asked Ms. McCulley if she wanted to clarify or ask for consensus on the items, she thinks staff needs here.

Ms. McCulley replied yes. She asked if the Board was asking staff to come back with some cost estimates on a maintenance code program, knowing that it can vary greatly if it is responsive or proactive and if it is a partial adoption versus full adoption. She asked if this was the Board's consensus.

Mr. Gallaway said he would agree with that, and no objections were heard. He asked if anything else needed to be clarified. He said in the Board's packet, all of this was received for discussion and consideration, and there were a few questions thrown out that could go to future conversations, such as the private/public road piece. He said it was asked by the Board if staff could conduct monitoring and evaluation of public nuisance cases, and that this was a given he believed everyone would agree should

happen.

Ms. McCulley said yes. She said she thinks that when staff comes back, they should find a way that if they are to implement it, whether it be at one time or in phases depending on what the Board chooses, that they also link up the resources that the low-income families would need to take care of the homes if they are the ones in a situation of violation of the maintenance code.

At 2:40 p.m., Mr. Gallaway noted that Ms. Price had lost power and would be joining the meeting again by phone. He asked staff, including Mr. Richardson, if they had what they needed.

Mr. Richardson said he appreciated this and knew they were over the allotted time, but that he did feel he should make a couple of comments. He said this is an extremely complex issue where there are owners who reside on properties who have a standard of living that is below a modest level. He said that with staff's sensitivity, they go on these properties and know quickly that they are working with people who are barely getting by, if at all. He said staff tries to be sensitive and exert influence, which is one segment of this.

Mr. Richardson said they will have to look at this in the accompaniment of absentee owners that rent properties and do not take an interest, even at a minimum level of compliance. He said as one or two Board members indicated, the closer these property owners live beside each other, the more adverse impact it can have on property values. He said if people are thinking about selling homes, it can be very concerning as it relates to if it will affect their ability to sell their homes for what they feel is a fair price.

Mr. Richardson said there are resource issues. He said the staff before the Board are very can-do and polite, and they try really hard to work every day with heavy workloads. He said they know they are working in a bigger environment where there are depleted resources, and there is a shaky economy. He said they will have to figure all this out, and they will do it in the budget process.

Mr. Richardson said he believed he heard a consensus from the Board that day that they would like to look at more aggressive and perhaps more uniform programs. He said it was not a matter of "if" it would require more resources, and that of course it will require more resources. He said it would not be done with the resources they have, and staff will have to do a good job of letting the Board know that.

Mr. Richardson said he appreciates Ms. McCulley and her team. He said he does appreciate the interest and compassion the Board has because he knows they hear complaints from citizens in the community, and this is a consistency issue they are hearing. He said staff will do their best work to come back and try to provide additional options with more precise cost estimates.

Recess. The Board recessed its meeting at 2:43 p.m.

At 3:08 p.m., Mr. Gallaway called the meeting back to order. He said they were late coming back from recess as there were power outages with participants. He said they were waiting to see if Ms. Price could come back into the meeting. He stated that due to weather events, if these prevent a quorum from being maintained at any given time, they will continue the meeting until the next regular meeting on January 6.

Mr. Gallaway said if for some reason one more Supervisor loses power and disconnects, a recess will be called to see if they can be reconnected, but if they do not come back on, it means the meeting will be forwarded to the January 6 meeting. He said the public hearings for that evening were not the type that would cause any deadline issues, and so having those on January 6 would not prevent any major issues. He asked Mr. Kamptner if there was anything else to say at that point.

Mr. Kamptner replied no. He said it may be that there were a couple of closed meeting items that were time sensitive, and so he may communicate with Supervisors otherwise or perhaps suggest that a special meeting be called at some point.

Mr. Gallaway said obviously, a judgment call would need to be made by those at the building, and those at home had a different situation with power outages. He said they would try to get through the afternoon items, there were things that would likely be done after daylight. He said it becomes more problematic for those in the building.

Agenda Item No. 10. **Work Session:** Rio29 Form Based Code.

The Executive Summary forwarded to the Board states that the Rio29 Small Area Plan (the Plan) was developed through a two-year community driven engagement process. The Plan establishes a vision and recommendations for transforming Rio29 into a connected, multimodal area with a vibrant, mixed-use community enhanced through conservation and public amenities. The Board of Supervisors adopted the Plan on December 12, 2018. The Implementation Chapter of the Plan recommends "amending the County's Zoning Ordinance and Map to include a form-based code tailored to the area."

In March 2019, the Board directed staff to begin work on drafting a form-based code (FBC) consistent with the Plan's vision to allow development to occur through a by-right (staff approved) process. Throughout 2019, staff developed a draft FBC framework (Attachment B2) based upon rigorous stakeholder and community engagement, staff research, and a series of four work sessions with the

Planning Commission. In December 2019, the Board of Supervisors endorsed the draft framework and directed staff to continue work on a draft FBC ready for Planning Commission and Board consideration.

Staff is currently sharing the draft Rio29 FBC with property owners, residents, and stakeholders. In October, staff conducted a meeting with the Rio29 Steering Committee, and throughout November, staff held meetings with property owners, residents, and key members of the development community to share the draft and receive feedback. Staff will share summaries of preliminary community feedback at the Board work session.

On November 4, 2020, the Board directed staff to include the County's intent for long-term maintenance and ownership of required civic spaces and street amenities in the Rio29 FBC (Attachment B3). On November 17, 2020, the Planning Commission held a work session to review and discuss the current draft FBC (Attachment B).

Staff received favorable feedback on the draft FBC at the November 17, 2020 Planning Commission work session. The Commission highlighted additional areas of focus in increased sustainability incentives and requirements, detailed design guidelines for urban parks and civic spaces, and emphasis on the protection of scenic views. This feedback aligned with staff's recommendation for future planning and design work (Attachment B4).

The Community Development work program, approved by the Board of Supervisors, calls for adoption of the Rio29 FBC by the end of first quarter of 2021. After the December Board work session, staff plans to make final revisions based on community and Board feedback and will prepare a final draft for public hearing and adoption in the first quarter of 2021.

No additional staff or resources are anticipated.

Staff recommends that the Board of Supervisors review and discuss the attached summary of Rio29 FBC work and structure (Attachment A), the draft Rio29 Form-Based Code (Attachment B1), and the future planning and design work (Attachment B4). Once staff receives and incorporates feedback from the Board of Supervisors, the Planning Commission will hold a public hearing to provide a recommendation to the Board on a final draft FBC.

Ms. Rachel Falkenstein, Planning Manager with Community Development, said she was joined by her colleagues Ms. Michaela Accardi and Ms. Lea Brumfield. She said they were excited to present the draft Rio29 Form-Based Code to the Board. She said they know they have more work to do to finalize the document, but this was a big milestone for the team. She said she wanted to recognize all the work that had gone into this document from members of staff as well as community partners, stakeholders, and the Board.

Ms. Falkenstein said the agenda for the afternoon would be focused mostly on going through the sections of the draft form-based code they provided and pausing at key points for discussion and Q&A from the Board. She said they did want to make sure to save some time at the end for direction on next steps and future work. She said they would start off with some project background and sharing some work staff did in 2020 since they last held a work session with the Board on this project.

Ms. Falkenstein said she would give a quick refresher on the vision for this project and why they were doing this. She said the Board adopted the Rio29 Small Area Plan in December of 2018, which establishes the vision for this area of a connected network of complete streets; sustainable and usable public spaces that enrich the community; and development that is vibrant, diverse, and mixed use.

Ms. Falkenstein said the vision is supported by a series of recommendations in the plan as to how to implement that vision, which brings them to form-based code. She said the green box shown on the screen was a screen capture from the Rio29 Small Area Plan. She said there is a specific recommendation that calls for zoning to be updated to allow development that is consistent and in keeping with the vision. She said it recommends form-based code be pursued as a possible zoning update.

Ms. Falkenstein said this was the work being done today and the background that brings them to form-based code. She said she would turn over the presentation to Ms. Accardi to share some of the work that was done since the Small Area Plan.

Ms. Michaela Accardi, Senior Planner in Community Development, said that throughout the course of 2019, staff led a rigorous engagement process that was made up of project steering committee meetings, public workshops, focus groups with the development community, and work sessions with the Planning Commission and Board. She said this was in addition to staff's technical working groups. She said this resulted in the draft framework, and there was a screenshot shown of the document that the Board saw in December of 2019. She said the Board supported the draft and directed staff to continue work on the document to transition the outline to a ready-to-adopt zoning ordinance.

Ms. Accardi said this was the work that staff was doing over the last year. She said CDD staff has been collaborating across County departments and working with external agencies, such as the Virginia Department of Transportation and Charlottesville Area Transit, to develop the draft ordinance currently before the Board.

Ms. Accardi said that in addition to this collaborative work, the Form Based Code Institute was hired to provide peer review and scenario modeling services. She said the Form Based Code Institute assembled a team of nine reviewers and form-based code experts from a variety of backgrounds. She said the group included architects, developers, elected officials, and municipal staff, and their comments and feedback would be shared throughout the presentation that day as they move through each section.

Ms. Accardi added that staff would share hypothetical development scenarios that were designed to test out and demonstrate the draft ordinance at three different sites throughout Rio29. She said these were designed in collaboration with Dover, Kohl & Partners, a firm that is part of the Form Based Code Institute's network of reviewers. She said the Board may be interested to know that Mr. Joe Kohl, who is a partner at the firm, grew up in the Rio29 area and that it was fun to work with him on this project.

Ms. Accardi said finally, staff has been sharing the draft code with a variety of stakeholders, including the project steering committee that met throughout 2019, property owners, the development community, and the Planning Commission, with the draft being shared with the Commission during a November work session.

Ms. Accardi said the goal for the day was to share the current draft form-based code with the Board. She said staff was seeking the Board's support and feedback on moving this draft forward to the public hearing phase. She said staff would like to hear the Board's feedback on changes that should be made to the draft prior to finalizing. She said that as Ms. Falkenstein mentioned, there would be an item at the end of the presentation about the Board's feedback on prioritizing future work on this project.

Ms. Accardi said she would transition the presentation to Ms. Brumfield, who would talk about the development scenarios.

Ms. Brumfield said that as part of the contracted consultant services, staff did have the consultant develop scenarios not necessarily to show what they should put in various parts of the County, but to show that the code could achieve the goals that they envisioned for the area. She said they also wanted to test out with the mind of a developer or someone who would have to interpret these codes whether these kinds of regulations were even feasible or possible.

Ms. Brumfield said the code did provide these scenarios and delivered very well. She said they gave staff a feel for the potential development types and the density they are asking for. She said she wanted to caveat for the Board and the public that these scenarios are not proposals but just an exercise in imagination that are hopefully shaped by the form-based code they are looking at.

Ms. Brumfield said the first scenario is the Core existing conditions for the corner of Rio and Route 29. She said it is currently dominated by single-level retail with large parking lots, but as a Core site in the Core District of the form-based code, it is intended to be the densest, most urban character area.

Ms. Brumfield said what they end up with in this development scenario is an attractive, welcoming face of the area. She said the development shows a large, prominent civic space. She said at the rear of the slide, one could see it is directly next to the Northside Library. She said it also shows the incorporation of some of the existing structures that may be more useful to keep while still relegating parking to the rear of buildings. She said overall, it creates a very welcoming, walkable façade.

Ms. Brumfield said the next slide showed a view of the actual proposed civic space, and it shows that this is still a brick-dominated area, but with more interesting and welcoming views.

Ms. Brumfield said going to the Flex existing conditions, they were particularly looking at filling in a lot of the large expanses of parking lots there, as they provide a good development opportunity for the property owners and for the developers in the area to maximize on the space that they already have without necessarily demolishing everything that is already on the site.

Ms. Brumfield said the Flex development scenario shows an option for adding dense mixed use to the site without actually demolishing everything that is already there, which provides an opportunity for a lot of growth. She said this adds residential above retail and incorporates parking garages, a central civic space, and pedestrian walking streets between buildings, creating a spot where people, even if they are not necessarily living in the area, can park once and then walk, with open-air, attractive pedestrian streets to get their business done in the area and actually enjoying being there.

Mr. Gallaway asked Ms. Brumfield if she could state the number of the slide that she was on so that those on the phone would know exactly what slide she was on.

Ms. Brumfield asked Ms. Accardi to provide the slide number.

Ms. Accardi said they were on Slide 12.

Ms. LaPisto-Kirtley asked Ms. Brumfield if she could also state the streets, as she had Rio and 29 and she was not sure which one she was on since everything looked different to her. She asked Ms. Brumfield if she could point out existing things so she would know exactly where they were and if they were in the northwest, southwest, northeast, or southeast corners.

Ms. Brumfield noted again that these were not necessarily proposals, but just examples of what they could have in the area. She said the slide on the screen was showing 29 as the main street, as well

as 29th Place Shopping Center, which is directly across from Fashion Square. She said if they are going to the street view, they are looking from 29, and this creates a destination when looking off of 29 to see that they would want to be invited into this shopping area or development.

