

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on September 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.

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

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson, 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 1:00 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(8), "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.

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

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Agenda Item No. 9. **Action Item:** HS201900026 Special Exception Northfield Manor, **deferred at the request of the applicant.**

Mr. Gallaway noted that the applicant for HS201900026 requested a deferral. He said due to agenda timing, this hearing could be scheduled for November 4, and that the Board would need to take a vote to approve that deferral.

Ms. LaPisto-Kirtley **moved** to defer HS201900026 to November 4. Ms. Palmer **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, Ms. Palmer, and Ms. Price  
NAYS: None.

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Agenda Item No. 4. Adoption of Final Agenda.

Mr. Gallaway recommended that Items 20 and 21 ("From the Board: Committee Reports and Matters Not Listed on the Agenda" and "County Executive Report") should be moved to occur after Item 11 in the afternoon.

Mr. Gallaway said he understood that Ms. Palmer would appreciate having Item 8.4 (ZMA201900010 3223 Proffit Road) pulled from the consent agenda for brief comments. He said this item would be discussed after the consent agenda vote.

Ms. McKeel **moved** to adopt the final agenda. Ms. Palmer **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, Ms. Palmer, and Ms. Price  
NAYS: None.

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Agenda Item No. 5. Brief Announcements by Board Members.

Ms. Price said she saw in the news recently that Sentara announced the closure of one of the two medical clinics in Buckingham County because of the retirement of the physician there and the inability to obtain a replacement for the position. She said this highlighted the difficulties faced in providing adequate healthcare to the residents of the region.

Ms. Price reminded everyone that early voting would start that Friday, September 18 at 8:30 a.m. at the 5th Street County Office Building. She encouraged all citizens eligible to vote to plan accordingly to either vote early, complete their absentee ballot, or vote on Election Day.

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Agenda Item No. 6. Proclamations and Recognitions.

Item No. 6.a. Resolution Recognizing Bruce Dotson

Mr. Gallaway **moved** to adopt the resolution as he read it aloud. 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, Ms. Palmer, and Ms. Price  
NAYS: None.

Ms. Mallek thanked Mr. Dotson, adding that they had worked together for 20 years. She congratulated Mr. Dotson on his retirement from the Planning Commission, and asked him not to go far, as she was sure the County would have questions for him.

Ms. Palmer said she had no idea that Mr. Dotson had represented the Samuel Miller District, nor that he had been a Zoning Administrator, and that she was even more impressed and grateful. She said she always appreciated the times when she called Mr. Dotson to get an in-depth view of a matter and for his being so helpful and thoughtful.

Ms. McKeel thanked Mr. Dotson for all his years of service. She said she always enjoyed working with him and would miss him. She said she believed the County might be able to keep him on a couple of committees, even in his retirement.

Mr. Julian Bivins, Planning Commission Chair, thanked Mr. Dotson for his service and dedication to the community, particularly in the way they knit their lives together. He said they each have a special appreciation for Mr. Dotson, and his contributions to both the effective working of the Planning Commission and to the built environment of Albemarle County.

Mr. Bivins said on behalf of the Planning Commissioners, he wanted to share that the Commission's work was richer and made better because of Mr. Dotson's time spent on and dedication to the Planning Commission.

Mr. Bivins thanked Mr. Dotson for his service and passion. He said they looked forward to benefiting from Mr. Dotson's continued efforts with the schools' Long-Range Planning Advisory Committee.

Mr. Bivins thanked the Board for their time and for all the things they do to make Albemarle County a truly wonderful place to live.

Mr. Dotson thanked everyone for their comments, expressing that he was honored and was proud to have served. He said his priorities have always been to tie together land use, the economy, and public services because as the Board knew better than anyone, these are all linked, whether in master plans or in looking at ways to improve the review process, which benefits everyone (developers, elected and appointed officials, community, and staff).

Mr. Dotson said regarding the economy, he served on the very first Fiscal Impact Committee. He said more recently, he was involved in the CIP and also has been involved in affordable housing. He stressed that affordable housing was really essential worker housing. He said to provide affordable housing was not to provide affordable housing for someone else, but for the County's essential workers. He offered that perhaps a new term, "essential worker housing," should be used.

Mr. Dotson said in terms of services, his current focus was mainly on education. He said as Mr. Bivins mentioned, he would continue to serve on the School Division's Long-Range Planning Advisory Committee to try to tie land use economy and the provision of educational services. He said he also will continue to serve on the board (representing the County) for Piedmont Virginia Community College (PVCC). He said he was not retiring, but merely narrowing his focus.

Mr. Dotson said all of this would not be possible without an outstanding County staff; his fellow Planning Commission members, who bring a wealth of education, experience, and engagement; and the support of the excellent Board of Supervisors. He thanked the Board for their service. He said he would be proud to add the certificate given to him to his wall in his home office and will enjoy it frequently.

Mr. Gallaway said as Mr. Dotson's remarks proved yet again, he has always approached the Board with an incredible thoughtfulness that he always appreciated. He said he also appreciated that Mr. Dotson always took the time to make sure that citizens understood the process, how things were supposed to work, and how they played through with land use.

Mr. Gallaway said he learned a lot from Mr. Dotson when he came onto the Board to represent the Rio District, and that Mr. Dotson made him a better Supervisor. He said he was grateful for Mr. Dotson's time and service and was thrilled he was still working on various committees.

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**Resolution Recognizing Bruce Dotson**

**WHEREAS**, Bruce Dotson has served Albemarle County with distinction for 12 years representing the Samuel Miller District from 1994-1997, as an at large Commissioner from 2012 to 2013 and later representing the Rio District from 2014 to 2020; and

**WHEREAS**, Bruce Dotson's has added value through his participation on numerous additional committees to support the County's planning functions; and

**WHEREAS**, Bruce Dotson's commitment to the vision of Albemarle County has promoted a proactive community planning effort that involves all stakeholders in a consensus building process and ensures that new development reflects the community's vision; and

**WHEREAS**, Bruce Dotson's faithful attendance at Planning Commission meetings and functions has allowed the Commission to conduct its affairs in an efficient and timely manner; and

**WHEREAS**, Bruce Dotson's consistent and deliberate manner has added a key element of thoughtfulness and wisdom to the Planning Commission's decision-making process; and

**WHEREAS**, Bruce Dotson has provided thoughtful comments on staff work, including careful review of proposed ordinances, through his experience as a Planning Professor as well as his former work experience as a Zoning Administrator; and

**NOW, THEREFORE, BE IT RESOLVED**, that we the Albemarle County Board of Supervisors do hereby honor and commend Bruce Dotson for his years of service to Albemarle County and its residents as a Planning Commissioner.

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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 said he is an Earlysville-area voter, taxpayer, and property owner. He said he lives in the Rio District and has been in the area for 34 years. He said he would provide the Board with some feedback on their retreat held September 9.

Mr. Grant first thanked the Board for making their retreat available to the public via video-streaming, just as they were with the present meeting, thanks to taxpayer funding.

Mr. Grant said secondly, based on what he heard from listening live to the Board's retreat, all six Supervisors were certainly accomplished at repetitively complimenting themselves on their relationships with each other and their alleged achievements. He said to him, their retreat came across as a five-and-a-half-hour compliment carnival. He said that, in his opinion, there was very little substance to the retreat, which was led by a sleep-inducing Professor Nalbandian and a softball-throwing consultant, Julie Novak.

Mr. Grant said it was his opinion that the Board should let the public decide whether or not to thank them and their staff for their relationships and for their self-professed, alleged achievements.

Mr. Grant said it was also his opinion that the Board's County Executive should reduce the number of his thank-you's to the Board. He said the Supervisors are the County's Executive bosses and that taxpayers pay the County Executive compensation worth well over \$4,000 per week. He said the County Executive is obviously entitled to his opinions and to speak them over and over again, but that this was not necessary.

Mr. Grant said that meanwhile, this was what the public did say about the Board of Supervisors and administration, which came from their valid, reliable, and professionally done 2020 Community Survey: that only 11% of respondents said Albemarle County Government was "excellent" at treating residents fairly. He said only 10% of respondents responded that the leadership of the County Executive's Office and staff was "excellent" and that only 9% said the leadership by the Board of Supervisors was "excellent."

Mr. Grant asked the Board to spare the public their self-congratulations. He said the public can provide the compliments to the Board if and when warranted.

As there were no other speakers, Mr. Gallaway closed the public comment period.

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Agenda Item No. 8. Consent Agenda.

Mr. Gallaway reminded the Board that Item 8.4 (ZMA201900010 3223 Proffit Road) had been pulled from the consent agenda and would be addressed after the consent agenda vote.

Ms. Price **moved** to approve the consent agenda as amended. 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, Ms. Palmer, and Ms. Price  
NAYS: None

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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 \$61,038.00. 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 #2021029** **\$61,038.00**

Source: ECC fund balance \$ 61,038.00

The Emergency Communication Center (ECC) requests that the County, acting as fiscal agent for the ECC, appropriate \$61,038.00 from ECC fund balance to recognize and compensate employees for their work during the initial phases of the pandemic pursuant to the ECC Management Board's action at its August 18, 2020 meeting.

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**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 #2021029 is approved; and
- 2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2021.

Item No. 8.2. Schedule a Public Hearing to Consider the Adoption of an Ordinance to Amend County Code Chapter 1, General Provisions.

The Executive Summary forwarded to the Board states that the County has prioritized working towards a more diverse, inclusive and equitable organization, and a review of the County's policies, processes, and ordinances is ongoing to ensure they reflect the County's priorities.

In a review of County Code § 1-102, Rules of Construction, the reference to "Gender" is currently defined as: "A word used in the masculine includes the feminine and the neuter." Staff recommends amending the reference to "Gender pronouns," defined as: "A word used in the masculine or the feminine, in particular "he," "she," "him," and "her," includes all gender identities."

Staff believes this amendment creates a more inclusive reference, and the County Attorney has prepared a draft ordinance (Attachment A) to make this change.

There is no budget impact.

Staff recommends that the Board direct staff to schedule a public hearing on October 21, 2020 to consider the adoption of the attached draft ordinance (Attachment A).

**By the above-recorded vote, the Board authorized the Clerk to schedule a public hearing on October 21, 2020 to consider the adoption of the attached draft ordinance (Attachment A).**

Item No. 8.3. Third Amendment to Woolen Mills Economic Opportunity Fund Performance Agreement.

The Executive Summary forwarded to the Board states that, on September 12, 2018, the Board authorized the County Executive to execute a performance agreement with Woolen Mills, LLC and the

Albemarle County Economic Development Authority on behalf of the County regarding the \$1 million infrastructure investment associated with this project. This investment supported the following specific public service uses: 1) public parking for recreational amenities, 2) a pedestrian bridge and trail linkage, and 3) transit improvements - shuttle partnership.

The original project completion date was December 31, 2019. As the construction progressed, the Developer requested to adjust the deadline to June 30, 2020, due to revisions in the construction schedule (Attachment A). The deadline was later adjusted to September 30, 2020, as the timeline for approvals, delivery, and installation related to the bridge took longer than originally anticipated. The Second Amended Agreement aimed to accommodate the updated timeline (Attachment B).

Despite the on-going public health pandemic, progress towards the completion of all the public service uses in the County's performance agreement at the historic Woolen Mills site continues to be made. Most significantly, the bridge has been fabricated, delivered, and installed. The bridge and its abutments await final approval. A cross-departmental team including Community Development, Parks and Recreation, and Economic Development is working closely with the Developer and other parties to confirm each of the last remaining improvements are completed.

Although it is possible that the remaining physical improvements are completed before the current deadline, staff is recommending an extension out of an abundance of caution (Attachment C). Staff also believes this extension will provide the additional time necessary to provide a superior final product than the current deadline may provide. Finally, because the Developer has obtained and installed the largest physical element subject of this agreement, staff recommends the County Executive be given authority to approve future extensions to accommodate completion of the bridge's permitting and approval process, finalizing trail designs, and fine-tuning public access, parking, and trail easements.

Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve the Third Amended Agreement extending the performance deadline and allowing the County Executive to approve future extensions as needed but not beyond September 30, 2021, and to authorize the County Executive to sign this Amended Agreement on behalf of Albemarle County once it has been approved as to substance and form by the County Attorney.

**By the above-recorded vote, the Board adopted the attached Resolution (Attachment D) to approve the Third Amended Agreement extending the performance deadline and allowing the County Executive to approve future extensions as needed but not beyond September 30, 2021, and to authorize the County Executive to sign this Amended Agreement on behalf of Albemarle County once it has been approved as to substance and form by the County Attorney:**

**RESOLUTION TO APPROVE THE  
THIRD AMENDED ECONOMIC OPPORTUNITY FUND  
PERFORMANCE AGREEMENT FOR THE  
REDEVELOPMENT OF THE WOOLEN MILLS SITE**

**WHEREAS**, the Board of Supervisors approved a Performance Agreement, a First Amended Agreement, and a Second Amended Agreement between the County, Woolen Mills, LLC, and the Albemarle County Economic Development Authority regarding the redevelopment of the Woolen Mills site in anticipation of WillowTree, Inc.'s expansion and relocation to the site; and

**WHEREAS**, the Board finds substantial, good faith progress has been made in furtherance of the project's successful completion and it is in the best interest of the County to enter into a Third Amended Agreement to revise the project completion date and contract term and to allow the County Executive to permit future extensions as needed.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves the Third Amended Agreement between the County, Woolen Mills, LLC, and the Albemarle County Economic Development Authority, and authorizes the County Executive to execute the Third Amended Agreement on behalf of the County once it has been approved as to substance and form by the County Attorney.

**THIRD AMENDED ECONOMIC OPPORTUNITY FUND  
PERFORMANCE AGREEMENT**

This Performance Agreement made and entered into this 29<sup>th</sup> day of September, 2020, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WOOLEN MILLS LLC**, (hereinafter the "Company") a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

**WITNESSETH:**

**WHEREAS**, Company is the owner and developer of the property located at 2100 East Market Street and known as Albemarle County Tax Map and Parcel No. 07800-00-00-021B0 (the "Property");

**WHEREAS**, the County provided one million dollars (hereinafter "County Grant") to the Authority from the County's Economic Opportunity Fund and the Authority provided the monies to the Company subject to the requirements set forth herein that the Company meet its public parking obligation, transit obligation, and pedestrian bridge and trail construction obligation pursuant to this Agreement; and

**WHEREAS**, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the parking, transit, and pedestrian bridge and trail construction obligations of the Company, and the termination of all or part of the County Grant under certain circumstances; and

**WHEREAS**, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

**Section 1. Parking and Trail Construction Obligations.**

*Parking Obligation.* The Company shall execute, subject to the County Attorney's approval, an agreement allowing the County and members of the public access to and exclusive use of ten (10) parking spaces on the Property (the "Parking Spaces") by December 31, 2020. The exact location of the Parking Spaces and route of access thereto shall be determined by the Company in consultation with the County, including without limitation, Parks and Recreation and Facilities and Environmental Services staff.

*Pedestrian Bridge and Trail Construction Obligation.* The Company shall provide an easement of adequate area for the construction of a Class A Trail, as defined in the Albemarle County Design Standards Manual, including construction of a pedestrian bridge over Moore's

Creek, providing a public pedestrian connection between the Property and Albemarle County Tax Map Parcel 07800-00-00-022A0. Parks and Recreation and Facilities and Environmental Services staff from the County will participate on the project team for design and precise location of the bridge and trail. Final design of the pedestrian bridge and trail connections must be approved by the County Department of Parks and Recreation and the County Engineer before construction of the pedestrian bridge and trail by the Company commences. The County Engineer shall review and approve all plans for the trail's construction before construction of the trail commences. Upon inspection and final approval by the County Engineer, the Company shall execute a deed of dedication and easement to the County. The deed of dedication and easement shall be in a form acceptable to the County Attorney.

*Transit Obligation.* The Company shall pay a maximum of forty thousand dollars (\$40,000.00) to the County to fulfill the first year of a five-year County obligation to fund a transit service to the Property to the extent such payment is required by a future three party agreement between WillowTree, Inc., the Company, and the County.

**Section 2. County Grant**

The parties acknowledge the County appropriated a grant to the Authority in the amount of one million dollars (\$1,000,000.00) within thirty days of the original Agreement between these parties dated September 18, 2019, and the Authority paid \$1,000,000.00 to the Company within thirty days of receiving the appropriation from the County.

The Company agrees that it will use the grant funds to fulfill its parking and pedestrian bridge and trail construction and transit partnership obligations.

**Section 3. Clawback**

Unless otherwise mutually agreed upon in writing, the Company agrees that it will fulfill its parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2020. If the Company has not fully achieved the parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2020, the Company shall repay the Authority the sum of \$1,000,000.00, and the Authority shall return that sum to the County within 30 days after the Authority receives the repaid sum from the Company.

**Section 4. Company Inspections.**

The Company shall permit the County Engineer to inspect the construction of the trail and bridge after receiving twenty-four (24) hours' notice from the County.

**Section 5. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

Woolen Mills LLC  
Attention: Brian H. Roy  
1012-C Druid Ave  
Charlottesville, VA 22902

With a copy to:

Peter J. Caramanis, Esq.  
Royer, Caramanis & McDonough, PLC  
200-C Garrett St.  
Charlottesville, VA 22902

If to the County, to:

Albemarle County Executive's Office  
401 McIntire Road  
Charlottesville, Virginia 22902  
Attention: Jeff Richardson

If to the Authority, to:

Economic Development Authority  
Albemarle County  
401 McIntire Road  
Charlottesville, Virginia 22902  
Attention: Rod Gentry, Chair

**Section 6. Miscellaneous.**

A. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the County Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Dispute Resolution:* If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation in 30 days; the parties agree first to try in good faith to settle the dispute by mediation, also within 30 days; before resorting to litigation. In the event that parties are unable to agree on a mediator, an experienced mediator shall be randomly selected. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.



C. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

D. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument. A scanned or electronic signature shall be as effective as an original.

E. *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining provisions will not in any way be affected or impaired, and the unenforceable provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

F. *Term:* This agreement shall run from September 18, 2018 to January 29, 2021. The County Executive may provide reasonable and necessary extensions to the term and other deadlines contained herein so long as the Company continues to make reasonable progress towards successful and satisfactory fulfillment. The County Executive shall notify the Economic Development Authority of his intention to grant any extensions in advance. Any such extension must be in writing and delivered according to Section 5 but cannot extend past September 30, 2021.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**COUNTY OF ALBEMARLE, VIRGINIA**

By:   
Jeffrey Richardson, County Executive

Date: 10/14/20

**ECONOMIC DEVELOPMENT AUTHORITY  
OF ALBEMARLE COUNTY, VIRGINIA**

By:   
Donald D. Long, Chairman

Date: 10/1/20

**WOOLEN MILLS LLC**

By: \_\_\_\_\_  
Brian H. Roy, Manager

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

By: \_\_\_\_\_  
Jeffrey Richardson, County Executive

Date: \_\_\_\_\_

ECONOMIC DEVELOPMENT AUTHORITY  
OF ALBEMARLE COUNTY, VIRGINIA

By: \_\_\_\_\_  
Donald D. Long, Chairman

Date: \_\_\_\_\_

WOOLEN MILLS LLC

By:  \_\_\_\_\_  
Brian H. Roy, Manager

Date: September 29, 2020

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Item No. 8.5. County Grant Application/Award Report, including CARES Funding, **was received for information.**

Item No. 8.6. Updated Albemarle County 1st Quarter 2020 Building Activity Report, **was received for information.**

Item No. 8.7. Albemarle County 2020 2nd Quarter Building Permit Report, **was received for information.**

Item No. 8.8. Albemarle County 2020 2nd Quarter Certificate of Occupancy Report, **was received for information.**

Item No. 8.9. VDoT Monthly Report (September) 2020, **was received for information.**

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Item No. 8.4. ZMA201900010 3223 Proffit Road, deferred from September 2.

The Executive Summary forwarded to the Board states that, at a public hearing held on September 2, 2020, the Board of Supervisors considered this Zoning Map Amendment request to amend the proffers and concept plan associated with ZMA201800006. After discussion of the item, the Board voted 6-0 to defer action on this item until September 16, 2020. For reference, the Planning Commission's staff report, action letter, and meeting minutes (Attachments A, B, and C), as well as the project narrative (Attachment D), are attached.

At the September 2nd public hearing, the Board expressed concerns about the open space areas proposed for the project and the preservation of trees and other existing natural areas on the property. The Board voted to defer this item until the September 16th Board meeting so that the applicant could address these concerns. Since the public hearing, the applicant has provided a revised concept plan (Attachment E) and a revised proffer statement (Attachment F) showing an expansion in the areas designated as "minimally disturbed buffers." A minimally disturbed buffer of approximately 8,000 square feet has been identified in the western portion of Block B, where the natural recreation area is proposed. In addition, the 25'-wide minimally disturbed buffer that was originally proposed for the northeastern part of the subject property has been expanded to an area of approximately 19,000 square feet. The 25' undisturbed buffer along the northeastern property line remains the same. Proffer #4 in the proffer statement has also been revised to reference these areas of minimally disturbed buffer. In addition, proffer #4 defines the undisturbed and minimally disturbed buffers by what activities are permitted in each of those areas.

If the Board chooses to approve the Zoning Map Amendment request, staff recommends that the Board adopt the attached Ordinance (Attachment G).

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Ms. Palmer said she wanted to inform the Board of a few things she found out in the past week. She said this was not to rehash any of the discussion on the application, but that she was concerned that the Board had approved a much different plan than they had one year earlier.

Ms. Palmer said she went back and read all the minutes from the Planning Commission meeting from 2019 and in those minutes, she read that Mr. Morgan Butler of the Southern Environmental Law Center (SELC) spoke before the Commission and urged them to get more information about what was going into the open space. She said a long discussion ensued and that no further information came out other than what the County usually receives, which was a list of the things that can go into open spaces (e.g. trails, recreational areas, and stormwater).

Ms. Palmer said she began also thinking about how the Board spent two hours on their discussion. She said in thinking back through many discussions during her time on the Board, the question of what they will do with open space frequently extends the length of their meetings. She said the answer is typically the list of things that can go into open spaces, that they will meet all the regulations, that much of it will happen at the site plan level, etc.

Ms. Palmer said she called Mr. Greg Kamptner (County Attorney) and asked him if there were any way, in the future, for the Board to receive more information from staff on what could go into these areas so that it would help the Board in their deliberation to have the meetings go more quickly and smoothly. She said Mr. Kamptner kindly told her this was an interesting idea and that he would talk to Mr. Doug Walker (Deputy County Executive) and other staff.

Ms. Palmer said she wanted to bring this to the Board's attention before they take a vote. She said she was thinking back on Southwood and similar applications and the exhaustive conversations about what "open space" means. She said the term conjures up the idea that there will be something nice there when it really could end up being a large stormwater basin, a staging for construction, or something else.

Ms. Palmer said she wanted the Board to know that this topic might be coming back to them in some way to help them better streamline their meetings.

Ms. Palmer said she would vote against the application in principle of the way the process went. She said she would hope to see something good come out of the Board's two-hour discussion than some of the applications in the past.

Ms. Mallek said when the last public hearing was held, she was shocked at the acreage that was shown in the giant stormwater area, which had never been described before. She said she would like to see much more information provided ahead of time before the Board gets into these hearings, and that this was work that the applicant (not staff) should be doing.

Ms. LaPisto-Kirtley **moved** to adopt the attached Ordinance (Attachment G) to approve ZMA201900010 3223 Proffit Road. Ms. Price **seconded** the motion.

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

September 16, 2020 (Regular Meeting)  
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AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Ms. Price  
NAYS: Ms. Palmer

**ORDINANCE NO. 20-A(11)  
ZMA 2019-00010**

**AN ORDINANCE TO AMEND THE ZONING MAP  
FOR TAX PARCEL 032A0020000200**

**BE IT ORDAINED** by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2019-00010 and their attachments, including the concept plan dated September 8, 2020 and the proffers dated September 8, 2020, the information presented at the public hearing, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-18.1 and 18-33.27, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2019-00010 with the concept plan dated September 8, 2020 and the proffers dated September 8, 2020.

ZONING

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INDEX OF SHEETS

1	- Cover Sheet & Conte
2	- Parcel / ZMA Info.
3	- Block Plan
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5	- Conceptual Street Se
6	- Conceptual Street Se
7	- Conceptual Street Se



ZON

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SITE

BLOCK	UNSTABLE	
ALLOWED USES	BLOCK A	BLOCK B
	All uses listed under section 18.2.1 of the Albemarle County Zoning Ordinance will be permitted by right within Block A. All uses listed under Section 18.2.2 of the Albemarle County Zoning Ordinance will be permitted through approval of a special use permit within Block A.	All uses listed under Section 18.2.1 of the Albemarle County Zoning Ordinance will be permitted by right within Block B. All uses listed under Section 18.2.2 of the Albemarle County Zoning Ordinance will be permitted through approval of a special use permit within Block B.
MAXIMUM BUILDING HEIGHT	45 1/4 Stories whichever is less	45 1/4 Stories whichever is less
SETBACKS	FRONT MINIMUM: 5' from Right-of-way	FRONT MINIMUM: 5' from Right-of-way
	FRONT MAXIMUM: 25' from Right-of-way	FRONT MAXIMUM: 25' from Right-of-way
	SIDE: 5' feet, unless the building shares a common wall; provided that (a) in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas, or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back five feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and (b) any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3	SIDE: 5' feet, unless the building shares a common wall; provided that (a) in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas, or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back five feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and (b) any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3
FRONT SETBACKS	REAR: 20'	REAR: 20'
	For each story that begins above 40 feet in height or for each floor above the third story, whichever is less, the minimum setback shall be 15 feet	For each story that begins above 40 feet in height or for each floor above the third story, whichever is less, the minimum setback shall be 15 feet
DRIVEWAY STANDARDS AND GARAGE SETBACKS	Single-family attached and single-family detached units in Block A, Area 1, on Sheet 4 shall be subject to the following: driveways shall be rear-loaded and only enter onto internal "Rural R," Block A, Area 1, may permit double frontage lots and screening or with frontage lots and screening of double frontage lots required by 19.7.9.2, as permitted for the sign. Visitors and/or exceptions from the prohibition of double frontage lots and screening of double frontage lots may be pursued during site plan or subdivision plat.	Single-family attached and single-family detached units located outside of Block A, Area 1, on Sheet 4 shall be subject to the following: front-loading garages shall be setback a minimum of 3 feet from the building facade of which the garage is located or porch/deck on the facade of which the garage is located.
PROPOSED AREA OF BLOCK	52 AC	GARAGE MAXIMUM: None
MINIMUM NUMBER OF DWELLING UNITS	44	2,09 AC
MINIMUM DENSITY BASED UPON AREA	9 DUA	0
MAXIMUM NUMBER OF DWELLING UNITS	46	0 DUA
MAXIMUM DENSITY BASED UPON AREA	16 DUA	30
*Total number of dwelling units in the development not to exceed 80		

USE

EXISTING: Single-Family Residential  
COMPREHENSIVE PLAN; Urban Density Residential  
PROPOSED: R15 - Residential

ZONING

EXISTING: R15 - Residential, Airport Impact Area (AIA)  
Overlay; Steep Slopes - Managed Overlay  
PROPOSED: R15

SIGNS

All signs and pavement markings shall conform with the latest edition of the MUTCD Guidelines.

ACREAGE

TOTAL: 7.29 AC

PROPOSED UNITS

Maximum 80 units. Maximum gross and net density of 11 dwelling units per acre.

OPEN SPACE + RECREATION REQUIREMENTS

Open space area shall be provided in accordance with Sec. 4.7 of the Albemarle County Zoning Ordinance. The proposed open space area shall be privately owned. A minimum of 25% of the site shall be designated as open space.

Recreational areas and facilities shall be provided in accordance with Sec. 4.16 of the Albemarle County Zoning Ordinance.