Ms. Brumfield said this is intended to show the wider sidewalks where they have multimodal transportation going on. She said it is separated by 29, and it also incorporates a variety of architectural styles that can bring in the life they are looking for in the redevelopment of the area while still feeling true to the greater Charlottesville architectural areas.

Ms. Brumfield said the next slide showed the Edge existing conditions. She said this was a parcel on Berkmar Drive that is currently owned by the County and is directly next to the fire station. She said this is currently completely vacant and wooded.

Ms. Brumfield said the next slide showed the development scenario, which demonstrates the ability to put in mixed-use or affordable housing developments that slot very easily into this development, which creates places where people could live in order to walk to walkable areas. She said on the left side, there is a medical office building, and on the right is the fire station.

Ms. Price spoke into the phone, but her comments were inaudible.

Ms. Brumfield asked Ms. Price if she was trying to say something.

Mr. Gallaway said he did not think Ms. Price had meant to say anything.

Ms. Accardi noted that they were showing Slide 14, for reference.

Ms. Brumfield said the slide showed the walking trail at the rear and incorporates a larger sidewalk at the front of the property. She said it also continues to demonstrate the depth of buffer they have in the rear of the property between this property and the single-family development behind it.

Ms. Brumfield said Slide 15 shows the street view of that development. She said hopefully, the development scenarios have sparked everyone's imagination. She said they are looking not only at what could be, but an inspiration to make Rio29 a great place to live. She said she would hand things over to Ms. Falkenstein to review the actual draft code itself.

Ms. Falkenstein said they were now on Slide 16 and getting into the part of the presentation that would allow the opportunity for discussion with the Board. She said they would go through the sections of the code in the order in which they appear in the draft, reviewing three sections at a time. She said after they get through three, they would pause and allow for discussion on the three sections just covered. She said they would do three rounds of three.

Ms. Falkenstein said she would talk about some of the overarching edits that were done in the document before the Board. She said Ms. Accardi had talked about the framework document from 2019, and there was a lot of work done to that document to bring it to a draft ordinance for the Board to review.

Ms. Falkenstein said a lot of work was done in refining and adding detail to the draft framework and making it into a code that can be adopted and implemented. She said they have added standards by working with internal County staff and external agencies to fill out some of those details. She said they have also incorporated more provisions for administrative work and modifications, special exceptions, and processes that needed to be filled out to allow this to function like an ordinance.

Ms. Falkenstein said staff added some graphics and diagrams to the document. She said they removed the Incentives section and incorporated some of these standards throughout, which they would talk about more once they get to that section of the code.

Ms. Falkenstein said as a refresher that regarding the framework staff brought to the Board in 2019, which the Board endorsed, the Administration section talked about how it would work. She said the Administration section is the "how-to" guide of the code, and in the framework from 2019, staff was recommending that the ordinance be structured as an optional overlay district. She said this is a parallel zoning that property owners would have the option to choose to develop under, but if they were not interested, they could continue to operate or develop under the existing zoning on their property.

Ms. Falkenstein said some advantages of this were detailed on the slide. She said staff is hopeful that the way it is structured would incentivize property owners to want to choose to develop under the form-based code. She said it adds quite a bit of additional development potential that does not exist with the current zoning today. She said it enables mixed-use development through a by-right process, so those interested in developing mixed-use projects would not have to go through a rezoning as they currently do.

Ms. Falkenstein said another advantage is that the County can include an affordable housing provision in the code, since the overlay district is optional. She said the State of Virginia does not allow requirements of affordable housing through zoning, but since it is optional, they can do this.

Ms. Falkenstein said lastly, structuring the code this way is consistent with the project goal and recommendations of the small area plan to allow the area to change and transform over time. She said it is something that will work today and into the future as well.

Ms. Falkenstein said on the next slide, she would summarize some of the peer review feedback that staff received from the Form Based Code Institute reviewers on an early draft that they shared with them. She said the institute recommended that staff include some more overarching goals and context in the Administration section, and so staff has done this. She said the Institute also recommended that staff specify how existing buildings and development can be incorporated into redevelopment proposals. She said they did share a concern that it was optional, but staff is not changing the recommendation for the code to be optional. She said staff felt that the feedback they heard, as well as their reasoning, was a strong justification for going this route.

Ms. Falkenstein said lastly, the Form Based Code Institute recommended that staff incorporate more graphics and illustrations to help provide clarity and the ability to better understand the concepts.

Ms. Falkenstein said that the Board would find the current [inaudible] section on pages 3-9 of the attachment. She said as stated, it is still an optional overlay as it is structured. She said property owners would be eligible to develop by submitting an application, and so the attachment talks about the process. She said if an owner does opt into the Rio29 Form-Based Code, the regulations would be applied in whole, and so one cannot pick and choose from the code which standards they would like to apply, but they would all apply to the entire parcel.

Ms. Falkenstein said phased redevelopment can occur, however, if there a redevelopment plan is submitted. She said she thinks this will be important for larger properties such as the shopping centers that may want to phase the development or develop an outparcel in the parking lot, similar to the scenario that Ms. Brumfield shared. She said they can do so and still move forward with the form-based code.

Ms. Falkenstein said the last slide about administration talks about the development review process. She said there will be an application submittal and a by-right or staff-approved process. She said this will be similar to the site plan process they have today, though the requirements will be a little bit different since the code requirements are different than the current ordinance. She said these projects will not be reviewed by the Board, Planning Commission, or ARB. She said it is structured to be reviewed and approved by staff unless there is an application for a special exception or special use permit alongside it.

Ms. Falkenstein said she would turn over the next section to Ms. Accardi.

Ms. Accardi said the next section was the Regulating Plan, and the framework for the document included a Regulating Plan with three character areas: the Core, shown on the map on the screen in a pink hue; the Flex, shown in white; and the Edge, shown in blue. She said these are character areas that align with the small area plan that was adopted, with amenity spaces shown in green. She said these character areas dictate the permitted uses and the general standards applicable to each property throughout the code.

Ms. Accardi said the feedback staff heard from the Form Based Code Institute peer reviewers was that they identify street locations on the regulating plan itself to ensure continuity of development and to provide more guidance on civic space types and locations. She said the updated code draft before the Board has the character areas, and the Regulating Plan can be found on pages 10 and 11 of Attachment B1.

Ms. Accardi said the amenity spaces are now renamed "civic spaces." She said instead of green parcels, they are points that identify the general location and specify the type of civic space required. She said this approach allows for greater clarity about the underlying character area of each parcel in case buildings or development occur around a civic space. She said the placement of points allows multiple parcels to contribute. She said that in most cases, these have been placed around parcel boundaries. She said staff would go into this in greater detail when they talk about civic spaces.

Ms. Accardi said the Streets Regulating Plan is also noted as a high priority for future work for this project as a result of the feedback that we heard.

Ms. Accardi said Ms. Brumfield would talk about uses.

Ms. Brumfield said they were on the slide that said "Framework – Uses" at the top. She said the framework for uses does include a large shift, as described throughout the process, in changing the way that the County generally handles the uses. She said they currently have specifically named individual uses like "musical instrument sales and repair," and they are switching this to broad, flexible categories like "retail" so that they can cover uses without excluding anything that has similar impacts.

Ms. Brumfield said that as the code strongly emphasizes form over function, they do permit most uses throughout the Rio29 area. She said staff did also propose new categories, specifically "artisan manufacturing," which will be small-scale industrial uses with extremely low or no impacts. She said this was in response to the desire for such uses, and there have been many requests for this. She said there has been development of places with special use permits to allow that kind of use when those uses really do not have the impacts that would require a special use permit to mitigate. She said this would include artisans, craftspeople, small breweries, small manufacturing, and the like.

Ms. Brumfield said they have also allowed an additional use that is described as "temporary uses," which would allow an expansion of uses in existing buildings where a development may not be able to completely redevelop the entire parcel, but they want to expand use in some of the existing

buildings. She said this is intended to avoid having a ghost town of abandoned shopping centers that are waiting for redevelopment.

Ms. Brumfield moved on to the next slide, "Feedback Summary." She said they did have feedback that the previous recommendations that went to the Planning Commission and the Board before were too narrow. She said this feedback came from both the Planning Commission and the stakeholder group that reviewed it, and so staff plans to specifically call out interim uses in the code guide and naming the kinds of things they are looking for in addition to expanding the definition to be clearer on how many things they are looking at.

Ms. Brumfield said the next slide was "Current Draft – Uses." She said staff has expanded temporary uses. She said they are explicitly permitting uses in the existing structures, as noted, to avoid deserted areas. She said they have also expanded the use categories from the prior slide seen before in response to the reality that if these things are not listed, then they are not permitted, and they want to be able to have uses like utilities throughout the County. She said as they are a Dillon Rule state, if they don't say that they can do it, they cannot do it.

Ms. Brumfield said staff has also provided additional guidance on uses they know are fundamentally contrary to some of the goals they are looking for in the Rio29 area based on their form, and those are explicitly gas canopies and drive-thrus. She said those now require special use permits to achieve in this area.

Ms. Brumfield said to keep things rolling and focused, staff was opening up discussion and questions to the Board for those sections they just discussed. She said additional sections would be reviewed later in the presentation.

Ms. McKeel said she did not have any questions at that time, but she thought this was exciting work and appreciated all the information.

Ms. Mallek said likewise, this was great reading and a wonderful step forward, and she thanked staff for their work. She said she had some questions, but not answers, for staff to think about. She asked if they were trying to avoid requiring residential over retail because, in some circumstances, it creates a building that cannot be financed by a bank. She said they have learned this the hard way in other areas, and they hopefully will not saddle Rio with this same conundrum. She said as an option, it is terrific, and if they are rental-only, this seems to be fine. She said apparently, banks will not finance anything that is "condoized" in a multilayer, multiuse situation.

Ms. Mallek said she loves the idea of the overlay, and her question is if the overlay were established, and if someone wanted to take the conventional approach, if they could have a waiver process. She said it seems almost opposite what is being proposed, but if they do not have the overlay, she understands that they cannot get all the other things. She said she hopes there is a way to get to the point of having the overlay as the basis and then, if someone has a particularly unique situation that only works the old way, staff could then consider that.

Ms. Mallek said she had a question about a 20-person limit, but that she would wait until a future section on Light Industrial to ask it.

Ms. Price said she had missed a part of the presentation since the power went out. She said she did not have any questions, and she was very impressed with the part that she did see. She said it was very exciting.

Ms. LaPisto-Kirtley said she liked the direction they were going, and she had no questions.

Mr. Gallaway asked staff to let him know if he asks a question or makes a comment that should be for a future section. He asked if staff could put the view of the Regulating Plan up on the screen, which was page 11 of the attachment.

Ms. Accardi presented the map on the screen.

Mr. Gallaway said the map showed different areas, and he liked how this had progressed, but he wanted to hone in on the Edge pieces. He said it looked as if in the Woodbrook neighborhood, the Edge does a good job of separating. He said that while there are things in the Edge area, the Core and Flex areas seem to be well-separated from Woodbrook.

Mr. Gallaway said on Berkmar Drive, in the area that is up behind Berkmar Circle and goes over to Commonwealth, there are a couple of plots around that roundabout. He said he was not disagreeing with this because he knows what exists there, but he wanted to know why the blue color did not extend into there. He asked if it was due to the make-up of what exists there now.

Ms. Falkenstein said this was correct. She said it was an acknowledgment of the existing uses, and it was a judgment call. She said she believes it could go either way, and staff saw what was there today and what the existing zoning allowed and decided to put it in Flex.

Mr. Gallaway said he did not disagree with this but wanted to be mindful on those two areas. He said it would be easy to think that there is an edge around the whole development, but there really is not. He said those are residential neighborhoods, and they want to be thoughtful about how things transition

from what is there now to a redevelopment, and then what could be added in a redevelopment to help with any buffering for areas that are not in the "Edge area."

Mr. Gallaway asked if the "public and institutional use" that is by right in the Edge is simply in line with everything else that they are doing by right. He said he looks at the other uses that they have as "by right" in the Edge areas, and retail sales, restaurants, and entertainment are all permitted. He said the reason he wrote the note down was that he was thinking about the impacts, and "public and institutional use" might have more than those others, but this is probably not the case. He said retail and restaurants can be well-used. He said he assumed they were just trying to get as many things as possible as "by right."

Ms. Brumfield said this was correct and that, in general, they are looking at traffic and noise. She said that most public uses would not necessarily be subject to regulations of this kind, regardless, in the current, existing zoning. She said the institutional uses fall under that same category. She said staff did not anticipate the impacts to that to be more than a restaurant or a bar.

Mr. Gallaway said there is a fire station on Berkmar now where once they get up and running, the residents are going to hear that. He said he did not think they would necessarily mind that, knowing that they have a fire station there.

Mr. Gallaway informed Ms. Price that they were currently on the "Current Draft – Uses" slide, but he did not know what the slide number was.

Mr. Gallaway said in terms of the temporary uses at the Edge as by right included storage yards and construction uses. He asked staff to talk about their reasoning about why that would be allowed as by right in the Edge areas specifically, just because they are so close to residential. He said he was thinking along the lines of what could happen, just knowing that if there is construction going on in the Core or the Flex, he understood, and there could be some things off to the Edge that could house those things while they are happening, but then it is a matter of what this could mean to the residences, such as debris, dust, noise, etc. He asked if this was discussed, or if they made this by right across the board in each area.

Ms. Brumfield replied that this was by right across the board. She said the temporary construction is currently by right everywhere, meaning it is basically a construction site. She said if one is to build a building, they must have a temporary construction use. She said this is the way that the zoning works now because in order to build something, one needs to construct it and needs a construction yard.

Mr. Gallaway asked if it was not necessarily that if he is in the Core area, he has to stay on his property for it. He said he would have the benefit of using the Edge area if he were developing a Core area, or this is where his head was at there and may not be the way to think about it.

Ms. Brumfield said she believed she understood. She asked Mr. Gallaway if he was talking about this being a staging area.

Mr. Gallaway replied yes.

Ms. Brumfield said this would not be permitted as a clearance. She said one has to use the construction area that they currently have, and she was sure that they could have further information on this. She said she did not know all the specifics on that, but this was actually copied directly from the existing ordinance in terms of the temporary construction uses and temporary storage yards. She said this was not a change from the current regulations throughout the County, and it would not be a change in procedure, either.

Mr. Gallaway said that at the end of the day, then, it is allowing them to do what they currently do.

Ms. Brumfield said this was exactly right.

He said these were all his questions on uses, and he would wait until the other sections come forward to make further questions.

Ms. Falkenstein asked Ms. Mallek if she had a question about light industrial, as it was included in the Uses section.

Ms. Emily Kilroy noted that Ms. Mallek was in the process of rejoining the meeting.

Ms. Falkenstein addressed Ms. Mallek again and said she wanted to follow up on Ms. Mallek's point about light industrial. She said staff would be happy to answer her question.

Ms. Mallek said she was focusing her point strictly on light industrial of the 21st century and that she wanted to be sure they were not returning to what they tried ten years ago when they had very strict size limits of 5,000 square feet and smaller for all these uses, and everyone had to get a special permit. She said she would hope that they consider being more flexible about the Afton Scientific, wet labs, and what they call "light industrial" but is also medical research and not have these employee limits or special permit required for them.

Ms. Mallek said she was looking at the chart and thinking that she wished it were a by-right use.

She said if it is something that generates noise, it is totally different. She reminded everyone that the old linen building on East Market Street was an artisan welder, and Gaston and Wyatt were furniture makers, and jewelers and potters all over the place. She said they are using a lot of older warehouse-type buildings because they are much more affordable and have the space they need. She said she would put those all in the light industrial category, and hopefully, there will be a place that will be welcoming to them rather than having special permits required.

Ms. Brumfield said she could answer this directly with probably exactly what Ms. Mallek would want to hear. She said all of those uses Ms. Mallek just described would fall under “artisan manufacturing,” which are permitted by right. She said it is a new use category staff has created.

Ms. Mallek asked about someone who is a medical researcher who is making COVID vaccines, for instance. She said the R&D/Flex category is one of her favorites and asked if this would also be a by-right use.

Ms. Brumfield replied that depending on the use, R&D would either be Office or Light Industrial, and this would be determined at the permitting stage. She said if it is an office use that is truly an office use, then this would be by right. She said if it is something that does have light industrial impacts, then it would be Light Industrial.

Ms. Mallek said they had a way to go to figure this out.

Mr. Gallaway asked if Flex would be allowed by right.

Ms. Mallek said if there is any kind of assembly, or even if it is a matter of injecting sterile saline into little bottles, there is no impact with that, which is why she is trying to avoid having that kind of aspect of manufacturing and light industrial being put into a special permit category. She said otherwise, they will go somewhere else, and these are good jobs. She said HemoShear, for example, was crammed into a little building near the municipal arts center and had scientists doing research, wet labs, and the like. She said it was incredibly good employment and did wonderful work as well.

Mr. Gallaway asked to be corrected if he was wrong and said that the way they had Light Industrial by right was encouraging it to be in the Flex area. He said they would not necessarily want it in the tallest or most dense area of the Core, and he did not think they would want it in the Edge next to residential. He said they were basically telling someone who wants to do this type of thing to do it in the Flex area by right. He said they need a special permit if they are above the retail on the fourth floor of a building versus just setting this up outside of that. He asked if what he was saying was right.

Ms. Brumfield replied that this was the way it was currently set up.

Mr. Gallaway said it is allowed, then.

Ms. Mallek said she must have been looking at a different chart that had a special permit, and so this was fine and sounded great.

Mr. Gallaway told staff they could proceed with the next section.

Ms. Falkenstein said the next section was about streets, and the slide number was 32, which was “Framework – Street Standards.” She said the framework staff shared with the Board in 2019 had some street standards established, with four street types that were based on the small area plan. She said there were two tables that talked about street components and street amenities. She said they have done some work to move that forward.

Ms. Falkenstein said the feedback they received on the streets was quite a bit, as it is a big section and makes up a good bit of the code. She said the first three bullets on the slide were from the consultants and Form Based Code Institute reviewers. She said they recommended staff identify street locations on the Regulating Plan. She said staff did not incorporate this, which she would talk about later. She said the reviewers recommended staff identify how street standards apply to smaller parcels and clarify ownership and maintenance of streets, both of which staff did in the draft before the Board.

Ms. Falkenstein said that when staff talked about this with the Planning Commission in November, the Commission had some feedback as well. She said they focused quite a bit of their discussion on views and vistas, and they thought it was important that when they get to the point where they are identifying street locations that staff be thoughtful about the street alignment to incorporate views along the streets.

Ms. Falkenstein said the Planning Commission also wanted staff to bring forward the message on the importance of investment and implementation. She said this is not necessarily related to the draft form-based code, but the Commission felt that for the area to be successful, they need to ensure safe bicycle and pedestrian access and travel throughout the area, which would require some investment from the County.

Ms. Falkenstein said the draft of the street standards before the Board incorporated some additional elements that were not in the framework. She said the first is that they identified two new street types, so they have carried forward the four street types from before and added two new types. She said pedestrian passages and alleys are both optional street types and are not being required anywhere, but

staff thinks they could be useful for some of the forms of development staff is recommending. She said standards have been provided for those street types.

Ms. Falkenstein said they also refined some of the components and streetscape elements. She said the components are those things on the street like bike lanes, sidewalks, etc., and the elements are those amenities that come to life on the street such as the seating, street trees, and lighting. She said those standards have been refined.

Ms. Falkenstein said staff has also incorporated street sections and diagrams. She said the graphic on the slide shown was incorporated into the draft form-based code. She said she would call attention to Ms. Accardi and to Mr. Charles Rapp, Planning Director, who worked on the graphics and did a great job. She said the next slide showed another graphic, this time of a section that showed what the dimensions were for each of the street components she mentioned.

Ms. Falkenstein said that in terms of how to identify the locations of streets, as she mentioned, they do not have a street regulating plan, and they do not have a plan that shows exactly where the streets should be in Rio29. She said instead, they rely on some standards, mainly block size. She said they are requiring a network of streets be built, and there are some minimum and maximum block sizes and ranges for each of the character areas. She said this is actually mentioned in the Building Standards section, but the street standards call attention to this, and this is how they should be located.

Ms. Falkenstein said that in this section, it also talks about how one can get a modification from street standards because staff recognizes that when putting streets in, things can get in the way. She said there can be utilities, existing buildings, or trees that one wants to avoid, and so staff built that flexibility into this section. She said this section is pages 15-27 of the code.

Ms. Accardi said she was on the slide titled, "Framework – Building Standards." She said this slide shows a screenshot of some very initial diagrams from December 2019. She said this section includes a lot of the core content of the form-based code. She said there are required building standards that are based on a property's character area. She said that in 2019, these included height, ground floor ceiling heights, which is the ceiling heights for the first floor of a building, block length, and build-to lines.

Ms. Accardi said the feedback staff heard from the consultant team was to reconsider the height minimums and decrease them to allow for redevelopment of existing buildings and incremental new development. She said additionally, the team recommended greater flexibility in block size to account for existing site conditions and features such as topography. She said finally, the team suggested allowing counterflow streets along Route 29 by adjusting the build-to line to a range.

Ms. Accardi said that based on this feedback, in the current draft's building standards, staff changed the minimum height requirement in the Core character area to two stories instead of three stories. She said they also provided flexibility in block length by allowing for pedestrian passages and alleys to be incorporated to meet this requirement, which Ms. Falkenstein mentioned previously.

Ms. Accardi said additionally, these building standards shift from a specific build-to line or a location where the front façade of the building must be located to a range. She said they also incorporated a new standard of a maximum average distance between ground floor entrances, which was to ensure that streets are pedestrian friendly and have multiple points of access for those biking or walking along the street. She said there is a height bonus provision for additional affordable housing provided above the requirement. She said these standards are found on pages 28-31 of Attachment B1.

Ms. Brumfield moved on to the slide titled, "Framework – Parking Standards," Slide 39. She said that in the framework, staff proposed minimum parking requirements that are one space per 1,000 gross square feet, one space per every two hotel rooms, and a maximum number not to exceed 150% of the minimum parking. She said they allowed provisions for shared parking agreements between multiple uses and parcels. She said they incorporated street parking toward parking minimums so that if someone only needed one parking spot and they had a parking spot in front of their retail store, this would be an acceptable use of that parking spot.

Ms. Brumfield said staff also permitted structured parking and by-right regulations as staff realizes that as the Rio29 area evolves, the best-case scenario for the first stages of development would be to create a park-once area and transition toward more transit and pedestrians over time. She said they are trying to be realistic in that development.

Ms. Brumfield said regarding the feedback from stakeholders and the consultants, staff did receive suggestions about incorporating rideshare, and they were urged to consider additional design guidance on structured parking to make sure they do not have large, unattractive buildings.

Ms. Brumfield said that at the work session with the Planning Commission a few months ago, staff also received feedback from the Planning Commission to consider additional standards for e-bikes, electric vehicle charging stations, and e-bike charging stations.

Ms. Brumfield said that in the current draft, staff has incorporated the structured parking requirements that were discussed. She said they have incorporated requirements for non-parking uses on facades to create a more walkable, more pleasing building that people would want to use and is not just a wall of parking. She said they have included screening and building articulation on the parking garages, and they have added bicycle parking requirements for both long-term and short-term bicycle storage.

Ms. Brumfield said staff also incorporated something that came up not necessarily from the feedback, but during staff discussions that came to light. She said particularly during the COVID-19 pandemic, it became clear that pickup and drop-off would be a more standard part of the urban landscape, so they included design standards and requirements for this as well. She said they are simply called "pickup" and "drop-off" locations. She said this would be for food pickup, delivery, rideshare, general deliveries, and general storefront loading. She said these would not be traditional loading spaces, but the pickup and drop-off would be more frequent transportation used for the general driver as well as Lyft and Uber.

Ms. Brumfield said as they were moving into discussion, they were again looking at the streets, buildings, and parking sections. She said she would turn this over to everyone else.

Ms. McKeel said this was great, and staff had been forward thinking. She said she did have some questions, as there was discussion about a previous agenda item. She asked for clarification, as she could see there were public roads, VDOT roads, and some reference to Albemarle County. She asked if staff could go over who is putting in and maintaining the roads and who will be in charge of the roads.

Ms. Falkenstein said she could cover this, as she realized she has glossed over that point on the slide she had covered. She said the expectation is that roads be dedicated to the public and that VDOT will own and maintain them. She said these are all the main street types including local streets, boulevards, avenues, and the like. She said alleys and pedestrian passages, however, may end up being private.

Ms. Falkenstein said that as the Board would recall, there was a work session in November where the Board was asked for their feedback on how they would like these spaces to be owned and maintained, moving forward. She said staff has heard from VDOT that they are putting forth some extra elements that VDOT does not require or officially maintain on these streets such as wide sidewalks, street furniture, and those types of elements. She said the Board's feedback was that they should be publicly owned and maintained, and so that is how it is written in the code.

Ms. McKeel said she was going to ask about charging stations, but this had already been addressed, and they are looking forward towards that. She said another question she had was that in the future, by the time this development comes to fruition, she thinks there will be some autonomous vehicles, as they certainly have them in other places. She asked how this code would adapt to autonomous vehicles, specifically in terms of some sort of autonomous transit. She said perhaps this was hard to quantify or qualify, currently.

Ms. Falkenstein replied that she believed they would have to continue to keep an eye on it, see how development evolves, and come back to it. She said what comes to mind is that they may want to reduce their parking requirements if this is the case. She said they may also want to look at whether or not it makes sense to do some intentional transit planning and identify spots where stops should occur. She said a question is whether they should work with a provider such as JAUNT or CAT that wants to have some dedicated space for stops throughout. She said it is something they have to continue to watch and see what happens as they go.

Ms. McKeel said other developments are already using autonomous vehicles, and so she was trying to make sure that these vehicles could be accommodated as they come forward, as they are needed, as they and electric vehicles are already happening.