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xc April 15, 2019  
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; County Office of Geographic

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unity Panel 51003C0286D),  
in a Zone A 100-year flood

TERSHERD

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ty Service Authority (ACSA)

Sec. 4.12 of the Albemarle



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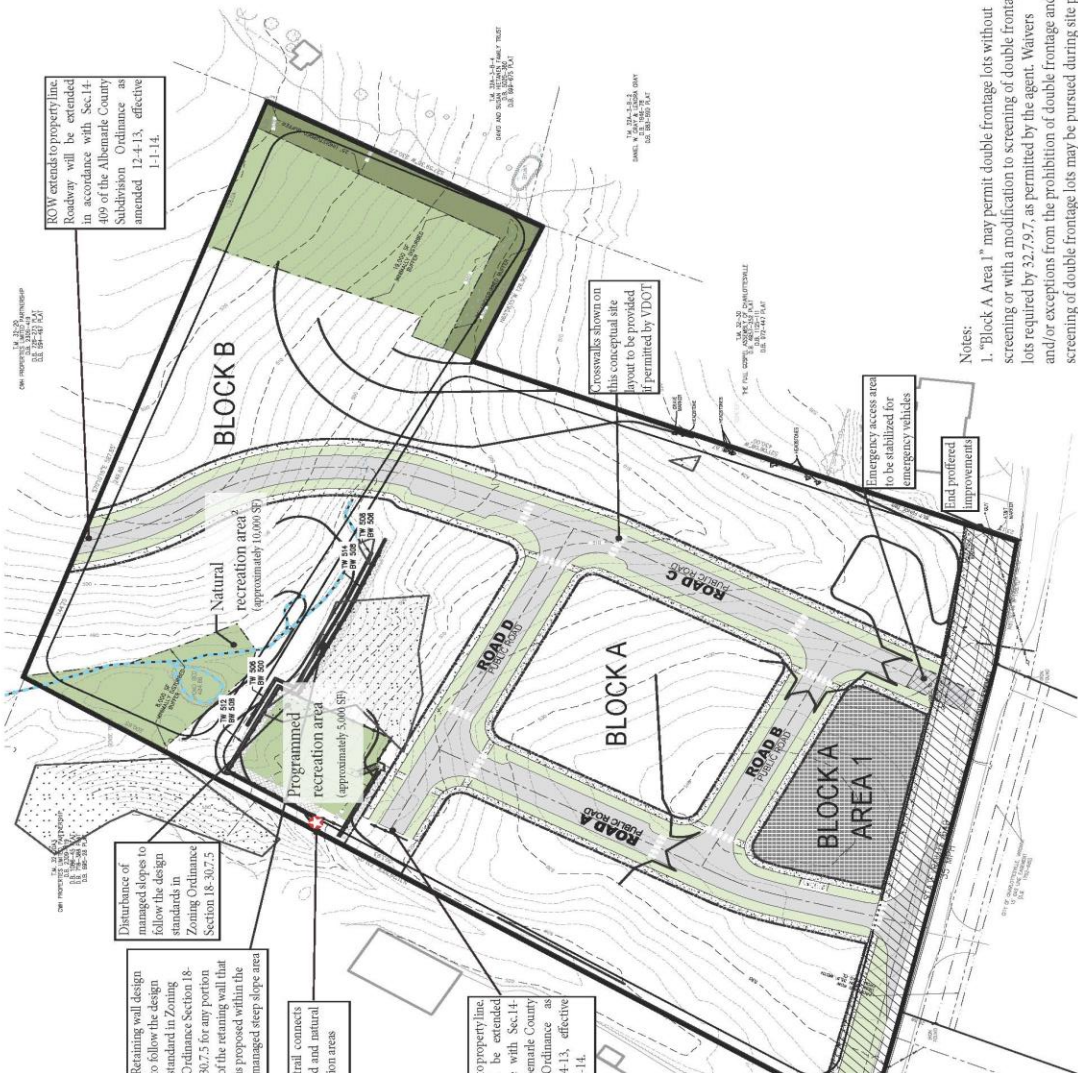
Key	
Vehicular circulation	—
Managed slopes	—
Emergency Access	—
Easement	—
Right-of-way dedication	—
Existing Channel	—

REVIS



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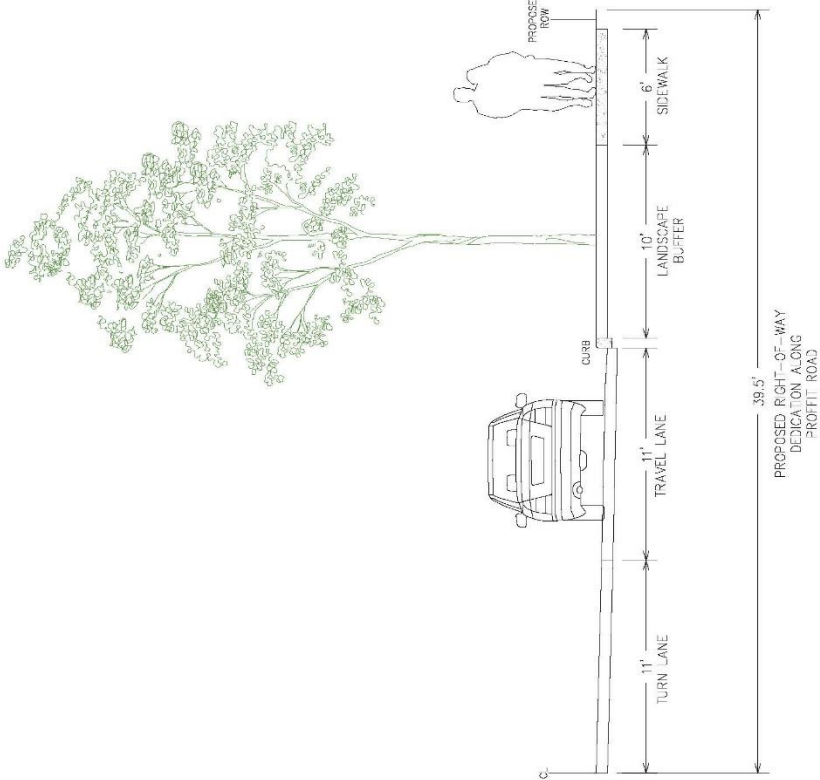
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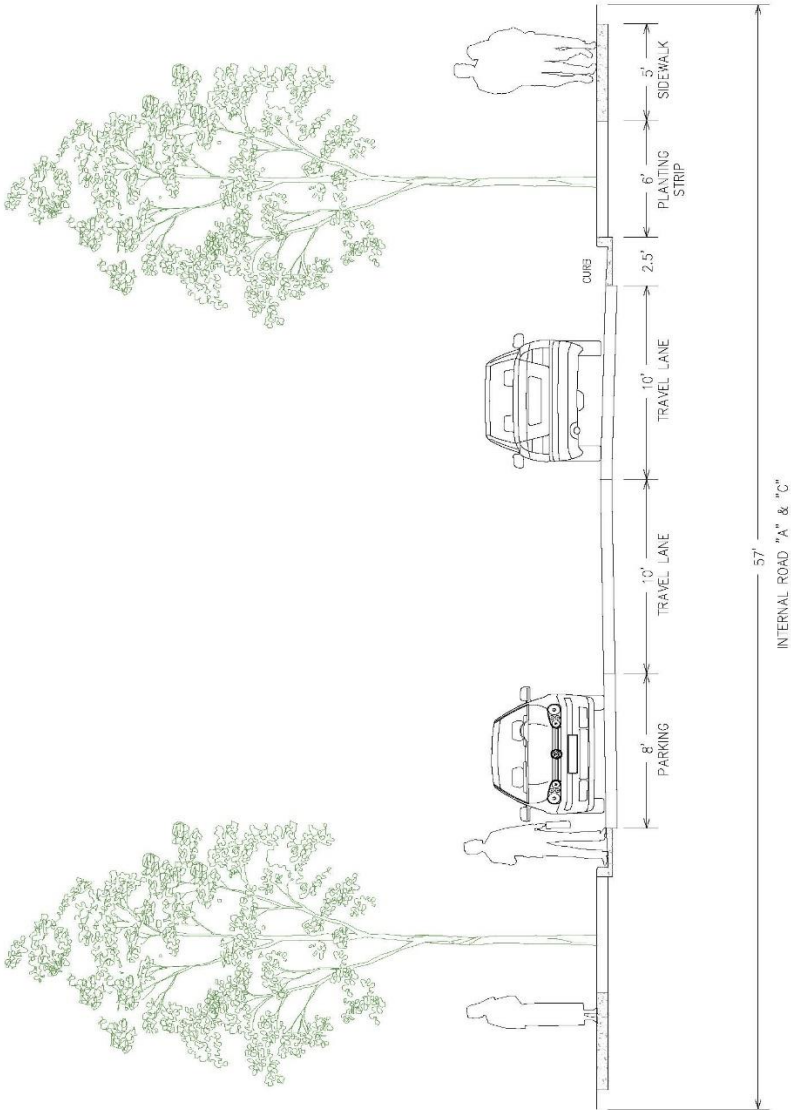


Turn lane to be provided if warranted by final use

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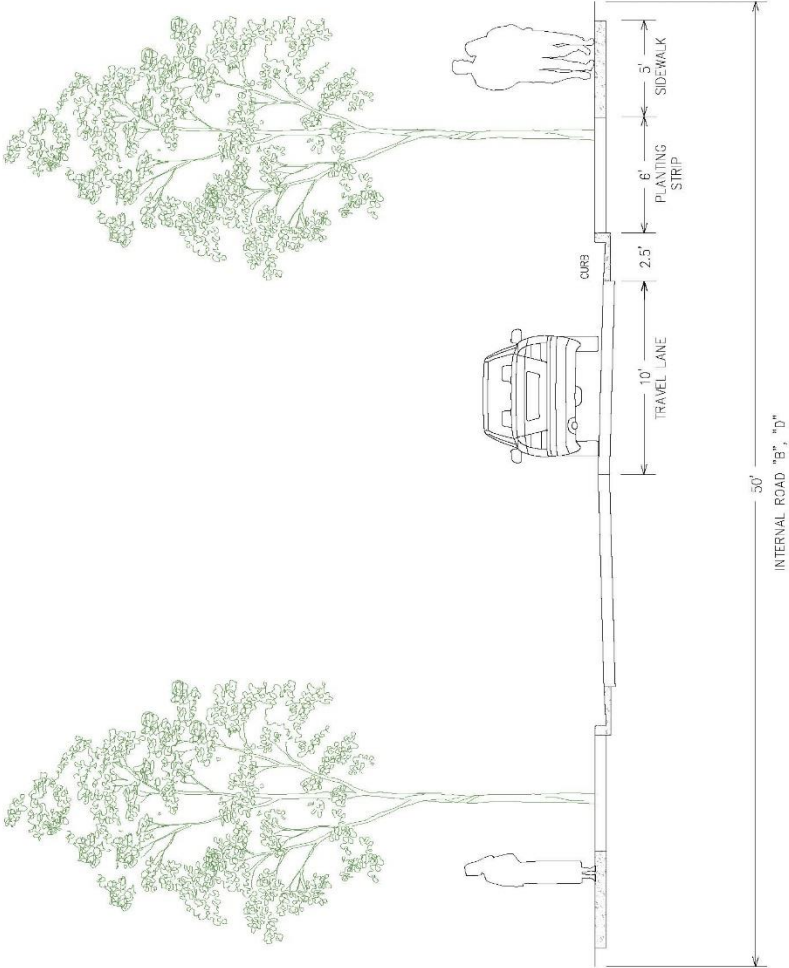
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Original Proffers \_\_\_\_\_  
Amendment   X  

**PROFFER STATEMENT**

ZMA No. **201900010 – 3223 Proffit Road**

Tax Map and Parcel Number(s): **032A0-02-00-00200**

Owner(s) of Record: **ALBEMARLE LAND DEVELOPMENT LLC**

Date of Proffer Signature: September 8, 2020

7.29 acres to be rezoned from R-15 to **R-15**

**ALBEMARLE LAND DEVELOPMENT LLC** is the owner (the “Owner”) of Tax Map and Parcel Number **032A0-02-00-00200** (the “Property”) which is the subject of rezoning application ZMA No. **201900010**, a project known as “**3223 PROFFIT ROAD**” (the “Project”).

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. This proffer statement amends the proffers applicable to the Property that were accepted in conjunction with ZMA2018-00006.

**The Property shall be developed in general accord with the Zoning Map Amendment Concept Plan prepared by Shimp Engineering, dated June 17, 2019 revised September 8, 2020 and shall reflect the following major elements as shown and noted on the plans:**

- 1. The internal street network grid and interparcel connections between the subject parcel and TMPs 03200-00-00-02000 and 032A0-02-00-001B0;**
- 2. Right-of-way reservation and associated improvements along Proffit Road;**
- 3. A minimum of 44 total dwelling units shall be developed on the property. The total maximum number of dwelling units on the property shall not exceed 80.**
- 4. A 25' Undisturbed Buffer adjacent to TMP 032A0-03-0B-00200, TMP 032A0-03-0B-00400, and TMP 03200-0000-03000 as shown on the Conceptual Site Layout. Minimally Disturbed Buffers of the approximate size and in the locations shown on the Conceptual Site Layout:**
  - a. Undisturbed Buffer allows for the removal of brush and/or dead vegetation.**
  - b. Minimally Disturbed Buffers allow for minimal grading and/or the removal of brush and/or dead vegetation.**
- 5. Garage Setbacks - Single-family attached and single-family detached units located outside of Block A, Area 1 as shown on Sheet 4 shall be subject to the following: front-loading garages shall be setback a minimum of 3 feet from the front building façade or front porch.**
- 6. Parking Standards – The following standards shall apply to uses located within Block A, Area 1 as shown on Sheet 4 of the plans:**
  - a. For single-family attached and single-family detached units — Front building facades shall face Proffit Road. No individual lot driveways shall enter directly onto Proffit Road; driveways shall be rear-loaded and only enter onto “Road B”.**

**Front building facades shall face Proffit Road.**

**For multi-family - off-street parking shall be relegated to the side or rear of buildings adjacent to Proffit Road and shall be accessed from the internal road network. If a drop-off/pick-up area is proposed between multifamily buildings and Proffit Road, a limited off-street parking area can be included to accommodate ADA accessible and guest spaces. This limited off-street parking shall be screened by landscaping, permanent structures or other acceptable methods per Section 32.7.9 of the Albemarle County Zoning Ordinance.**

WITNESS the following signature:

Owner of Tax Map Parcel : 032A0-02-00-00200

ALBEMARLE LAND DEVELOPMENT LLC,  
a Virginia limited liability company

By: Brent Hall  
Brent Hall, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Albemarle, to wit:

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of September 2020 by  
Brent Hall, Manager of Albemarle Land Development LLC.

My Commission expires: March 31, 2024

Barbara U. Chumley  
Notary Public



Barbara U. Chumley  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. # 187406  
My Commission Expires  
March 31, 2024

Agenda Item No. 10. **Presentation:** CDD 2020 Work Program Presentation..

The Executive Summary forwarded to the Board states that periodically, the Community Development Department updates the Board of Supervisors on those projects above and beyond the day-to-day work of the department. These larger projects make up the CDD Work Program; and as time permits, staff folds the work on these items into the regular workflow. Unforeseen priorities and challenges may intervene. Such has been the case with the COVID-19 Pandemic.

On March 4, 2020, the Community Development Department Work Program was presented to the Board of Supervisors as a briefing covering work both under way and planned projects through 2023 with a focus on priorities through the first quarter of 2021. Included in that presentation was a request for support of key projects identified post-budget for the fiscal year. The Board was supportive of pursuing those projects.

By the end of March 2020, the work world changed significantly with the reaction to the pandemic and the related adjustments to the work processes, habits, and work locations of staff. Since then, approximately 35 inspectors and the CDD management team have continued to work from the office. Approximately 40 planners were able to telework. Parents of school age children were challenged to provide online environments at home while still trying to keep up with work obligations. After an initial

suspension, public outreach on an array of projects and the related communications with the public and with applicants pivoted onto virtual platforms. Throughout this period, staff innovated new approaches to doing business to keep the County going. This presentation shares the status on key projects and the related timelines associated with them.

While several of these projects will inform budget discussions for the upcoming FY21 budget, at this time no specific funding requests are embedded in this item.

Staff recommends the Board receive this briefing on the status of current projects and the future direction of large projects for information and general discussion.

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Ms. Jodie Filardo, Director of Community Development, said she was joined by Ms. Amelia McCulley, who would be leading a portion of the presentation. She said this presentation was for the Board's awareness only, with no action necessary.

Ms. Filardo said that because so much had changed since staff were last before the Board in March on this topic, they wanted to update the Board. She said in the presentation, staff would lay out ways in which they are working differently now. She said they would share data on productivity, the impacts of the pandemic, and the work they performed since they last spoke. She said they would also present updates to the ongoing work program.

Ms. Filardo said they would also share the growing list of additional project ideas to be considered at a later date, as resources become available.

Ms. Filardo said that on March 4, permit applications and project values appeared to be on the rise, approximating the highest numbers staff had seen since 2008. She said then, on March 15, the County sent staff home to work who could do so. She said at the time, a mix of planners, engineers, Geographic Data Systems personnel, support staff, and managers, picked up their work, computers, and work lives and completely reconfigured how they were going to accomplish the work of CDD and the County in a totally new environment.

Ms. Filardo said some staff, such as inspectors, were working in the building; and Engineering and Zoning teams were working onsite at both COB McIntire and in the field. She said the CDD leadership team and additional staff were also working onsite.

Ms. Filardo said early on, staff recognized the need for the department to stay open to support the community, businesses, and developers. She said based on the guidance from the Incident Management Team (IMT), they implemented policy changes to keep staff and the community safer. She said the inspectors continued to work in the field. She said through the end of August (or 4.5 months), CDD logged 14,645 inspections.

Ms. Filardo said CDD also implemented safety-oriented changes in keeping with the multiphase approach to the pandemic outlined by the IMT. She said they installed barriers between staff and the public; controlled access to reduce the number of people in the lobby; reduced lobby hours to Mondays, Wednesdays, and Fridays 8:30 a.m. to 4:00 p.m.; and placed drop-off and pickup bins in the lobby for contactless delivery. She said for some time, they even quarantined paperwork received for 36 hours. She said they remained open to receive applications and bonds throughout the pandemic.

Ms. Filardo said with over half the team working from home, they have learned new technical skills, installed new environments, developed new management techniques, and still met their mandated deadlines. She said they also discovered more challenges with their tools, especially their permit and application tracking software (County View), which is 16 years old and not well-suited to managing in this new environment.

Ms. Filardo said thanks to the emergency action taken by the Board, CDD was able to make temporary policy changes to support the business community. She said they have implemented fee-free zoning clearances to support temporary outdoor restaurant seating and to improve business viability for restaurants trying to stay open.

Ms. Filardo said as the pandemic continued and with the retirement of their Counter Planner, they implemented a new online process to accept requests from the public via website, phone, or email. She said since implementing this six weeks earlier, CDD received 199 separate inquiries.

Ms. Filardo said that to further increase accessibility for CDD customers, they expanded their acceptance of various online applications.

Ms. Filardo said these were some of the impacts to the work environment during the pandemic. She said to varying degrees, all changes impacted the work program the Board had endorsed in March. She stressed that despite those impacts, CDD has stayed open, adjusted, and innovated to meet the needs of their customers.

Ms. Filardo said they would move into the discussion of the work program itself. She presented a chart familiar to many on the Board, illustrating that CDD allocates the majority of its staff resources to meet obligations regarding nondiscretionary, mandatory items within specific timeframes. She said volumes of many of these items, especially building permits and zoning complaints, have increased in



recent years.

Ms. Filardo said mandated work limits resources available for the work program. She reminded the Board that the work program is a list of discretionary projects and policy updates prioritized by the Board.

Ms. Filardo said in pursuing projects, complexity and the number of stakeholders with different interests directly correlate to the time necessary for completion. She said staff strives to right-size engagement processes to the project complexity and impacts.

Ms. Filardo summarized that the purpose of the presented slide was to illustrate that the amount of staff time available for the work program was limited by nondiscretionary demands.

Ms. Filardo said that through the end of August, CDD received 1,929 applications at a project value of \$228 million. She said compared with 2019, they were experiencing a higher volume of smaller projects. She said if they project these through December 2020, they anticipate the volumes of permits and their related project values will be more in range from those from 2014 through 2017.

Ms. Filardo said the graph on the screen displayed projected year-end figures in orange. She noted that permits were the beginning of a construction process, and that those impacts roll through to inspections and zoning.

Ms. Filardo said CDD also projected the complaints forward to the end of the calendar year. She noted that this did not accommodate the impact of the release of additional letters to potential homestays found through the Harmari software program, which looks for homestays through various social media sites. She said they anticipate that the release of those additional letters will raise their complaint levels to approximately the same level as 2019.

Ms. Filardo said she would share a story about how times had changed. She said when she went through a dry run of the presentation internally, the photo on the screen of CDD staff (taken at the last time they were all together) caused quite a stir. She said it was taken in 2019 and not since they had been maintaining social distance and wearing masks. She asked the Board not to despair, and that this was an old photo of a type of gathering they may not see again for some time.

Ms. Filardo said the last time staff updated the Board on the work program, their staff count was 74.5. She said at present, it was at 67.5, with 5 frozen positions. She said organizational changes are normal and that retirements were ongoing. She said as people retire, CDD (like all other departments) were freezing their positions in an abundance of caution, pending revenue results.

Ms. Filardo said she would transition into the work program update of the presentation. She said she would review the previously approved work program, progress made, and additional requested projects from the Board and others.

Ms. Filardo said thus far, she had provided the Board context. She presented a slide, noting that it was the work program the Board had adopted on March 4, before COVID-19 struck. She said moving forward, they were discussing the specifics of the updated work program. She said staff believed it was important to emphasize that their environment was not "business as usual."

Ms. Filardo said the slide showed both the "finish what we've started" projects, as well as the recommended work program for staff to do the right work. She said the three major initiatives, "Schedule the Unscheduled," represent a bold and yet strategic effort to better position themselves for the present as well as for the future. She said this work included the Strategic Comprehensive Plan Update, Zoning Ordinance Amendments to implement the Comprehensive Plan, and Development Process Improvements (including updating and aligning key tools).

Ms. Filardo said the critical work outcome from these three initiatives will increase efficiencies and better assure that CDD is attaining land uses and developments that are consistent with Board policies and those projects that are recommended to improve department efficiencies.

Ms. Filardo presented a slide listing the projects that were in the implementation phase, as well as those that were underway in work through the Geographic Data Services in CDD with IT and other stakeholders in the County.

Ms. Filardo presented a slide listing projects that were requested by the Board and that were on their way to the Board by the end of that year, with the exception of the Wireless Policy Update, which was tabled until funding was available.

Ms. Filardo said she would review projects that were currently in the works. She presented a list of projects from the March plan that were listed in the "Finish what we started" category. She said these were projects currently underway. She said Homestays, Housing Policy, Form-Based Code, and the Crozet Master Plan had been before the Board since March.

Ms. Filardo said the Rivanna Corridor Plan was being led by the Thomas Jefferson Planning District Commission (TJPDC) and restarted in May. She said that by December, the Southwood project agreement regarding Community Development Block Grant (CDBG) funding would be before the Board. She said the Crozet Master Plan adoption was impacted by COVID-19 modifications to the community

outreach schedule and will come to the Board in early 2021, as will Phase 1 of Stream Health in the Development Areas and an ordinance update to the Albemarle County Easements Program.

Ms. Filardo said she would transition to items previously requested, but which required additional external resources. She thanked the Board for funding the Rio Road Corridor Study last July. She said work was underway, with a target of third quarter 2021 for the findings.

Ms. Filardo said for an overview of the work program as it stood, she would turn over the presentation to Ms. McCulley.

Ms. McCulley said she would talk to the Board about the status of projects in the work program as previously directed by the Board. She explained the legend for the colors and symbols the Board could see on the presented chart. She said the green arrow showed work that was underway; light blue squares showed planned work time; blue triangles were the milestones for deliverables that were shared with the Board in March; and the red triangles were revised deliverables, which were based on operational regearing (such as determining how best to provide public and/or stakeholder engagement for projects in the context of COVID-19).

Ms. McCulley said in prior slides, the Board heard about projects that were completed and underway. She noted that work was currently underway in the third quarter for almost every project in the work program. She said as previously noted, several of the projects will be completed in either the present quarter or the next quarter.

Ms. McCulley noted that some projects, such as Form-Based Code, involved substantial resources with work from many hands. She said because of the substantial resource demands, the timing for the Strategic Comprehensive Plan work (which also required many hands) was synchronized to follow delivery of the Form-Based Code.

Ms. McCulley said the work program list before the Board did not include work to advance dozens of prioritized transportation projects, including those for bicycle and pedestrian travel. She said this type of work was underway but was not on the presented list. She said the list also did not include priority projects or CARES work, which were typically unscheduled and required staff to be quickly responsive as they are identified through the Economic Development Office.

Ms. McCulley said staff was aiming to provide more depth to the resource and work planning as they considered phases beyond the most immediate deliverable. She said that with the homestay deliverable in the present year's work program, for example, it was a June status update, but work continued to close the compliance gap that was necessary and related to the homestay regulations.

Ms. McCulley said another example of this more in-depth planning was with the Housing Policy which, once delivered, will have an implementation plan and schedule. She said many of the projects the Board saw on the list with deliverables will continue to successive phases that involve implementation.

Ms. McCulley said staff felt good about the progress on the Board priorities that they have made and continued to make during the pandemic. She said the excellent staff pivoted to find new ways of doing their work. She said they have evaluated whether this was the right work for the time, and that they continued to support that it was the right work.

Ms. Filardo said the purpose of the next slide was to share with the Board project requests raised by one or more Supervisors over the last year. She said the projects had not yet been scoped or prioritized, as staff did not have the resources to undertake them at that time. She said they wanted the Board to see the ever-growing list of project ideas waiting in the wings for consideration.

Ms. Filardo said the presentation walked the Board through the current resource constraints and the previous work program for discretionary projects; recommended an approach for the 2020 work program, predicated on "Finish what we've started;" and shared the growing list of projects. She said the work plan on the screen represented the list of projects staff believed they could complete in light of the pandemic and the current environment.

Ms. Filardo concluded the presentation and offered to answer questions.

Ms. Palmer said she would like to know, with the reduction in staff, if there were categories of Community Development that were most affected by the staff shortage.

Ms. Filardo replied that surprisingly, there was an array of different positions open across the department, and that the five that were frozen were Zoning Principal Planner, Transportation Principal Planner (with the recent promotion of Mr. McDermott to Chief of Planning), Counter Planner, Code Compliance Officer, and Planner. She said they were actively recruiting for a Commercial Combination Inspector and a Permit Technician, both of which are customer-facing positions and were approved for immediate recruiting by the County Executive's Office.

Ms. Palmer asked if for the list of the 13 projects that had last been shown on the screen that were requested but had no funding, if Ms. Filardo said she believed she could get those projects done with the current staff if they had the funding. She said she did not quite understand the explanation of staff's ability to get those things done.

Ms. Filardo clarified that sadly, staff could not get those things done as they presently did not have the resources to do them.

Ms. Palmer said she simply misunderstood.

Ms. McKeel said Ms. Filardo referenced challenges with CDD's software and technology infrastructure. She said she believed this was a challenge in many areas in the County, currently, as the software packages were very old and were slowing down staff's ability to get work done. She asked Ms. Filardo if she could address what the plan was to solve that challenge, whether or not this was budget cycle. She said knowing the plan was critical.

Ms. Filardo replied that CDD did have a plan, and that they had already started forming their Needs Analysis Team to take a look at everything they would need a system to do. She said interestingly, in conversations with the Finance Department (with whom CDD integrates with a great deal in handling payments received from the community for permits), Finance is also in need of a system. She said they have started having conversations about how best to position all the systems for a sustainable future for the County.

Ms. Filardo said as Ms. McKeel mentioned, everyone was in a situation where they needed new, major systems. She said they were preparing to bring these things forward to the Board as they begin tackling their budget requests. She said that while they were just beginning their scoping on those kinds of projects, they were putting teams together to determine a needs analysis and then, staff would be bringing more of that information back to the Board.

Ms. McKeel asked if this information would inform the Board's next budget cycle, which would be starting soon, and if this work would be ready in time.

Ms. Filardo replied that staff would not have an ask for the entire system ready for the Board for the upcoming budget cycle. She said they would begin working on it through the next calendar year. She said she believed it would take staff a year to get all of the needs analysis done.

Ms. McKeel urged Ms. Filardo that as staff does this work, and as she was sure they were all aware, the systems have to talk to each other and cannot be in silos. She said she experienced this in other organizations (i.e. UVA), which created a problem. She said the systems needed to all be integrated.

Ms. Filardo thanked Ms. McKeel for her support of that.

Ms. McKeel said when talking about prioritizing and the work plan, and understanding the way that the topics and issues get on the work plan (i.e. four or more votes) and that there was a list of other projects that may have come from just one Supervisor, she wanted to know how the current infrastructure and needs of the current infrastructure informs the work plan. She said for example, they were just talking about infrastructure as a software problem. She asked if when CDD is looking at prioritization, they are looking at where they are in the organization and which projects would support their most desperate infrastructure needs.

Ms. Filardo replied that the Board prioritizes how staff goes after the discretionary projects. She said while CDD would give a staff recommendation and feedback for the Board to consider as they prioritize the projects, staff's expectation is that as some of the work program items get completed in the fourth quarter and onto the first quarter of 2021, in their routine update to the Board in March, staff hoped that they would have some good discussion about prioritizing the list and any other projects that come up until that time at the Board.

Ms. Filardo said staff would consider infrastructure as they talk the Board through each of the projects as they can see them before they start work on them and that certainly, infrastructure would play into that. She said infrastructure covers a very broad range of projects, and that just about everything they do has a component of infrastructure in it. She said those kinds of projects are prioritized by the Board.

Ms. McKeel said while she had projects that were her "wants" as they matched with her community, she would be interested in some discussions to see a larger prioritization from staff as a suggestion to say that if the Board takes a certain direction, they will get a bigger "bang for their buck." She said there could be 3-4 projects that would work better at a later time if they were to get another project done first, for instance.

Ms. McKeel said the Board and staff keep doing things the same way, and she was trying to figure out how they could get out of that box and move the organization forward in a more efficient way that helps all the Supervisors in their magisterial districts get the projects that they feel are necessary.

Ms. Filardo said this was a good point. She said what staff was trying to tee up to address some of those concerns were the Comprehensive Plan and Zoning Ordinance changes. She said once they know the environment and the world they are trying to create in Albemarle County, it will inform some of the other discussions, moving forward. She said they have already tried to bring that kind of approach to doing business as they came to the Board for their support on the Rio Road Corridor Study.

Ms. Filardo said she appreciated Ms. McKeel's perspective, and that staff was definitely taking a more holistic look at the entire County for consideration.

Ms. McKeel said she had a similar question. She asked Ms. Filardo if staff was looking at the projects through an equity lens. She said this may involve Ms. Siri Russell's office (the Office of Equity and Inclusion). She said that if the Board is prioritizing the projects and were looking at the projects through both an infrastructure and equity lens, she would be very interested in learning which projects would rise to the top.

Ms. Filardo replied that CDD was actually a prototype for working with Ms. Russell on some of their projects. She said they are actively engaged with Ms. Russell and that evaluating their Comprehensive Plan using the new value of community was on their list as one of the strategic and important updates to the Comprehensive Plan. She said staff would be doing more of this as time goes on.

Ms. McKeel said she would again be asking which projects would rise to the top if they were looking at them through an equity lens. She said this didn't mean it would be the way they would determine everything, but if they didn't ask and look at them through that lens, then it would be very easy for some to miss that bigger piece. She said she believed it would lead to a more robust discussion amongst the Board.

Ms. Mallek referenced Ms. Filardo's mention of County View and asked if it was something that might qualify for COVID funding. She said she did not require an answer on this right away, but that she was always thinking of ways to jumpstart things they would need to do with some of the federal funding that was coming the County's way. She said she did hear from Culpeper County that they were investing \$1 million of their COVID funding in broadband investment, as it was a high priority for them.

Ms. Mallek said Ms. Filardo's concern about how complaints were increasing did not surprise her at all. She said she believed there was a weird vibe going on over the past couple years (and particularly, in the last six months) where complaints are increasing with more people saying, "It's all about me" without recognizing that their neighbors have any rights at all. She said this puts staff in an obligation of trying to help.

Ms. Mallek said her question (not requiring an immediate answer) was if more thorough ordinances and rules would make staff's job easier to make things better. She said she has found that when repeat visits happen due to incomplete rules, it makes everyone go in circles. She asked if this would help in the long term to reduce the workload. She said it would definitely reduce the "neighbor versus neighbor" mentality, which is put on people by not having rules about requiring the neighbors calling out when something happens. She said this had been the culture for 50 years and that she hoped they would continue to slowly move away from that.

Ms. Mallek said she completely understood the staff transition because having known staff who have been working for 30 years and were retiring, and then a much younger group who is bright and engaged, having the younger group absorb the institutional knowledge that staff with many years of experience have been storing before they retire was important, and she knew Ms. Filardo was working hard on that.

Ms. Mallek said regarding the Rivanna Corridor Study, the Rivanna River Basin Commission demanded that the planning district tell them what they were doing, as they had basically seen nothing for three years. She expressed that with them finishing up the mapping project and using money that had not been used for two years, she would love to say that Phase 3 needed to go on the list rather than being continued because spending \$300,000 for small area planning for a tiny area on the river, to her, was a lower-priority investment when it would require many meetings and asking people what they want. She said they were not in a position to give anyone what they wanted at the moment, and so this was something she would suggest taking off of staff's plate.

Ms. Mallek said regarding County View, a citizen told her in the last year that the County would benefit from using software that is readily available instead of having everything custom-made, which takes five years, costs a fortune, and then cannot be updated. She said she did not understand the details, but that it seemed to make sense to her that there were many existing software programs that already had the bugs worked out.

Ms. Mallek said she would leave this thought with Ms. Filardo as something to consider, as the last thing they needed to do was spend another 10 years to get the system up and running, like they did with County View, only to find out that it was not working as they wished. She thanked Ms. Filardo and staff for all they do each day.

Ms. Price said she would echo some of Ms. McKeel's earlier comments. She said she recognized that the presentation was about the work program, but that she had something slightly different to discuss. She said she had been anecdotally hearing from some developers and construction entities about the amount of time it takes for applications and permits to process through the system.

Ms. Price said she wanted to acknowledge and give due respect to the way that CDD has worked through these most challenging times of the pandemic in having to lose personnel and work remotely. She said when she first moved to the County four years earlier, it was possible to sit down with CDD staff, who would have other relevant parties present, and that it was a very thorough, efficient process. She said this process was much more difficult now with social distancing.

Ms. Price said she wanted to point out some of the comments and concerns that were raised to her. She said there appeared to be stations within the process of a permit application where things appear to be bogged down, and some comments with inconsistencies. She said an individual may be told initially that they need A, B, and C, for instance, but then be told later that they also need 1, 2, and 3.

Ms. Price said part of this, she believed, was the nature of having to work under this different environment. She said she would ask Ms. Filardo to look at her department to identify the different stages in the process and the amount of time it takes for each application to work through that in order to identify where there may be delays and opportunities to improve efficiencies.

Ms. Price said when one works in a particular environment, they know what is required. She said an individual (particularly, someone who is not a business enterprise) that comes to the County to pursue something, however, does not have that wealth of knowledge, background, and experience to understand the whole process. She said part of the problem could, at times, be an assumption on the part of County staff that the applicant understands the process the same way the County does. She said perhaps some extra time in communicating with the applicant to truly be sure of what exactly it is they are seeking would help them answer the questions the applicant does not know they need to ask.

Ms. Price said as Secretary of Defense Rumsfeld said, there are “knowns, unknowns, and unknown unknowns.” She said particularly for the individual residents that are applying, they have many “unknown unknowns.”

Ms. Price said she did not want her comments to detract from the great job she believed staff was doing under very difficult circumstances.

Ms. Price said in her law practice, she dealt with federal agencies that had basically been rendered unable to complete anything. She said she has observed other municipalities and local governments who have done nowhere near the category, quantity, and quality of work that staff does. She said she appreciated everything that they do, but that these were a couple of areas she would ask they look into.

Ms. LaPisto-Kirtley said she was very much interested in CDD receiving updated software. She asked if CDD was looking into software that has already been developed that would work, or if they would have to reinvent the wheel.

Ms. Filardo said she actually has a software development background and that before she got into public service, this was much of what she did. She said she believed CDD would follow the existing process the County has, whereby they develop their needs analysis and take it to a team of people at the County level that will explore those needs and help determine what possible options they can consider.

Ms. Filardo said it was safe that on the staff side, everyone shared the belief that they would much rather buy a best-in-class project software product that already exists than to do what they did with County View. She said County View was actually a software product they bought, then customized to fit their processes instead of taking the process they built the system to utilize and implementing those instead.

Ms. Filardo said she believed CDD learned their lesson over the past 16 years, and that she knew they had a team that would help them sort through all those things after they get their list of needs clarified and brought forward to the team. She said she knew it was their intention to explore packages.

Ms. LaPisto-Kirtley asked if Ms. Filardo had looked at other localities with similar needs who may already have packages.

Ms. Filardo replied yes. She reiterated that they would like a best-in-class system.

Ms. LaPisto-Kirtley said she knew that CDD was working on a homestay registry. She asked if this was something where they would have to wait for the new software to have it.

Ms. Filardo replied no.

Ms. LaPisto-Kirtley asked if this were something that already could be easily implemented and started.

Ms. Filardo replied that it was not easy to implement, but that it was underway. She said if the Board wanted more information on the registry, Mr. Bart Svoboda was standing by who could share where this project stood and that alternately, staff could come back to present this at a later time.

Mr. Gallaway said there was time to spend a few minutes on an update.

Mr. Bart Svoboda, Zoning Administrator, said that similar to the discussion the Board was currently having, staff has had to go through their capabilities within County View to see where they can adapt entries to query to do the registry. He said at that point, they accomplished that as of that week and knew how to pull the registry information out of the system. He said they were beginning to send out notices to pre-approved homestays to get them registered, and that these were people who were approved for homestays prior to the registry being up to date. He said as they begin to approve the ones coming in, they will submit their forms as they are approved through the process.

Ms. LaPisto-Kirtley asked Mr. Svoboda how long he believed this would take (weeks, months, or years).

Mr. Svoboda replied that it was an ongoing process. He said the registry happens annually, and will happen each time one is either first approved or with their annual date. He said one of the agreements was that the annual inspection has to take place. He said what they didn't do, with consultation with Fire Rescue and building code, was say that everyone was coming in on January 1 because they cannot absorb that impact. He said as time goes on, everyone will be added on their approval month, then will reregister on their approval month throughout the year. He said the registry activation will begin either at the end of September or in the first part of October.

Ms. LaPisto-Kirtley said this was good news. She asked if those who had Airbnb's prior to the County's homestay ordinances would be grandfathered in or if they were now part of the new homestay ordinances.

Mr. Svoboda replied that their approvals are valid, meaning that they can do what they were approved for. He said the registry was not contained within the Zoning Ordinance and is a different part of the County Code. He said they will have to comply with the registry requirements and will be part of those that get their notice on the month they were approved.

Ms. LaPisto-Kirtley asked if they would also be inspected.

Mr. Svoboda replied yes.

Ms. Mallek asked if the "three strikes and you're out" rule would also apply to everyone once they get registered, even if they have been in business for a while.

Mr. Svoboda said the "three strikes" rule was a registry component and was for compliance with any of the homestay regulations. He said this still applied and that basically, one has to conform with their approval, or they will take a hit on the registry.

Ms. Mallek asked if one already had some notices of violation, these would be incorporated when one finally registers so that the County does not lose those previous years.

Mr. Svoboda said unfortunately, the answer to this question was no.

Ms. Price said anytime she hears something like a "three strikes" rule, she thinks back to some of the abuses that happened in the criminal law area where offenses ended up resulting in life imprisonment. She said she recognized they were not there in that same situation, but she hears something like this and believes they must be reasonable. She said there are different degrees of violations and although she was sure they would be reasonable, everyone has heard her talk about overcriminalization and that anytime they start getting into this kind of language environment, she wants to be very cautious.

Mr. Svoboda assured that staff's posture was still compliance and not penalty. He said they want to the business to operate, but in compliance with the regulations.

Ms. Price said this was a great response.

Ms. Filardo said she wanted to add one point of clarification. She said to be placed on the registry, one first has to be an approved homestay. She said for those people who the Board has declined, they do not even make it to the registry.

Ms. LaPisto-Kirtley asked if the people who had an Airbnb prior to homestays did have to be part of the registry.

Ms. Filardo replied yes.

Ms. LaPisto-Kirtley asked if they also have to be a resident if they were previously approved.

Mr. Svoboda replied that the owner must be present. He said there was not an absentee owner process prior to what the County currently has.

Ms. LaPisto-Kirtley asked if the person has to be a resident owner if they were approved as an Airbnb prior to the homestay ordinance. She asked if they had to be present and had to live there.

Mr. Svoboda replied that the answer was generally yes, without having memorized all the approvals. He said they did not have the process where the owner did not have to reside on the premises, they could have a caretaker, depending on the circumstance. He said he would default to his original answer, which was that the person needs to follow the approvals that they received. He said they are subject to registering on the register, however, as a previously approved Airbnb.

Mr. Kamptner clarified that if they were otherwise required to register because they were making their house available for short-term rental and failed to do so for whatever reason, this is a violation of the registry ordinance.

Ms. Price added that she believed the Board should also make sure to educate their constituents on the difference between the homestay under their ordinance versus the more commonly understood Airbnb, as there is a substantial difference between the two. She said she was seeing this in the lack of understanding of some of their constituents in the communications that the Board was receiving via email.

Ms. Mallek said before the County had the ordinance, there was no legal short-term registry or operations because fewer than 30 days was not allowed. She said there was no one operating before who somehow should get out of participating in these things. She said the bed and breakfast is something the County has had for 30 years, which was a completely different category, and that those people who have signed up for that will bring themselves into this as it is combined.

Ms. Mallek said they should remember carefully that until they had the ordinance that changed the 30-day-minimum rental, none of those people were locally compliant or registered for anything, in her understanding.

Ms. LaPisto-Kirtley asked if everything now that was a homestay fell into the homestay ordinance. She said for example, if someone had a short-term rental, this was a homestay and that the County was no longer approving Airbnbs. She asked if they all fall under the homestay ordinance.

Mr. Svoboda replied that Airbnb is an industry term and not a Zoning Ordinance term. He said a bed and breakfast (B&B) is what they had before, and that those were any of the 30-days-or-less rentals that were allowed for a number of years, in certain districts. He said any that were preapproved have to be on the registry.

Ms. LaPisto-Kirtley asked if the County was no longer giving out B&B's

Mr. Svoboda replied that they were not calling them bed and breakfast permits, and that everything now was a homestay, under one category.

Mr. Gallaway noted that with the current work program, he wanted to note how he was reacting to the visual on the screen. He said he was not criticizing or judging it, but that he was trying to understand it. He said it dawned on him that he did not have an appreciation for how staff resources are used to achieve the work plan. He said when he looked at the plan as a Supervisor trying to make priorities or understand why something was taking the time it was taking, or trying to explain to a constituent why a certain item wasn't in the plan, he did not really understand himself how staff allocates human resources to these projects.

Mr. Gallaway said when he looked at the graph, he presumed that the red points were the final destination points, even though it said, "New milestone." He said using the color red suggested that this was an end point, to him. He asked if he was correct.

Ms. Filardo said Mr. Gallaway was right, but that it was a new end point. She said staff had hoped that the blue triangles on the graphic would be the end points they could hit pre-COVID. She said they have gone through a series of adjustments, especially because of the community outreach requirements relative to many of the projects where, while they were in the period of indecision about how they were going to manage public outreach and meetings, it did shift several of the projects out further because they got off track.

Mr. Gallaway said he understood, and asked if the red triangles were new deliverable milestones.

Ms. Filardo said yes.

Mr. Gallaway said what he was getting at was that when he looked at the graphic from a capacity standpoint and being able to add to the list, as he saw the blue come to a close and all the white to the right, he saw all the blue going in under the longer-range items. He said the Strategic Comprehensive Plan update may be equitable to four rows up above on the graph, but that it was lost on him because staff capacity was not necessarily visualized. He said he had seen this before, so he was reacting to it differently in a way in which he did not understand what staff capacity it takes to work on the Crozet Master Plan or the Water Resources Stream Health Rural Area project, and how this equates to "Zoning Amendments to Implement Comprehensive Plan."

Mr. Gallaway asked if there was a way, when this comes up during budget time, to have charts that allocate the resources so they know the capacity they have. He said this was obviously critical in being able to understand how to program the resources, moving forward. He said what he did not understand, at that point, was that he did not know how the staff capacity played into this. He said as the projects come back to the Board for prioritization, this was an unknown that would be helpful to him to understand and make decisions on how to move forward and get projects programmed and completed.

Ms. Filardo noted that all was not lost relative to the projects list. She said CDD has started deploying Microsoft Project, which is a software tool that indicates how many resources it takes, and which resources are taken up, by individual projects. She said when staff comes back to the Board, they can show them how many resources each project will take. She said on Form-Based Code, for example, the actual individuals on that project are many of the people with the right expertise to be working on the Comprehensive Plan, which was why the Board was seeing some of this work staggered. She said staff was learning the tool that will help them describe resources to the Board in a much more effective way.

Mr. Gallaway said this was great. He said he would think that when the Affordable Housing project comes to an end, for example, the expertise level would not be simply shifted over to the Rio Road Corridor Study or any other project, as the expertise was also part of the capacity. He said it was helpful to know that this information would be coming forward.

Mr. Gallaway asked if Ms. Filardo could email the list of frozen positions to the Board as a follow-up so they can have that information on hand.

Ms. Filardo replied yes.

Mr. Gallaway said one of his first questions when looking at the graph was about understanding the Rio Road Corridor Study (which he did not see) and how those types of projects interact with the work plan. He said while Ms. Filardo addressed this, he believed that visually, it would help to have it all in one place.

Ms. Mallek said even something as simple as a different color triangle on the chart that showed outside work being done (such as the corridor study) would help the Board to keep those things in their minds.

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Agenda Item No. 11. **Presentation:** Thomas Jefferson Health District COVID-19 Update.

Dr. Denise Bonds, Director of the Thomas Jefferson Health District (TJHD), said she was joined by Mr. Ryan McKay.

Mr. McKay said he would start briefly by sharing the state and regional status, then drill down to districts, counties, and cities. He said he would speak about the work with UVA and what they have seen in other university and college towns across the Commonwealth.

Mr. McKay said in August, the Virginia Department of Health (VDH) introduced new pandemic metrics as a way to inform decision making similar to what the Board did at the end of July and early August, which was how to strategize around returning to the more restrictive mitigation strategies for containment of COVID-19.

Mr. McKay presented a slide providing a brief overview of what the pandemic status was in terms of transmission extent by region. He said they were currently in a moderate phase, but were increasing (indicating to the arrow on the screen in the northwest, pointing upwards). He said that at around the same time Albemarle County implemented its ordinance, the eastern region was in a similar position where they were seeing increasing cases. He said this was the first region to look at reverting back to Phase 2, and that they implemented many of the Phase 2 measures as a way to contain and slow the spread of COVID-19 in that region. He said at that point, they were in a high transmission extent and that since then, they were down to "Moderate" and were decreasing.

Mr. McKay said in Northern Virginia, they were actually in "Low" transmission extent, which they had been in for three straight weeks. He said implementing the various containment measures and mitigation strategies has been working in these regions, and was certainly something to continue to push as they move forward in the region.

Mr. McKay said the metrics and how this is determined are based on case counts, positivity rates, and the number of measures that are specific to the healthcare infrastructure (surge capacity, visits to emergency departments where people report a COVID-like illness, etc.). He said these are all weighted to formulate the extent.

Mr. McKay said in terms of the northwest region and its score based on the measures, they have increased about 5 points between end of August and September 12. He said he believed this was largely attributable to case counts and positivity rates in Harrisonburg and Rockingham County. He said Charlottesville was seeing increased numbers, as well as some of the more populous portions of the northwest region.

Mr. McKay said that based on these measures, as a region, they were moving towards substantial community transmission, but that this was not necessarily taking into account all of the rural areas, which may not be experiencing such transmission as the urban, more populated areas.

Mr. McKay presented a snapshot of the new measure in the TJHD Data Portal, which changed things somewhat. He said at the district level, they were now reporting cases by date of onset, which provides a more accurate picture of when symptoms are developing as opposed to waiting for a test result and the report date for that. He said they have been trending downward over the 7-day moving average. He said Cases by Date of Onset were also posted there. He said this gives them a better sense and picture of when things are occurring in terms of symptoms in the district.

Mr. McKay presented a slide that broke down the data by localities. He said Albemarle County was shown in blue, and that there was a total of 1,145 cases, 73 hospitalizations, and 19 fatalities in the County. He said the information on the slide was the report date (when they receive the lab report), which aligned with the data that VDH posts on their website. He said VDH does not break it down by locality onset, in terms of symptom onset, but continue to report this data out by when lab reports are received



into the surveillance system. He said TJHD was doing the same, and that this showed different trends over time.

Mr. McKay said looking at the demographics, they continue to see disproportionate cases among Black, Latino, and African American people in the districts. He said populations by district were shown on the left of the slide in terms of race and ethnicity. He said hospitalizations and fatalities were also disproportionate, particularly with Black and African Americans. He said this was a trend they have seen over the course of COVID-19 not just locally, but also in the Commonwealth and across the country.

Mr. McKay said part of the pandemic metrics that VDH posts and updates is including some locality-specific metrics. He said on the left-hand side of the slide, the data was broken down by the numbers of cumulative cases, the 7-day rolling sum, and the percent positivity over a 7-day average from August 31, September 7, and September 14. He said on the right side, this data was used as an opportunity to not only show the case incidence rate, but measures over time as well so that one can see how this has been fluctuating since the beginning of COVID-19.

Mr. McKay said at that point, Albemarle County was at 5.3%. He said this number was updated daily and that there would be fluctuation from one day to the next, which was why TJHD introduced these on a weekly basis to local government, community partners, and schools.

Mr. McKay said since August 31, there has been a downward trend in Albemarle County both in percent positivity as well as in the number of cases. He noted that there was a lot of testing that was ongoing through both UVA and TJHD's community testing events. He said high testing numbers, and even a low percent positivity and case counts, were important and give the TJHD a good sense of where things were currently trending. He said these could change, but that there have been 10 days of a decrease in positivity rate, which is considered to be fluctuating. He said they have had 14 days of decreasing case incidence above 10, and that the decreasing portion of that was important to pull.

Mr. McKay said at the regional level, other metrics are added related to healthcare infrastructure, but that they do not necessarily do this for localities.

Mr. McKay presented metrics for Charlottesville. He said the positivity rate had approached 10%, which is one of the thresholds VDH recognizes as a possible opportunity to discuss mitigation strategies. He said that since then, through massive increased testing both within the community and at UVA for students and faculty, 133 was about the highest number of cases seen for Charlottesville over that time, and that the positivity rate has gone down to 4.5%.

Mr. McKay said there was burden in relation to cases per 100,000, which is 39.5, but the positivity rate was something important to look at as well, as it continued to go down. He said there was widespread access to testing and continued to be access through multiple locations, which was an important element to keep in mind when looking at the metrics to evaluate where they were.

Mr. McKay presented a snapshot of UVA's COVID tracker. He said as of that day, there were 373 total positive cases, and that 325 of those were student cases. He said this was being updated during the week, around 4:00 p.m. He said they were seeing an increased number of cases among students and were beginning to see some cases occurring on grounds.

Mr. McKay said TJHD meets with UVA on a daily basis to make sure they are communicating regularly and that there is transparency between what the Health District is seeing in terms of numbers, what UVA is seeing, and how they are trying to support students both on and off grounds day by day. He said these meetings have been helpful in terms of establishing strong communication points between TJHD's investigation team and UVA's personnel within Student Health and the UVA health system.

For comparison, Mr. McKay presented some data he was able to locate on different COVID dashboards including JMU, Radford, Virginia Tech, and UVA. He said he pulled JMU, Radford, and Virginia Tech partly for size, but also because Radford had hit the news a week or so earlier as a designated hot spot, and so he wanted to see what was happening there. He noted that not all dashboards are the same in terms of what information they offer, but that they do give a sense of what has been occurring at universities in Virginia, particularly larger ones. He said he believed that the Harrisonburg data would be somewhat close in comparison to Charlottesville.

Mr. McKay said positivity rates within those universities were high, particularly with JMU and Virginia Tech. He said Virginia Tech was doing a lot of testing on their own, and that JMU was working with a number of partners on testing. He said he believed UVA had an advantage over other universities in terms of the amount of testing they have experience doing, but also in providing that widespread access to students through Student Health.

Mr. McKay said to offer the Board somewhat of a comparison of where JMU and Harrisonburg were on August 21 versus where they currently were. He said the red circle on the slide represented the time when students returned to campus at JMU, and that this did not necessarily account for students who would have returned to Harrisonburg living in off campus housing. He said the yellow circle on the slide was where they currently were. He said it has taken some time, but positivity rates had dropped over the course of the past couple weeks. He said cases were still occurring at relatively high rates, however, in Harrisonburg. He said their dashboard is updated with day rolling sums as well.

Mr. McKay said an important piece for the County to recognize was that testing was critical in that

it identifies those who test positive and gives the Health District the opportunity to ensure they can isolate those individuals, identify close contacts, and quarantine. He said they continue to do this as a high rate consistently above 90% of the time in terms of getting in contact with those individuals within 24 hours, both for isolation and the close contacts for quarantine, which allows TJHD to mitigate potential spread and, depending on the number of cases, contain further spread.

Mr. McKay said these testing events will continue through UVA or the community testing team. He said TJHD was hiring a second team, as they have had a struggle with getting nurses who can do the testing. He said they will be able to ramp up the second team hopefully in the next couple weeks, or perhaps sometime in October. He said one thing they have noticed is that fewer people were coming to their testing sites, so they have lots of opportunity for people to come and get tested so they can identify those individuals and isolate as needed.

Mr. McKay concluded his presentation and offered to answer any questions.

Ms. Palmer recalled that during Mr. McKay's slides on the university comparisons, he noted that UVA had an advantage in that they were doing a lot of testing, and that Virginia Tech also had their own testing. She asked Mr. McKay if he could further explain how they compare. She asked if UVA was doing more testing than Virginia Tech.

Mr. McKay replied that he did not know how much testing UVA was doing in comparison to Virginia Tech. He said he knew they had plans for doing more random testing, so they will start with 50 and go up to 100. He said they were also going to look at doing wastewater testing within the dorms to determine if there is any potential spread occurring there. He said he did not have a good insight into the amount of testing UVA was doing on a daily basis, nor did he have that insight into Virginia Tech. He said perhaps Dr. Bonds had further details.

Dr. Bonds said she did not know the specific numbers, but that UVA had already started their wastewater testing.

Ms. Palmer said her only other request was if Mr. McKay could email the PowerPoint presentation to the Board.

Ms. McKeel said on the slide before the Board, she saw that the percent positive metric for UVA was "not available." She asked if she missed the explanation for that.

Mr. McKay replied that it was not posted on UVA's dashboard.

Ms. McKeel asked what the rationale was behind that.

Mr. McKay replied that he did not know.

Ms. McKeel said she would have to ask UVA. She said she did notice that UVA did not seem to be updating their numbers over the weekends.

Mr. McKay said this was correct. He said they have not been updating on Saturdays and Sundays.

Ms. McKeel said it was then important to know that if one visits UVA's dashboard on Saturday or Sunday, they are looking at Friday's data. She asked if it is then updated on Friday and on Monday.

Mr. McKay confirmed it is.

Ms. McKeel asked what the testing turnaround time was. She said she recognized there were different entities doing the testing, but wanted to know if there was a sense of what the turnaround time was, as this was critical. She said she had heard it had decreased but that it went back up again.

Dr. Bonds replied that it depends on where the test is sent and when. She said if it was from one of TJHD's testing events and it goes to DCLS, it depends on when it hits the courier. She said if there is a testing event in the morning and the test is couriered to the lab that day, it probably will not hit a run until the next day and then, they do not get results uploaded until that night. She said people will get results the following day, which makes the entire process about 48 hours. She said if the labs have a big point-prevalence study they are doing for some place that is ahead of TJHD's tests, this may push the labs out two runs, for example.

Dr. Bonds said they say 4 days, but that they usually get them back earlier than that. She said the sooner they get them back, the sooner they can either get people out of quarantine or make sure people are in isolation and get those contacts notified.

Dr. Bonds said UVA still had a roughly 24-hour turnaround time. She said UVA does lots of testing for TJHD at community events, but that one can also go to Riverside and get tested there. She said she did not know what Martha Jefferson was currently running, and did not have a good feel for places like LabCorp and Quest. She said it had been a long turnaround time, but that it was not as bad as it used to be. She said it was probably not 24 hours, however, because it has to be sent to wherever they are running that lab, and there is therefore transit time.

Ms. McKeel said none of this was really ideal in terms of getting tests back. She said she also wanted clarity on one of the slides. She said when Mr. McKay first started his presentation, he showed a map of the state and talked about how the eastern area had improved. She said her impression was that the eastern decrease was based on what Governor Northam did at one point. She asked if this was correct.

Mr. McKay replied yes. He said over a weekend in July, health directors met with VDH and talked about different containment strategies. He said recommendations were then sent up to the Governor and his office, which implemented Phase 2 guidelines and measures to mitigate spread and start eventually containing it.

Ms. McKeel said this was then the result of the Governor's mandated restrictions.

Ms. Mallek said she remembered that several jurisdictions in the Hampton Roads area, as well as Richmond, went to the Governor when he went to Phase 3 and said that they would not. She said he gave them special dispensation, and the County did what they were going to do anyway. She said she would like to know what Fairfax County was doing and why their numbers were low, as they were doing much better than Albemarle.

Ms. Mallek said every day, she saw national maps that did not show Virginia making any progress at all, which made her very anxious. She said kids and families were constantly scared no matter which route they were taking (either going to school or missing school). She said she hoped there were details so that they can find out what the "Low" region was doing to accomplish that.

Ms. Mallek asked Mr. McKay if he could further explain why the date of onset metric was helpful if the numbers were still rising.

Dr. Bonds said she could address Ms. Mallek's first question. She said Ms. Mallek's point about learning from areas that are doing well was well-taken and that, in fact, she would be on a call that afternoon with a community mitigation team that was being stood up by the state, which will include representatives from all the various regions. She said she would be represented the northwest region and that she can learn what is going on in the northern region, for example. She said it was more than Fairfax, and that it also included Loudoun County, Prince William, and Alexandria. She said these are all dense, urban areas and that it would be helpful to understand what they are doing.

Dr. Bonds noted that the northern areas, coincidentally, were also learning from the northwest as well. She said she received an email from the director of Alexandria's health district asking for the ordinance that was put into effect for Charlottesville and Albemarle and questions about how this was working out. She said they were also thinking about instituting one, and so she forwarded all that information along.

Ms. Mallek said this was good.

Dr. Bonds said regarding date of onset, it helps TJHD identify potential super spreader events. She said they know that not everyone gets tested at the same time, and that someone may have symptoms but may delay getting tested (and receiving a positive test) for several days, while other people want to know (for example, for their jobs) and may go in at the first sign of a minor symptom.

Dr. Bonds said in looking at the date of symptom onset, if they see a sudden surge that happened around September 15, for instance, they can start to go back to those cases. She said there is a meeting every morning with the case investigator to do this somewhat on a rolling basis, but they could go back and explore those cases in greater depth to determine if there is some commonality they missed the first time around that they could attribute to why, in this 48-hour period, they suddenly have a huge increase.

Ms. Mallek said she has also heard discussion on the news about a number of positive cases per 100,000 population. She asked what the County's cases were per 100,000. She said the cases for the City totaled 39.5, which was described as very high, but that she did not catch what the County's total was.

Mr. McKay replied that the County was at 6.2 per 100,000, which had been decreasing for two straight weeks.

Ms. Mallek said this sounded like a good sign.

Mr. McKay said yes.

Ms. Mallek said on social media, UVA students are telling their fraternity brothers and sorority sisters to get their testing out of town because then, if they are positive, it will not be reported to UVA and they will not have to quarantine. She asked if there were any handle happening on those numbers and if those UVA numbers were being reflected either in the City or the County.

Dr. Bonds replied that the way the reporting system works, the labs are sent to the jurisdiction of the home address. She said TJHD tries to get students to change their home address and insurance to wherever they live locally so that the cases get reported to that local district, but this does not always happen. She said then, they talk. She said if they get a case and it is clearly a student at JMU, for example, and the student is living at JMU, TJHD transfers the case to them so that they can investigate.

She said JMU does the same for TJHD, and the Health District does this everywhere, including across states. She said although people can try, TJHD eventually tracks them down. She said they get counted in where they are living.

Dr. Bonds said in terms of whether or not they get reported to UVA, UVA has encouraged students to do this as part of living on grounds. She said ultimately, if a student asks TJHD not to report their case to UVA, they follow their privacy directions because that is the mandate they have. She said they cannot share information without the individual's express permission to share it. She said they try hard because they think it helps UVA to understand the burden, but at the end of the day, it is the student's responsibility.

Dr. Bonds said the Health District still tells the students to quarantine and isolate. She said another thing the state has done is created unique IDs in the electronic database system so that there can be an internal tag for various universities to try to get an internal idea of what the burden is from various institutes of higher education.

Dr. Bonds said they want students to understand that this was not punitive. She said this allows TJHD to provide education to the students. She said there are individuals who can provide some assistance, and there are resources in the community if the individual who was asked to isolate needs groceries brought in, for example. She said the Health District can either direct them to a resource or can help them obtain it.

Dr. Bonds said similarly, in reporting to UVA, understanding what the burden of disease is in the university is helpful to everyone.

Ms. Mallek said there was a picture that went around of the kids in Newcomb Hall trying to get food and were jammed into the hallway because their dorm rooms have no cooking facilities and they cannot get to the grocery store. She said they were trapped and that she knew this was a difficult situation for them.

Ms. Mallek thanked Dr. Bonds for the host organizations who have had the testing crews come, noting that the experience was very positive.

Ms. Price asked Mr. McKay if he could go back to the earlier part of his presentation so she could again see the chart that showed a fairly sharp decline in the number of recent cases in the County or area. She said they have seen an increase, however, as the students came back into the community. She said they have started to experience some of the first cold evenings and that flu season was upon them, and so she had some questions.

Ms. Price said she has started to see facilities that provide flu shots indicating that they were available. She asked Dr. Bonds if it were the time to get the annual message out to people to start getting their flu shots, or if there was a less ideal time for people to get them.

Dr. Bonds said they were almost at the ideal time. She said she usually tells people to get them in October, as this gives them plenty of time to develop the antibodies before flu season gets into full swing, and because it also provides them with the longest amount of coverage so that they still have coverage going into the tail end of flu season. She said any time was better than no time to get the flu shot, and so she would encourage people currently going to the doctor to get their shot. She said if one needs to schedule an appointment, they should try for some time in October.

Ms. Price said this was helpful because as she recalled, the peak of the flu season was December through February, and so they want to make sure people get their flu shots in a timely fashion. She said as Dr. Bonds just indicated, her suggestion would give them the greatest amount of coverage during the flu season. She said they recognize that COVID-19 was not the flu, but that if people can protect themselves from the flu, it can also have a corresponding protection towards the pandemic.

Ms. Price said it appeared that at least within the last 7 days, the County's numbers were looking better. She asked if there were any indications that Dr. Bonds has seen that would warrant a reduction in some of the steps they have taken with their recent ordinance to try and continue to reduce the potential of transmission in the area, recognizing that this was a policy decision the Board would have to make.

Dr. Bonds replied that she believed the ordinance has been helpful, and has contributed to some of the reductions that they have seen. She said having the UVA students back has obviously added an increasing burden. She said they did see an uptick and that she did not think they were finished seeing an increase in cases because of the increase in numbers of UVA students.

Dr. Bonds said she believed they were entering a risky period, as the temperatures were becoming colder. She said people will move from those outdoor activities that were protective (because aerosols there are widely spread) to indoor activities where there is a much greater risk of infection. She said having the ordinances the Board put into place have been helpful in keeping the large gatherings down and the numbers down. She said the complaints have gone down as well, and that although she did not show a slide about this, these are seen to have gone down week to week, which shows that the regulations have become part of normal activities.

Mr. Gallaway recalled that there was a chart that showed 300 or more positive cases at UVA and 18,000 students. He asked if of the 18,000 students that had negative prearrival tests, the 325 total

positive cases occurred after the students arrived on campus.

Dr. Bonds replied yes. She said the 325 were individuals that tested positive after arrival.

Mr. Gallaway asked if they had previously tested negative.

Dr. Bonds replied yes. She said some of the 65 positive tests could have been individuals who were UVA prearrival, but were actually already there in the community. She said these tests were sent out at the beginning of August. She said there were students arriving because their apartment leases started in July.

Dr. Bonds expressed her appreciation for the collaboration among the Health District, the Board, and County staff.

Mr. Gallaway said it would be great to have the PowerPoint presentation sent to the Board.

Mr. McKay said he would be happy to do that.

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Agenda Item No. 20. From the Board: Committee Reports and Matters Not Listed on the Agenda.

There was none.

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Agenda Item No. 21. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Jeff Richardson, County Executive, said he wanted to share some information with the Board regarding the memorial removal event that took place the prior weekend.

Mr. Richardson said this was, in his opinion, a complex construction project that was completed without any major issues. He said they did have some minor issues with separation of the statue from the base. He said this was a 111-year-old piece of infrastructure that had been in place and that frankly, there were unknowns when beginning to pull this apart. He said they were trying to pull it apart meticulously so as not to damage it in any way. He said although this took slightly longer than what had been planned, he was pleased to report that the statue was pulled apart successfully, meaning that putting it back together again was a true reality.