Ms. McKeel said it was great that staff is accommodating bike storage. She said perhaps it was a good time for her to ask her question, and perhaps it was a lot more about the previous discussion, but it was her first opportunity to ask. She said she would love to hear from Mr. Roger Johnson from Economic Development. She noted that she saw his picture in the meeting, and so she would love to hear from him any thoughts or comments about what they have seen or what they were hearing. She said she was sure Mr. Johnson was part of the planning.

Mr. Roger Johnson noted that he was present and apologized in advance for any poor network quality. He said he had a couple of general statements, which he would preface by saying that he was looking at this through the lens of the development community as well as investors. He said these were the comments he was about to share and not necessarily those from the community.

Mr. Johnson said the greater flexibility that was put into the form-based code, for example Ms. Brumfield's mention of listing retail, artisans, and certain types of microbreweries, will make it more attractive for both developers and investors. He said it is common sense that the more by-right development that they allow, the more likely it is to make a difference in how quickly there is turnover for new development in that particular community.

Mr. Johnson said this gets to the point that Ms. Mallek was making about requiring residential over retail or limiting certain types of light industrial use. He said he was not putting value judgments on whether or not someone should make those determinations, but he was making the statement that the more they put in, the more by-right development that is allowed, the more attractive it will be for a developer. He said it lets the market conditions dictate and provides more certainty.

Ms. McKeel thanked Mr. Johnson. She said she would have to stop and think about that. She asked Mr. Johnson if he felt that they had enough flexibility, or if he would like to see more, as it sounded

like he would like to see more.

Mr. Johnson replied that he knew the development community would like as much flexibility as possible and, in certain cases, the community input may be just the opposite of that. He said he did not know if he had a position statement to provide, and it was really a question of how quickly the Board would like this to turn over, and which is more important to the Supervisors as elected officials. He said there is no value judgment, and he thinks they need to recognize that there is a direct tradeoff between flexibility and certainty and how quickly things happen in the community.

Ms. McKeel said she continues to be concerned. She said perhaps Ms. Mallek could address this later, but her experience in Crozet about having residential over commercial and be able to get bank financing continues to be a concern for her because this was Ms. Mallek's experience. She asked Mr. Johnson if he could speak to that.

Mr. Johnson replied that he believed he could speak to it historically, but he did not know specifically what Ms. Mallek was speaking to. He said he knows that the financial lending changed after they had the economic downfall from the housing market some time ago where they required that in order to finance certain condos and other types of things, if less than 50% of the owners had to be from individual owners and not by private developers, the banks felt that this was too risky. He said this somewhat limited a developer's borrowing ability. He said those types of decisions do impact the finances on the backend, although he could not speak specifically to Ms. Mallek's situation.

Ms. Brumfield said this had come up a couple of times, and she had been waiting until they got to the architectural section to address it, but with the flexibility that Mr. Johnson was discussing where the street façade has requirements for a particular mix of residential and retail, those first four retail they are looking for can be used for residential as long as they are constructed to retail requirements. She said they can talk further about this in the architectural section and is something they did address because they do have a history in the County with the particular developments that were being discussed. She said this is something staff has considered, and they will get to this in the next section.

Ms. McKeel said she did not mean to go out of turn, but she had seen Mr. Johnson in the meeting and wanted to address him while she had the chance.

Mr. Gallaway noted that they had hit an hour and it was a hard subject to get in in an hour's time. He suggested moving quickly.

Ms. Mallek asked that all the planners be especially careful about all of the streets and elevations. She said it looks really great, but one that was on the screen for a while was 100 feet curb and gutter for one of the smaller streets. She said by the time they put this in there, the question is if there is enough left to do the buildings. She said she was going back to rezoning attempts in Crozet in 2010, when the community was offered a beautiful plan for the J.B. Barnes lumberyard that was completely impractical because by the time that they took out the park in the center and the street, making the big rectangle, half of the dimensions of the usable land that was left over, and so this had to all be thrown out.

Ms. Mallek said with the shapes of the parcels already, it was going to be challenging, and so she just wanted to make sure that they were not digging in their heels on a particular side. She said if there is flexibility, that is okay, and not every street may have enough room for bike lanes in both directions, etc.

Ms. Mallek said the only other thing was to be very careful about the drastic reduction in parking standards over the next 20 years. She said they went from one space per a certain count for restaurants to ten times that amount and now, there is a parking free-for-all in Downtown Crozet. She said this was not happening currently due to COVID but that during normal times, it is a complete and total jam. She said they have to get on with that, and staff should keep this in mind.

Ms. Price comments were inaudible due to a faulty connection. She said she would pass on comments due to the technical difficulties.

Mr. Gallaway said he thinks the streets and parking are the most difficult part of this. He said that once things start to get redeveloped, it will start to dictate where the streets go. He said he thinks there has been a lot of input and discussion about too much parking and too little parking, and there has to be the flexibility to figure this out as they go, which everyone will have to understand.

Mr. Gallaway asked if the building stories were part of this section.

Ms. Accardi replied yes.

Mr. Gallaway said he wrote down a note at one point, which he was sure was discussed, about why there is a difference between six and seven stories in the Core, jumping from by right to special exception. He asked if there was something special about Story 7 that he missed along the way. He said he did not have a problem with 6 or 7, but he thought that it was interesting that it was by right up to 6, but when they get to 7, they have to ask for a special permit. He asked what the thought process was behind this.

Ms. Accardi replied that this was looking back at both the small area plan and the process in 2019 of the community workshops that were held regarding the work with the stakeholder community about appropriate heights for the area. She said staff did not hear as much support for the seventh story, and it

was inconsistent at times, and so staff's team felt confident about six stories being appropriate for the area. She said this also incorporates height bonuses in this area as well.

Mr. Gallaway asked if they get to six by using the bonuses.

Ms. Accardi replied yes. She said the bonus factors allow for the sixth or seventh story. She said it is intended to be an incentive and also acknowledges that this is at the higher end of what they hear is an appetite for height in the area.

Mr. Gallaway said he presumed there would be a similar answer for why there is only one story on the Edge. He said that as they are promoting multiple floors, they want the density.

Ms. Accardi replied yes.

Ms. Falkenstein said that while Ms. Accardi was bringing up the slides for the next section, she wanted to clarify Ms. Mallek's comments. She said the street section that was shown was the Boulevard Street section, which only applies to Rio Road. She said this is the only street that they anticipate being that wide within the area. She said there are two lanes of traffic in each direction and a median, and this acknowledges the existing conditions that are there. She said they were not calling for a wider street in that area.

Ms. Accardi said she would kick off the last section with architectural standards. She said she was on the slide that said, "Framework – Architectural Standards." She said this was the section that was least developed in December 2019, which included a proposal to administratively review compliance with Entrance Corridor Guidelines and incorporating standards that are part of those guidelines within the code.

Ms. Accardi said the feedback staff received from the peer review was slightly different in that rather than feedback, they helped work with staff by sharing examples of how other localities regulate facades and transparency, as well as examples of very detailed architectural design standards that the County could pursue further, if desired. She said there was a note on the slide to indicate that earlier that year, staff worked with the Architectural Review Board via virtual meetings and feedback forms to receive their direction on different sections that are in the current draft.

Ms. Accardi said the architectural design standards are related to some earlier questions about uses within a building. She said rather than dictate specific uses within buildings, this code focuses on the form of buildings and their design.

Ms. Accardi said there are two aspects of this code that are important in preventing blank walls. She said the first is transparency, which refers to the amount of windows and doors on a wall. She said the second is a maximum façade segment length, which is basically a maximum portion of a wall that does not have a physical or visual break. She said staff has written this as being a function of the building height, so the length of the wall changes according to the building height. She said this applies to facades that face streets and civic spaces.

Ms. Accardi said additionally, this section incorporates the Entrance Corridor Guidelines by including minimum planting requirements, lighting requirements, screening for the mechanical service and loading areas, and permitted and prohibited building materials. She said there was an extensive list shown on the screen in the table on the right.

Ms. Accardi said Ms. Brumfield would talk about amenity standards and civic spaces.

Ms. Brumfield said they were on Slide 47, "Framework – Amenity Standards." She said that in the draft framework, they did require amenity spaces although at the time, they were calling them "greenspaces" or "public spaces." She said each parcel which is to be redeveloped under the form-based code would be required to dedicate a portion of their site to public use. She said this requirement is similar in spirit to current County requirements for open space, but it is more active and dynamic and instead of reserving that space just to be open for environmental use and recreation for the residents of a development, these spaces would be open to the public because this is an urban development that is supposed to be more activated and flexible.

Ms. Brumfield said this creates a lively streetscape. She said the hope is to bring pedestrians out of their cars, into the streets, onto the sidewalks, and into the amenity spaces. She said these kinds of spaces would incorporate plantings and greenspaces, but their primary use would be for active use by people who are walking their dogs, taking a walk after dinner, dining, and bringing their lunch or coffee out to sit on a bench and enjoy being outside. She said there is intention for these spaces to be programmed with more active County-involved events as well such as outdoor movie nights, festivals, farmers markets, sporting events, and public speeches.

Ms. Brumfield said that during the drafting of the code, staff switched the name from "amenities" to "civic spaces" to emphasize the active public nature and that these belong to the public.

Ms. Brumfield said as far as the feedback staff has received, they did hear that the developers were worried about the extent of the civic space requirements, and that every single space that would be required to devote one of these civic spaces would put a crunch on the very small developments, particularly on small individual parcel owners. She said in response to this, and also in response to the

reality that they do not need millions of 100-foot-by-10-foot parks, staff provided a cash in lieu exemption for many sites. She said any site that is not 2 acres in site in the Core area, for example, would not have to develop that site and could provide funds to develop a larger site on a nearby parcel or on a County-owned parcel.

Ms. Brumfield said staff also heard feedback about wanting pedestrian passages to serve toward civic spaces. She said something like the Downtown Mall in Charlottesville, for instance, would be an active public space. She said staff did incorporate this into the new draft.

Ms. Brumfield said staff also provided additional guidance and clarified that the County would own and maintain civic spaces as directed by the Board in the November work session.

Ms. Brumfield said if looking at the current, existing civic space standards, there are examples of what the elements that are required in each different civic space. She said the chart for civic spaces shows the range all the way from indoor civic space, such as a public art gallery or something like City Space, to linear parks, squares, plazas, and small pocket parks to create activated oases.

Ms. Brumfield said staff incorporated different sizes and forms of civic space to have requirements intended toward their intended uses, and so a square would require areas to sit and a focal element to gather around, like a fountain or art installation. She said a green would require a large open-grass lawn.

Ms. Brumfield said staff does have the element of the smaller cash in lieu and to explain this further, in small developments, if a development is less than 2 acres in the Core, 1.5 acres in the Flex, or 1 acre in the Edge and is within three quarters of a mile of a large County-owned civic space that is identified on the Regulating Plan, or a civic space that is not County-identified that is identified on the Regulating Plan, they can contribute cash to the development and maintenance of those large civic spaces. She said they were thinking about something like a very large, activated square with multiple features going on that spans a large amount of space for multiple acres at a time.

Ms. Brumfield said she would hand the presentation over to Ms. Falkenstein to cover incentives.

Ms. Falkenstein said she would be finishing off the code sections for review that afternoon. She said the framework staff brought to the Board in 2019 had a section dedicated to incentives, and staff had laid out a points system by which property owners and developers could qualify for certain incentives.

Ms. Falkenstein said staff received quite a bit of feedback on this topic, and the consensus from the reviewers was that this section was not necessary, given that it is an overlay zoning and is intended to be implemented as an incentive itself. She said staff heard additional feedback from stakeholders as well that the most meaningful incentive they can provide is the additional height.

Ms. Falkenstein said what staff decided to do in the draft before the Board was to remove this section and then incorporate some of the elements of the incentives table throughout the code itself. She said things like amenity spaces and bicycle storage are now incorporated as standards within the draft.

Ms. Falkenstein said that instead, they decided that the most important thing to incentivize would be affordable housing, and so they have incorporated an affordable housing section at the very end of the code, on page 50. She said they are requiring a percentage of affordable housing be provided with all residential development of six units or more within Rio29. She said the percentages listed on the slide mimic the percentages of the current housing draft policy that the Board recently reviewed. She said this is what staff is expecting with residential development within Rio29.

Ms. Falkenstein said there is a provision of affordable height, or a height bonus, if developers want to go above and beyond the minimums required by the draft.

Ms. Falkenstein said she would pause to ask if there were any discussion or questions on the three sections they covered: architecture, civic spaces, or affordable housing.

Ms. McKeel said she liked what she heard and believed this was a good way to move forward, which she appreciated.

Ms. Mallek said she agreed that the process that County staff has been working hard to establish for this is enough incentive, and so she was very grateful they had taken it out.

Ms. Price's comments were inaudible.

Ms. LaPisto-Kirtley said she liked everything she had seen, and she liked the flexibility involved and the affordable housing piece with different levels, as well as the new civic center space. She congratulated staff, noting that she thought they were on to something great.

Mr. Gallaway said he agreed that civic spaces should come into play with the County taking responsibility in getting involved with that, as he had said the last time. He said he was good with the architectural standards also. He said he wanted to give more thought to the points system. He said it was fine if it stayed the way it was and that affordable housing should be the focus to incentivize, as this was appropriate, but that he believed there was merit to the prior approach as well. He asked if there was another locality that has used a similar type of system successfully, as he wanted to brainstorm this

further before the code would come back for a more official approval. He said he was happy to receive that answer offline if the question was not expected.

Mr. Gallaway said the other thing he wanted to say that he failed to mention when they were looking at the Core and Flex, and at the map with the pink and white Edge area. He said when looking at the Fashion Square Mall property and how part of it is Core and part of it is Flex, and knowing that it is already a complicated property with multiple owners involved, it seems to him that when going down 29 along the whole property as they think about the footprint of the mall, he wonders if they need to be flexible if the Core area needs to expand to include some of that. He said there is 29 on the face, and there is not really any residential behind it at that point, on that end. He said if someone wanted to come in and do a big redevelopment with one foot on the Core side and one foot on the Flex side, it can become an obstacle.

Mr. Gallaway said he hoped there would be some flexibility there to say that perhaps the Core area, by the nature of that footprint, is a little bit more accepted versus it just being Core/Flex and having the developer be stuck with two different codes underneath this overlay umbrella. He said he was throwing this out as something to think about, and perhaps it was already discussed. He said it is something he would like to avoid. He said someone could come in and start asking for a lot of extra things because of the code, and he did not know how hard the boundaries were for Core, Flex, and Edge.

Ms. Accardi said she could respond to the first portion about the incentives section. She said the initial draft was based off of a similar points system in Colorado Springs, Colorado, and she had reached out previously to staff to see how well this was working.

Ms. Accardi said she and Ms. Brumfield also spoke with a planner in Portland, Maine. She said there was not a points system for the form-based code that they have, and it isn't the whole city, but just a portion of it. She said they had an interesting experience where it seemed that everyone was taking advantage of the green roofs provision that they provided, which came as a surprise to staff. She said they do not have a lot of clarity on how well a points system worked, and it does not seem to be as common of an approach, though not necessarily a wrong one. She said there is just not enough information.

Ms. Accardi asked Ms. Falkenstein if she minded responding to the character areas portion of the question.

Ms. Falkenstein said this was a good point and something that staff should think about more. She said the main difference between the character areas is the height of the buildings, which they talked about earlier, as well as the light industrial use being allowed in Flex and not in Core. She said she did not know if it would necessarily be problematic for a site to be straddling two areas, but she did want to think about if there is a way to be flexible about where that line is. She said they would not want the line crossing through a proposed building that is seven stories and have this be problematic. She said this is something she would like to think about more.

Mr. Gallaway said he was trying to get rid of impediments and obstacles rather than creating some they are not thinking about. He said he appreciated all of the work and asked Ms. Falkenstein if there was anything else staff needed the Board to respond to.

Ms. Falkenstein replied that staff had a list of future work that they had provided in Attachment 6 that they wanted to talk about. She said she knew the Board was short on time, however. She said the most important thing for staff to hear that evening was whether the draft was ready to move forward to public hearing. She said their work program has an estimated timeline for first quarter of 2021 for a public hearing, and they want to hear from the Board if they think the timeline is reasonable, with a couple of tweaks and small edits that they can address quickly. She said they would not be able to make major changes in that timeframe.

Mr. Gallaway asked if there were any objections to this moving forward, and none were heard. He asked Ms. Falkenstein if there was anything else staff needed from the Board.

Ms. Falkenstein replied no. She said she believed they could carry the future work discussion forward to another time because it would not impact the work currently before staff.

Mr. Gallaway said before ending the work session, he wanted to mention that the Places29 Rio Community Advisory Committee passed a resolution on December 10, and he wanted to quickly read the first paragraph.

Mr. Gallaway read aloud, "We, the members of the Places29 Rio CAC wish to express our appreciation to Rachel Falkenstein, Michaela Accardi, and countless other Albemarle County staff for their impressive work on the Rio29 Small Area Plan and the resulting proposal to offer a form-based code option. For the past several years, they have persevered, despite the disruption of the pandemic, and developed a balanced and exciting approach to offer the option for property owners in the Rio29 area to redevelop their properties using form-based code. As this significant zoning change nears completion with the December 16 work session of the Board of Supervisors to discuss the draft and FBC regulation, the committee looks forward to the final implementation of the new code by the Board."

Mr. Gallaway said he is not a voting member of the CAC, but had he been, he would have given this a resounding "yes." He said he was thrilled that they passed the resolution acknowledging the efforts

and work of staff. He said he knows Ms. Falkenstein and Ms. Accardi have had a lot of interaction with the CAC and steering committee, and Ms. Brumfield with the presentations to the Board. He thanked staff on behalf of the Board for their effort and continued time they put in on this as they move toward the final steps.

Mr. Gallaway noted the meeting was behind schedule. He suggested moving forward with the update from the Health District, taking action on the ordinance, and then doing a check-in with Mr. Kamptner on the closed session items. He explained they would pull the plug on the evening session, which would allow those in the building to leave as close as possible to still having light outside. He said for the public, they would push everything from 6:00 p.m. on out to the next meeting, and they would push through quickly with their updates from the Health District. He asked if there were any objections to this plan, and none were heard.

Agenda Item No. 11. **Presentation:** Blue Ridge Health District (Formerly Thomas Jefferson Health District) COVID-19 Update.

Mr. Ryan McKay, Director of Policy and Planning, reminded the Board that as of January 1, the Thomas Jefferson Health District will transition to being the Blue Ridge Health District, and they will be converting all their media campaigns to the new logo seen on the bottom of the screen.

Mr. McKay said he would start with a national overview and give a comparison of where Virginia currently stands with COVID as related to where they are seeing the worst number of cases across the country (Oklahoma, Tennessee, New Mexico, and Ohio). He said they have seen a significant increase over the last two to two-and-a-half weeks, up 23 per 100,000 to 42.9. He said he would say, however, that they are in much better shape as a state in comparison to their neighbors such as North Carolina, West Virginia, and Tennessee. He said this was not to say this was not going to be creating impacts and problems locally and in the state.

Mr. McKay presented a graph that showed a record number of COVID cases being reported for the last couple of weeks. He said the seven-day average of 3,600 is significant. He said these numbers were current as of the day before, and there were 3,100-plus cases reported the day before. He said what they know about COVID is that this can actually present a longer-term effect as related to hospitalizations and new cases associated with the current ones. He said this is true particularly as they move into a longer holiday period, which is of concern for those in public health because there are more opportunities for interaction, whether this is through social gatherings, children having to go to different daycare and childcare settings given breaks, opportunities for travel, and obviously celebrations related to the holidays.

Mr. McKay said something he had not shared in depth before was hospitalizations in Virginia, and he thinks it is important to understand where they currently are. He said the numbers are obviously records on some days as compared to where they were earlier in the pandemic, in April and May. He said they see the average number of daily new cases reported at 103, and there is always a lag time when it comes to the cases that are reported versus when they actually see hospitalizations. He said it could be a week to two and a half weeks, and so this is something they need to keep in mind when thinking about transmission, but also the burden on any given community.

Mr. McKay said looking more locally, as the Board could see, since November 30, there has been a significant increase in weekly case counts. He said the data on the left side of the slide was part of what the Health District does for their weekly pandemic metrics updates for localities and schools. He said there were 202 cases between December 7 and December 14. He said what they have been finding is that these cases are largely tied to social gatherings, with many of them being around Thanksgiving and others not necessarily being around Thanksgiving, but events that occurred in larger gatherings or private settings over that same time period.

Mr. McKay said they are seeing significant increases, and there are larger numbers of contacts to trace. He said he would be upfront in stating that this has presented a significant challenge to the contact tracing and case investigation. He said they continue to contact everyone they can who they are able to reach. He said they have implemented some abbreviated investigation protocols that help them get through the investigation a little more quickly. He said they are making all attempts to contact individuals and let them know that they may be considered a close contact.

Mr. McKay said some of the tracing and investigation goals of meeting 90% are still there, but perhaps they are not getting to the high 90s at this point. He said this is something to be mindful of as they are going through the holiday season and what this impact is on the public health response.

Mr. McKay said looking at hospitalizations locally, they were not seeing the same impact of COVID on hospitalizations within Albemarle County. He said he would show the Board numbers for Charlottesville shortly. He said the seven-day moving average was 1 over the last week, which was a good sign for the moment and gives some optimism. He said there is also caution, as they may see an uptick over the next couple of weeks as cases may increase with severity.

Mr. McKay said Charlottesville has seen an increase, and the numbers have not quite doubled, and perhaps not to the extent that they have seen in Albemarle County, but there are impacts given the close nature of the two communities and localities. He said their numbers do not necessarily reflect the same increases that were seen back in September and October with university students, but it is

important to note that there is an increase with potential impacts on the broader community.

Mr. McKay said hospitalizations in Charlottesville, similar to Albemarle County, remain low in terms of the number being reported and the seven-day average. He said this is different than what they are seeing across the state, and so there is cautious optimism as they look at these numbers specifically.

Mr. McKay said they are looking more ahead to 2021. He said they continue to have priorities in terms of providing access to testing resources. He said at the end of November, around Thanksgiving, there were some challenges with access and some slower turnaround times, given the demand for testing. He said more people were asking for testing because of travel requirements or wanting to make sure that if they did travel to see friends and family, they were not positive and potentially infecting others. He said the Health District also saw the residual effect of that which was when they returned, there were more people interested in getting testing.

Mr. McKay said that as a Health District, they will continue to provide access to community testing throughout January and into February. He said they did not see any change in their interest in providing that access.

Mr. McKay said in terms of contact tracing and case investigation, while vaccines are on the horizon for the broader communities in the coming months, this light at the end of the tunnel is still a far way off in terms of this providing protection to the community. He said they have to continue with these two priorities in making sure they are able to contact trace and case investigate. He said they continue to mount for those priorities, and they will be bringing people on and training them over the coming weeks as they continue to mount that part of the public health response.

Mr. McKay said the vaccination planning and operations will be a critical component of what they try to do in 2021 for the response. He said it is great news that the local hospitals have access to the vaccine now and are able to provide it to their employees. He said the Health District is working on their planning process to make sure they can provide access to the vaccine through the prioritization process set by the state and CDC, but certainly in a way that is equitable to communities and general population. He said it will be a significant challenge and one they understand will be closely watched and will need continued support from all communities.

Mr. McKay said that in summary, the Health District again saw that gatherings and travel around Thanksgiving created the surge that they are seeing. He said they are not in as bad of a position as other health districts in other parts of the state, and so they are certainly starting off the season a little better off than others. He said they recognize, however, that there is potential for this continued pattern to occur, and they need to be prepared for that coming up in December and January.

Mr. McKay said hospital capacity is stable. He said looking at some of the numbers that were reported to the Health and Human Services website, there are hospitals that are near or at capacity in Virginia, but locally, they are not seeing that based on the recent data he could find through Health and Human Services. He said there is still optimism there for stabilization in hospitals.

Mr. McKay said vaccine distribution and dispensing will take time, and it will be another aspect of whole-community response from partners with the Board, the County, and across all communities in the Health District to be able to provide access. He said they need to continue the mitigation strategies and things they have been doing to keep them in this position. He said it is a little better than where they are in other parts of the state, and it will be important moving forward. He said they cannot stray away from those if they want to get through this surge with as minimal an impact as possible.

Mr. McKay said Dr. Denise Bonds was not attending, but he did want to say on her behalf and on behalf of the Health District that there have been tremendous successes in 2020 that they can build off of due in large part to partnerships with the Board of Supervisors, County Executive's Office, and the entire team. He said the work that has been done in partnership with Albemarle County has been critical to the response, and he feels that they are all part of this public health response together. He said he wanted to express his thanks and gratitude for the County's efforts. He offered to answer any questions.

Ms. McKeel said as a cautionary note, as other hospitals fill up in the state and capacity dwindles, the University of Virginia will start to see more patients transferred in.

Mr. McKay said that this is a possibility. He said he does not have all the insights as to how those transfers occur, but there is this possibility.

Ms. McKeel said people have to realize this because the capacity at UVA is not just dependent on the community. She said they are a tertiary hospital and so as other hospitals fill up, they will be on the receiving end.

Ms. McKeel said she had a quick question. She said she signed up for a tracing app, and the Governor had asked for people to do this. She asked if this is something that is still being used, and if it had not received enough people signing up for it.

Mr. McKay replied that if Ms. McKeel was speaking about the COVIDWISE app, this is something they continue to use. He said the last he heard that Saturday, there were 800,000-plus people who had signed up for the app, and they are pushing for more people to do so. He said the more that sign up for the app, the more likely it is that they are going to be successful.

Mr. McKay said there have been a couple of cases and contacts identified through the app. He said he was not sure what those numbers were at the state level, but it is still an active app and one the Health District is pushing. He said they are trying to enhance their ability to contact trace through that.

Ms. McKeel asked if there is a way the Board can make sure they help the Health District with that and if they had information that they could share with the Board to share. She said she thought this would be helpful.

Mr. McKay replied that pushing this through social media would be the best bet.