Mr. Richardson said the concrete foundation was about 36 inches deep. He said he wanted to thank the City of Charlottesville's Public Works department, which has experience with sidewalks, streets, and heavy infrastructure projects. He said they lent their expertise to the County in trying to get the foundation successfully off the property, which was appreciated.

Mr. Richardson said in terms of cost, he believed the project would land at about \$60,100. He said regarding the timeline, with the Board being involved, the project began on Friday at 2:00 p.m. and completed on Sunday at 1:00 p.m. He said it was a 14-hour process that stretched over three days.

Mr. Richardson presented a picture of the cavity of the time capsule as soon as the stone was revealed, noting that this item continued to receive a great deal of attention. He said unfortunately, there were about 2 inches of standing water in that area. He said it took about 2.5 hours to recover the box from the cavity. He said the box is about 12 inches by 12 inches in size and about 6 inches in depth. He said the Special Collections library recovery work was ongoing, and that he believed he would soon have a report on the ability to recover the items that were in that box with the expertise of those involved.

Mr. Richardson said the livestream event lasted 9 hours and 17 minutes. He said Mr. Gallaway opened this with his remarks. He said the livestream event offered both video of the removal and a learning opportunity on the time capsule, the engineering of the statue and base, and the funding and installation of the monument. He said the event highlighted the community with public comment from the Board meeting and recorded reactions from community members. He said there had been a lot of work that went into the livestream, with lectures by professors and subject matter experts.

Mr. Richardson said about 100 people did show up at Court Square's perimeter and wore masks. He said the livestream reach was 126,000, with 51,000 views and 271,000 shares. He said they had a steady audience, even until the end of the broadcast, of about 100.

Mr. Richardson said when the statue was installed, thousands of community members attended. He said the livestream was intended to allow the community attend while keeping them safe in light of COVID-19. He said while the intention was to meet the needs of the community, the world was watching. He said the Board received a media report Saturday evening, and that he asked Ms. Emily Kilroy about it as she had included a caveat noting that she believed she had covered most of the media outlets that had reached out or reported. He said there was both national and international coverage of the event throughout the day.

Mr. Richardson said he had several other items to cover, but that the Board could ask questions about the event, as supporting staff were attending who could answer those questions.

Ms. Palmer said she watched a good portion of the event via video and that it was very well done.

She asked if there were a list of all the speakers that she could have.

Ms. Emily Kilroy, Director of Communications and Public Engagement, replied that she could provide a list of speakers.

Ms. Palmer said the relocation of the monument looked great and was a success.

Ms. McKeel said she was at the site in the morning until the statue came down and wanted to thank everyone who participated. She said she heard nothing but positive comments from the community who contacted her.

Ms. McKeel said there were some surprises, including getting the statue loose from the base. She said she would be interested in Mr. Trevor Henry or Mr. Lance Stewart offering to the Board what their biggest surprise might have been. She said she thought the livestream itself went beautifully and thanked Ms. Kilroy and Ms. Siri Russell for that. She asked Mr. Henry and Mr. Stewart if they wanted to comment.

Mr. Trevor Henry (Assistant County Executive) said staff had been working for a long time on three elements: the construction project, the community engagement project, and the public safety planning, which all went back to January. He said he would speak to the construction side, and that there was an engineer's report that helped guide the process. He said the biggest surprise happened when they reached the bottom of the slab and did not know what to expect with the time capsule. He said seeing how it was positioned in the slab and how they had to approach getting to it took hours, care, and hand work by the contractor.

Mr. Henry said they were surprised at the number of bugs that came out when the last block was lifted up, which he believed was visible on the streaming. He said they stopped digging at about 3 feet of concrete on the slab, and on Sunday, the Public Works crew from the City said it was hardest cement they had ever encountered.

Mr. Henry said they expected to have challenges but once the statue piece came down, the rest of the structure went quickly. He said it was the last part that surprised them.

Ms. McKeel asked what kind of insects these were that came out with the block.

Mr. Henry replied that he did not know, but that the insects were surprised.

Ms. Palmer asked if a picture could be sent so they can be identified.

Mr. Henry replied that Ms. Kilroy could send that.

Ms. McKeel asked Mr. Stewart if he had anything to add about takeaways or surprises.

Mr. Stewart replied that his biggest surprise, which was a pleasant one, was the fact that the entire community who came out to view the event came out to celebrate it. He said he was mentally prepared for a challenging and potentially frightening day, and that other people were also nervous going into the day. He said to feel the support from the community so universally was a surprise and something that he would personally value as an experience for the rest of his life.

Ms. McKeel said she would like for the Board to send an official thank-you to the construction company, perhaps signed by the Chair. She said the company did an outstanding job and were honored to have done the work.

Ms. Palmer asked if this would be sent with the check for \$60,000.

Ms. McKeel said she had something in mind that would recognize the company, as she felt they took a certain amount of pressure and perhaps some unfortunate communications from citizens. She said she felt an official letter would be appropriate.

Mr. Doug Walker, Deputy County Executive, said that from a public safety standpoint, they would be glad to know that the biggest surprise was the change in the drop-off point for the Board members that morning. He said he wanted to say this to emphasize how well the public safety planning played out. He said it was a situation where they planned for a certain number of contingencies, and that the events of the day drove what actually happened. He said for that to be the biggest surprise was no small thing, from a planning standpoint.

Mr. Walker said he wanted to acknowledge the County's high level of collaboration with the City of Charlottesville across the board – not just on public safety, but with Public Works and their administration. He said they were a tremendous partner in recognizing that with all of the activity, all they had was a postage stamp of a courthouse square that was County property and that everything around it was in the City of Charlottesville. He said the collaboration had to be significant and smooth, and that it was.

Mr. Walker said staff was making some after-action evaluations and debriefing soon. He said there were a number of other communities that already indicated their interest in learning lessons from Albemarle because they also have statues they may want to be taking down. He said he was not just

talking about the City of Charlottesville. He said there were lessons learned that staff hoped to be able to share locally as well as out farther in the state and beyond.

Ms. McKeel asked Mr. Richardson if he had anything he wanted to add about surprises.

Mr. Richardson said that he did not have anything to add.

Ms. Mallek said watching from home, she was appreciative of the ability to see the event as if she were there. She said this allowed people with widely diverse points of view to be part of the event to the extent that they could. She said there were many who would have come down to watch, but were told not to and were annoyed to then see the people who were allowed to be on the sidewalk. She said a lesson learned to share with other communities was if they were going to have rules, it was good to follow them. She said expectations should be followed so that there are not rules for some people and other rules for others.

Ms. Mallek said it was a well carried out event and an exhausting weekend for those were there for 25 collective hours. She said she appreciated being able to watch from home.

Ms. Price thanked County staff for the many months of work they put into the event. She said the Community Engagement and the Office of Equity and Inclusion were two of the main offices, and that she appreciated the work Mr. Walker and Mr. Henry did.

Ms. Price said because of the work they did with engaging in the community, it was evident that what the Board ultimately approved was not only the right thing, but that they had the public support for it. She said these were not always in tandem but in this case, they truly were.

Ms. Price said she was honored to have been there. She said she would ask that Mr. Gallaway's public remarks be made a part of the record of the present Board meeting, as she felt that they were historic. She said they were moving, and that they captured the mood and sentiment of the community.

Ms. Price said that after returning home, she was able to go online and view the recording. She said one of the things that struck her was that there were virtually no comments from local residents that were not supportive of what the County did. She said she believed this was a telling message; what was able to happen was something that the community wanted.

Ms. Price said the removal was done in such a way that the residents were patient and allowed the legal process to proceed to conclusion. She said she took great pride in Albemarle County being the first local jurisdiction in the Commonwealth of Virginia to comply with the new law, remove the artifacts as they were legally permitted to do, and that the constituents allowed the process to work.

Ms. LaPisto-Kirtley thanked staff for its planning of the removal, which enabled everything to go smoothly. She said they cannot stop people from wanting to congregate in the area, and that they were kept away, which was why they did not have thousands of people there. She said because of the advanced publicity and what the County asked people to do, it was done in a very respectful manner and was certainly a blueprint for other communities to follow.

Ms. Palmer said she recognized that the vast majority of the community wanted the statue to come down, but she had to acknowledge that she personally heard from several people who were not pleased with it. She said it was not universal, and that she thought the Board's decision to bring the monument to the battlefield was a good one to respect some of the people who wanted it contextualized or felt that it represented a grave marker of their relatives.

Ms. LaPisto-Kirtley said it was obvious that it was all done in a respectful way, regardless of an individual persons feelings on its removal.

Mr. Gallaway said he had emailed his remarks out to the Board if they wished to read the statement. He echoed all the sentiments and appreciation to staff, and added that he was grateful to Ms. Siri Russell, who provided information and suggestions for the remarks he was able to make. He said he knew it was a lot of time and effort for everyone involved, with a quick turnaround. He said the County often takes months to get things done, but that this was an effort that was quick. He said in a year when staff have had a lot thrown at them, they were able to respond quickly from a logistical standpoint.

Mr. Richardson said he wanted the Board to be aware that he had placed Board Retreat summary reports in their boxes in the Board Office, as were provided by the facilitator. He said he believed the material was reflective of the presentations, handouts, drawings, and requests that were made by the Board during the retreat. He asked the Board members to let him know if they needed anything in addition to that.

Mr. Richardson said he would ask Mr. Stewart to quickly go over the early voting information for the County Office Building, 5<sup>th</sup> Street (COB 5<sup>th</sup>) location. He said he sent a document to the Board earlier that day that outlined the work that was in place for the early voting that would begin on September 18.

Mr. Stewart said his office was working closely with the Office of Voter Registration and the Electoral Board to prepare for the early voting period for some time. He said it was just within the last several business days that their attention switched specifically to the accommodation at the County Office Building where early voting will be held of individuals wishing to campaign or speak to one of the matters

on the ballot, which had not been anticipated in previous discussions that the building would function as a polling place.

Mr. Stewart said they quickly came up with a plan. He presented a map showing the site of the 5th Street County Office Building. He said the red dot on the map represented Conference Room A, and that the approximate location of the entrance to the conference room was normally an exit but was being utilized as an entrance. He said the areas in orange will be designated parking spaces for visitors, specifically for the early voting exercises. He said the blue area was designated as a staging area for people who wish to participate in their right to campaign. He said at the entrance, they have designated sections of both sides of the driveway for the placement of additional campaign signs.

Mr. Stewart said they also wanted to be careful to establish clear guidelines to accomplish several tasks, primarily related to the protection of voters, campaigners, and staff alike to observe local ordinances and state guidelines, and to also keep pedestrians out of the way of vehicular traffic. He said they wanted something that seemed to be convenient to pedestrians as they make their way from cars to the entrance to the building while at the same time, ensuring that they are not injured by cars.

Mr. Stewart said they also want to ensure there is equity day to day by establishing a guideline that staging areas will be available on a first-come, first-served basis beginning 30 minutes before the election and that each day, this begins again. He said following the end of the voting schedule that day, campaigners and others will have 30 minutes to remove any materials from the site. He said there will be accompanying signage located on site so that these guidelines are clear.

Mr. Stewart said there were some simple guidelines in terms of signs along the entrance, for ease of maintenance of the lawn. He said they were asking that signs not be placed more than 30 minutes before the scheduled start time for voting each day, and removed at the end of the day. He said they should also not protrude into the traffic lane, for safety, and should maintain a reasonable distance of no greater than 6 feet from the curb or from the sidewalk.

Mr. Stewart said the Electoral Board reviewed the plan and responded positively. He said these were the instructions that were provided to Mr. Jake Washburne and, as of that morning, to representatives of all three political parties. He offered to answer any questions.

Ms. Palmer said it was great that Mr. Stewart put together the plan so quickly. She asked if the Registrar's Office had any comments about the first-come, first-served 30-minute timeframe and how coveted the spot next to the stairs was. She said she supposed people having to walk through that area might reduce the competitive behavior to get the closest spot. She asked if the Registrar's Office had any concerns about this.

Mr. Stewart replied that their minds may have gone to the fact that this would be very attractive, and that he was personally concerned that someone might try to claim that spot for the duration. He said this was why there was the requirement that items be removed at the end of the day and that each day begins on a first-come, first-served basis.

Ms. Palmer asked Mr. Stewart if he could send his PowerPoint to the Board members.

Mr. Stewart replied yes.

Ms. Mallek said she appreciated Mr. Kamptner's swift work to change direction to get this accomplished quickly when people reached out with concerns. She said with the amendment questions, it was important to have a space for people to be able to read the small print before going inside and then creating a traffic jam inside when they are trying to read things. She said if staff were to assign a permanent spot for anyone, doing so for the amendment considerations would be a good thing to do.

Ms. Mallek said this was different from the partisan matter. She said if they did not want to do that, they should expect that people will be there in their cars at 6:00 a.m. waiting to set up at 8:00 a.m.

Ms. Mallek said all the various items for the present year's election were important, and she could not wait for everything to begin. She said although Mr. Stewart mentioned three different political parties, the amendments will make for four different areas where people will need to be able to function.

Ms. Price said her hope was that the partisan political parties will be reasonable and behave in a manner they have historically done in Albemarle County in lining up the available spaces so that they do not have those sorts of conflicts at the very beginning and will act in a way that best serves the public, as always.

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#### Agenda Item No. 12. Closed Meeting.

At 3:35 p.m., Ms. LaPisto-Kirtley **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under Subsection (1), to discuss and consider the annual performance of the Clerk and the County Attorney; and
- Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation regarding the interpretation of a proffer that had been accepted in



conjunction with a rezoning.

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, Ms. Palmer, and Ms. Price  
NAYS: None

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Agenda Item No. 13. Certify Closed Meeting.

At 6:02 p.m., Ms. LaPisto-Kirtley **moved** that the Board 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, Ms. Palmer, and Ms. Price  
NAYS: None

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Agenda Item No. 14. 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.

Ms. Marcia Geyer (Charlottesville resident) said she was one of the organizers of the solar petition that was submitted to the Board of Supervisors and the School Board with an attachment of 88 signatures and many supporting comments. She said in the petition, the Board was asked to enact the following resolution in 2020: for County-owned buildings that can accommodate solar roofs, solar panels will be installed within five years of a roof replacement; for buildings that cannot accommodate a solar roof, if there is ground space available to accommodate a ground-based solar array, it will be added within five years of roof replacement.

Ms. Geyer said there is an overview of the reasons why the Board was urged to resolve to add solar to County buildings wherever feasible every five years or less and to begin that process in 2020. She said first, by using Power Purchase Agreements (PPAs), which avoid upfront capital costs, the County can act during the years when the COVID-19 epidemic impacts tax receipts. She said it is therefore feasible.

Ms. Geyer said secondly, in 2019, the County named Climate Action as its most important priority. She said it was more obviously important in 2020 with the number of hurricanes forming in warmed oceans and the huge extent of wildfires.

Ms. Geyer said thirdly, it was urgent and the pace of climate emergency was accelerating all over the world, either subtly or dramatically, and that Albemarle County was not exempt. She said they were all like the proverbial frog in a pot that was coming to a boil.

Ms. Geyer said fourth, businesses and families who see solar powers on County-owned buildings will be stimulated to reduce their own fossil fuel consumption. She said public buy-in was absolutely essential to meeting Albemarle's emission reduction targets. She asked the Board not to delay leading by example.

Ms. Geyer said the County will save money on its electric bills during the 20 years of each PPA term. She said the request is cost-effective.

Ms. Geyer said finally, creating solar industry jobs in Albemarle will economically better fit both County residents and the solar businesses headquartered there both at present and every five years.

Ms. Geyer thanked the Board for their attention, skillful leadership, and dedicated service.

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Mr. David Redding (EcoVillage Charlottesville, Rio District) said he wanted to first thank the Board for all the effort they put into making Albemarle County such a wonderful place to live in. He said he was a volunteer there for a number of organizations, with many of them related to climate. He said he appreciated the fact that the Board created the "Climate Monday" project last summer, and that everyone had a good talk about the various ways to learn about the direction the County was planning on going concerning climate change.

Mr. Redding said he wanted to talk about the PPAs. He said last December, Fairfax County awarded contracts for PPAs to install solar on more than 100 sites, including schools and other government buildings. He said Fairfax County's contract is rideable, which allows other counties and cities to piggyback on the award, getting the same terms without the need for new contract negotiations. He said he would send the link about this to the Board.

Mr. Redding said COVID-19 has thrown everyone's lives into turmoil, and he realized there was not enough money for many of the items that had been worked on during Climate Mondays. He said there was a pathway, however, that will provide a reduction in climate change as well as reducing the monthly cost of the County's electric bill. He said the Virginia Legislature passed the Clean Economy Act earlier that summer, which permits a larger number of Power Purchase Agreements (PPAs) than they had in the past.

Mr. Redding said Fairfax County's action gives Albemarle County a clear path. He said they expect to save millions of dollars in the next 20 years because they are using the PPAs.

Mr. Redding said as a result of the PPAs, Albemarle County can contract with a number of different companies to have them install solar panels on the roofs of the government buildings. He said this will reduce the cost of electricity while using clean power to reduce the County's carbon footprint. He said these contracts typically last for 20 years, with a contract cost of electricity that is below the cost that Dominion charges. He said the provider also pays for maintenance and repair costs of the installation during the term of the contract. He said at the end of the contract, the panels will still have 10-20 years left for generating power. He said the County can either purchase the system or have the contractor take the panels down.

Mr. Redding said one of the solar panels was planning on charging 3% of the original cost of the system. He said where the solar companies make their profit was from the 26% federal tax credit to the owner of the solar systems. He said additionally, Dominion has to charge for up to 40% loss in the power that comes from the fossil fuel plants that generated the electricity. He said there was a lot of loss and infrastructure there that was necessary. He said when solar panels are installed, there is none of that, and so it is quite a savings.

As Mr. Redding's speaking time expired, Mr. Gallaway informed him that he could submit his entire written statement to [bos@albemarle.org](mailto:bos@albemarle.org) and that they would make sure it is included in the minutes.

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Ms. Lisa Glassco (Rio District) thanked the Board for working all day on behalf of the community, expressing that it must be difficult to work so many hours over Zoom.

Ms. Glassco said in 2010, there was a young man who wanted to get solar panels put on his school. She said this man was her son, Amory Fischer. She said he worked hard on getting the "Solar on the Schools" campaign launched. She said he made many connections with people in the County, including Susan Grant at Henley Middle School in Crozet and Lindsay Snoddy in ACPS (Albemarle County Public Schools) Building Services. She said Ms. Grant was a librarian until August, when she retired.

Ms. Glassco said Ms. Grant wrote and received a grant proposal and ran many fundraisers with the goal of getting solar panels at Henley, which she did. She said it was small, however, at only 42 kilowatt hours. She said Amory wanted a larger array without managing difficult fundraisers, but Henley showed him that school solar was possible. She said he and his sister, Eleanor (who some would remember as the little girl who demonstrated how her homemade solar robot could walk across a desk), collected hundreds of signatures on petitions and turned them into the Board. She said after that, Ms. Snoddy became a key ally in his project.

Ms. Glassco said she and Amory, as well as Ms. Geyer and Mr. Reddy (who just spoke), were also part of the former 350.org chapter (a Central Virginia environmental group) and involved the local press as well as a number of teachers in the Solar on Schools effort. She said they were successful. She said in 2014, the School Board put out a request for proposals on Power Purchase Agreements.

Ms. Glassco said some may recall that in 2016, Governor McAuliffe and Mr. David Toscano came to Monticello High School to cut the ribbon for the new solar installation. She said many people, students, families, and officials, were there to see it happen. She said they all stood close to each other in the hot sun, shouted, and clapped. She said they were all elated and excited that Amory's vision had come true.

Ms. Glassco said the vision could continue if the Board will make regular solar installation a policy. She said this policy will save money and help to save the environment, which will lead to saving the future for the visions of the children.

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Ms. Donna Shaunesey said she represented the Piedmont Group of the Virginia Chapter of the Sierra Club. She said although she lived in the City, many members lived in the County, including most of their executive committee. She said they were grateful that the County set ambitious goals for tackling greenhouse gases and for their wonderfully inclusive process of creating the Climate Action Plan.

Ms. Shaunesey said she was speaking in support of the proposal to increase solar power on or near all public buildings. She said this was an excellent, no-cost way to implement the County's goals and save on utility bills at the same time. She said the added bonus was the great example the County would be setting for everyone. She said schoolchildren can monitor the output of the panels, even if COVID-19 keeps them in virtual school.

Ms. Shaunesey said she herself had panels installed on her house last winter and was still

puzzling over the ups and downs of power generation based on tree cover and weather. She said she was sure there was a science fair project for many children in analyzing this.

Ms. Shaunesey said neighbors will see how easily panels can be installed and maintained. She said there will be economic benefits to local solar companies, and that the County will save money and benefit from increased predictability about energy bills in these turbulent times.

Ms. Shaunesey asked the Board to incorporate this initiative into their Climate Action Plan in Phase 1. She said they could not afford to wait another year.

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Mr. Peter Krebs (Piedmont Environmental Council) said PEC supported the petition for a number of reasons, many of which had already been well-articulated. He said the schools tend to be well-sited for solar, making solar a good choice. He said they know that rooftop solar and distributed solar, more broadly, was definitely going to be part of the climate solution. He said from a policy standpoint, there were no reasons to wait, and he would recommend going forward.

Mr. Krebs said furthermore, the PPAs Ms. Geyer and Mr. Redding described also provide the County a way to do this, even in a moment when budget issues are uncertain because they will not encumber this or future budgets.

Mr. Gallaway closed the public comment section.

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Agenda Item No. 15. **Public Hearing: ZMA202000006 Spring Hill Village Proffer.**

PROJECT: ZMA202000006 – Spring Hill Village Proffer Amendment

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 09000000002800

LOCATION: Parcel is approx. 12.63 acres and has frontage on both State Route 742 (Avon Street Extended) and State Route 20 (Scottsville Road). Parcel is located approx. 1,600 feet to the north of the intersection of State Route 742 and State Route 20. Parcel is located approx. 330 feet south of the intersection of State Route 742 and Stoney Creek Drive.

PROPOSAL: Amend previously approved proffers per ZMA201300017 to revise the proposed improvements to Route 20 (Scottsville Road). Specifically, remove the proposed left turn lane on Route 20, and instead construct a right turn in, right turn out, left turn out at the intersection of Dauphin Drive (main road through Spring Hill Village) and Route 20. The applicant is also proposing to construct a pedestrian trail or path along Route 20 instead of the previously approved 8-foot sidewalk. The application plan has been updated to show these changes.

PETITION: Proffer amendment of ZMA201300017.

ZONING: NMD Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses.

ENTRANCE CORRIDOR: Yes

PROFFERS: Yes (ZMA2013-17)

OVERLAY DISTRICT: Steep Slopes (managed)

COMPREHENSIVE PLAN: Community Mixed Use – residential (up to 34 units/acre), community scale retail, service and office uses, places of worship, schools, public and institutional uses in the Southern and Western Urban Neighborhoods.

The Executive Summary forwarded to the Board states that, at its meeting on July 21, 2020, the Planning Commission voted 7:0 to recommend approval of ZMA202000006 with the changes outlined in the staff report and with a recommendation that sufficient methods are employed to prevent U-turns on the adjacent property to the north.

The Planning Commission's staff report, action letter, and minutes are attached (Attachments A, B, and C).

The applicant has updated the application plan to make the recommended revisions as stated in the staff report and as recommended for approval by the Planning Commission. The attached Proffers (Attachment D) have been revised to make minor wording changes for clarification.

Since the Planning Commission public hearing, the applicant has met with the adjacent property owner of Tax Parcel 90-35V and proposed placing a median within the entrance to the parcel, which would make U-Turns less feasible. This layout would have been acceptable to VDOT, however, the adjacent owner did not agree to this layout. VDOT does not find there are any changes that can be done completely within the right-of-way that would also prevent U-Turns on this property. The applicant has explored several other options, however, none were acceptable to both the adjacent owner and VDOT. Staff finds that the applicant has sufficiently addressed this concern.

Staff recommends that the Board adopt the attached Ordinance (Attachment F) to approve ZMA202000006.

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Ms. Tori Kanellopoulos, Lead Planner for the project, said she was joined by Mr. Adam Moore (VDOT) and Mr. Daniel Butch (Transportation Planner).

Ms. Kanellopoulos said the request was to amend proffers and the application plan for the approved Spring Hill Village rezoning in order to remove a proposed left turn lane on Route 20 and to

change the proposed sidewalk along Route 20 to a path.

Ms. Kanellopoulos said the 12.5-acre site is located between Avon Street Extended and Route 20. She said it is located across Avon Street from the Avon Park development, and that the Rural Area is located across Route 20 to the east. She said adjacent parcels to the north are zoned Light Industrial and include a variety of commercial and industrial uses. She said adjacent parcels to the south and west are zoned R1 and R6 Residential. She said as shown by the aerial map on the screen, Spring Hill Village was in the process of being developed.

Ms. Kanellopoulos presented pictures from staff's site visit. She said one image showed the view from Spring Hill Village at Avon Street Extended, looking down towards Route 20. She said another image showed the current construction entrance off of Route 20 into Spring Hill Village, looking south.

Ms. Kanellopoulos said the community meeting requirement was met in the form of mailed letters with information about the proposal, with response options including contacting staff via email or phone call, or using an online input form. She said the applicant mailed letters to property owners within a 500-foot radius of the proposal on June 5. She said staff received a total of four individual responses via email and Microsoft Forms. She said the major concerns heard were access to the site (especially with drivers potentially using the adjacent property to the north to make U-turns); and traffic, with the potential for more traffic to be diverted to Avon Street Extended.

Ms. Kanellopoulos said the property is zoned Neighborhood Model District, per approved application plan and proffers with ZMA2013-17. She said this rezoning approved up to 100 dwelling units, and between 10,000 and 60,000 square feet of nonresidential uses. She said staff was reviewing a final site plan for the development for 100 dwelling units for Phase 1. She said the nonresidential development will be submitted as Phase 2.

Ms. Kanellopoulos said the property is located within the Entrance Corridor Overlay District, as Route 20 is an entrance corridor. She said if the proffer amendment were approved, the applicant would need to amend their site plan and road plan to match the updated application plan and proffer requirements.

Ms. Kanellopoulos noted that the code of development (included as Attachment A9) was the current code and was not changing with this application. She said the code was last updated with a special exception approved by the Board on May 20. She said the only changes to the rezoning with this application were Proffer #4 and to the application plan (specifically, the Route 20 improvements).

Ms. Kanellopoulos said the property is designated "Community Mixed Use" in the Comprehensive Plan. She said as noted in the staff report, analysis of this development's consistency with the Comprehensive Plan was completed with the original rezoning. She said therefore, staff analyzed the proffer amendment application for consistency with the relevant portions of the Comprehensive Plan and Southern and Western Master Plan.

Ms. Kanellopoulos said staff found that this application would provide the same level of multimodal connectivity as the original rezoning. She said staff also found that a path was more fitting with the character of Route 20 instead of a sidewalk. She said a path was also approved with the Galaxie Farm rezoning in 2019.

Ms. Kanellopoulos said removing the left turn lane also results in less land disturbance and fewer lanes, which was more in line with the rural character on Route 20 that the Southern and Western Master Plan calls for.

Ms. Kanellopoulos said the proposal was to amend Proffer #4 as approved with ZMA2013-17, as well as the relevant requirements of the application plan. She said specifically, the revised proffers application plan would eliminate the left turn requirement on Route 20. She said it would also change the timing of the required Route 20 improvements so that they must be completed before the thirtieth certificate of occupancy, as Fire Rescue requires two entrances after the thirtieth dwelling unit. She said the revisions would also require a path along the frontage of Route 20 instead of a sidewalk.

Ms. Kanellopoulos noted that the landscaping on the application plan was conceptual only, as Architectural Review Board review and approval will be required with the final site plan. She also noted that the revised application plan would replace the existing application plan dated August 29, 2014.

Ms. Kanellopoulos presented a comparison between the current approved rezoning and the proposed changes per this application. She said the image on the left showed ZMA2013-17 and the left turn lane on Route 20 into Spring Hill, with a sidewalk along the frontage. She said the image on the right showed the new proposed design of the Spring Hill entrance, with the removal of the left turn lane and no option to turn left in. She said it also showed the proposed path along the frontage, which was a conceptual location and will have public access regardless of its final location.

Ms. Kanellopoulos presented an image that showed how cars traveling northbound on Route 20 would access Spring Hill. She said drivers would turn left onto Avon Street Extended from Route 20, then drive up Avon Street Extended and turn right into Spring Hill. She said there were concerns from the adjacent property owner to the north of Spring Hill that drivers will use their property to make U-turns to turn into Spring Hill instead of using Avon Street.

Ms. Kanellopoulos said the applicant estimated that approximately 5 drivers per day would be traveling northbound on Route 20, traveling to Spring Hill. She said VDOT and Transportation Planning staff found this estimate to be reasonable, and unlikely that drivers would make a U-turn instead of turning left onto Avon Street. She said this was not possible to guarantee, however.

Ms. Kanellopoulos said additionally, the construction of a left turn lane on Route 20 would require significant land disturbance, especially in the right-of-way area at the front of the property directly to the south of Spring Hill. She said staff found that this was disturbance was less preferable, given that Route 20 is a dividing road between the Development Area and Rural Area and is intended to have a more rural character.

Ms. Kanellopoulos said VDOT and Transportation Planning staff found it likely that residents of Spring Hill would develop patterns and learn that Avon Street Extended was the optimal route.

Ms. Kanellopoulos said staff found favorable and unfavorable factors for the proposal. She said the unfavorable factor was addressed at the Planning Commission public hearing, as the applicant made the requested changes to their application plan.

Ms. Kanellopoulos said staff recommended approval of ZMA202000006. She said the Planning Commission, at their meeting, voted 7-0 to recommend approval of the rezoning with the changes outlined in the staff report and with the recommendation that the applicant work with the adjacent property owner to the north to attempt to find a solution to prevent U-turns on the adjacent property.

Ms. Kanellopoulos said that since the Planning Commission public hearing, the applicant made all the changes to their application as outlined in the staff report. She said the applicant also met with the adjacent property owner to the north and proposed several options to both the owner and to VDOT. She said this included a proposed median on the adjacent property, which VDOT found to be an approvable layout. She said at that time, however, the adjacent owner did not agree to the proposal. She said that by the time final documents were placed on the Board's agenda, the two parties had not found a solution. She said it appeared, however, that the applicant possibly had an update to present that evening.

Ms. Kanellopoulos concluded her presentation and offered to answer questions.

Ms. Mallek said in Phase 2, the commercial, retail, or mixed-use part was going to be on the south end of the lot. She said she did not understand where the five-car-per-day estimate came from or why this was deemed to be reasonable.

Ms. Kanellopoulos said she would defer to the applicant to share their analysis of how they came to that number.

Ms. Mallek said the applicant could address this later.

Ms. Price said she would hold her questions until after hearing from the applicant.

Mr. Gallaway opened the public hearing and invited the applicant to speak.