Ms. McKeel added that they could push it through the website as well. She said it has been on her phone for a long time, but she does not hear about it anymore.

Mr. McKay said he was not sure why that was the case but that the Health District could push out some information that could be shared through social media if it is not already there.

Ms. Mallek said it is always scary to look at the numbers. She said the TV news the day before had talked about how both local hospitals had no ICU beds available, yet Mr. McKay's data seemed to look fine. She said she did not know how to understand that, and so she would not spend any more time on it. She said there was weird information out there that was confusing to the average person like herself.

Ms. Mallek asked Mr. McKay if people are cooperating with the Health District when it comes to contact tracing in general.

Mr. McKay replied that in general, the Health District has had great success with contact tracing and case investigation. He said it has been a substantial effort on the part of their team, though it is predominantly contract staff. He said they have been working on this for a long time, for many months, and they have become extremely good at what they do in terms of getting in touch with people. He said they are extremely thorough, even in an abbreviated surge. He said they are having great success with getting people to comply.

Mr. McKay said the adjustment to the new quarantine measures from CDC has been a little challenging, but so far, they have gotten great compliance from those who are close contacts or have tested positive.

Ms. Mallek said it is always infuriating when people contact the Supervisors to see they had just seen a picture sent on Instagram of a party of 15 families off in Orange County where they thought they could go and misbehave without anyone finding out. She said she wished people would get their act together and understand that there are at least six more months of hard work to do to get through this, and to stop thinking about themselves all the time because it makes it hard for the Health District to do their job and for everyone to get through. She thanked Mr. McKay for all he was doing.

Ms. LaPisto-Kirtley thanked Mr. McKay for the presentation.

Mr. Gallaway asked Mr. McKay if when referring to hospitalizations, this meant admitted to the hospital with COVID, or admitted to the hospital with some other issue and got COVID after being there.

Mr. McKay replied that these were hospitalizations due to COVID contracted outside of the hospital setting.

Mr. Gallaway asked if they know how many are found to get COVID after they are admitted for something else and what impact this has had.

Mr. McKay replied that he did not have that information, nor did he understand what the impact was at that point. He said he does know it is occurring, as hospitals across Virginia test individuals as they enter, particularly if they have some sort of surgery or when there is going to be a longer stay required.

Mr. Gallaway said it seems to be a critical piece of what the ICUs are probably doing. He asked Mr. McKay if when he said, "I could find," it meant he is seeking to go out and find what the capacity is, and the capacity is not being reported.

Mr. McKay replied that hospitals across the country are now reporting data directly to Health and Human Services, and they update this information on a weekly basis. He said there is a number of reputable websites that provide mapping where one can go and find what local hospitals are reporting at that particular time. He said they do have access to some data through the Virginia Hospital Alerting System. He said he does not access that one on a daily basis, but in general, through several meetings that the Health District has each week, they have not heard significant concern from the hospitals locally about being overwhelmed by COVID.

Mr. Gallaway asked if a locality wanted to understand capacity, whether it is for open beds or staffing for beds, they just have to do their best to try to figure that out. He said as a locality, this has to be part of the question and concern. He said they talk about cases, positivity rates, and hospitalizations. He asked if there is any cooperation at all about the localities understanding what their local capacity is in

their hospitals.

Mr. Doug Walker, Deputy County Executive, replied that he could say, and perhaps Mr. McKay could add to it, that they do have discussions as a region every week that ideally include both UVA and the health system. He said the health system is not always on that call, but there is that formal weekly update on the status of mitigation efforts and issues of concern within the region and with each of the partners in the region. He said they do have the mechanism, and so he would look to Mr. McKay to add to that to see if there is another opportunity to get more granular information from them. He said he knows that Chief Eggleston also engages directly with his contacts at both of the local hospitals as well.

Mr. McKay said there is a case investigator lead and a district epidemiologist who meet with UVA, and it includes some health system representation three times a week. He said he does not necessarily sit on this meeting all the time, but he has not heard from them that there is concern on the hospital side, at this point. He said they do not necessarily provide hard data at that meeting, but it has not been a topic of discussion in terms of capacity and concern for where they currently are. He said he thinks they are concerned with the potential for capacity issues as cases continue to increase across Virginia, but he was not aware of anything that was particular of concern to date in terms of the current capacities.

Mr. Walker added that on a regular basis, they do track the symptomatic calls. He said these are transports of patients by the combination career/volunteer system where the patients are symptomatic. He said it is a bit of a blunt instrument, but it is an indication of any type of increase in that is an early warning system of encounters with symptomatic individuals. He said although it has been consistently elevated over the course of the pandemic, they are not seeing dramatic spikes, but they do see that as blunt as it is, it is an opportunity for an early warning if they are responding to a sustained and significant increase in symptomatic patients calling for service.

Ms. McKeel said she was starting to see on national TV channels the rescue personnel being very concerned with what Mr. Walker mentioned as far as capacity. She said perhaps when the Board comes back in January, she would like this to be one of the report-outs to let the Board know how the rescue personnel are doing on transports.

Mr. Walker said they could do that.

Agenda Item No. 12. **Presentation:** Emergency Ordinance to Amend Emergency Ordinance No. 20-E(7), An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19.

Mr. Greg Kamptner, County Attorney, said this is an emergency amendment to the emergency ordinance in order to bring the County ordinance up to speed with Executive Order 72, which was issued the previous Thursday. He said Virginia Code § 15.2-1200 is the enabling authority under which the County's ordinance has been considered by the Board.

Mr. Kamptner said the Board would recall that staff was with the Board just a month earlier with an emergency ordinance after the Governor issued Executive Order 67 to reduce the maximum size of gatherings from 250 to 25. He said the County's ordinance, as originally adopted, had established a maximum gathering size of 50, and so to keep up with the Governor's executive order, the November 18 amendment reduced the number from 50 to 25.

Mr. Kamptner said lastly, the Governor further reduced the maximum size of gatherings from 25 down to 10. He said this ordinance would make that same change to reduce the maximum size of gatherings down to 10.

Mr. Kamptner said they have also done some other things in this amendment to further refine what are and are not gatherings in public places. He said the definition of "public places" pertains to the face covering requirements. He said in Section 4, those are the restaurants, farm winery, brewery, and distillery regulations, and there are no changes proposed there. He said he already mentioned the change to Section 5 regarding the public and private gatherings. He said in Section 6, the County retains their face covering standards, which differ from the executive order in that they do require written documentation from a healthcare professional to establish the basis to be excused from wearing a face covering.

Mr. Kamptner said they also incorporated a couple of the exceptions that were included in Executive Order 72. He said people playing wind instruments and those who are talking to the hearing impaired, for example, may be excused from wearing masks.

Mr. Kamptner said also, in Sections 5 and 6, they have continued to further clarify the relationship between the County's local ordinance requirements and the Governor's executive order. He said they are not addressing everything that the state is, and so they are trying to make it clear that if they do not cover a gathering size issue or face covering requirement in Sections 5 and 6, then these business sectors, institutions, events, and activities need to look to Executive Order 72 so that there is no question that they are excused from complying with some requirement.

Mr. Kamptner said the proposal was vetted with the COVID IMT (Incident Management Team) on Monday morning, and because of the recommendation from COVID, the IMT, which includes a representative from the Albemarle County Police Department, combined with the fact that this Executive

Order 72 will expire January 31 and that the students will be returning to UVA around February 1, the recommendation to the Board is to adopt the proposed emergency ordinance. He presented the recommended motion language on the screen. He reminded the Board that the non-emergency version of this ordinance will return to the Board on January 6 for public hearing and action. He offered to answer any questions.

Ms. Mallek said if she understood correctly, if the Board adopted this now, they did not have to stop on January 31 because they will take care of it on January 6 and be able to extend on.

Mr. Kamptner replied yes. He said what they have been doing is to have their ordinances be valid for roughly 60 days or so, so they are keeping up with the changes in the conditions of the pandemic.

Ms. LaPisto-Kirtley **moved** that the Board adopt the proposed Emergency Ordinance dated December 15, 2020. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price

NAYS: None.

ABSENT: Ms. Palmer

ORDINANCE NO. 20-E(8)

AN EMERGENCY ORDINANCE TO AMEND SECTION 3, DEFINITIONS, SECTION 4, LIMITATION ON THE NUMBER OF PERSONS AT FOOD ESTABLISHMENTS, FARM WINERIES, LIMITED BREWERIES, AND LIMITED DISTILLERIES, SECTION 5, LIMITATION ON THE NUMBER OF ATTENDEES AT GATHERINGS, SECTION 6, FACE COVERINGS, AND SECTION 9, SUCCESSION TO ORDINANCE NO. 20-A(13) AND DURATION, OF ORDINANCE NO. 20-E(7), AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19

WHEREAS, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (for reference in this ordinance, this virus and the disease that it causes are referred to as "COVID-19"); and

WHEREAS, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Board of Supervisors on March 17, 2020; and

WHEREAS, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One ("EO 51") declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a "disaster" as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

WHEREAS, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet)¹, and by airborne transmission, which may be able to infect people who are further than 6 feet away from the person who is infected or after that person has left the space²; and

WHEREAS, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity³; and

WHEREAS, at this time, there is no known cure and no effective treatment of widespread application⁴ vaccine; however, the first vaccine was approved for emergency use by the United States Food and Drug Administration on December 11, 2020 and distribution of available quantities began on December 13, 2020⁵; nonetheless, at this time, people may be infected but asymptomatic and infect persons⁶; and

WHEREAS, the World Health Organization, the United States Centers for Disease Control and Prevention ("Centers for Disease Control") and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people ("social distancing" or "physical distancing"), limiting the size of gatherings in public places, and limiting the duration of gatherings⁷; and

WHEREAS, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or

through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes⁸; and

WHEREAS, according to the World Health Organization, fabric face coverings, “if made and worn properly, can serve as a barrier to droplets expelled from the wearer into the air and environment,” however, these face coverings “must be used as part of a comprehensive package of preventive measures, which includes frequent hand hygiene, physical distancing when possible, respiratory etiquette, environmental cleaning and disinfection,” and recommended precautions also include “avoiding indoor crowded gatherings as much as possible, in particular when physical distancing is not feasible, and ensuring good environmental ventilation in any closed setting”⁹; and

WHEREAS, the World Health Organization advises that people take a number of precautions, including: (i) maintaining social distancing because when someone coughs, sneezes, or speaks they spray small liquid droplets from their nose or mouth which may contain virus, and if other persons are too close, they can breathe in the droplets, including the COVID-19 virus, if the person coughing, sneezing, or speaking has the disease; and (ii) avoiding crowded places because when people are in crowds, they are more likely to come into close contact with someone that has COVID-19 and it is more difficult to maintain social distancing¹⁰; and

WHEREAS, the Centers for Disease Control caution that: (i) the more people a person interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading; (ii) the higher level of community transmission in the area that a gathering is being held, the higher the risk of COVID-19 spreading during the gathering; and (iii) large in-person gatherings where it is difficult for persons to remain spaced at least six feet apart and attendees travel from outside the local area pose the highest risk of COVID-19 spreading¹¹; and

WHEREAS, the Centers for Disease Control state that cloth face coverings are strongly encouraged in settings where persons might raise their voice (e.g., shouting, chanting, singing)¹²; and

WHEREAS, the Centers for Disease Control advise, in restaurants: (i) wearing cloth face coverings when less than six feet apart from other people or indoors; (ii) wearing face coverings as much as possible when not eating; (iii) maintaining a proper social distancing if persons are sitting with others who do not live with the person; and (iv) sitting outside when possible¹³; and

WHEREAS, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19¹⁴; and

WHEREAS, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; and

WHEREAS, as of July 21, 2020, the spread of COVID-19 in the Commonwealth, in the Thomas Jefferson Health District of which the County is a member, and in the County itself, had been increasing since late June, shortly before Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19) (collectively referred to as “EO 67”) moved the Commonwealth into “Phase 3” of its reopening plan, the curve in the positivity rate of persons tested for COVID-19 was no longer flattened, and the community was currently experiencing more transmission of COVID-19; and

WHEREAS, on July 27, 2020, the Board of Supervisors adopted Ordinance No. 20-E(5), “An Emergency Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19 (the “Ordinance”), which became effective August 1, established regulations pertaining to: (1) the maximum indoor occupancy allowed at restaurants, farm wineries, limited breweries, and limited distilleries; (2) the maximum size of public and private gatherings; and (3) the requirement for persons to wear face coverings in public places; and

WHEREAS, as of September 7, Virginia’s 7.30 percent positivity rate in COVID-19 testing over a 14-day period exceeded the World Health Organization’s recommendation at that time that the positivity rate remain at 5 percent or lower for at least 14 days before governments lift public health and social measures (“re-open”)¹⁵; the seven-day positivity rate in the Thomas Jefferson Health District was 6.4 percent¹⁶; the community had just entered an uncertain period with approximately 4,400 students having returned to the University of Virginia to live on grounds since September 3, and in-person instruction beginning at the University on September 8.¹⁷