Mr. Jeremy Swink (Stanley Martin Homes) said he represented the applicant. He said the idea for the road improvements and change came to fruition through the public process. He said at the public preliminary plat meeting with staff to review the initial layout for the project, the neighbor to the south on Route 20 was in attendance. He said the applicant had previously worked with the neighbor to the north to negotiate an easement to bring the sewer from Avinity Estates, where the sewer stopped all the way down to the applicant's property. He said they had previously met the owner to the north, but that he had not encountered the owner to the south before that public meeting.

Mr. Swink said the neighbor came to the meeting with a valid concern and one that he had not thought of before. He said looking at the property improvements and scope of work, creating the new left turn lane (as well as the turn lanes into the community) resulted in a three-lane to four-lane road improvement, which would take from right-of-way line to right-of-way line on Route 20, which roughly 500 feet along the frontage. He said it was across the neighbor's entire frontage for right-of-way.

Mr. Swink said as a result, looking at this on paper together, what the neighbor perceived to be his yard was actually 20 feet of the right-of-way. He said the neighbor had a 20-foot wooded buffer between his yard and Route 20 that was going to disappear as a result of the proffered road improvements because the applicant had to work from right-of-way line to right-of-way line to fit the entire section within the property.

Mr. Swink said initially, his thought was that there was nothing they could do about this, as it was proffered. He said he had assumed it was scaled appropriately for the development. He said his engineer, Mr. Scott Collins, suggested going back to take a look because one of the things he noted was that when Spring Hill was originally approved (adding that he was not the applicant during the original approval), there had been quite a bit more flexibility in zoning for more commercial and less residential.

Mr. Swink said his company is a 100% for-sale residential builder and developer, and that commercial was outside of his bailiwick. He said his company does partner with other companies to do commercial from time to time, in projects spanning from Maryland down to Georgia. He said with this project, however, it was maximized for for-sale residential, and so the commercial component, while it

could have been much larger, was down to 0.6 acre. He said he was not an expert in commercial but that arguably, it was not really viable, given the size. He said they did not assign much value to it, and he was not exactly sure what could go there someday.

Mr. Swink said looking at this and how the layout was shaping up, one of the things that was important for a vibrant commercial pad of a larger size would be a full-scale entrance, with left turn lanes and right turn lanes into the neighborhood as well as out. He said if he viewed the commercial as not necessarily viable to begin with, or not as viable as perhaps the initial rezoning plan had assumed it would be, all those movements would be important to the viability of that commercial use.

Mr. Swink said the applicant looked at this and determined that if they eliminated the left-hand turn lane into the community from Scottsville, heading north on Route 20, this would be important for a commercial developer, but it was not that important for a residential component. He said most of the residents within the neighborhood would be traveling towards Charlottesville for work, so their ability to turn left onto Route 20 was important. He said he did not foresee, however, that many people would be coming from Scottsville to the community, aside from visitors coming to visit future residents there.

Mr. Swink said this was how they arrived at their decision. He said Mr. Collins and his team conducted traffic studies and ran these by VDOT and County staff. He said the applicant determined they have a viable solution for the neighbor to the south and can help retain the buffer that is mostly in the right-of-way.

Mr. Swink said at the Planning Commission meeting, the neighbor to the north, who had sent a letter with concerns about the change, was able to connect with the applicant. He said the northern neighbor's concern was that people driving from Scottsville to the neighborhood would miss the turn, then come into his commercial entrance to make a U-turn in order to come back and make a right into the community.

Mr. Swink said this was a valid concern, and so he and Mr. Collins went back to the drawing board and came up with a plan that included a median to divide the neighbor's entrance. He said they would widen his entrance with curb and gutter so that tractor trailers coming in and out of the site would still have a good turning radius.

Mr. Swink said that as of that Monday, when they last met (which was a friendly and cordial negotiation to determine the best approach), it seemed that the median solved the issue of people taking a left into the neighbor's parking lot to make a U-turn and come into the neighborhood. He said the only outstanding matter for the neighbor was evaluating the potential for a right turn lane into his business so that people slowing down and taking a right can enter safely. He said the applicant was trying to make sure this was a viable solution, but that he believed they were heading on the right track.

Mr. Swink welcomed questions from the Board.

Ms. Price said she would have some questions after the public hearing.

Mr. Roger Schickedantz (Scottsville District) said he was the property owner immediately to the south of the subject property. He said he was very much in favor of the amendments, with one of the many reasons being the buffer. He said he now looked forward to having 100 residences to the north, and it had been a bit of a shock that he would be losing a portion of his front yard, even though he understood it was in the right-of-way. He said this provided a significant buffer.

Mr. Schickedantz added that there was a stone stair to the street that was originally built to the house and that this would have had to be relocated. He said there had been other issues with maintenance with the proposal in terms of grades, the need for possible retaining walls, and alignment with the paths. He said with the proffer amendment, those issues would go away, which was primarily why he was in favor of it.

Mr. Schickedantz said there was another issue that, in his mind, had not been addressed sufficiently before. He said the turn lane that was originally proposed that ran along the entire frontage of his property came in at an acute angle to his driveway. He said there was already a hazardous situation because of the hump in the road there, with traffic coming southbound, and that this would be made worse. He said for safety reasons, he was supporting the amendment.

Mr. Schickedantz said separately from the amendment, he was eager to have a discussion about reviewing the speed limit along Route 20 and possibly lowering it to 45 mph. He said this was part of the issue for the length of the original turn lane that was proposed. He said he knew the property owner to the north also had concerns about the speed limit.

Mr. Schickedantz said he was in favor of the amendment and if it were not accepted, he hoped there would be an opportunity to again address the other issues with the stairs and retaining walls before the site plan is approved.

Mr. Peter Krebs (Piedmont Environmental Council) said PEC was very much in favor of the amendment. He said he was pleased when he looked at the site plan. He said Ms. Kanellopoulos did a great job of explaining the merits, but he would go a little further than this. He said Ms. Kanellopoulos said it would be the same amount of connectivity, but that he believed the shared use path being away from the street and possibly shaded with a buffer would be much more appealing to a broader range of people.

Mr. Krebs said he therefore believed that connectivity would be improved along Route 20. He said he believed someone would be much more likely to use a bicycle on a shared use path, for example, than they would be on a sidewalk.

Mr. Krebs added that this was an interesting place in the County where there was a real neighborhood across from a true Rural Area. He said Ms. Kanellopoulos had subtly mentioned this, but that he believed a path was also in keeping with the semi-rural character while also providing the connectivity that makes urban Albemarle so livable.

Mr. Krebs said although his next comment was not a matter that the Board would be voting on, he wanted to point out and praise the earlier proffer on the other side of the property that allowed for a shared use path along Avon Street. He said the Avon Corridor Plan was a high priority for everyone, and so this would be an important installment in the implementation of the plan.

Mr. Gallaway closed the public hearing and brought the matter back to the Board.

Ms. Price asked Ms. Kanellopoulos if she could again show the slide with the comparison between the previous plan (that had a left turn lane into the property coming north on Route 20) and the current one.

Ms. Price asked Mr. Swink if he could further speak to how he envisioned the resolution with regard to the property to the north. She said the questions there had been related to potential U-turns by people heading north because they cannot turn left into the development, and she wanted to make sure she understood how Mr. Swink envisioned how this might be resolved to avoid that.

Mr. Swink shared his screen to show the plan he had been discussing with the neighbor. He noted this was the new version of what the applicant was asking to be able to do. He indicated on the plan to the neighbor's location. He said this was the plan developed before the meeting with the neighbor, and that the entrance on this plan was not quite as wide. He indicated on the plan to the place where the curb and gutter stopped.

Mr. Swink said the idea the applicant shared with the neighbor was that they could place a median in their entrance. He said this was similar to the median in the applicant's entrance, except it would allow for a left turn in while the applicant's entrance would not. He said this type of median would still allow someone coming from Scottsville, north on Route 20, to make a left turn into the neighbor's business, which is important to him. He said most of the traffic would come from I-64 and would make a righthand turn, but that keeping the left-hand movement was important as well.

Mr. Swink said the proposed median would make it very difficult for a driver to make a U-turn, then come into the community. He said in the first iteration sent to the neighbor, the median was moved farther back, and the neighbor commented that while he felt this was a step in the right direction, the median looked as if it was not far enough out to disincentivize drivers from making the U-turn.

Mr. Swink said the neighbor's next comment was related to what the profile and section were. He said what he shared with the neighbor was that because this was hitting the VDOT right-of-way, it should be an MS2 median, which has a profile of about 6 inches. He said the neighbor's concern had been that if the profile were 1 foot, a truck could roll over and have some trouble. He said the neighbor was then fine with the profile.

Mr. Swink said the last concern brought to him during the meeting that Monday was that there had previously been a turn lane there, and the neighbor was worried about people making a more abrupt turn into the neighborhood.

Mr. Swink said he believed that the way the entrance swept into the neighborhood likely alleviated the neighbor's concern. He said he told the neighbor that he and Mr. Collins would go back and evaluate a small turn lane on the neighbor's property in the median, which would give trucks and the employees coming into his business a way to pull off and let traffic go around them. He said this would be a much better condition than what currently exists.

Ms. Price said she was not sure from Mr. Swink's earlier comments whether the median was there, or if it would be in the middle of Route 20, and so she appreciated Mr. Swink clarifying that.

Ms. Price said if the development still were to have the commercial or business component, it would be very difficult not to have a left turn lane moving north on Route 20. She said if this component were truly no longer a viable option, what they were talking about would principally be visitors or residents coming north from Route 20, who could make a left onto Avon and go up.

Ms. Price said Avon Street was also becoming busier, with Biscuit Run Park going in as well. She said she recognized the concerns of the residents living off of Avon Street Extended.

Ms. Price said she had a question that may be more addressed to Mr. Moore or Mr. Butch, which followed up on Mr. Schickedantz's comments. She asked what the prospect was of reducing the speed limit from 55 mph to 45 mph from the intersection of Avon Street Extended and Route 20 going north. She said it was not particularly far from that intersection to the traffic light at Mill Creek where the speed limit does reduce.

Mr. Adam Moore, Charlottesville Residency for VDOT, replied that the prospect would be dependent on the results of a speed study that the County can request of VDOT at every time. He said VDOT works closely with Mr. Butch and Mr. Kevin McDermott on locations where they believe they need to do a speed study. He said the results of this would inform if a 45-mph speed limit would be more appropriate.

Ms. Price encouraged County staff to begin looking into this if they had not already. She said looking at this buildout, with Avinity and other development taking place that will have egress points on Route 20, this becomes a safety concern.

Ms. Price said she understood there was both a pro and con to this, and asked if there were any considerations of placing any sort of signage shortly south of the intersection of Avon Street Extended and Route 20 that would notify northbound drivers that access to Spring Hill Village would be a left turn onto Avon Street Extended so that there are not drivers coming north on Route 20 who experience the panic moment of not being able to turn left into the development.

Mr. Moore replied that he believed having a wayfinding sign or two was possible. He said if they believed it to be necessary, he knew the County had a sign process that normally takes place separately from VDOT, but that VDOT could figure something out.

Ms. Price asked Mr. Butch if there were any comments Transportation staff would offer in response to her queries.

Mr. Butch replied that they were in agreement with what was proposed in the presentation by Ms. Kanellopoulos, the applicant, and VDOT. He said staff looked at the proposed trips heading northbound on Route 20 and that in the application material, it mentioned five trips per day. He said staff's view was that removing the left turn lane from Route 20 and sending the drivers to Avon Street Extended would not have a significant impact on Avon.

Ms. Price said when she first saw the application, she had some concerns about it because of the loss of the left turn lane moving north on Route 20 into a fairly substantial development. She said the applicant, as well as Mr. Moore and Mr. Butch, however, were able to address her concerns.

Ms. Price said she saw some real benefits as well. She said they knew the triangle between Route 20 North, Avon Street Extended, and Mill Creek was a developing area. She said were seeing this with Spring Hill Village, Avinity, and others that were coming in. She said in the data analysis that was provided, she saw a great benefit in being able to protect the property to the south while maintaining the more rural nature of Route 20 by not having the left turn lane into the development. She said this was an application where, at the outset, she had concerns, but that she did not have those concerns any longer.

Ms. Price **moved** to adopt the Ordinance (Attachment F) to approve the Zoning Map Amendment for ZMA202000006 Spring Hill Village Proffer Amendment. 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, Ms. Palmer, and Ms. Price  
NAYS: None

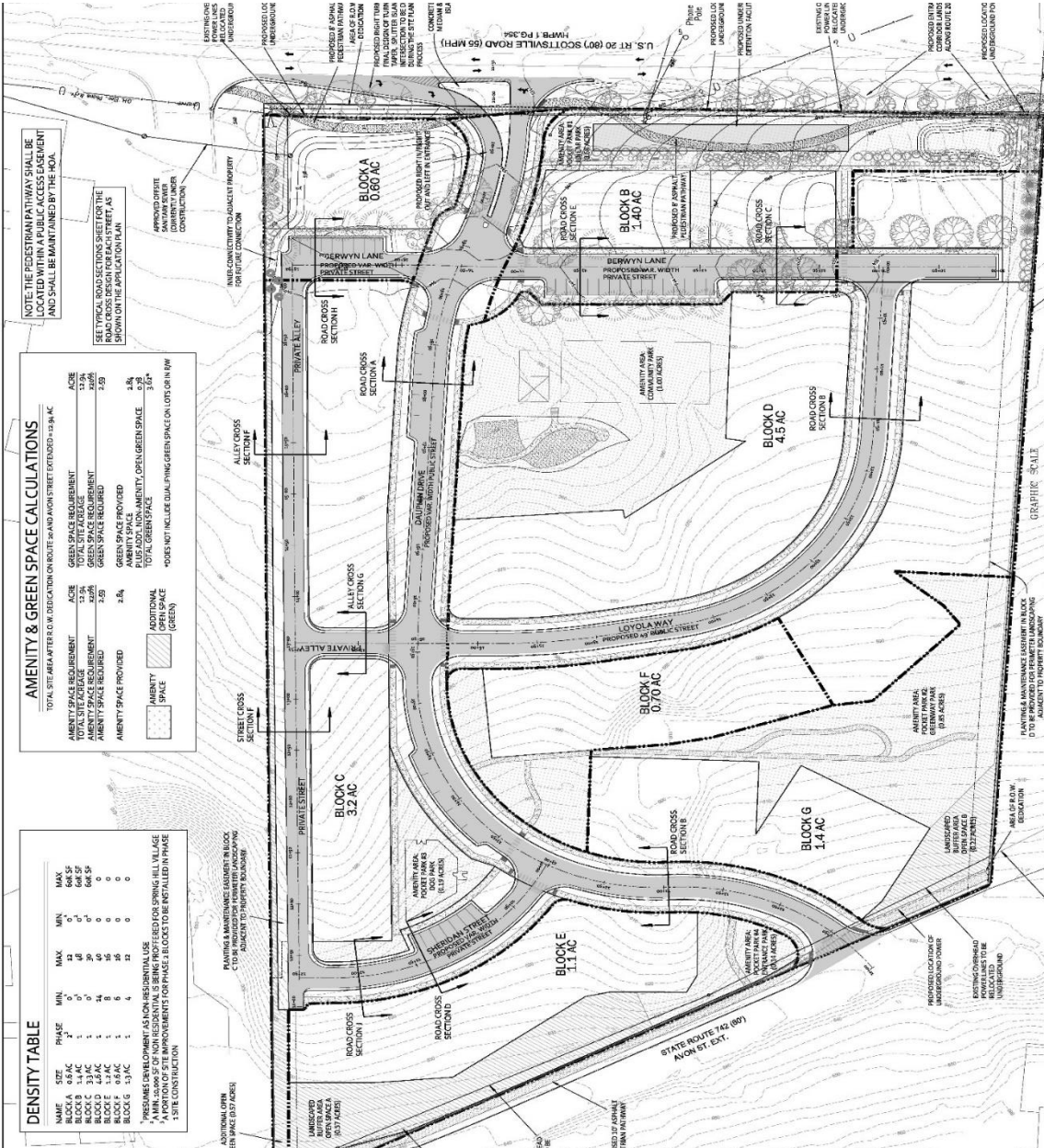
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**ORDINANCE NO. 20-A(12)**  
**ZMA 2020-00006**

**AN ORDINANCE TO AMEND THE ZONING MAP**  
**FOR TAX PARCEL 09000-00-00-02800**

**BE IT ORDAINED** by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2020-00006 and their attachments, including the application plan dated August 21, 2020 and the proffers dated August 24, 2020, the information presented at the public hearing, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-20A.1 and 18-33.27, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2020-00006 with the application plan dated August 21, 2020 and the proffers dated August 24, 2020.





Original Proffers ZMA2013-00017  
Amendment YES

**Spring Hill Village**

**PROFFER STATEMENT**

Date: **August 24, 2020**  
ZMA No. 2020-00006, **Spring Hill Village**  
Tax Map and Parcel Number(s): **TMP 09000-00-00-02800**  
Owner(s) of Record: **Stanley Martin Companies, LLC**  
Project Address: 1776 Scottsville Road  
Magisterial District: Scottsville

12.63 Acres to be rezoned from **Neighborhood Model District (NMD)to Neighborhood Model District (NMD)**

The term “Owner” as referenced herein shall include within its meaning the owner of record and successors in interest. The “Application Plan,” refers to the Application plan last revised August 21, 2020, prepared by Collins Engineering.

Pursuant to Section 33.22 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These proffers are part of the requested rezoning and the Owner and applicant specifically deem the following proffers reasonable and appropriate, as conclusively evidenced by the signature(s) below.

**1. Affordable Housing.**

(The Affordable Housing Units will be provided in the form of for sale or rental units.) The community could have as few as 80 units and as many as 100 dwelling units. The Owner shall provide 15% of the dwelling units constructed as “Affordable Housing Units” within the Project in the form of 2 or 3 story townhomes.

The Albemarle County affordable housing policy defines affordable housing as the following: Affordable Housing, in general terms means safe, decent housing where housing costs do not exceed 30% of the gross household income. Housing costs for homeowners shall include principal, interest, real estate taxes, and homeowner’s insurance (PITI). Housing costs for tenants shall be tenant-paid rent and tenant-paid utilities with maximum allowances for utilities to be those adopted by the Housing Office for the Housing Choice Voucher Program. Affordable Housing is defined, for the purpose of this policy, as those houses affordable to the forty percent of the County population that have household income at or below 80% of the area median income. For 2003, the maximum affordable home purchase (80% median

income) would be \$172,000 and maximum housing costs (rent and utilities) for tenants would be \$787 (50% median income.)

Each Affordable Housing Unit shall be located on a single lot. The Owner shall have offered for rent or sale as provided herein each Affordable Housing Unit within the project. The Owner shall convey the responsibility of constructing the Affordable Housing units to the subsequent owners of lots designated affordable on the site plans or plats.

- A. Rental Rates. The initial net rent for each for-rent Affordable Housing Unit shall not exceed the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent Affordable Housing Unit may be increased up to three percent (3%). For purpose of this proffer statement, the term “net-rent” means that the rent does no include tenant-paid utilities. The requirement that the rents for such for-rent Affordable Housing Units may not exceed the maximum rents established in this paragraph shall apply for a period of ten (10) years following the date he certificate of occupancy is issued by the County for each for-rent Affordable Housing Unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the “Affordable Term”). The Owner of each Affordable Housing Unit shall, at the request of the Albemarle County Office of Housing, provide written reports documenting rental rates and occupancies of the affordable units.
- B. For Sale. All purchasers of for-sale Affordable Housing Units shall be approved by the Albemarle County Office of Housing or its designee. The Owner shall provide the County or its designee 180 days to identify and pre-qualify an eligible purchaser for the Affordable Housing Units. The 180- day period shall commence upon written notice from the Owner that the units will be available for sale. This notice shall not be given more than 120 days prior to the anticipated receipt of the certification of occupancy. If the County or its designee does not provide a qualified purchaser during this period, the Owner shall have the right to sell the units without any restriction on sales price or income of purchaser. If these units are sold, this proffer shall apply to the first sale of each unit. The maximum sales price for Affordable Housing Units (65% of VHDA’s Maximum Sales Price for First-time Homebuyers.) The calculation currently put the maximum sale price for Affordable Housing units at \$211,250.
- C. Conveyance of Interest. All deeds conveying any interest in the for-rent Affordable Housing Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 1. In addition, all contracts pertaining to a conveyance of any for-rent Affordable Housing Unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by paragraph 1A. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then current owner shall notify the County in writing of the conveyance and provide the name, address, and telephone number

of the potential grantee, and state that the requirements of this paragraph 1C have been satisfied.

2. **Cash Proffers for Residential Units.** Beginning with the thirteenth residential unit for which a building permit is obtained, the Owner shall contribute cash for each new residential unit that is not classified as an Affordable Housing Unit. The cash contribution shall be for the purposes of addressing the fiscal impacts of development on the County's public facilities and infrastructure, i.e. schools, public safety, libraries, parks, and transportation. The cash contribution shall be Twenty Thousand Four Hundred Sixty and 57/100 dollars (\$20,460.57) cash for each new single-family detached dwelling unit. The cash contribution shall be Thirteen Thousand Nine Hundred Thirteen and 18/100 dollars (\$13,913.18) cash for each single family attached or townhouse dwelling unit. The cash contribution shall be paid at the time of the issuance of the certificate of occupancy for each new unit in order to be consistent with current state law.

Beginning January 1, 2015, the amount of the cash contribution required by this proffer shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by this proffer. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the preceding calendar year, and the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended.

3. **Over Lot Grading.** The owner shall submit an over-lot grading plan (hereinafter the "Plan") meeting the requirements of this paragraph 3 with the application for each subdivision phase of this paragraph 3 with the application for each subdivision phase of the Property. The plan shall show existing and proposed topographic features. The Plan shall be approved by the County Engineer prior to approval of an Erosion and Sediment Control plan. No building permit shall be issued for any dwelling on a lot where the County Engineer has determined the lot grading is not consistent with the approved Plan. The plan shall satisfy the following:
- a. The Plan shall show all proposed streets, building sites, setbacks, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
  - b. The Plan shall be drawn to a scale not smaller than (1) inch equals fifty (50) feet.
  - c. All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be designed to assure that surface drainage can provide adequate relief from the flooding of dwellings in the event a storm sewer fails.
  - d. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1.) Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and

sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.

- e. Surface drainage may flow across up to three (3) lots before being collected in a storm sewer or directed to a drainage way outside of the lots.
- f. No surface drainage across a residential lot shall have more than one-half (1/2) acre of land drainage to it.
- g. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
- h. The plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if it is less than ten (10) feet, from the portion of the structure facing the street, has grades no steeper than ten (10) percent adjacent to possible entrances to dwellings that will not be served by a stairway. This area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.
- i. Any requirement of this proffer may be waived by submitting a request for special exception with the over-lot grading plan. If such a request is made, it shall include a justification for the request containing a valid professional seal from a Professional Engineer, Landscape Architect or Land Surveyor. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree.
- j. In the event that the County adopts over-lot grading regulations after the date this proffer is approved, any requirement of those regulations that is less restrictive than any requirement of this proffer shall supersede the corresponding requirement of this proffer, subject to the approval of the Director of Community Development.

#### **4. Improvements to Scottsville Rd and Avon Extended**

At its sole expense, the Owner must plan, design, bond and construct the improvements shown on the County approved engineering drawings titled Spring Hill Village – Application Plan, sheet 1 dated 8.21.20 as prepared by Collins Engineering, for both Scottsville Road and Avon Extended. The improvements must be designed and constructed to the County and VDOT standards, including the design and construction of the related drainage, slope and utility easements as applicable. The improvements along Avon Extended must have been completed and approved by VDOT and the County prior to the first certificate of occupancy for any structure on the Property, and the improvements along Route 20 must have been (i) approved and bonded prior to the first certificate of occupancy, and (ii) completed and approved by VDOT and the County prior to the 30<sup>th</sup> certificate of occupancy. As part of this process, the dedication to public use must have been completed before the 30<sup>th</sup> certificate of occupancy may be issued. The improvements will be deemed complete when they are accepted into the secondary system of highways or when the County Engineer determines that the roadway is safe and convenient for travel.


This document shall supersede all other agreements, proffers, or conditions that may be found to be in conflict. These proffers shall be binding to the property, which means the proffers shall be transferred to all future property successors of the land.

**OWNER(S) of Tax Map Parcel 09000-00-00-02800**

By: \_\_\_\_\_

By: \_\_\_\_\_

**Stanley Martin Companies, LLC**, a Virginia limited liability company (Contract Purchaser)

By:  \_\_\_\_\_

Jeremy W. Swink, Vice President, Land – Charlottesville and Richmond Divisions

Date: August 24, 2020

- Agenda Item No. 16. **Public Hearing: SP201900002 Pleasant Green.**  
PROJECT: SP201900002 Pleasant Green  
MAGISTERIAL DISTRICT: White Hall  
TAX MAP/PARCEL: 05600-00-00-11500; 056A1-01-00-030A0; 055C0-03-00-000A1  
LOCATION: Southwest of Cling Lane and northeast of Peach Tree Drive and Orchard Drive  
PROPOSAL: Amendment to SP2016-003 West Glen for relocation and construction of stream crossing of Powell's Creek with box culvert and roadway in floodplain.  
PETITION: Fill in the Flood Hazard Overlay under section 30.3.11  
ZONING: R-6 Residential – 6 units/acre  
OVERLAY DISTRICT: FH – Flood Hazard Overlay  
COMPREHENSIVE PLAN: Neighborhood Density Residential – 3-6 units /acre, supporting uses such as religious institutions, schools and other small-scale non-residential uses; Greenspace – public parks, open space, environmental features.

The Executive Summary forwarded to the Board states that, at its meeting on July 14, 2020, the Planning Commission conducted a public hearing and voted 7:0 to recommend approval of SP2019-00002, with the conditions as stated in the staff report. Attachments A, B, and C are the Planning Commission staff report, the Planning Commission action letter, and minutes from the meeting.

The Planning Commission raised no objections to this request to amend the originally approved

special use permit, SP2016-00003, which was approved by the Board of Supervisors on September 14, 2016. No members of the public spoke at the public hearing of the Planning Commission.

Staff recommends that the Board adopt the attached Resolution (Attachment D) to approve SP201900002.

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Ms. Megan Nedostup, Principal Planner, said she was joined by Mr. Frank Pohl (County Engineer). She said this was a request to amend Special Use Permit SP2016003 to relocate the stream crossing that was approved with that application. She said these special use permits are required for crossings within the Flood Hazard Overlay.

Ms. Nedostup said there were three parcels impacted by the stream crossing. She indicated on a map to a gold star on a large parcel, noting that this was west of Downtown Crozet. She indicated on the map to Cling Lane, Peachtree Lane, Orchard Drive, and Jarmans Gap Road (going downtown, from the east). She said the three indicated parcels were located west of Blue Ridge Avenue.

Ms. Nedostup said there were three properties impacted by the stream and currently zoned R6 Residential, which allows up to 6 units per acre. She said this crossing was part of a larger by-right subdivision.

Ms. Nedostup said the Crozet Master Plan designates the area and parcels as Neighborhood Density Residential, which is 3-6 units per acre. She said the green area shown on the map was designated as Parks, Open Space, and Environmental Features. She said the Crozet Master Plan also included dashed lines, which indicated conceptual locations of potential future roads. She said although the crossing was not consistent with the road location shown in the master plan, the Transportation Planner did state that three connections would help distribute the traffic and recommend a crossing.

Ms. Nedostup said with the by-right subdivision, there would be a connection to Cling Lane, a connection to Blue Ridge Avenue, and a connection to Orchard Drive. She said the Transportation Planner also stated that a connection to Orchard Drive can more safely handle the traffic load from the development and would quickly disperse cars onto Jarmans Gap Road, providing a safe and direction connection to Downtown Crozet.

Ms. Nedostup noted that Blue Ridge Avenue was currently a deficient roadway. She said it was a public road, but was not built to current road standards and was not designed to carry a large volume of traffic. She said dispersing the traffic will help this current condition.

Ms. Nedostup said the history of the crossing was that in 1990, a special use permit was approved that required the crossing and a second access for the development of the residue parcel adjacent to Cling Lane. She said with the development of the property, a condition was put on that special use permit that with any future development east of that area, an additional connection would be required.

Ms. Nedostup said in 2016, with SP201603, in order to satisfy the 1990 condition, the development of the parcels east of Cling Lane approved that connection. She said since the 2016 approval, some additional parcels to the east were acquired, and the applicant requested that the crossing be located approximately 925 feet downstream from the approved crossing to allow for a lesser impact.

Ms. Nedostup said a site plan and subdivision plat were approved for Phase 1, and that a site plan and subdivision plat were under review for Phase 2. She said Phase 2 included the crossing she indicated to on the map.

Ms. Nedostup said the image on the left side of the screen was the approved crossing for the special use permit from 2016, and that the proposed crossing was shown on the right. She said the revised location will greatly reduce the impact to the stream and floodplain. She said the previous impact to the stream buffer was 1.22 acres and 9,660 square feet of preserved slopes. She said the revised location will be 0.62 acres of impact to the stream buffer, with no impacts to the preserved slopes.

Ms. Nedostup added that linear footage of roadway and drainage improvements will be reduced from 1,200 linear feet to 450 linear feet. She said the crossing will consist of a 10 x 10 box culvert, and the applicant demonstrated that it will not cause a rise in the basic floodplain elevation.

Ms. Nedostup said the applicant was also proposing to maintain the area south of Powell's Creek in open space, as shown in the Crozet Master Plan. She said a greenway and trail connection was also shown on the plan. She said the applicant also proposed to dedicate that area for the trail connection.

Ms. Nedostup presented the larger plan for the Pleasant Green development. She said the proposed roadway was part of the subdivision that will connect to Cling Lane. She said it currently ends in a cul-de-sac, as well as the connection of Blue Ridge Avenue and the connection to Orchard Drive.

Ms. Nedostup said if the special use permit were approved, the applicant was proposing to develop the full property with the R6 by-right subdivision.

Ms. Nedostup said the mitigation measures that would be in place with the conditions were the removal of the 5-foot dam and stream bank restoration, mitigation plantings with the greenway dedication,



and support from the Army Corps of Engineers for the dam removal.

Ms. Nedostup presented the factors for consideration. She said a favorable factor was that the new location will greatly reduce the impact on the stream buffer and floodplain. She said other favorable factors were that the stream crossing will allow development on the property consistent with the Crozet Master Plan; that the applicant was proposing a greenway dedication identified within the Crozet Master Plan; and that the stream crossing in this location promotes interconnectivity and disperses traffic onto a road system that is able to handle the traffic load.

Ms. Nedostup said the sole unfavorable factor identified was that the Crozet Master Plan did not identify a road with a stream crossing in this location.

Ms. Nedostup said there were seven conditions recommended by staff and the Planning Commission. She said she would not read these verbatim, but could revisit them if there were questions. She noted that these were the same conditions that were approved with the 2016 special use permit, with one minor amendment to Condition #1 to reference the revised plan.

Ms. Nedostup said the Planning Commission did recommend approval of the special use permit. She concluded her presentation and offered to answer questions.

Ms. Mallek asked who would be responsible for the dam removal, cleanup, and testing. She said when West Glen was approved, the Board at that time approved it in many ways because they were told that it was a huge hazard and that the developer would be taking on the risk of removing the supposedly noxious material there. She said they voted for the approval and now, the story seemed to have changed dramatically.