WHEREAS, on September 16, 2020, following a duly noticed public hearing, the Board of Supervisors adopted Ordinance No. 20-A(13), “An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19”; and

WHEREAS, as of November 9, 2020, the seven-day positivity rate in the Thomas Jefferson Health District was 1.7%; nationwide, as of November 9, 2020, new daily cases rose 29.1%, new daily reported deaths rose 20.9%, and hospitalizations rose 18.5%, all over the prior week, and the positivity rate among reported tests was 8%;¹⁸ and all states and territories, with the exception of Puerto Rico,

including Virginia (+10%, in addition to 21% the week before), reported increases in cases over the prior week¹⁹, and public health experts warn that, during the coming winter, with people spending much more time indoors and in drier air, will bring on a new surge in COVID-19 cases unless gatherings are limited, physical distancing is maintained, and face coverings are worn²⁰; and

WHEREAS, the Board of Supervisors had on its agenda for November 18, 2020 a public hearing on the question of extending Ordinance No. 20-A(13) from November 18, 2020 to January 20, 2021; and

WHEREAS, on November 13, 2020, Governor Northam issued amended Executive Order Number 63 (2020) and Order of Public Health Emergency Five, Requirement to Wear Face Covering While Inside Buildings (collectively referred to as “EO 63”) and EO 67, and the introduction to EO 67 states that the “statewide percent test positivity rate is at 6.5%, an increase from 4.3% approximately one month ago,” that all “five health regions report a positivity rate over five percent and hospitalizations have increased statewide by more than 35 percent in the last four weeks,” that “[c]ase investigation interviews show a pattern of increased socialization with extended (non-household) family members and friends,” that “[r]ecent scientific literature suggests indoor settings contribute to community transmission,” and that “[m]odeling data demonstrates that large gatherings substantially increase transmission of the virus”²¹; and

WHEREAS, because EO 67 reduced the State-allowed maximum gathering size from 250 to 25 persons, the Board of Supervisors on November 18, 2020 adopted an emergency ordinance, Ordinance 20-E(7), which reduced the County-allowed maximum gathering size from 50 to 25, among other changes; and

WHEREAS, on December 10, 2020, Governor Northam issued Executive Order Number Seventy-Two (2020) and Order of Public Health Emergency Nine, Common Sense Surge Restrictions, Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19) (collectively referred to as “EO 72”) which imposes further directions and restrictions, including a request for persons in Virginia to stay at home between the hours of 12:00 a.m. and 5:00 a.m. each day, and a reduction in the maximum size of gatherings, in response to increases in new COVID-19 cases, positive tests, and hospitalizations throughout Virginia.²²

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that:

Sec. 1. Purpose

For the reasons stated in the recitals, the purpose of this ordinance is to prevent the spread of COVID-19.

Sec. 2. Authority

This ordinance is authorized by Virginia Code § 15.2-1200, which enables the County, through its Board of Supervisors, to adopt “necessary regulations to prevent the spread of contagious diseases among persons . . .” that “are not inconsistent with the general laws of the Commonwealth.” This ordinance is adopted as an emergency ordinance pursuant to Virginia Code § 15.2-1427(F).

Sec. 3. Definitions

The following definitions apply to this ordinance:

- A. “Entertainment and amusement businesses” includes performing arts venues, concert venues, sports venues, convention centers, expos, movie theaters, museums, aquariums, fairs, carnivals, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, amusement parks, and zoos, and other places of indoor public amusement.
- B. “Expressive activity” means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- C. “Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (*i.e.*, the person’s nose and mouth).
- D. “Farm winery” means an establishment that is required to be licensed as a farm winery under Virginia Code § 4.1-207.
- E. “Food establishment” means a food establishment as defined in 12VAC5-421-10 and the term includes, but is not limited, any place where food is prepared for service to the public on or off the premises, or any place where food is served, including restaurants, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs. For purposes of this ordinance, “food establishment” does not include kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under Virginia Code § 53.1-68.

- F. "Gathering" includes, but is not limited to, parties, celebrations, wedding receptions, or other social events, whether they occur indoors or outdoors. The following are not "gatherings": (i) the gathering of family members who live in the same residence; (ii) the presence of more than 10 persons performing functions of their employment or assembled in an educational instructional setting; (iii) the presence of more than 10 persons in a particular location, such as a park or retail business, provided that those persons do not congregate; and (iv) the presence of more than 10 persons in shared spaces not expressly addressed in Section 5 but which may be subject to restrictions on the maximum size of gatherings in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.
- G. "Limited brewery" means an establishment that is required to be licensed as a limited brewery under Virginia Code § 4.1-208.
- H. "Limited distillery" means an establishment for which a limited distiller's license is required under Virginia Code § 4.1-206.
- I. "Public place" means: (i) any indoor place shared by other persons, including, but not limited to, local government buildings, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle; or (ii) any outdoor place shared by other persons. "Public place" does not include a person's residence or personal vehicle. "Public place" also does not include institutions of higher education and other schools, fitness and other exercise facilities, religious institutions and places where religious rituals are conducted, areas under state or federal jurisdiction or control, indoor shooting ranges, and the County courthouse buildings, provided that they, and any other institutions, business sectors, and locations shared by other persons not expressly addressed in Section 6 but which may be subject to face covering requirements in EO 72 or any state or federal law or order that are unique to that institution, business sector, facility, activity, or event.

Sec. 4. Limitation on the Number of Persons at Food Establishments, Farm Wineries, Limited Breweries, and Limited Distilleries

- A. *Indoor occupancy.* Indoor occupancy at food establishments, farm wineries, limited breweries, and limited distilleries must not be more than 50 percent of the lowest occupancy load on the certificate of occupancy issued by the County of Albemarle. If the building or structure does not have an occupancy load established on a certificate of occupancy issued by the County of Albemarle, indoor occupancy must not be more than 50 persons.
- B. *Persons at gathering are counted.* Persons participating in or attending a gathering who are indoors count towards the occupancy limits established by this section.
- C. *Persons working not counted.* Persons working at food establishments, farm wineries, limited breweries, or limited distilleries, either as employees or independent contractors, do not count towards the occupancy limits established by this section.
- D. *State requirements, recommendations, and guidance.* Except as provided in Sections 4(A), (B), and (C), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing that apply to food establishments, farm wineries, limited breweries, and limited distilleries established in EO 72, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

Sec. 5. Limitation of the Number of Attendees at Gatherings

- A. *Generally.* All public and private in-person gatherings, as defined in Section 3(F), of more than 10 persons are prohibited, except as provided in Sections 5(B) and (C).
- B. *Entertainment and amusement businesses.* The total number of attendees (including both participants and spectators) at entertainment and amusement businesses cannot exceed the lesser of 30 percent of the lowest occupancy load on the certificate of occupancy, if applicable, or 250 persons. Private bookings at entertainment and amusement businesses are subject to the 10-person limitation in Section 5(A).
- C. *Recreational sports.* The total number of spectators at indoor and outdoor recreational sports activities are limited as follows:
 - 1. *Indoor sports.* For sports played indoors, the number of spectators may not exceed 25 persons per field and the total number of spectators may not exceed 30 percent of the occupancy load of the certificate of occupancy for the venue.
 - 2. *Outdoor sports.* For sports played outdoors, the number of spectators may not exceed two spectators per player and the total number of spectators may not exceed 30 percent of the occupancy load of the certificate of occupancy for the venue. Races or marathons may have up to 250 participants, provided staggered starts separate runners into groups of 25 persons or less.

- D. *State requirements, recommendations, and guidance.* Sections 5(A), (B), and (C) incorporate the gathering size limitations of EO 72 for common businesses, events, and activities in the County, however this section does not affect any other applicable requirement, recommendation, or guidance in EO 72 including, but not limited to, those requiring or recommending physical distancing pertaining to entertainment and amusement businesses, and recreational sports nor does it affect the exceptions in section II(D)(3) of EO 72. This section also does not affect any requirement, recommendation, or guidance pertaining to business sectors and other events and activities subject to EO 72, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

Sec. 6. Face Coverings

- A. *Face coverings required.* Face coverings must be worn by all persons in public places, as defined in Section 3(I), except as provided in Sections 6(B) and (C).
- B. *Persons not required to wear face coverings.* Face coverings are not required to be worn by the following persons:
1. *Children.* Children four years of age or under.
 2. *Wearing face covering poses certain risks.* Persons for whom wearing a face covering poses a bona fide and substantial mental or physical health risk, such as persons who have trouble breathing, a health condition, or a disability, or poses a safety or security risk to persons who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance. For this exception to apply to any person claiming that wearing a face covering poses a substantial mental or physical health risk: (i) the person must present a valid document from a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services, including mental health services, consistent with State law, specifying the medical necessity for not wearing a face covering and the date on which the person may begin wearing a face covering again; and (ii) the public place must be unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child four years of age or under.
 3. *Certain employees.* On-duty employees exempt from wearing face coverings by workplace safety regulations promulgated by the State Safety and Health Codes Board, or exempt from face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency by the State Health Commissioner.
- C. *Circumstances when face coverings are not required to be worn by any persons.* Face coverings are not required to be worn by any persons in the following circumstances:
1. *Outdoor activities.* While persons are engaged in outdoor activities in public places such as parks and other open spaces, provided that at least six feet of physical distancing from any person not living in the same household is maintained.
 2. *Eating or drinking.* While a person is eating food or drinking a beverage.
 3. *Exercising.* While a person is exercising or using exercise equipment.
 4. *Certain musical instruments.* While a person is playing a musical instrument, whether indoors or outdoors and in a rehearsal or during a performance, if wearing a face covering would inhibit playing the instruments, such as a wind instrument, if at least 10 feet of physical distancing can be maintained from other persons.
 5. *Communicating with the hearing impaired.* While communicating with the hearing impaired and for which the mouth must be visible.
 6. *Receiving services.* While receiving governmental or medical services if removing the face covering is necessary to receive the services.
 7. *End of waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in section III(F) of EO 72, or as it may be further amended or superseded, ends.
- D. *Responsibility of adults accompanying minors.* Adults accompanying minors should use their best judgment regarding placing face coverings on any minor between the ages of two through four in public places. Adults accompanying minors between the ages of five through 17 must use reasonable efforts to prompt the minor to wear face coverings while in public places.

Sec. 7. Effect of More Restrictive Executive Order or Order of Public Health Emergency

Section 4, 5, or 6 does not apply when a more restrictive requirement in an Executive Order or an Order of Public Health Emergency is in effect.

Sec. 8. Penalties

- A. *Penalty for violation of Section 4.* A violation of Section 4 by the owner of the food establishment, farm winery, limited brewery, or limited distillery, and any manager or assistant manager, however titled, responsible for the operation and management of the food establishment, farm winery, limited brewery, or limited distillery on the date of the violation, is punishable as a Class 3 misdemeanor. Section 4(D) is not enforced pursuant to this ordinance.
- B. *Penalty for violation of Section 5.* A violation of Section 5 by the owner or tenant of the private property on which the gathering is located, is punishable as a Class 1 misdemeanor. A violation of Section 5 by any person attending the gathering, after first being warned by a law enforcement officer to disperse from the gathering because it exceeds the limitation for a gathering and having failed to disperse after a reasonable period of time not to exceed two minutes, is punishable as a Class 1 misdemeanor.
- C. *Penalty for violation of Section 6.* A violation of Section 6 by any person subject to its requirements is punishable as a Class 1 misdemeanor. No person under the age of 18 is subject to a criminal penalty for failing to wear a face covering.
- D. *Injunctive relief.* The County, the Board of Supervisors, and any County officer authorized by law, may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.

Sec 9. Succession to Ordinance No. 20-A(13) and Duration

This ordinance amends Ordinance No. 20-E(7), which succeeded and superseded Ordinance No. 20-A(13) on and after November 18, 2020, and Ordinance No. 20-E(7), as hereby amended, continues in full force and effect for 60 days from November 18, 2020 until and including January 16, 2021 unless it is amended, superseded, or repealed on or before that date.

Sec. 10. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

Sec. 11. Severability

It is the intention of the Board of Supervisors that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

State law reference – Va. Code §§ 15.2-1200, 15.2-1427(F), 15.2-1429, 15.2-1432, 18.2-11.

¹ *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at *1 (D. Ariz. July 14, 2020) and cases and authorities cited therein; [How Coronavirus Spreads | CDC](#).

² [How Coronavirus Spreads | CDC](#).

³ *Xponential Fitness v. Arizona*, No. CV-20-01310-PHX-DJH, 2020 WL 3971908, at *1 (D. Ariz. July 14, 2020) and cases and authorities cited therein.

⁴ <https://www.covid19treatmentguidelines.nih.gov/whats-new/> (use of remdesivir approved for certain patients on October 22, 2020); <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-mono-clonal-antibody-treatment-covid-19> (use of investigational monoclonal antibody therapy bamlanivimab approved for certain patients on November 9, 2020).

⁵ [Hospitals await coronavirus vaccine shipments and wonder who gets the first shots - The Washington Post](#)

⁶ *South Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (May 29, 2020) (Roberts concurring in denial of application for injunctive relief); on the fact that there is no effective treatment as of the date of this ordinance, see also https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EAlaQobChMI9lvSvJPk6glVGbICh2TYw9QEAAAYASAAEgKjDfD_BwE#medicines; <https://www.health.harvard.edu/diseases-and-conditions/treatments-for-covid-19>; <https://www.mayoclinic.org/diseases-conditions/coronavirus/diagnosis-treatment/drc-20479976>.

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html> and links therein; <https://www.vdh.virginia.gov/coronavirus/#COVID-19-resources> and links therein.

⁸ World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

⁹ World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; see also Statement of Dr. Michael Ryan, World Health Organization COVID-19 Virtual Press Conference, transcript page 12, https://www.who.int/docs/default-source/coronaviruse/transcripts/covid-19-virtual-press-conference---17-july.pdf?sfvrsn=dd7f91a1_0 ("So it's all about the setting, it is about the duration you spend in that setting and it's about the intensity of the activities that you participate in in that setting and when you get into a particular setting, a very overcrowded situation in an indoor environment then effectively all bets are off because so many of the modes of transmission come into play; the aerosol route, the airborne route, the fomite or contamination route. So the more close you are to other people, the more you are inside, the more the activity is intense or involves very close social contact the more that

multiple modes of transmission come into play. So in that sense it is about you understanding your risk, it is about you managing that risk and being aware of the situation that you find yourself in personally and reducing that risk for you, for your family, for your children and for your community. It is important, as I've said previously, that governments communicate those risks very, very carefully and it is also important that providers, authorities and others ensure that those environments are as safe as possible and that the risks are also managed.")

¹⁰ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>.

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>; see also <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; [How Coronavirus Spreads | CDC](#).

¹² <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>.

¹³ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>; [Deciding to Go Out | COVID-19 | CDC](#).

¹⁴ <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>.

¹⁵ <https://coronavirus.jhu.edu/testing/testing-positivity>

¹⁶ <https://www.vdh.virginia.gov/thomas-jefferson/tjhd-covid-19-data-portal/>

¹⁷ <https://www.cavalierdaily.com/article/2020/08/there-are-no-risk-free-paths-u-v-a-announces-no-changes-to-fall-semester-plans-for-in-person-instruction>

¹⁸ <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

¹⁹ <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/>

²⁰ <https://www.scientificamerican.com/article/why-covid-outbreaks-could-worsen-this-winter/>; <https://www.forbes.com/sites/robertglatter/2020/10/25/dry-air-indoors-will-increase-transmission-of-covid-19-as-winter-approaches/?sh=1ce4e74720ee>; <https://blogs.webmd.com/public-health/20201019/will-covid19-get-worse-in-the-winter>

²¹ <https://www.governor.virginia.gov/executive-actions/>

²² <https://www.governor.virginia.gov/executive-actions/>

Agenda Item No. 13. Closed Meeting.

Ms. Price noted that she had been listening to the meeting but had not been able to be heard due to technical difficulties.

Mr. Gallaway assured Ms. Price that this had been communicated to everyone.

Mr. Gallaway asked if there were items that needed to be addressed in a closed meeting.

Mr. Kamptner replied that there were some time-sensitive matters. He said one item was pulled, and Mr. Herrick had a couple of things to update the Board on. He said they could speed through the items fairly quickly.

Mr. Richardson said in the accompaniment of Mr. McKay being there from the Blue Ridge Health District that day, and with there being many questions the Board had asked specific to the work, he did want to mention to the Board that they are continuing through the IMT format to look at extending their current service delivery posture, which would include how they interact with citizens Monday through Friday, buildings and their accessibility, as well as their public meetings, that they are continuing to look at their current building posture through March 15.

Mr. Richardson said there are many good reasons for this, given what the Board heard that day, and all the good work from the collaborative partners in the community and citizens. He said they will continue to keep an eye on this and certainly be back before the Board for planning before March 15.

Mr. Richardson said they are also working with staff to give them this as much ahead of time, as it helps them to better plan for their balance of their home and work life.

Mr. Gallaway said to reiterate to those who were following, they will continue all agenda items from 6:00 p.m. on to the next Board meeting, which would be January 6. He said this was due to the weather so that they can get the building cleared. He said for those participating by phone, the public hearing item visuals are usually important, and so it would be better if they have all the information up in front of them.

Mr. Gallaway said he was sure Ms. Kilroy and the Clerk's Office was on it as far as putting out all the proper communication.

At 4:55 p.m., Ms. LaPisto-Kirtley **moved** that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation involving a Virginia corporation and two zoning decisions where consultation or briefing in an open meeting would adversely affect the litigating posture of the County and the Board; and
- Under Subsection (8), to consult with and be briefed by legal counsel requiring the provision of legal advice by counsel regarding new enabling authority regarding firearms, volunteer emergency medical service providers in the County, a zoning decision, a zoning overlay district, and a mixed-use development.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price

NAYS: None

ABSENT: Ms. Palmer

Agenda Item No. 14. Certify Closed Meeting.

At 5:51 p.m., Ms. LaPisto-Kirtley **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each Supervisor'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 carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price

NAYS: None

ABSENT: Ms. Palmer

Mr. Gallaway again noted that the items from 6:00 p.m. on would be moved to January 6 due to the weather so that they could get employees out of the County Office Building.

Agenda Item No. 15. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.

This item was not held due to inclement weather.

Agenda Item No. 16. **Presentation:** 2020 Year in Review.

This item was not held due to inclement weather.

Agenda Item No. 17. **Public Hearing: 20-03(1) – Agricultural and Forestal Districts.** Ordinance to amend County Code Chapter 3, Agricultural and Forestal Districts, Article 2, Districts of Statewide Significance, Division 2, Districts, to review certain districts, and to make corrections to certain district regulations to identify all those tax map parcels within the districts, as specified below:

- a) **AFD 2020-01 Batesville AFD – District Review.** The proposed ordinance would amend Section 3-207, Batesville Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 16, 2025, to identify TMP 70-40 as no longer being in the district (this parcel was removed from the district by the former owners' heirs), to identify TMP 85-3A1 as being in the district (this parcel was created by the division of another parcel in the district), and to remove TMP 85-17B, as well as any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance. The review of the district will be reduced from once every ten years to once every five years, so that the next review of the district after the current review will occur prior to December 16, 2025; and
- b) **FD 2020-02 High Mowing AFD – District Review.** The proposed ordinance would amend Section 3-220, High Mowing Agricultural and Forestal District, to continue the district for all parcels identified in the district regulations, to set the next district review deadline date of December 16, 2030, and to remove any parcels for which a request for withdrawal is received before the Board acts on the proposed ordinance.

The Executive Summary forwarded to the Board states that localities are enabled to establish agricultural and forestal districts (AFDs) under the Agricultural and Forestal Districts Act (Virginia Code § 15.2-4300 et seq.). AFDs serve two primary purposes: (1) to conserve and protect agricultural and forestal lands; and (2) to develop and improve agricultural and forestal lands. Land within an AFD is prohibited from being developed to a more intensive use, other than a use resulting in more intensive agricultural or forestal production, without prior Board approval. In addition, the County is prohibited from exercising its zoning power in a way that would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the Agricultural and Forestal Districts Act unless those restrictions or regulations bear a direct relationship to public health and safety (Virginia Code § 15.2-4312).

The consolidated public hearing and the proposed ordinance pertain to the periodic reviews of two AFDs.

District Reviews: Virginia Code § 15.2-4311 requires the periodic review of AFDs to determine whether they should continue, be modified, or be terminated, unless the Board determines that review is unnecessary. During the review process, land within an AFD may be withdrawn at the owner's request by filing a written notice with the Board any time before the Board acts on the review. Virginia Code § 15.2-

4311 requires that the Board conduct a public hearing on AFD reviews after they have been reviewed by both the Agricultural and Forestal District Advisory Committee and the Planning Commission for their recommendations.

Reviews:

Pursuant to the Board's direction in November 2018, the proposed ordinance (Attachment A) includes a five-year renewal period for AFDs containing parcels enrolled in open-space use valuation that have no development rights, and a 10-year review period for districts that have no such parcels. The Advisory Committee and the Planning Commission reviewed the following districts and recommend renewal of the Batesville AFD for five years, and the High Mowing AFD for ten years. The November 10, 2020 staff reports to the Planning Commission are attached (Attachments B and C). See Attachments B and C for more details regarding this and other staff analysis of the following district reviews.

Batesville AFD: The Batesville AFD is on the north, west, and south sides of Batesville, and is undergoing its periodic 10-year review. One landowner submitted a request to withdraw one parcel (TMPs 85-17B) consisting of 136 acres from the AFD. This AFD was created in 1990 and currently includes 34 parcels totaling 1,115 acres. With the withdrawal of parcel 85-17B, the AFD would include 33 parcels and 955 acres. The review period for this AFD is recommended to be reduced to five years, so the next review will occur prior to December 16, 2025.

High Mowing AFD: The High Mowing AFD is located south of Batesville, and is undergoing its periodic 10-year review. No requests for withdrawal have been received to-date. This AFD was created in 1991 and currently includes 5 parcels totaling 445.8 acres. The review period for this AFD is ten years, so the next review will occur prior to December 16, 2030.

There is no budget impact.

After conducting public hearings on the proposed AFD addition and the proposed AFD reviews, which may be held together as one public hearing, staff recommends that the Board adopt the attached ordinance to continue the Batesville and High Mowing AFDs.

This public hearing was deferred to January 6, 2021 due to inclement weather.

Agenda Item No. 18. **ZTA202000003 Outdoor Storage and Outdoor Activities at Recycling Uses in Industrial Zoning Districts.** To receive public comments on its intent to adopt an ordinance: (i) to amend Albemarle County Code § 18-5.1.51 (Outdoor activities in industrial districts) to permit special exceptions to that section only after notice to abutting property owners; and (ii) to amend Albemarle County Code § 18-5.1.52 (Outdoor storage in industrial districts) (a) to require outdoor storage areas in industrial districts be fully screened by a planting strip, existing vegetation, berm, a solid wall or fence, or a combination thereof; (b) to permit the outdoor storage of inert materials at a recycling collection or recycling processing center provided that the materials are stored no closer than 100 feet to any abutting agricultural or residential lot line and that a vegetative buffer is maintained within the required 100-foot setback; and (c) to permit special exceptions to that section only after notice to abutting property owners; and (d) to make technical changes.

The Executive Summary forwarded to the Board states that, on June 3, 2020, the Board of Supervisors adopted a resolution of intent (ROI) to consider amendments to Albemarle County Code § 18-5.1.51 (Outdoor activities in industrial districts) and Albemarle County Code § 18-5.1.52 (Outdoor storage in industrial districts).

On October 13, 2020, the Planning Commission held a work session to discuss each regulation found in § 18-5.1.51 (Outdoor activities in industrial districts) and Albemarle County Code § 18-5.1.52 (Outdoor storage in industrial districts) and consider staff recommended changes. (Refer to Att. A.1-Commission Work Session Report).

On November 10, 2020, the Planning Commission held a public hearing to consider the draft ordinance. By a vote of 6:0, the Commission recommended approval of ordinance changes as presented by staff. (Refer to Att. A-Commission Staff Report, Att. B-Commission Action Memo, Att. C-Commission Minutes)

The proposed ordinance is provided as Attachment D. It reflects the changes outlined below, which includes the recommended changes endorsed by the Commission and a few minor updates since the Commission meeting.

Albemarle County Code § 18-5.1.51 (Outdoor activities in industrial districts) - Amends the ordinance to permit special exceptions to this section only after notice to abutting property owners. Currently, there is no requirement to notify abutting property owners. The draft ordinance has been updated since Commission's review to clarify abutting owner notice requirements.

Albemarle County Code § 18-5.1.52 (Outdoor storage in industrial districts):

- Amends the ordinance to allow greater flexibility in the types of screening for outdoor storage in industrial districts.
- Amends the ordinance to allow outdoor storage of inert materials at a recycling collection or recycling processing center, provided that the materials are subject to increased setbacks and buffers. Currently, outdoor storage of materials at a recycling processing center is prohibited.

- Amends the ordinance to permit special exceptions to this section only after notice to abutting property owners. Currently, there is no requirement to notify abutting property owners. The draft ordinance has been updated since Commission’s review to clarify abutting owner notice requirements.

Staff recommends that the Board adopt the attached Proposed Ordinance (Attachment D).

This public hearing was deferred to January 6, 2021 due to inclement weather.

Agenda Item No. 19. From the Board: Committee Reports and Matters Not Listed on the Agenda.

This item was deferred to January 6, 2021 due to inclement weather.

Agenda Item No. 20. From the County Executive: Report on Matters Not Listed on the Agenda.

This item was deferred to January 6, 2021 due to inclement weather.

Agenda Item No. 21. Adjourn.

At 5:52 p.m., Mr. Gallaway adjourned the Board meeting to January 6, 2021 at 1:00 p.m., an electronic meeting held pursuant to Ordinance No. 20-A(16), “An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.” He said information on how to participate in the meeting will be posted on the Albemarle County website on the Board of Supervisors homepage.

Chair

Approved by Board
Date 08/17/22
Initials CKB