Ms. Mallek said there were new owners and now, there was nothing in this about damage, and so perhaps all these spoils would be spread upon this property, which was of great concern to her. She said her ultimate goal was that there would be a change in the condition that would say it would not be spread on the property, and that it would be handled more appropriately. She said she would love to have some information from either staff or the applicant about the chain of custody in this decision, and if the Army Corps of Engineers or someone else would make sure that this is done carefully.

Ms. Mallek said the sediment has been there for 50 years, and it was place right below the mixing shack for the orchards for 50 years. She said it has potential for concern, and that the definitive tests that they were supposed to have right away, after the previous approval, never took place, to her knowledge.

Ms. Nedostup said she would defer to Mr. Pohl or to the applicant to address those questions.

Mr. Frank Pohl, County Engineer, said he was pulling up the Phase 2 Environmental Site Assessment (ESA) to refamiliarize himself with the matter, and asked to revisit this later in the discussion to give him a chance to review it.

Mr. Gallaway opened the public hearing and invited the applicant to speak.

Mr. Jeremy Swink said this was actually a concern that was brought to his attention during an informal community meeting in Crozet, when both the West Glen parcel and Marshall Farm were under contract and they were forming the development plans. He said the applicant met with a group of homeowners on Blue Ridge Avenue and Cling Lane at Crozet Park to see if they could ferret out any initial concerns. He said since it was a by-right development, it was going to go through the preliminary plat process, and so they wanted to see if they could ferret out the issues at the time.

Mr. Swink said he and his family, along with many friends, are Crozet residents, and so he had a heightened sense of community, especially regarding the size of the property and its proximity to downtown.

Mr. Swink said at the community meeting, he received one of the best suggestions he had ever heard at any community meeting. He presented the original plan to the Board, explaining where the original road crossing was located. He said this would cut down much of the stream buffer (about 65,000 square feet) and about 10,000 square feet of preserved slopes, which was roughly 1.5 acres of total environmental impacts.

Mr. Swink said a gentleman came up to him after the community meeting and suggested that rather building the road in the approved location, they could punch it straight across the stream buffer. He said he could not believe he had missed this before and that it was a wonderful suggestion. He said he told the gentleman that he would explore the viability of it to see if they could move it forward. He said what they were now proposing had roughly half the impacts, with 0.6 acres of stream buffer and no preserved slope impacts. He said this made for a total of 38,000 square feet as opposed to 76,000 square feet.

Mr. Swink said this was how the special use permit revision came into existence. He said he and his engineer, Mr. Scott Collins, started working their way through to make sure the location was viable, that the grading wasn't too extreme, and that the box culverts and the floodplain would all work.

Mr. Swink said Ms. Mallek brought up a great point. He apologized, explaining that while he was not part of the original approval and negotiations, he did read the conditions and saw that a Phase 2



environmental assessment of the dam area was required. He said the previous applicant for West Glen actually performed that Phase 2 analysis, and that he had a copy of it and a reliance letter.

Mr. Swink said he sent a copy to Mr. Pohl, but hearing that there may still be some ongoing concerns, and while it had been some time since he had read the report, his recollection was that there were no recognized environmental conditions. He reminded the Board that this was not his consultant, nor his report.

Mr. Swink said he does a fair amount of work with Commonwealth Environmental, and that it may be prudent to ask them to come to the site and take some additional samples. He said they could write their own independent report, without having the previous applicant's report. He said he was willing to ground truth it and make sure that if there are environmentally hazardous materials there, he can do the right thing for the community, homeowners, company, and employees. He said being prudent and taking an extra step was a great suggestion.

Mr. Swink said if there were environmentally recognized hazards on the site, he would immediately have to self-report them to DEQ (Virginia Department of Environmental Quality). He said the applicant was protected as a bona fide purchaser because of the Phase 2 reports, but that it was incumbent on them to make sure everything is shepherded through the proper disposal process. He said they would alert DEQ that there were hazardous materials onsite, and that DEQ would open a file and a case.

Mr. Swink said DEQ's expectation would be that the applicant would use the commercially accepted practices for removing whatever the hazard was. He said if it was contaminated soil, for example, they would have to put it on a truck and take it to a disposal site, which would have to give the applicant and Commonwealth Environmental a record of what was disposed, how much, when, and on what day. He said the applicant would then take those files and report, and the environmental consultant would then write to DEQ to say their client has fulfilled the regulations and that they would like a closure letter for the case. He said if everything were acceptable to DEQ, they would have a case closure and file for their homeowners' records.

Mr. Swink said this was the extent of his presentation, and that he would turn his time over to Mr. Pohl to corroborate or correct anything he said.

Mr. Pohl said he could confirm that what Mr. Swink said was correct. He said there were three tests that were done behind the dam, and that all of those came to be less than levels in the surrounding soils. He said even if it were trucked offsite, it would not be considered a hazardous waste. He said the report indicates that the soil could be accepted at the landfill.

Mr. Pohl said permitting will be required through DEQ or the Army Corps of Engineers. He said the report states, "and the Corps," but that typically if one entity is doing the permitting, the other entity does not have to. He said during this permitting process, the County would make sure that the entities knew about and agreed with the report and its findings. He said as Mr. Swink explained, the applicant could conduct more tests if needed.

Ms. Mallek said she was glad to know about the chain of custody, which brought to her much comfort.

Mr. Gallaway said with the location of the new connector road hitting Orchard Drive, it seemed to him that if one were leaving on the new connecting road and turning onto Orchard Drive, left or right, there was a good vantage point of what is traveling there. He said he presumed everything was fine, relative to sight lines, for those turning onto the road.

Mr. Swink replied that the way the old road location popped out was not at the apex of the curve. He said one of the things the applicant tried to do was put this as close to the apex as possible. He said for the applicant, the number one concern was the straight cross across the stream in order for there to be less environmental impacts to the stream buffer and grading. He said if one tries to hit parallel with the stream, there will be more impacts.

Mr. Swink said the second thing the applicant looked at was how they could get as close to the apex of the curve as possible for sight distance. He said this was not only from a vertical curve standpoint, but from the horizontal curve as well. He said they tried to center it there as much as possible.

Mr. Swink said the third thing the applicant considered and why it was not exactly on the apex of the curve was how the headlamps would impact the two people who live there currently. He said he could make the argument that if there were no houses there, it may make more sense to go closer to Jarmans Gap Road. He said he feared that if they did, they would likely be shining headlights right into the kitchen or living room of that house, and so the applicant wanted to be careful to get it in the middle and away from as many windows as possible. He said they did their best to look at what was there and fit this connection in under those three parameters.

As there were no speakers from the public, Mr. Gallaway closed the public hearing and brought the matter back before the Board.

Ms. Palmer said it sounded like a good proposal and that she was glad the member of the public made the suggestion.

Ms. Price concurred with Ms. Palmer's comments.

Ms. Mallek **moved** that the Board adopt the resolution in Attachment D for SP201900002 Pleasant Green. Ms. Price **seconded** the motion.

In further discussion, Ms. Mallek said the reason she was moving to approve the bridge at its new location closer to Jarmans Gap was because of all the improvements that were already discussed and the far better protection for the stream and floodplain. She said distributing the traffic was important for the neighborhood. She said the Board had seen the first plan sheet that Ms. Nedostup showed and the density of the houses. She said everything east of the creek all the way up to the railroad tracks was being very densely built upon. She said having access for many of those people to get directly to Jarmans Gap and be able to go out will be an improvement over Blue Ridge Avenue, which was only about 10 feet wide.

Ms. Mallek said she did want people to be aware that there was significant queueing at Jarmans Gap at commuter time every day to the east of where this will come out. She said for people going west to go out to I-64 or through Old Trail to the commercial area, they will have no problem at all. She said it is 25 mph on Jarmans Gap, which will help those people who need to get out to move into slow traffic.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price  
NAYS: None

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**RESOLUTION TO APPROVE  
SP 201900002 PLEASANT GREEN**

**BE IT RESOLVED** that, upon consideration of the staff reports prepared for SP 201900002 and all of their attachments, the information presented at the public hearings, any written comments received, and the factors relevant to special use permits in Albemarle County Code §§ 18-30.3.11 and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 201900002, subject to the conditions attached hereto.

\* \* \* \* \*

**SP2019-02 Pleasant Green Special Use Permit Conditions**

1. The culverts under the proposed Connector Road extension over Powell's Creek must be in general accord with the attached Concept Plan titled "Pleasant Green Subdivision Special Use Permit Plan" (the "Plan") prepared by Collins Engineering with a revision date of March 2, 2020. To be in general accord with the plan, development must reflect the general size, arrangement, and location of the culverts, as well as maintaining no increase of the 100 year flood elevation outside of the Pleasant Green property. Modifications to the plan that do not conflict with the elements above may be approved subject to the review and approval of the County Engineer.
2. Prior to final road plan approval or permitting of a land disturbance in the floodplain, the applicant must obtain from the Federal Emergency Management Agency (FEMA) a conditional letter of map revision (CLOMR, or CLOMA), and prior to road acceptance the applicant must obtain from FEMA a letter of map revision (LOMR or LOMA). In addition, the applicant must copy the County Engineer on all correspondence with FEMA. Construction and installation of the culverts must be in compliance with approved road plans and FEMA approved CLOMR or CLOMA.
3. Any residential lots and associated streets resulting from the subdivision of the property, with the exception of the stream crossing and roadway identified on the attached plan as Connector Road, must be located outside of the 100 foot stream buffer, Flood Hazard Overlay and preserved slopes on the property. Lots may be permitted to be located within the landward 10 feet of the 100 foot stream buffer only if the lots are adjacent to approved stormwater management facilities located within the landward 50 feet of the stream buffer. Approval of lots located within the stream buffer must be subject Subdivision Agent approval.
4. The net density of the property must not exceed 6 units per acre, in accordance with the Crozet Master Plan. Net density must be calculated by subtracting the area within the Flood Hazard Overlay District, the 100-foot stream buffer, and areas of preserved slopes from the total acreage of the property subject to the special use permit.
5. Prior to issuance of a grading permit to allow installation of the stream crossing or with submittal of the final subdivision plat, whichever comes first, the applicant must submit an easement plat dedicating to the county the area identified for a greenway trail on the attached plan.
6. If the construction of the stream crossing for which this Special Use Permit is issued is not commenced by September 16, 2025, the permit will be deemed abandoned and the authority granted thereunder will thereupon terminate.

7. Prior to approval of the first final Virginia Stormwater Management Program (VSMP) plans or the first final subdivision plat, whichever comes first, the applicant shall conduct a Phase II Environmental Site Assessment (ESA) in accordance with ASTM standards. The Phase II ESA shall include sampling and testing of accumulated sediment behind the dam that exists on the Property. The applicant shall be required to comply with all recommendations of the Phase II ESA prior to issuance of the first building permit on the Property. The applicant shall also be required to remove accumulated sediment from behind the dam prior to demolition of the dam and dispose of the sediment, either on site or off site, in accordance with the Phase II ESA recommendations.

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Agenda Item No. 17. **Public Hearing: ZTA201900007 Fill Areas and Waste Areas.** ZTA 201900007 Fill Areas and Waste Areas. A proposed ordinance to amend the Albemarle County Code to define types of fill activity and establish regulations for the placement of fill. Among other revisions, the proposed ordinance would: Amend § 7-103 by excluding the application, storage, or disposal of certain material from the definition of "agricultural activity"; Amend § 18-3.1 to modify and exp and the existing regulations for fill and waste areas by defining two types of fill: clean earth fill and inert waste fill; Amend § 18-4.2.3 to prohibit the placement of clean earth fill or inert waste fill on critical or preserved slopes except as otherwise permitted; Amend § 18-4.3.1 to permit inert waste fill and clean earth fill in all zoning districts; Add § 18-5.1.28(a)(10) to prohibit fill activity within the drip line of any tree; Add § 18-5.1.28(a)(12) to permit tree cutting by-right for fill activity; Add § 18-5.1.28(a)(15) to require a tree canopy be re-established in zoning districts other than the Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts; Amend § 18-5.1.28(b) to subject all fill activity of 2,500 square feet or greater to regulations, including: setbacks, maximum fill height, hours of operation, access standards, prohibition of placement of fill on critical slopes or hydric soils, a minimum lot size for fill activity of 5 acres, and a maximum fill area of 2 acres; Amend § 18-5.1.28(c) to require a variation or special exception for inert waste fill activity in the RA, VR, or MHD zoning districts; Amend § 18-5.1.28(d) to allow the Board of Supervisors to modify regulations and to permit the placement of inert waste fill in the RA, VR, or MHD zoning districts by special exception; and Amend § 18-31.5 to include clean earth fill activity and inert waste fill as activity requiring a zoning clearance

The Executive Summary forwarded to the Board states that, on September 18, 2019, the Board of Supervisors conducted a midyear review of the Community Development work program. The Board directed staff to prioritize the review of fill and waste regulations. On November 6, 2019, the Board of Supervisors adopted a resolution of intent to consider amending the Zoning Ordinance regulations for fill and waste areas. The Board of Supervisors directed staff to begin work immediately and to hold a work session in January 2020. The Board of Supervisors held a work session on January 15, 2020. During the work session, the Board of Supervisors endorsed the ordinance approach presented by staff. On August 4, 2020, the Planning Commission held a public hearing and voted unanimously (7:0) to recommend approval of the zoning text amendment with minor changes.

The Planning Commission made several requests and recommendations:

1. The Commission requested minor changes to the ordering of the ordinance to permit easier reading and clarification of terms. The proposed ordinance has been revised accordingly.
2. The Commission also requested that the ordinance not permit the burying of live trees by filling around them. Though certain trees may still be cut, under proposed Section 18-5.1.28(a)(10), they may not be buried.
3. The Commission also discussed the provision limiting fill activity to two acres. Proposed Section 18-5.1.28(a)(11) now clarifies that fill activity is limited to two acres on any parcel in existence at the time of adoption of this ordinance.
4. The Commission also discussed the proposed provision that if an abutting owner does not receive notice of a special exception request, but does participate in the public hearing, the owner may not appeal based on an alleged failure to receive notice. Proposed Section 18-5.1.28(d) has been reorganized to clarify that it limits the ability to appeal only on grounds of failure to receive notice. The owner may still appeal on other grounds. This language is consistent with Virginia Code § 15.2-2204 and is also found elsewhere in the Albemarle County Code. The Commission only requested clarification of this provision, but did not request any substantive change.

In addition to the proposed Zoning Ordinance amendment, staff has prepared a proposed ordinance (Attachment E) to amend County Code Chapter 7, Health and Safety, Article I, Noise, Section 7-103, Definitions, to amend the definition of Agricultural Activity. The proposed amendment would clarify that agricultural activity does not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

Staff recommends adoption of the proposed ordinances to amend Chapter 18, Zoning and Chapter 7, Health and Safety (Attachments D and E).

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Mr. Bill Fritz, Chief of Special Projects, said he had been working with the Board on this ZTA for about seven months. He said the Board had directed staff to work on a fill and waste ordinance and to bring forward a proposal on an aggressive time schedule. He said in January, the Board held a work session to discuss the concepts of a proposed ordinance, and that what was before the Board presently

was a product of that work session.

Mr. Fritz said there was some public outreach that was somewhat limited by the aggressive time schedule. He said staff borrowed heavily from other Virginia localities to develop the proposed ordinance.

Mr. Fritz said fill and waste (which he would only refer to as “fill”) involves obtaining material on one property and disposing of it on another. He said moving material around on the same property is not “fill.”

Mr. Fritz said that both currently and in the proposed ordinance, fill material is limited to inert material. He said this includes things such as soil, rocks, concrete, bricks, and asphalt. He said metal, drywall, and other construction debris are not considered to be inert material. He said rebar is permitted as inert material, but only if it is embedded in concrete. He said this allows for the disposal of reinforced concrete as inert material.

Mr. Fritz said that currently, fill is permitted by right in all zoning districts. He said currently, if the area disturbed exceeds 10,000 square feet or if the fill is coming from a site in Albemarle County that is disturbing more than 10,000 square feet, the regulations of the Water Protection Ordinance and the supplemental regulations come into play. He said if the area disturbed is less than 10,000 square feet and the fill is coming from outside the County, the Water Protection Ordinance does not come into play.

Mr. Fritz said that regardless of the area of disturbance, if it is agriculture, it is exempt from the regulations.

Mr. Fritz said he would start with an outline of the proposal. He said the proposed ordinance creates two types of fill: clean earth fill (soil and rock, with limitations on the size and amount of rocks), and inert fill (what is currently permitted as fill). He said clean earth can go everywhere, just as inert fill can today.

Mr. Fritz said inert fill would be permitted by right in all zoning districts except for RA (Rural Areas), VR (Village Residential), and the MHD (Monticello Historic District). He said in those three districts, the inert fill would be permitted only by special exception. He said those three districts are the dominant districts in the Rural Areas of the Comprehensive Plan. He said when he refers to “Rural Areas,” he means all three districts.

Mr. Fritz said the proposed ordinance amends the definition of agriculture so that fill is never considered an agricultural activity. He reminded the Board that in the Rural Areas, clean earth fill would still be permitted by right, meaning it could be used to support agriculture, but would be subject to some new performance regulations.

Mr. Fritz said he wanted to be clear that the placement of fertilizers or biosolids was not impacted by the proposed ordinance. He said this would continue to be regulated as it was currently by DEQ. He added that moving soil from one part of a property to another has never been considered as a fill activity and was not considered to be a fill activity under the proposed ordinance.

Mr. Fritz said currently, in districts other than RA, VR, and MHD, trees may not be cut unless this is associated with a site plan, building permit, or road plan. He said this effectively prohibits placement of fill in the Development Areas on undeveloped property. He said the proposed ordinance would permit tree cutting to allow for fill activities. He said performance standards were created addressing setbacks, hours, amount of fill, access, and other items.

Mr. Fritz said by limiting the Rural Areas to clean earth, it limits the total level of activities in the Rural Areas. He said this reduces the total level of truck traffic, which may help to improve safety and quality of life for rural residents. He said by having materials disposed of in the Development Areas (where most material is generated), it reduces truck miles, which may help to reduce the County’s environmental impact. He said that by not using the Rural Areas for the disposal of inert material, the County may be preserving land for future agricultural or forestall production.

Mr. Fritz said currently, the Rural Areas are used for the disposal of materials because of the ease of getting approvals for fill operations. He said in the Rural Areas, the most that will be needed for approval is an erosion and sediment control plan in order to comply with the Water Protection Ordinance (WPO). He said there are some performance regulations, but that these are largely technical.

Mr. Fritz said in the Development Areas, getting approval for a fill operation is complicated by the need to obtain approval of a site plan, subdivision, or building permit. He said this is because tree removal is not permitted on nonagricultural-zoned properties that have one of those approvals. He said what this means is that a vacant property zoned Commercial or Industrial cannot accept material unless the necessary approvals have been received.

Mr. Fritz said the sending property often does not have time to wait for someone to get approval. He said they need to dispose of the material immediately. He said Rural Areas can receive it, and so that is where it goes.

Mr. Fritz said the proposed ordinance would allow tree cutting on non-RA parcels to allow them to accept the fill material without having to go through an extensive review. He said as he stated previously, the Development Areas are the primary source of fill material, and that keeping the fill material within the

Development Areas has some advantages.

Mr. Fritz said that in order to minimize impacts caused by fill operations, staff was recommending a number of new performance standards. He said this included things such as setbacks and limits on fill. He said preserved slopes in the Development Areas were already protected, but that critical slopes in the Rural Areas were not. He said the proposed performance standards would protect critical slopes and hydric soils.

Mr. Fritz said if the Rural Areas can only accept clean earth fill, there will be increased pressure to place inert fill in the Development Areas. He said as stated previously, the proposed regulations will allow for some tree cutting to make filling easier in the Development Areas, but that this may result in the partial development of property that then sits idle until full development occurs. He said additional regulations may result in additional costs to place fill. He said there would be a cost associated with the processing of applications for special exceptions.

Mr. Fritz said there was a letter that was sent to the Board the day prior from the Farm Bureau, which raised concerns about additional impacts.

Mr. Fritz said he would go further into the details and compare the current and proposed regulations. He said currently, inert waste fill is permitted in all zoning districts. He said with the proposed regulations, clean earth would be permitted in all zoning districts, and inert waste would be permitted in all districts except for VR, RA, and MHD. He said inert waste would be permitted by special exception in those districts.

Mr. Fritz said the proposed ordinance contains criteria for the Board to consider during their review of a special exception. He said these criteria are, by their nature, general. He said staff attempted to develop detailed criteria that would have eliminated the need for special exceptions to be reviewed. He said it was not possible to develop the criteria that would have allowed staff to administratively determine if inert waste should be permitted in the Rural Area. He said most special exceptions do not have any guidance on how to review them. He said staff and the Board have found this to be problematic, in some cases. He said therefore, staff was offering language to help guide the review. He said the criteria is subjective and is only a guide.

Mr. Fritz stressed that the Board was not required to make specific findings in support of its action. He noted that the Board can also place conditions on special exceptions.

Mr. Fritz said currently, inert materials are considered to be all non-reactive material and include soil, rubble, concrete block, broken bricks, asphalt, etc. He said what was proposed were two categories of fill: clean earth fill (i.e. soil and rock) and inert waste (what is currently called "inert materials").

Mr. Fritz said there were questions as to why staff was changing the term from "inert materials" to "inert waste" and that part of that was to simply help them have the conversation and make sure they knew what they were talking about. He said there was no change to the definition, but that it was a matter of convenience for being able to identify that there were two types of fill, and so they came up with similar titles (clean earth fill and inert waste fill).

Mr. Fritz said the proposed ordinance removes the exemption for the placement of fill as an agricultural activity by redefining "agricultural activity." He said it also triggers performance regulations when the activity exceeds 2,500 square feet. He said currently, activity under 10,000 square feet is exempt from some of the regulations. He said the proposed ordinance limits that activity to 2,500 square feet. He said activity under 2,500 square feet will still be subject to the same regulations that exist today and zoning regulations.

Mr. Fritz said for ease of reading, he broke down the current and proposed operational regulations into two slides. He said Attachment A included both the current and proposed regulations for the Board to see in more detail.

Mr. Fritz said the current regulations were largely technical. He said these operational regulations set limits for the area of activity. He said this would include not just the fill activity, but any vehicle and equipment storage or maintenance and limits where tree cutting may occur. He said all of these regulations would be supplemental regulations and were in addition to the previously mentioned regulations. He said the Board has the ability to modify any of the regulations if requested by an owner, and in granting any modification, the Board would be able to include appropriate conditions.

Mr. Fritz said the proposed regulations included having setbacks 150 feet from the entrance corridor and 75 feet from all other public road rights-of-way; Setback of 150 feet from Entrance Corridor and 75 feet from all other public road right-of-way. This would be measured from the edge of the right-of way; establishing minimum setback for fill activity and all associated activities, including access of 75 feet from rural and residential property lines; establishing minimum setback for fill activity and all associated activities, including 50 feet from nonresidential property lines; and establishing a maximum activity area of 2 acres, which was a topic of discussion for the Planning Commission that this would be a lifetime limit that could be modified via special exception.

Mr. Fritz noted that none of these setbacks apply if the adjacent property is under common ownership with the property receiving the fill.

Mr. Fritz said that with minimum lot size, multiple properties under the same ownership could be counted towards establishing the minimum lot size. He said these parcels, however, would have to have similar zoning. He said if a property owner has 3 acres of commercial, for example, they could not count 2 acres of adjacent residential property to come up with 5 acres.

Mr. Fritz said the tree cutting regulations proposed would allow trees to be removed, but only within the areas to be disturbed for the fill activity. He said this means that any trees within the setbacks would remain. He said the proposed setbacks for the fill activity are greater than the buffer setbacks that would apply when the property is developed in accord with an approved site plan or subdivision. He said this means that some trees that are not removed with a fill activity may ultimately be removed by right with the full development of the property.

Mr. Fritz said the ordinance currently does not have access requirements, and that the proposed ordinance includes provisions to insure adequate access. He said the hours of operation are currently limited only for activities "involving industrial-type power equipment," which is not a defined term. He said the proposed ordinance clarifies the hours and removes that term. He said the proposed ordinance also limits height of material and slopes, and it protects critical slopes and hydric soils.

Mr. Fritz said in summary, the proposed ordinance adds protections to the Rural Areas, allows fill the Development Area, includes protection of adjacent properties, includes protection of natural resources, and may discourage the generation of fill materials.

Mr. Fritz said staff acknowledges that the proposed regulations may make fill activities more difficult due to performance regulations. He said it may discourage the generation of fill material and encourage the reuse of existing infrastructure while reducing terraforming activities. He said the reuse of existing infrastructure reduces environmental impacts caused by the disposal of demolished infrastructure materials and the manufacturing of new materials.

Mr. Fritz said the Planning Commission held a public hearing on August 4 and recommended approval, with some changes. He said based on the Commission's comments, the ordinance was revised to change the ordering of the ordinance to permit easier reading and clarification of terms; to not permit the burying of live trees by filling around them, which could result in the trees dying; and clarifies that fill activity is limited to 2 acres on any parcel in existence at the time of the adoption of this ordinance.

Mr. Fritz concluded his presentation and offered to answer any questions.

Ms. Palmer said the Board had received letters about logging roads. She asked Mr. Fritz if he could explain why one cannot separate the logging road issue from the fill issue.

Mr. Fritz replied that there were some limited discussions and that they did not go through the normal process, which generally takes a long time and involves public involvement. He said there were some discussions about how to try to accommodate that, and staff simply was not able to come up with something where they would deem a road to be a logging road and would not lead to a subdivision occurring, and where a certain amount of fill would be appropriate.

Mr. Fritz said the logging road could still be approved as a special exception. He said one of the concepts was as time goes by and the County receives multiple requests, they may see a pattern and be able to develop some language that would ultimately allow it by right. He said at this point, however, they were doing this as a special exception.

Ms. Palmer asked Mr. Fritz how he thought this would affect staff time. She asked if it would increase the workload.

Mr. Fritz said Mr. Frank Pohl and Mr. Bart Svoboda were present and could speak to this. He said they did anticipate some limited impacts on staff time, but not significant impacts on staff resources. He said in some cases, it may make things easier because they would not be tracking things down, and that there would be better tracking mechanisms with the ordinance.

Ms. Palmer said she just wanted to get an idea as to if Mr. Fritz believed this would generate a lot of special exceptions.

Mr. Fritz replied that they simply did not know at that point, and that staff may have to come back to the Board if they begin seeing a number of special exceptions to suggest a different fee or Zoning Text Amendment.

Ms. Palmer said the Board asked staff to fast-track this effort and that she was deeply grateful. She said she was excited about the ordinance but did recognize that it would cause some disturbances with several people in the community that do this fill operation as well as the farm roads for logging.

Ms. Palmer recalled that Mr. Fritz said staff had borrowed heavily from other communities. She asked if he could offer an example of this.

Mr. Fritz replied that he wished he could claim these as original ideas, but that there simply were not that many of them. He said the only original idea was the combination of different things staff found in other jurisdictions.

Mr. Fritz said he first looked at high-growth coalition counties to see how they were addressing the matter and borrowed language from them. He said that the concept of clean earth fill and inert waste fill as two different types of fill, for example, came from another locality. He said the 2-acre disturbance area came from James City County, as well as the 5-acre minimum lot size. He said the setbacks came from Stafford County, Spotsylvania, James City, and a number of other localities. He said then, they began seeing repetition.

Ms. Palmer said she knew staff did conduct a small amount of outreach to gain feedback from the community, including haulers. She asked Mr. Fritz if he could speak to what staff did have time to do in their limited amount of time for outreach.

Mr. Fritz replied that the one thing that was of concern was the possibility of allowing some level of inert fill by right in the Rural Areas to allow for farming roads and logging roads. He said staff simply was not able to come up with something about this. He said this was an idea that came up in the discussions and something that may be worth pursuing in more detail in the future.

Ms. Palmer mentioned that the Ivy Materials Utilization Center takes inert materials such as asphalt, brick, and concrete for \$10 per ton, which is considerably less than the \$52-per-ton tipping fee that one would normally pay if they went to the transfer stations in Zion Crossroads or to the Ivy Transfer Station, where it would go into a landfill. She said she wanted everyone to know that there is a reasonable place in the County to bring these materials now.

Ms. McKeel said since this change keeps the material in the Development Area, she wanted Mr. Fritz to help her understand what pressure this would put on the Development Area. She said she was specifically thinking about marginalized communities and neighborhoods. She asked if this had been looked at through an equity lens.

Mr. Fritz replied that this would put into place some protections for adjacent residential properties, which currently do not exist. He said the ordinance puts these into place whether the property is developed or not. He said it establishes one set of setbacks from the property line, but also has a 100-foot setback from a dwelling on adjacent properties. He said it establishes the 5-acre minimum lot size one must have to have in order to do the fill and waste, and establishes the 2-acre maximum of fill that can be done.

Mr. Fritz said the ordinance also puts limits in place on the amount of filling one can do. He said one can only fill 8 feet over the existing grade. He said some Board members may recall the large mountain adjacent to the airport some time, and that this would not be allowed. He said it did not meet the setbacks and would have been too tall, and this type of fill operation would not be permitted.

Mr. Fritz said on the other hand, if one has a vacant piece of property in the Development Area that has trees on it, they would be able to cut some of those trees outside of the setbacks (only for a maximum of 2 acres) and would be able to fill. He said staff sees this as an opportunity that would potentially allow for some fill to be put on the property that would ultimately allow it to be developed in the future. He noted that some properties need to be filled in order for them to develop.

Mr. Fritz said the proposed ordinance offers protections that currently do not exist, and that staff did not believe it would have adverse impacts on existing residents.

Ms. McKeel asked about the additional noise from trucks and work times.

Mr. Fritz said the primary source for the fill material is the Development Areas, and so the trucks are already there. He said this would potentially keep them in the Development Areas instead of having them go beyond those areas and then coming back to get more. He said it is an overall reduction in truck traffic, as the trucks are already starting out in the Development Areas. He said it was not an introduction of new truck traffic.

Ms. McKeel said they would be moving around the Development Area, though.

Mr. Fritz said this was correct, and that it was undeniable that the trucks would be moving more inside of the Development Area. He said if one is on a road with a vacant piece of property, they will see some truck traffic. He said this truck traffic would be likely to occur in any event when the property ultimately develops. He said there is some truck traffic now that brings in the material, and that the property may sit idle for a number of years before it is ultimately developed. He said at the time the property is ultimately developed, there will be fewer trucks because the fill material will have already been brought in, meaning that this may be a "wash" over time.

Ms. McKeel said she already receives complaints about this type of traffic in the Development Area and was concerned about increasing it.

Mr. Fritz said the ordinance does limit the hours of operation, so there was some protection there.

Ms. McKeel asked if this was 9:00 p.m.

Mr. Fritz said the hours were 7:00 a.m. to 9:00 p.m. He said the current limit was also for these hours, but only for industrial-type equipment. He said currently, if there is non-industrial equipment, there is no time limit. He said the proposed ordinance removes this and simply says "fill activity" so that

anything associated with fill activity is limited to the 7:00 a.m. to 9:00 p.m. timeframe.

Ms. McKeel said perhaps it was counterintuitive, but the County has a Development Area where they want development to happen, and they want to make sure they keep the Development Area a place where people want to live. She said now, they were relieving the burden from the Rural Area onto the Development Area. She said she understood some of the arguments and was trying to figure it out.

Mr. Fritz said if there is a piece of property in the Development Area that is receiving the fill material and ultimately, it develops years later, it would have needed to receive that fill material anyway. He said it did not make sense to import material only to have to export it at some other time. He said that level of activity was going to occur on the property regardless. He said it was occurring in stages where there was partial development now, with ultimate development at some point in the future. He said it was a "wash" in the level of overall activity occurring, but was happening at different times.

Ms. McKeel asked what the impact was to neighbors and people around this area if they suddenly have fill coming in, and if there would be erosion. She said she was already getting huge numbers of complaints, rightfully so, in the Development Area when there is 5 inches of rain in an hour and people have their yards turning into rivers. She said because they do not have the right-of-way, they don't have the stormwater.

Mr. Fritz said that simply put, it is a construction site and there are the same potential impacts that would be on a by-right development or a fill-and-waste development. He said there would be the same types of impacts as there would be from a construction site.

Ms. McKeel said they were talking about this happening and potentially sitting idle for years.

Mr. Fritz said it did have to be stabilized. He said it was not a matter of doing it and walking away. He said the developers would need to stabilize the property and meet all of the ordinance provisions. He said there were still performance standards about support slopes and that the Water Protection Ordinance was still in play. He said they would be seeing the same types of impacts they would see if they were developing a by-right piece of property for housing or commercial. He said it would be happening as a fill and waste activity, however, on a smaller portion of the property with greater restrictions on hours of operation, greater setbacks, and more limits than the level of activity that could occur under by-right development.

Ms. McKeel said everyone knows what can happen on construction sites, and could name places where there have been issues. She said this was a little concerning.

Ms. McKeel asked if someone could cut the trees and then come back to it 2-3 years later.

Mr. Fritz replied that someone can do that fill activity now, cut the trees and fill, with one year to complete the work. He said they have to stabilize it, and then they could walk away from it for some period of time. He said it could remain undeveloped for a number of years.

Mr. Fritz said the most infamous fill and waste site in the County that has sat for a number of years was the piece of property on Putt Putt Lane, across from Fashion Square Mall. He said this was a fill and waste area and has sat undeveloped for a number of years. He said people have talked about developing it, but no one ever has.

Ms. McKeel said Mr. Fritz mentioned borrowing parts of the ordinance's language from other localities, and that she was all for doing this. She asked Mr. Fritz if he actually talked to the people in those communities to make sure that what they are borrowing actually works. She said Albemarle, for example, has many things on the docket that they may not recommend and need to address, but haven't had the time.

Mr. Fritz replied that he did talk to some of the localities, and that he also talked to localities that have no regulations to discuss what they were considering doing.

Ms. McKeel said they knew, then, that as they were borrowing this language from other communities, there was a confidence level that while it was on their books, there was a sense that these regulations were actually working.

Mr. Fritz said he found nothing to indicate that the localities were having problems with their regulations.

Ms. Mallek said she was still hung up on access requirements because she has seen many neighbors come to grief over misuse of private easements. She said private easements allowing development in the County have been the source of much pain for everyone. She said in the past, the County has been required to tell their constituents that they are not allowed to help them because it is a private agreement.

Ms. Mallek asked how much diligence would be done to make sure that when someone is saying they want to use a private easement to get to a 5-acre landlocked parcel, that they should not have bought to begin with without proper street access, people will not have to put up with hundreds of trucks going down that private road. She said this was a real dilemma for her.



Mr. Fritz replied that there was currently nothing that discussed access at all. He said when someone comes in to do fill and waste, the County does not look at the access other than at the public street. He said they do not look to see whether or not they have a right of usage.

Ms. Mallek expressed her discontent.

Mr. Fritz said that this was under the current ordinance. He said under the proposed ordinance, the developer would need to demonstrate that they have a right to the use of the access and that the access meets a minimum design standard, which is spelled out in the ordinance. He said the standard deals with the carrying capacity of the road to make sure the road can handle the types of vehicles anticipated there.

Ms. Mallek said in her tour around the western parts of the district with Ms. Carrie Shepard (VDOT), many gravel roads have been destroyed by heavy trucking during wet weather events, and so this was something she was particularly tuned into. She said she understood that what Mr. Fritz was proposing would be better.

Ms. Price asked Mr. Fritz if he could address the three subject areas that were brought up in the Farm Bureau letter.

Mr. Fritz said he did not have the letter in front of him.

Ms. Price said she would summarize. She said the first comment was that the Farm Bureau did not generally have an objection to a 2-acre limit of fill, but that they did have concerns with this being a once-in-a-lifetime opportunity, so to speak.

Mr. Fritz replied that this particular concern was brought up at the Planning Commission meeting. He said staff was proposing it as a 2-acre maximum over the life of the property. He said this could be modified by the Board by granting a special exception on the property so that the applicant could come back to the Board of Supervisors and request a special exception for additional acreage.

Ms. Price said this addressed the issue, and that it appeared to also address the second concern raised by the Farm Bureau. She said the concern was that if one owns a 5-acre parcel, they can fill 2 acres and if they own a 500-acre parcel, they are still limited to 2 acres. She said what Mr. Fritz was saying was that they could come back for a special exception for anything above the initial 2 acres at any given time. She asked if this was correct.

Mr. Fritz replied this was correct. He said all the performance standards can be modified by the Board of Supervisors, and they can grant an exception to anything in those standards.

Ms. Price said to her, it would appear to be more logical to have some degree of a sliding scale based on the acreage of the parcel to begin with, rather than requiring a property owner to have to come back if they happen to have a very large parcel of property.

Mr. Fritz said this may be another example of where, if the County gets lots of special exceptions, they may see a pattern of this and ultimately amend the ordinance to remove the need for a special exception. He said alternatively, staff could do additional work and bring the ZTA back to the Board.

Ms. Price said at that point, she would prefer to have staff do additional work and bring it back rather than doing an enactment and having to make modifications.

Ms. Price said the third issue pertained to agricultural and forestry roads, and read the statement from the letter aloud: "All agricultural and forestry roads should be exempt – both the acreage limitation as well as the approval process. If the landowner has reached the 2-acre limit and builds a new agriculture road or decides to sell timber and a new road to remove the timber is required, any inert fill material to build the base of the roads will be in violation."

Ms. Price said the letter also stated that limiting their ability to construct the roads would also likely be in violation of the Right to Farm Act and the Right to Practice Forestry Act. She said she may also need to ask Mr. Andy Herrick from the County Attorney's Office to address that legal aspect of it.

Ms. Price asked if Mr. Fritz had any comment with regard to the general concern that was raised about the 2-acre limit if additional roads were needed.

Mr. Fritz replied that staff was not able to come up with a way to differentiate one logging road from another logging road. He said someone could possibly say they were using a road for logging, but could use the road in a different way that was preparatory to some form of development. He said staff simply was not able to come up with a mechanism to do that administratively.

Mr. Fritz said in terms of the impact on forestry, he would have to have Mr. Kamptner answer that question.

Ms. Palmer said she recognized that in the past, there have been situations where property owners have said they were doing one thing but over the course of time, it became obvious that it was part of a larger development plan. She asked Mr. Herrick if he were available to address the concerns regarding the two acts.

Mr. Kamptner said he was not sure if Mr. Herrick was in the meeting. He said one thing about the agricultural roads and the Water Protection Ordinance is that they do have a regulation in place where they look at what is going on. He said there is a prohibition on developing the property for a certain period of time, although it was not very long. He said this was put into the regulations about 12-14 years earlier to help the County deal with that issue.

Mr. Kamptner said he was pulling up the Planning Commission minutes, as Mr. Herrick had been asked the same question by Neil Williamson that Ms. Price asked. He said he believed Mr. Herrick responded to the question well, and that his response could be found on page 17 of those minutes relating to how this applies to the Right to Farm Act.

Ms. Price said she saw this in the Planning Commission minutes, in the third to last paragraph.

Mr. Kamptner said it was the second to last and third to last paragraphs.

Ms. LaPisto-Kirtley said she understood that the Farm Bureau had some concerns and that she believed Mr. Fritz addressed those, especially the point about using the special exception process, which only takes 90 days and does not require a special permit. She said perhaps the Board should ask staff how many special exception requests they receive in this area or, in a year, how many they will have received and work from there. She said if they then have to amend the ordinance regarding the 2 acres, they can do so.

Ms. LaPisto-Kirtley recalled that the prior year's Board wanted to put a rush on this ordinance to make sure it went through in an expedited manner. She said she felt that staff did a good job, adding that reaching out to other localities to find out what they are doing was a smart thing to do. She said they can adjust what other localities are doing to fit Albemarle's needs so that they are not wasting staff time recreating the wheel, even if amendments may need to be made.

Ms. LaPisto-Kirtley said she believed the ordinance to be reasonable and that she wanted to see how it works for a year. She asked if the Board would have the ability to adjust it via a ZTA.

Mr. Fritz replied that the Board could always amend the ordinance with the same procedure they were currently following.

Mr. Gallaway said he wanted to continue Ms. McKeel's train of thought. He said he understood the point. He said there were not many places that would be able to receive this material.

Mr. Fritz said this was correct. He said it was not going to be smaller properties, but larger properties and larger developments because of the 5-acre limit.

Mr. Gallaway said he wanted to make sure he understood Mr. Fritz's response to Commissioner Randolph regarding tree clearing. He said if he had a C1 property, for example, and he wanted to come in for a site plan and prep the site without doing all the development, he could do that. He said he could use shorter setbacks than what the ordinance would allow if he did a fill activity.

Mr. Fritz said he was not sure he completely followed, but would try to answer the question. He said if this were done as a fill operation, he could cut some of the trees, but the number of trees he could cut would be less than what he could ultimately cut if he did a full-blown site plan.

Mr. Gallaway said what he was saying is that he could get a pad ready on a site without doing the full development. He asked if this was allowed.

Mr. Fritz replied that there had actually been very few sites where people submitted site plans just to show something on the property so that they could get a grading permit and create a pad-ready site. He said this had happened in the past, but was very rare. He said he could think of one offhand that happened 30 years ago.

Mr. Gallaway said for a C1 property, this could move it towards being up and ready if they are trying to help along some C1 activity on those sites.

Mr. Fritz agreed that it may. He said it would give the Board of Supervisors the flexibility to, through a special exception, advance a property as a pad-ready site without a full-blown site plan and grant the special exceptions to say they could do this at less than 5 acres or with reduced setbacks. He said if there was a property they wanted to encourage, the Board could do this if they wanted to, which they could not do presently.

Mr. Gallaway said he could understand where Ms. McKeel and Mr. Randolph from the Planning Commission were going relative to the aesthetics. He said the ordinance had protections in place where a site does not become an eyesore. He said they won't want to create a "mountain" (as Mr. Fritz had mentioned) or other issues, and asked if this would all be protected with the new ordinance.

Mr. Fritz replied that this was correct. He said there would be a buffer around the edges of the property and a maximum 8-foot fill, which would avoid having a large 25-foot mountain of soil. He said the developer does have to stabilize it by grassing it over.

Ms. Palmer said they were not expecting all of the fill generated from the Development Area to necessarily stay in the Development Area, but what they were trying to do was encourage it. She said as she mentioned earlier, it could still go to Ivy very easily.

Ms. Palmer said when she called different people to get feedback on this matter, she was given the example of a relatively recent exchange of dirt from the eldercare facility on Rio Road to a development on Berkmar. She said one of the things that the individual talked about was the need to try to connect these people so that one development actually knows that fill was happening at another development. She asked Mr. Fritz if he saw a way to get those developers connected.

Mr. Fritz replied that he did not know of a way. He said that perhaps Mr. Pohl would be able to comment.

Mr. Pohl said the County frequently receives calls from developers or contractors who have material or are looking for material. He said staff does try to make those connections.

Ms. Palmer said she was glad to hear this. She said when the Farm Bureau talked about a sliding scale for acreage (i.e. having more than 2 acres of fill if there are 500 acres total), this got away from what the actual purpose of this ordinance was, to her, which was that the fill operations are not agricultural. She said what they are trying to do is limit the environmental impact on that piece of property to hopefully preserve more land and soils for agriculture in the future. She asked staff if they could speak to that and about the purpose. She noted she was separating the road issue, as this was a problematic part of it.

Mr. Fritz replied that this was looked at as a land use impact issue. He said staff looked at the Comprehensive Plan and at what the intended uses were for the different areas in the County. He said they also looked at the Board's Climate Action Plan and tried to bring all those things together.

Mr. Fritz said regarding the sliding scale, one has to remember that in the Rural Areas, they will only be able to do clean earth fill by right. He said 2 acres of clean earth fill is a lot and that this material is at a premium. He said to some degree, it would be unusual to have that much fill. He said it could happen, however, via special exception.

Mr. Fritz said to get back to Ms. Palmer's question, staff looked at this as a land use issue and about trying to minimize impacts and loss of agricultural land in the Rural Areas while trying to facilitate development in the Development Areas.

Mr. Gallaway opened the public comment portion of the hearing.

Mr. Neal Magee said he and his family live on the gravel portion of Dick Woods Road in the Samuel Miller District. He noted that the Board already had some documentation from him. He said he was one of 136 signers of a petition that supports the ordinance's language, as put forward, to regulate fill and waste in Albemarle.

Mr. Magee said he and his wife are concerned about the unanticipated ways that the City, County, and UVA building projects affect the rural landscape around them, as these have certainly affected them. He said one of the biggest effects was on the waterways, explaining that they live very close to the Mechums River. He said the 4.5-acre fill project on the property adjacent to theirs continues, even three months after construction, to have pretty significant erosion and that with every rain, they see large flows of water and silt spilling over the silt basin at the bottom of the fill area. He said this was unnerving, particularly when the County has a fair standing of water in the rivers.

Mr. Magee said he is all for growth in the County, but was asking for the Board to support the proposed ordinance's language as he feels it will help them channel and be more responsible in that growth.

Mr. Magee said regarding gravel road traffic, it was not hyperbole to say that they have had at least 2,000-3,000 dump trucks drive past their home over the last nine months. He said to imagine a scale of a large project of many more acres to be allowed to fill would be a nightmare of traffic alone.

Mr. Magee asked for the Board's leadership and expressed his appreciation to Mr. Fritz to gather language from around the state and find creative solutions to this. He asked the Board to be good stewards of the Rural Areas.

Mr. Paul Haney (Rivanna District) said he owns forest and agricultural land. He said he is a forester, the immediate past president of the Albemarle County Farm Bureau, and the chair of the Albemarle Rural Advisory.

Mr. Haney said he was pleased that the Board looked at the letter the Farm Bureau sent. He said he heard what Mr. Fritz said as far as special exceptions. He said he also wanted to make sure everyone understood that the Farm Bureau supported the concept of the Fill & Waste Ordinance. He said they do not want to see any agricultural lands becoming dumping lands. He said they are very much interested in continuing to be able to farm their lands and harvest their timber.

Mr. Haney said the 2-acre limit does cause the Farm Bureau great concern, and particularly for a lifetime. He said this was very reminiscent of what the County entered into with the City on the revenue-

sharing agreement in which they were still trying to figure it out as they go.

Mr. Haney said he has spoken with some of the Supervisors in the past about taking 90 days to get a special exception, and that this was unreasonable. He said in both the agricultural and forestal industries, things come up that have to take place, and for them to come back to what they had been doing for eternity to get a special exception from the County to continue this was not a reasonable approach.

Mr. Haney said he understood that the people he was speaking on behalf of as far as the Farm Bureau were not the target of what this ordinance was to accomplish, but that it did directly limit their ability to continue to manage their lands in the way they had.

Mr. Haney said the previous speaker spoke to the Board's responsibility to protect the rural lands, but that this was not just the Board's job to do this. He said the people who have owned this forest land have been doing this for an extended period of time without necessarily having the guidance of the County. He said it falls on them to continue what they have been doing for an extended period.

Mr. Haney said that with regards to the road, it was made painfully obvious that the proposed ordinance overstepped. He said he hoped the County had been in contact with the Department of Forestry to make sure there was a complete understanding of the County's limitations that impact logging activities and roads. He said those were clear from the agricultural side and the right to farm. He said he understood what legal counsel said to the County, but he was not sure there was anyone there who was willing to come out to spend the time with the Farm Bureau and understand what this proposed.

Mr. Haney said the Farm Bureau repeatedly volunteered to work with the County. He said they established the Albemarle Rural Advisory Committee. He said no one was engaging them to contribute where they can on these matters.

Mr. Peter Krebs said Piedmont Environmental Council (PEC) had been vocal over the past several months about the fill dirt issue. He said PEC wanted to acknowledge that their comments were well reflected in staff's proposal and thanked staff for this.

Mr. Gallaway closed the public comment portion and brought the matter back before the Board.

Ms. Palmer said she appreciated Mr. Haney talking about the roads, and had some questions for Mr. Fritz. She said her assumption was that if one was doing a logging operation, they will have already contacted the Department of Forestry and would likely have 90 days to get the special exception because there was some lag time there. She said they would not necessarily have to get the material from an ongoing construction site, as matching those things could be problematic in terms of timing (e.g. if there was not a construction demolition going on at the time that one was putting in the roads).

Ms. Palmer asked if Mr. Fritz contacted the Department of Forestry when he was trying to figure out the road issue with this ordinance.

Mr. Fritz replied that he did not contact the Department of Forestry. He said in the construction of a logging road or any road, it was important to remember that if one is moving material around on the site from the property, this is not considered fill. He said if one were bringing in clean earth fill, this would be permitted. He said it was correct that if one were bringing in inert material from another site, however, they would need to go through the special exception process.

Ms. Palmer asked what was required to bring in gravel to make a logging road for a logging operation.

Mr. Fritz said he spoke with the Zoning Administrator, if there is an existing road and one is bringing in gravel to maintain that road, this would not be considered fill, but would be considered maintenance of an existing accessory use and would be permitted. He said if one is constructing a new road, however, this would be fill.

Ms. Palmer said currently, if one is doing a logging operation as a professional logger and is working on 100 acres and putting in roads, she wanted to know how the County gets involved in this now if the logger is going to use inert material.

Mr. Pohl replied that logging operations are exempt from the WPO ordinance. He said they are not regulated. He said if the person is part of a bona fide logging operation, they can bring in stone and fill and move dirt on the site under the guidance of the Department of Forestry.

Ms. Palmer asked if the Department of Forestry was telling them, for instance, that they cannot get too close to a stream and has to have a buffer.

Mr. Pohl replied yes. He said they have adopted the Chesapeake Bay logging guidelines, which includes a 50% maximum cut within 50 feet of a stream. He said they can log within 50 feet of the stream, but with up to 50% of the trees.

Ms. Palmer said the Department of Forestry was regulating them while the County was not. She asked Mr. Pohl if he knew how long it takes for the Department of Forestry to investigate and tell the logger what they can and cannot do.

Mr. Pohl replied that sometimes, they do not know about a logging activity but get a call about it. He said they will go out to investigate and meet with the logger, as he understood it. He said they will usually receive a call about the activity beforehand.

Ms. Palmer asked said there is a complaint about this ordinance interfering with the right to do forestry, if there was a situation similar to the question about the Right to Farm Act that addressed the right to do forestry.

Mr. Pohl said he would have to have Mr. Kamptner answer this question. He said Mr. Fritz addressed the question about creating farm roads with onsite soil. He said Ms. Palmer's question was about bringing in gravel to help create those roads.

Ms. Palmer said she was thinking that someone could go to the 29 North recovery place and purchase inert material. She said they did not have to get it from a construction site at the moment the construction site was going. She said what she was trying to get at was that it did not have to be immediate. She asked how much the County was interfering with this process by delaying the forestry operation with the special exception, and if this were truly interfering with their right to do forestry.

Mr. Pohl replied that more often, he sees them purchasing from quarries. He said it is typically not from a construction site if they do use gravel.

Ms. Palmer said she understood that asphalt is also used and is preferred. She said her question was for the attorney.

Mr. Kamptner said to answer the question about the forestry activities, silvicultural activity falls within the scope of the Right to Farm Act, which he assumed was the element people were referring to when they talk about the right to forest. He said he was not aware of any sections in the code that were different from the Right to Farm Act.

Mr. Kamptner said the Right to Farm Act was not an absolute. He said it requires that any regulations that do affect agricultural activity have some relationship to the health, safety, or general welfare of the citizens. He said he believed the case had been made for these regulations that they were trying to protect the environment.

Mr. Kamptner said that as Mr. Fritz mentioned, the movement of dirt on the same property does not fall under these regulations. He said they were only talking about fill that was coming in from offsite.

Ms. McKeel said her concerns were around neighborhoods in the Development Area. She said there was talk about protecting roads in the Rural Area, and that she wanted to know about the impact on the roads in the Development Area, which she hears about all the time. She said perhaps this was too general of a question.

Mr. Fritz said that for public streets, the only provision that exists would be the requirement that the entrance be approved by VDOT. He said there was no additional review of use of public streets.

Ms. McKeel said she saw a section from page 3 about the Comprehensive Plan that talked about facilitating economic development. She asked Mr. Fritz if he reached out to Mr. Roger Johnson (Economic Development Office) to talk to him about this.

Mr. Fritz replied that he did talk to the Economic Development Office to a limited degree to make them aware of this. He said there was not a great deal of coordination about this. He said the office did not come out to say that this was absolutely needed, nor that it was a bad idea. He said staff simply made them aware that this was something that was being worked on.

Ms. McKeel asked if they could have responded if they wanted to.

Mr. Fritz replied yes.

Ms. Mallek said she would offer some information on the question that was raised about how the Department of Forestry works. She said the person with an operation is required to contact DOF within three days of beginning and then, Mr. David Powell will send one of his staffers out to inspect and make sure that Best Management Practices (BMPs) are going to have the potential to be followed.

Ms. Mallek said that at the state level, they are relooking at the BMPs again because they are 65-70 years old and are not prepared for the kinds of climate events happening recently. She said when there have been blowouts on various erosion control matters, the reply has been that no one expects a 1,000-year storm.

Ms. Mallek said the person doing the operation is required to use the #3 stone and big gravel for their entranceways, to pull the dirt off the tires before it hits the roadway so as not to create a hazardous situation at the end of the roadway. She said on her own landing, she had gravel put there to stabilize the soil.

Ms. LaPisto-Kirtley asked if regarding Mr. Haney's concerns, they would be able to put in roads because they can use clean fill, dirt, or gravel to put in the roads.

Mr. Fritz replied that they can use materials from the property and clean earth fill. He said they can use gravel to maintain existing roads.

Ms. LaPisto-Kirtley asked if they wanted to put in new roads for a logging activity, this would go under the Department of Forestry and not the County.

Mr. Fritz replied that this would be a fill activity if the material was coming in from offsite.

Ms. LaPisto-Kirtley asked if this could do this for up to 2 acres.

Mr. Fritz replied that they could for clean earth fill. He said they can do any amount of any type by special exception.

Ms. LaPisto-Kirtley asked if they knew how many special exceptions they might be receiving.

Mr. Fritz replied no.

Ms. LaPisto-Kirtley said this would be a matter of doing this and waiting to see what they would get to determine if it would be necessary to expand the ordinance.

Mr. Fritz said this was correct.

Mr. Gallaway said he was trying to understand the extent of this in the Development Areas. He said he could not imagine that Mr. Fritz was expecting this to be an activity that would suddenly transition into the Development Area. He said it seemed to be pragmatic to put this in places that will likely be developed that will meet the land size. He said he also presumed that in the Development Area, it is easier to detect this activity. He said from an enforcement standpoint, it was easier to get away with things by going into Rural Areas that are less populated. He said it seemed that people trying to do this in the Development Area and not obeying the performance standards would be on staff's radar.

Mr. Fritz said since Mr. Bart Svoboda and Mr. Pohl would be involved with enforcement, he would let them answer the question.

Mr. Bart Svoboda, Zoning Administrator, said he anticipated that this will spread out, and that some will migrate to the Development Areas. He said they hoped it would be a wash, and perhaps an increase, to start.

Mr. Svoboda said to be clear about the forestry standards, some of the standards such as for stream crossings and what staff would refer to as a construction entrance, the large stones Ms. Mallek referred to towards the road would likely be permitted and would not count as fill because this is part of their forestry approvals in doing that part of that use. He said he wanted to be clear that although this would be case-by-case, a lot of those requirements that forestry would permit from that road (e.g. required stream crossings) also have to be removed when the project is over with, and so those things would be allowed. He said he wanted to be careful that they not take too broad a brush on some of those things.

Mr. Svoboda said enforcement, as it was currently, would be on a complaint basis, but with the way they have the submittals for a clearance to track these, this would be part of the clearance process.

Ms. Palmer said there had been some discussion about the lifetime limit and that this was for the property, not the ownership. She asked if this was correct.

Mr. Fritz replied that it is for the parcel in existence on the date of adoption of the ordinance.

Ms. Palmer asked if the parcel is changed in some way (e.g. subdivided), those new parcels are allowed to have the 2 acres of fill on them.

Mr. Fritz replied no. He said it freezes the lots as they exist today, much like what is done with development rights.

Ms. Palmer said a few people have asked her why they could not regulate the fill at the source (the construction site) rather than at the farm level. She asked Mr. Fritz if he could address this.

Mr. Pohl replied that the County does regulate material leaving construction sites through the active general construction permit. He said most contractors will opt to get a separate permit for the offsite activity. He said there are reasons for this that have to do with land ownership and bonding. He said they have this option, but it is not frequently exercised to use the existing permits for fill disposal.

Mr. Pohl said if there is an active construction site that is exporting, the general permit requires the site identifies where the material is going. He said the County will confirm whether or not it exceeds the 10,000 square feet, under the current regulations. He said if it starts to exceed the 10,000 square feet, they stop until they get coverage.

Ms. Palmer asked if this was only for sites within the County. She asked about UVA, the City, or another jurisdiction if the demolition is happening elsewhere. She said people were asking her why the

County was going after the farmers instead of the entity doing the redevelopment. She said if UVA were taking down a library, for instance, she wanted to know why the County couldn't require them to say exactly where the material is going and have them take it to Ivy or elsewhere.

Mr. Pohl replied that the County can only regulate what is within their jurisdiction. He said they do communicate with the other jurisdictions when they see material and do not know where it is coming from to ask about it. He said UVA has been proactive since mid-2019 to inform the County when materials were coming off of their sites.

Ms. Palmer said the point was that the County cannot regulate anything coming from another jurisdiction. She said she wanted to make sure this was getting out to the public in this conversation.

Mr. Pohl said this was correct. He said this would be when the County would have to go to the landowners when they exceed the WPO thresholds, or if it is a fill activity and falls under Section 5.1.28 (the current regulations for fill and waste). He said they would have to go to the landowner, which has mostly been farmers.

Ms. Palmer said she would vote for the proposed ordinance. She said she appreciated all the work that had been done on it. She said as far as she was concerned, it was an environmental issue, and that the County needed to begin incentivizing recycling of this material, especially as they know they have an aging urban area where they want to encourage development and redevelopment. She said UVA was going through many changes and that while many of these were wonderful changes, the Rural Areas were not the place for this fill.

Ms. Palmer said when they think about U-Hall and the problem with the fill going out to Rural Areas, resulting in thousands of trucks going down the dirt roads (which was all totally legal), it was all properly done in the end. She said to assume that UVA, for example, had had lead paint on the concrete at U-Hall and this was put out into the Rural Areas, it is not known what will happen with this over time, such as contamination. She said if one could bring this kind of material to the Ivy Landfill, which is a permitted and safe site to put it, that entity doing the demolition and redevelopment is reducing their long-term liability.

Ms. Palmer said if materials are brought to Ivy, they cannot contain plastics or asbestos, but one is not supposed to have those in the materials brought to the farms anyway. She said there is a good opportunity at Ivy to bring the materials there if there is not someone in the Development Area to take it. She said it is relatively inexpensive and she knew that \$10 per ton will come out to more than \$35-50 per truckload out to the Rural Area, but it was not substantial for these larger projects.

Ms. Palmer said she felt this was a good advancement and that she would be curious to hear back from staff about the impacts. She recognized that they will make people angry, but said she believed this was a long time coming. She said she hoped there would be the support to pass this.

Ms. McKeel said although she was concerned, she would probably support it. She said the examples Ms. Palmer spoke about not wanting to have in the Rural Areas were things she did not want to have in the Development Areas, either.

Ms. Palmer said the materials would have to be cleaner when they go to the Development Area.

Ms. McKeel said her comfort level hinged on the 2-acre limit. She said she would not be in favor of a sliding scale and that especially at the beginning, she felt they needed to start with this slowly. She said she appreciated the 2-acre and lifetime limits, at the time, recognizing that there were ways to get exceptions. She said perhaps the Board eventually would want to open it up.

Ms. McKeel said although she had concerns, she was willing to go along with the proposed ordinance because it made sense environmentally. She said she understood the challenges in the Rural Area and the environmental portion.

Ms. McKeel said she would not be willing to support it if they were to go to a sliding scale. She said she wanted some limits to it, at least for now.

Ms. Mallek said this had been a very long time coming, and she was pleased they were discussing it. She said although it may not be perfect, she heartily supported it for many reasons.

Ms. Mallek said the land use impact issue focus was important, referring to Mr. Fritz's points about why they were doing this to begin with. She said she was hopeful it would do what staff suggested it would, which was to increase the reuse of buildings and materials by increasing the value of the cost of throwing it away. She said when they make things easy to throw away, it results in an endless cycle of garbage.

Ms. Mallek said as a farmer that was heading for a century of farming in her family, she was glad to write down what Mr. Kamptner said about Right to Farm. She said people who do farming and forestry have the same obligation to protect others. She said she has gotten into a lot of trouble with her farming colleagues to say that her property rights stop at her property line, and that she had absolutely no right to do damage to someone else. She said the regulations they were proposing really do have the foundation of protecting the health and safety of citizens, roadways and lakes downstream, and other elements of the County.

Ms. Mallek said that commercial dirt storage should be not considered “agriculture.” She said it was just a way to make a lot of money if one has nothing else to do, or to prepare land for another use (other than agriculture). She said many will recall that west of Ivy Creek on Garth Road, there was a five-year filling operation, which created a mountain of dirt. She said the bulldozer would go up and down and nearly vertical slope of dirt all day long, and that now, there were about five enormous houses on it. She said she did not know how the foundations work when they were built in 55 feet of fill, but that this is what would be happening here.

Ms. Mallek said the reason why a ravine happens is because water washes away the dirt that was there. She said to put fill in that ravine only means that the dirt will wash away, down to the neighbors and their lake. She said this occurs regularly.

Ms. Mallek said the lot size is incredibly important. She said people ask why they should be limited to 2 acres. She said this is over 87,000 square feet. She said a football field is just over 57,000 square feet. She said taking 87,000 square feet 8 feet deep is 25,800 cubic yards (or 4,000 or more dump trucks). She said people should not worry about being limited to 2 acres of anything because it is just not a reasonable restriction to interfere with someone’s ability to do something that is useful. She said she very much supported the 2-acre limit.

Ms. Mallek said she was very taken by what Mr. Gallaway said about helping to establish some stability on a property so that it would be ready. She said the County has been criticized for years about not having pad-ready sites, and so if this is helpful, she thinks this is great.

Ms. Mallek said the 5-acre minimum and the setbacks being increased to 150 feet, as well as 100 feet from any building on a neighbor’s property, limits the impact in a Development Area neighborhood. She said her first concern was that some spare lot in Montview would have this on it, but that it absolutely cannot. She said being careful in thinking about all the different criteria staff included in the ordinance provide substantial protections.

Ms. Mallek said tree cutting is a concern for her, and she would propose that they reduce the protection to 24 inches rather than 36 inches. She said they can probably count a high number of 36-inch diameter trees on any property in the area. She said all of it has been high-graded multiple times in the last 200 years. She said if they want to keep any trees at all, she believed they should do something smaller, and proposed having the 24-inch diameter when they allow some limited cutting in the centered, well-buffered section of the land.

Ms. Mallek said having the hours of operation limits for all operations on the site was a huge improvement because currently, the limits were only for certain types of machinery and the rest can run until midnight if they wanted to. She proposed they reduce the hour to 6:00 p.m., as she felt this was reasonable for the quality of life of anyone, whether it was the neighbors five miles away with trucks going by or the people who live nearby.

Ms. Mallek said she was glad to know that there were conditions available on the special exceptions. She said the lifetime use of 2 acres was hyperbole, and that it was someone’s use of a word to scare everyone into thinking that they would be losing all their property rights. She said there is already a process established to come in sometime in the future to do something else, and if they surpass the huge amount that she already talked about, she did not think there was an issue.

Ms. Mallek said the 8-foot height and the required stabilization was very important. She said the County has overlot grading rules and the requirement for permanent vegetation within 9 months that will prevent these from becoming the dirt piles they see in the northern part of Mr. Gallaway’s district that have sat there since 2004.

Ms. Mallek said she heartily supported the ordinance and hoped that others would as well.

Ms. Price said she agreed with Ms. Mallek with regard to reducing the time to 6:00 p.m. and reducing the diameter of the tree to 24 inches.

Ms. Price said she did, however, still have some concerns with regard to the proposed ordinance. She said although she was generally very supportive of it, there were a few areas where she had concerns. She said she wanted to avoid a situation where they make perfect the enemy of the good, as this was not her intention.

Ms. Price said she agreed with the 5-acre minimum. She said she believed, however, that there should be some sort of a sliding scale, though not necessarily that every 5 acres, one gets 2 acres to do this activity on. She said thinking aloud, if one has over 20 or 50 acres, there may be some additional acreage that could be open for fill, though not necessarily all in one location, that it would have to be spread out over the totality of the property.

Ms. Price said that for anything that goes over the 2 acres, however, she believed there should be a demonstration of benefit for agricultural or forestal uses and not simply that there is a right to fill it in.

Ms. Price said while she appreciated the calculation Ms. Mallek gave with the 8-foot-high pile, she seriously doubted that anyone would be engaged with fill activity that makes a perfect rectangle that is exactly 8 feet high over whatever acreage is involved and that more likely, they would be filling in the



lower levels and leveling things out. She said in some conversations she had with farmers, they expressed how some fill activity can actually help them improve the amount of agricultural use they might have in terms of being able to level a field.

Ms. Price said she recognized that there was a built-in special exception and appreciated that conditions had been considered. She said on the same token, she believed they needed to recognize that any time one needs to go through a special exception request, this adds time and money. She said she believed they should make the ordinance as good as possible now because once approved, they know it will go to the bottom of the list and it will be quite a while until it comes back up for any improvements.

Ms. Price said she acknowledged this was an area that she did not have a great deal of expertise in and that she was still learning it. She said she did have some lingering concerns with the roads, and that her preference would be that they defer action on this in order to make it better and then approve it, rather than approve something knowing that they will have to come back later to make a modification. She said for the time period in which they have to wait until that modification takes place, they are adding time and expense to the constituents who want to engage in certain activities.

Ms. LaPisto-Kirtley said she agreed with Ms. Mallek. She said she liked the idea of the 24-inch tree diameter and stopping at 6:00 p.m. for the quality of life of all residents.

Ms. LaPisto-Kirtley said she did have concerns regarding the 2 acres, but that she was willing to come back in a year because she would like to see how many special exceptions were requested, if any. She said perhaps it could be two years before they could see how many special exceptions were asked for, and if they have to adjust at that time, then they can do so.

Ms. LaPisto-Kirtley said this mainly applied to the agricultural areas, and so she wanted to make sure that if those areas do want to fill for agricultural uses, then they can do that.

Ms. LaPisto-Kirtley said one thing she worried about in the Development Areas was whether or not there was a time limit. She said someone could dispose of inert material on their future construction site, for example, and put dirt over it and grass it over. She asked if there were a time limit to develop that land or if it could remain as it was.

Ms. LaPisto-Kirtley said she was supportive of the project. She said she was not necessarily in favor of waiting, but she would like to see what will happen in another year to see how many special exceptions were received, and perhaps do a ZTA at that time.

Mr. Gallaway said he would not object to the proposed items regarding the tree and the time limit. He said to address the 90-day piece, he was okay with moving forward because the special exception process was out. He said while he knew this could create issues with time and money, just because it said "90 days" did not mean that it had to be 90 days. He said he hoped that if the Board began to see an influx of these requests coming in, staff could raise a flag and help expedite those coming through.

Mr. Gallaway said he never wanted to see more special exceptions coming to the Board. He said he appreciated having it because then they could assess the individual item, but if this would start to create more special exception requests coming in, then more work would be required, which seemed to be a judgement point on the ordinance itself.

Mr. Gallaway said he knew this had been sought after and understood the reasons why. He said he was listening to and following the lead of those who represent much more of the Rural Area than he does, and he appreciated their eagerness to move this forward.

Mr. Gallaway said that relative to the Development Area, he did see two different dichotomies in terms of C1 Commercial versus Residential property. He said they just had Parkway Place come forward, and that the Wetzel Property of 25 acres or more was sitting there. He said he supposed the applicant could not be doing anything because their contract was contingent upon the rezoning, and so they cannot go in to do fill activity. He said in this case, he supposed the property owner could do fill activity in preparation for something.

Mr. Gallaway said with this kind of brainstorming, he wondered what the unintended consequences might be if the property owner would go to that extent before trying to sell the land contingent on a rezoning. He said he brought this example up because he could see if Belvedere, for example, was moving dirt there, it could have limited the timeframe of the truck activity versus them having to take it up to Greene County or elsewhere. He said at the end of the day, there would have been less of an impact on the community if the trucks were going a shorter distance to deposit the fill.

Mr. Gallaway said he was open-minded to the scenario, but if there were consequences they were not thinking about in the Development Areas as they relate to residential properties, he hoped that this would be something where, if they see an issue, they can address it right away rather than waiting an entire year.

Mr. Gallaway said it was wise to say that if they are going to revisit it in a timeframe, then staff needs to let the Board know what they think a reasonable time is, whether or not it is a year. He said with that, he would be willing and ready to make a vote.

Ms. Palmer said she did not have any problems with the time limitations, although she thought

the other construction times the County has done have been until 7:00 p.m. She said she wanted to be consistent with the other things the County has done relating to noise ordinances.

Ms. Palmer said while she would love to keep trees, she was curious as to what staff would say about the limit to 24 inches. She said if there is a 5-acre lot and the topography is such that there is only one site to accomplish the setbacks and other things, and if there were a 25-inch tree in the middle of that, she wondered if this would stop the entire process. She said she wanted to be sure they were not making it too difficult to use the property.

Mr. Fritz said if they reduce the tree diameter limit from 36 inches to 24 inches, it will protect more trees on the property and potentially, the developer would have to get a special exception if there was a tree of 30 inches, so there would be some impacts.

Mr. Svoboda said with regards to the timeframe, the noise ordinance has longer hours, so there will be impacts in the Development Areas. He reminded the Board that when talking about large construction equipment, the backup beepers are not part of the noise ordinances because they are safety requirements from OSHA. He said the beeps cannot be regulated, whether this is 3:00 p.m. or 7:00 p.m.

Mr. Svoboda said he could not recall offhand what they did with the Yancey Lumber application in terms of the noise limitations, but that generally, it is 7:00 a.m. to 10:00 p.m. under the noise ordinance, and so this matched up with what they were proposing. He said the current proposal actually had it as 9:00 p.m.

Ms. McKeel said she thought Ms. Mallek made a great point about the start and end times, and so she would be very supportive of adjusting that. She said she understood Ms. Palmer's comment about keeping everything consistent, but that she would be supportive of a 6:00 p.m. or 7:00 p.m. time limit, especially after what Mr. Svoboda just said.

Ms. McKeel said she was unsure about the tree piece, as it sounded as if they would be limiting this.

Ms. Mallek said Mr. Fritz's suggestion that if there were one tree in the middle, it was something that would be easy enough to work around. She said in terms of reusing materials, there is a lot of value on a property with large trees on it for the future user. She said people were throwing this away because the County does not have the kinds of tree conservation ordinances that many other Virginia jurisdictions do.

Ms. Mallek said that on her own property, which was high-graded twice before her family bought it 70 years ago, there were no 36-inch trees left because when people high-grade, they take the high-value trees and leave the rest behind. She said it has taken many years for the spindling trees to grow into bigger, lovely ones, and so she was more protective of them in general.

Ms. Mallek said she was sure with the simple process that was laid out, although it would take time, people will be making serious income on it. She said a small application fee and small amount of time for an exception they feel is important should, in her mind, be proportional to the changes they are proposing.

Ms. Price said that even though she initially said she was with the 24-inch diameter, she believed this was a somewhat arbitrarily selected diameter. She said she did not know if this was the right diameter, although they could all agree that they wanted to save as many large trees as possible.

Ms. Price said it appeared that the ordinance would pass. She said if this were the case, since there were revisions she would like to see, she would like to have a report no later than a year after this passes from County staff letting the Board know the areas of concern so that if they need to tweak the ordinance, they can.

Ms. Price said she was not generally in favor of simply saying that there are special exceptions people can apply for. She said there are already so many special exceptions being applied for where she believed the County needed to amend the ordinances.

Mr. Gallaway said he was persuaded by Ms. Palmer's comments about the tree. He said he would prioritize the setbacks and other things that determine the positioning on the property and that then, the tree size could limit how things are positioned. He said he would be happy to move forward without further limitation to see how the ordinances goes.

Ms. McKeel encouraged Mr. Gallaway to adjust the times, as she felt they all agreed.

Mr. Gallaway said the 7:00 p.m. timeframe sounded like it was in alignment with what other existing ordinances called for.

Mr. Fritz said the hours of operation for machinery at a sawmill are 7:00 a.m. to 7:00 p.m.

Mr. Gallaway asked Mr. Svoboda if he had any concerns about the timeframe proposed.

Mr. Svoboda said no. He said it clarifies it so that there is not confusion between construction noise and other things. He said from an enforceability standpoint, it was clear.

Mr. Gallaway asked if the proposed timeframe (7:00 a.m. to 7:00 p.m.) could be added in.

Mr. Kamptner replied yes.

Ms. Mallek **moved** to adopt the proposed ordinances (Attachments D and E) to amend Chapter 18 (Zoning) and Chapter 7 (Health and Safety) as modified, with hours of operation beginning at 7:00 a.m. and ending at 7:00 p.m. Ms. McKeel **seconded** the motion.

Mr. Kamptner noted that the amended subsection was 5.1.28(b)(3).

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price  
NAYS: None

Ms. Mallek said she would like it written down that the Board would like a report within a year about how this ordinance was going.

**ORDINANCE NO. 20-18(3)**

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

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

By Amending:  
Sec. 18-3.1            Definitions.  
Sec. 18-4.2.3        Location of structures and improvements  
Sec. 18-4.3.1        Fill areas, waste areas.  
Sec. 18-5.1.28       Borrow, fill or waste areas.  
Sec. 18-31.5         Zoning clearance.

**Chapter 18. Zoning**

**Article I. General Provisions**

**Sec. 18-3.1 Definitions**

.....

Agricultural activity. "Agricultural activity" means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including tilling soil for raising crops; operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers' markets; or any combination of the foregoing activities- but does not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

.....

Clean earth fill. "Clean earth fill" means fill that (i) consists of any soil material that occurs naturally on the surface of the earth that can be dug, plowed, or planted, (ii) can be classified as a soil in accordance with the "Unified Soil Classification System", (iii) contains less than twenty-five (25) percent rock fragments greater than three inches in diameter, and (iv) contains less than five (5) percent by volume of root or woody material. Clean earth fill must be free of:

1. Any contaminants in toxic concentrations or amounts, in accordance with all applicable laws and regulations; and
2. Construction debris and demolition waste, including asphalt, concrete and other materials not found in naturally occurring soils.

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

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Inert waste fill. "Inert waste fill" means brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals or clean earth fill. Inert waste is nonreactive, physically, chemically and biologically stable from further degradation, and includes fragmented solid material such as rock, concrete, broken bricks, and block.

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

.....

[(§ 3.1: 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; [Ord. 01-18\(9\)](#), 10-17-01; [Ord. 02-18\(2\)](#), 2-6-02; [Ord. 02-18\(5\)](#), 7-3-02; [Ord. 02-18\(7\)](#), 10-9-02; [Ord. 03-18\(1\)](#), 2-5-03; [Ord. 03-18\(2\)](#), 3-19-03; [Ord. 04-18\(2\)](#), 10-13-04; 05-18(2), 2-2-05; [Ord. 05-18\(7\)](#), 6-8-05; [Ord. 05-18\(8\)](#), 7-13-05; [Ord. 06-18\(2\)](#), 12-13-06; [Ord. 07-18\(1\)](#), 7-11-07; [Ord. 07-18\(2\)](#), 10-3-07; [Ord. 08-18\(3\)](#), 6-11-08; [Ord. 08-18\(4\)](#), 6-11-08; [Ord. 08-18\(6\)](#), 11-12-08; [Ord. 08-18\(7\)](#), 11-12-08; [Ord. 09-18\(3\)](#), 7-1-09; [Ord. 09-18\(5\)](#), 7-1-09; 09-18(8), 8-5-09; [Ord. 09-18\(9\)](#), 10-14-09; [Ord. 09-18\(10\)](#), 12-2-09; [Ord. 09-18\(11\)](#), 12-10-09; Ord. 10-18(3), 5-5-10; [Ord. 10-18\(4\)](#), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; [Ord. 11-18\(5\)](#), 6-1-11; [Ord. 11-18\(6\)](#), 6-1-11; [Ord. 12-18\(3\)](#), 6-6-12; [Ord. 12-18\(4\)](#), 7-11-12; [Ord. 12-18\(6\)](#), 10-3-12, effective 1-1-13; [Ord. 12-18\(7\)](#), 12-5-12, effective 4-1-13; [Ord. 13-18\(1\)](#), 4-3-13; [Ord. 13-18\(2\)](#), 4-3-13; [Ord. 13-18\(3\)](#), 5-8-13; [Ord. 13-18\(5\)](#), 9-11-13; [Ord. 13-18\(6\)](#), 11-13-13, effective 1-1-14; [Ord. 13-18\(7\)](#), 12-4-13, effective 1-1-14; [Ord. 14-18\(2\)](#), 3-5-14; [Ord. 14-18\(4\)](#), 11-12-14; [Ord. 15-18\(1\)](#), 2-11-15; [Ord. 15-18\(2\)](#), 4-8-15; [Ord. 15-18\(4\)](#), 6-3-15; [Ord. 15-18\(5\)](#), 7-8-15; [Ord. 15-18\(10\)](#), 12-9-15; [Ord. 16-18\(1\)](#), 3-2-16; [Ord. 16-18\(7\)](#), 12-14-16; [Ord. 17-18\(1\)](#), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 17-18(5), 10-11-17; [Ord. 18-18\(1\)](#), 1-10-18; [Ord. 18-18\(4\)](#), 10-3-18; Ord. 19-18(3), 6-5-19) (§ 4.15.03: 12-10-80; 7-8-92, § 4.15.03, [Ord. 01-18\(3\)](#), 5-9-01; [Ord. 05-18\(4\)](#), 3-16-05; [Ord. 10-18\(1\)](#), 1-13-10; [Ord. 10-18\(3\)](#), 5-5-10; [Ord. 10-18\(5\)](#), 5-12-10; [Ord. 11-18\(1\)](#), 1-12-11; [Ord. 12-18\(2\)](#), 3-14-12; [Ord. 14-18\(3\)](#), 6-4-14; [Ord. 15-18\(3\)](#), 5-6-15; § 4.15.3; [Ord. 15-18\(11\)](#), 12-9-15; Ord. 17-18(4), 8-9-17) (§ 4.17.3: Ord. 98-18(1), 8-12-98; [Ord. 01-18\(8\)](#), 10-17-01; [Ord. 17-18\(5\)](#), 10-11-17) (§ 4.18.2: Ord. 00-18(3), 6-14-00; [Ord. 13-18\(4\)](#), 9-4-13) (§ 10.3.3.1: § 20-10.3.3.1, 11-8-89; § 18-10.3.3.1, Ord. 98-A(1), 8-5-98; [Ord. 01-18\(6\)](#), 10-3-01) (§ 30.2.4: § 30.2.4, 12-10-80) (§ 30.3.5: § 30.3.02.1 (part), 12-10-80; 6-10-87; [Ord. 05-18\(1\)](#), 1-5-05, effective 2-5-05; § 30.3.5; [Ord. 14-18\(1\)](#), 3-5-14; [Ord. 17-18\(4\)](#), 8-9-17); § 3.1, [Ord. 19-18\(3\)](#), 6-5-19; [Ord. 19-18\(6\)](#), 8-7-19; Ord. 20-18(3), 9-16-20]

## Article II. Basic Regulations

### Sec. 18-4.2.3 - Location of structures and improvements.

Except as otherwise provided in section 4.2.2, this section applies to the location of any structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to section 32 of this chapter or to the placement of clean earth fill or inert waste fill.

- a. No structure or improvement shall be located on any lot or parcel in any area other than a building site.
- b. No structure, improvement, land disturbing activity to establish a structure or improvement, or placement of clean earth fill or inert waste fill shall be located on critical or preserved slopes except as otherwise permitted under sections 4.2.5, 4.2.6, 4.3.1 and 30.7.4.

(§ 20-4.2.3, 12-10-80, 11-15-89; § 18-4.2.3, Ord. 98-A(1), 8-5-98; [Ord. 01-18\(7\)](#), 10-17-01; § 20-4.2.3.1, 12-10-80, 11-15-89, § 18-4.2.3.1, Ord. 98-A(1), 8-5-98; § 4.2.3.2, 12-10-80, § 18-4.2.3.2, Ord. 98-A(1), 8-5-98; § 18-4.2.3, [Ord. 12-18\(4\)](#), 7-11-12; [Ord. 14-18\(2\)](#), 3-5-14; Ord. 20-18(3), 9-16-20)

### Sec. 18-4.3.1 - Fill areas, waste areas.

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

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

### Sec. 18-5.1.28 Clean earth and inert waste fill activity.

- a. Each clean earth fill activity or inert waste fill activity not established and operated in conjunction with a permitted use under section 30.4 of this chapter or established and operated in conjunction with an approved site plan or subdivision are subject to the following requirements:
  1. Each active fill area shall be shaped and sloped so that no undrained pockets or stagnant pools of water are created to the maximum extent reasonably practicable as determined by the program authority. All undrained pockets and stagnant pools of water resulting from drainage shall be treated as required by the Virginia Department of Health to eliminate breeding places for mosquitoes and other insects. Slope may not exceed 3:1. The height of fill may not exceed 8 feet above natural grade.
  2. No fill area shall be located either within the flood hazard overlay district, except as authorized by section 30.3 of this chapter, or in any stream buffer area as defined by

Chapter 17 of the Code of Albemarle or on any hydric soils as identified by the United States Department of Agriculture.

3. Each fill area shall be reclaimed within seven (7) days of completion of the fill activity, or such later time authorized by the program authority for reclamation activities of a seasonal nature. Reclamation shall include, but not be limited to, restoring the area so that it approximates natural contours; shaping and sloping the area to satisfy the requirements of subsection (a)(1); and establishing a permanent vegetative ground cover.
4. Inert waste fill must be topped with clean earth fill to a minimum depth of two (2) feet in order to allow for permanent stabilization and reclamation; and establishing a permanent vegetative ground cover; provided that the program authority may reduce the minimum depth of clean earth fill to one (1) foot if the area is unlikely to be redeveloped.
5. The zoning administrator, or the program authority for those fill areas subject to subsection (b), may require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county or the program authority at the owner's expense should the owner fail, after notice is given to perform required reclamation work specified in the notice. The amount of the bond or other surety shall be based on unit pricing for new public or private sector construction in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost to initiate and complete the reclamation of the borrow, fill or waste area, and to comply with all other terms and conditions of the plan or narrative required by subsection (b). If reclamation work is required to be taken by the county or the program authority upon the failure of the owner to do so, the county or the program authority may collect the reasonable cost of the work directly from the owner, to the extent that the cost exceeds the unexpended or unobligated amount of the surety. Within sixty (60) days after the reclamation work is completed and inspected and approved by the county engineer, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner.
6. Fill activity (except for access) must be set back a minimum of 150 feet from any entrance corridor street.
7. Fill activity (except for access) must be set back a minimum of 75 feet from all property lines in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property. No setback is required if adjoining lots are under the same ownership. The access to a fill activity is not subject to the setback from public street right of way.
8. Fill activity must be set back a minimum of 50 feet from all non-residential property lines. No setback is required if adjoining lots are under the same ownership.
9. Minimum lot size for fill activity is 5 acres. Multiple parcels under the same ownership and with the same zoning designation may be considered as a single lot for the purpose of achieving the minimum lot size.
10. No fill activity may occur within the drip line of any tree.
11. The maximum area for fill activity on any parcel in existence on September 16, 2020 is two acres. Determining area for fill activity includes all locations used, or designated to be used, for fill, vehicle storage and vehicle maintenance but does not include area used for exclusively for access.
12. Notwithstanding section 4.3 of this chapter, trees may be cut, provided a plan as required by subsection (b) is submitted. However, no tree of 36 inches or greater in diameter may be cut.
13. If a private street, shared driveway or access easement is used, the applicant must demonstrate that the access is adequate for the proposed activity and that the applicant has the right to use the access. In order for access to be deemed adequate, the owner must limit vehicles associated with the fill activity to not more than 56,000 pounds. In addition, the access must meet the standards of section 4.6.6 of this chapter and have a surface adequate to accommodate a vehicle weighing 56,000 pounds. The owner may increase the weight of vehicles associated with the fill activity to a maximum of 80,000 pounds, provided that the access meets the standards of section 4.6.6 of this chapter and has a surface adequate to accommodate a vehicle weighing 80,000 pounds.
14. No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the highway.

15. Except for properties zoned Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD), tree canopy for area(s) disturbed by fill activity must be established and maintained in compliance with section 32.7.9.8 of this chapter.
- b. Any fill activity with an aggregate area greater than two thousand five hundred (2,500) square feet requires a plan or narrative, subject to the prior approval of the program authority, that satisfies the requirements of subsection (a) and the following provisions:
  1. All materials shall be transported in compliance with section 13-301 of the Code of Albemarle. Before a transporting vehicle leaves the parcel or parcels on which the fill area is located, it shall be cleaned so that no materials outside of the vehicle's load-bed can be deposited on a public or private street.
  2. The fill area and the access roads thereto shall be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.
  3. Fill activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m., except in cases of a public emergency as determined by the director of emergency services for the county.
  4. Fill activity shall be conducted in a safe manner that maintains lateral support, in order to minimize any hazard to persons, physical damage to adjacent land and improvements, and damage to any public street because of slides, sinking, or collapse.
  5. The placement of fill shall be completed within one (1) year of its commencement, except for reclamation activities and any other activities associated with the final stabilization of the area. The program authority may extend the date of completion upon the written request of the applicant, demonstrating that factors beyond the control of the applicant prevented the completion within the one-year period. The program authority may then extend the permit for a period of time that, in its sole discretion, is determined adequate to complete the work.
  6. In lieu of a plan or narrative, the program authority may accept a contractual agreement between the Virginia Department of Transportation and its contractor for a public road project; provided that the program authority determines that the agreement satisfies at least to an equivalent extent the requirements and intent of this section.
- c. Inert waste fill activity is not permitted in the Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD) zoning districts without approval of a variation or exception as permitted in section 33.43 of this chapter.
- d. The Board of Supervisors may approve a variation or exception from any requirement of this section.
  1. A variation or exception from any requirement of this section may be approved upon a finding that any of the following factors are satisfied: (i) the proposed fill activity would further agricultural use of the property; (ii) the variation or exception would allow for a more natural appearance of the site after the fill activity has occurred; (iii) a reduction in setback from the entrance corridor is recommended by the Architectural Review Board; (iv) the variation or exception is supported by the abutting owners impacted by the variation or exception; (v) approval of any variation or exception is consistent with an approved and valid initial or preliminary site plan or any other land use decision of the County; (vi) the proposed fill activity will be of limited duration (less than 90 days) and involve not more than 10,000 cubic feet of fill within any 12 months.
  2. The agent will provide written notice by first class mail or by hand at least five days before the Board hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owners associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent.
  3. A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required waives the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

## Article IV. Procedure

### Sec. 18-31.5 - Zoning clearance.

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

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

1. *New use.* Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), or clean earth fill activity or inert waste fill activity, other than an agricultural use.

(§ 31.2.3.2, 9-9-92; [Ord. 01-18\(6\)](#), 10-3-01; [Ord. 09-18\(3\)](#), 7-1-09; [Ord. 11-18\(1\)](#), 1-12-11; [Ord. 11-18\(8\)](#), 8-3-11; [Ord. 14-18\(4\)](#), 11-12-14; [Ord. 15-18\(10\)](#), 12-9-15; Ord. 20-18(3), 9-16-20)

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## ORDINANCE NO. 20-7(2)

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE I, NOISE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article I, Noise, is hereby amended and reordained as follows:

By Amending:

Sec. 7-103 Definitions

### Chapter 7. Health and Safety

#### Article 1. Noise

.....

### Sec. 7-103 Definitions.

The following definitions apply to this article unless the context requires a different meaning:

**Agricultural activity.** The term “agricultural activity” means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including tilling soil for raising crops; operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers’ markets; or any combination of the foregoing activities- but shall not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

.....

(§ 12.1-2, 9-10-80, § 2; 6-10-81; Code 1988, § 12.1-2; Ord. 98-A(1), 8-5-98; Ord. 09-7(3), 12-2-09; Ord. 13-7(2), 9-4-11; Ord. 20-7(1), 3-18-20, effective 5-1-20; Ord. 20-7(2), 9-16-20)

**State Law reference—** Va. Code § 15.2-1200.

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**Recess.** The board recesses its meeting at 9:14 p.m. and reconvened at 9:22 p.m.

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Agenda Item No. 18. **Public Hearing: Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19.** To receive public comment on its intent to adopt an ordinance entitled “An Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19,” which was first adopted by the Board of Supervisors as an emergency ordinance on July 27, 2020 (Ordinance No. 20-E(5)). The ordinance establishes: (1) limitations on the number of persons at food establishments, farm wineries, limited breweries, and limited distilleries; (2) limitations on the number of attendees at gatherings; and (3) requires persons to wear face coverings in public places. The ordinance also includes definitions, specific provisions for when and how the above-described limitations apply, and imposes criminal penalties for violations

The Executive Summary forwarded to the Board states that, 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”). 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. The Ordinance was narrowly focused to address areas of concern regarding the spread of COVID-19, and provided exceptions in limited circumstances.

On September 2, 2020, the Board adopted an emergency amendment to Ordinance No. 20-E(5) to exempt the "Horse and Other Livestock Shows" and "Horse Racing Racetracks" business sectors from the 50-person limitation on gatherings, provided that any shows or events are closed to spectators and that all of the applicable State guidelines are followed.

Emergency ordinances may not be enforced for more than 60 days unless they are re-adopted following notice and a public hearing. Ordinance No. 20-E(5) will expire on September 29. The proposed ordinance (Attached A), is the same as Ordinance No. 20-E(5) adopted by the Board on July 27, and as amended on September 2, but with the recitals updated and necessary amendments made as the ordinance is converted from an emergency to a non-emergency ordinance.

As of September 7, Virginia's 7.30 percent positivity rate in COVID-19 testing over a 14-day period exceeds the World Health Organization's recommendation 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"). The seven-day positivity rate in the Thomas Jefferson Health District is 6.4 percent. In addition, the community has 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. Staff will provide the Board with the most current information at the public hearing on September 16.

Staff recommends the Board adopt the proposed Ordinance (Attachment A).

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Mr. Greg Kamptner, County Attorney, said this was a public hearing for the ordinance that first came to the Board on July 27. He said he would give some background and a reminder to the public that the County's enabling authority was found in Section 15.2-1200, which gives the Board the authority to adopt necessary regulations to prevent the spread of contagious diseases, among other things in the section.

Mr. Kamptner said the ordinance as was originally adopted and the one before the Board that evening were very similar to the one that was last before the Board on September 2 for an emergency amendment. He said the only other changes since then were to update a couple of the recitals, but that the substance of the ordinance was what the Board last saw on September 2. He said it was a targeted ordinance that focused on indoor occupancy at certain identified establishments, the maximum size of public gatherings, and the requirement for people to wear face coverings.

Mr. Kamptner said each of these categories of regulations also have some exceptions, which were laid out in the ordinance.

Mr. Kamptner said the three areas of the ordinance were selected because these were three continuing themes that appeared in the recommendations from the World Health Organization (WHO), Center for Disease Control and Prevention (CDC), and the Virginia Department of Health (VDH). He said one of the key benchmarks for having more restrictive requirements for these areas of behavior was something that the County had not yet achieved, which was the recommendation that the positivity rate in the community remain at 5% or lower for at least 14 days.

Mr. Kamptner presented numbers indicating where the community stood that week. He said these were numbers he updated after Dr. Bonds gave her presentation earlier that day. He said the positivity rates for the Health District, County, and City were all from September 14, which was the most recent information available. He said the UVA dashboard was updated late that afternoon, and so the number of reported cases was up to 378, with 330 students and 48 faculty and staff. He noted that the numbers were a 7-day rolling average.

Mr. Kamptner said Ms. Price had asked Dr. Bonds a question about the County's ordinance, and her responses were warm to the ordinance continuing beyond its current ending date, which was near the end of September. He said the ordinance has been beneficial but that, more importantly moving forward, is that they were heading into a riskier period with cooler weather coming and with people spending more time indoors where the potential for spread increases.

Mr. Kamptner recommended one change to the ordinance before the Board, which was to revise Section 9 to have an ending date. He said they have been monitoring the positivity rates and other data, and that it was quite possible that staff could come to the Board well before November 18. He said this revision would extend the ordinance a little over 60 days from the present day, and about 50 days beyond its original ending date. He said they will monitor the circumstances and situation between now and then, and would definitely bring it back to review at the Board's regular meeting date on November 18.

Mr. Kamptner said staff's recommendation would be to adopt the ordinance (Attachment A) with the revision to Section 9.

Ms. Mallek said her lingering concern was always that the figures and formulas keep changing at the state, local, and federal levels, and so it was difficult to stick with anything. She said she was glad to see the Albemarle County numbers for the first time that day, both from Dr. Bonds and Mr. Kamptner, and so at least they had that item to focus on and how this will be impacted by UVA (which they still did not



know because they kept changing their rules as well). She said it was very confusing to her, but that they would do the best they could.

Ms. LaPisto-Kirtley said since they were heading into cooler weather, she worried about extending this and the impact it would have on the restaurants. She said she was contacted by a restaurant asking whether or not they could put up partitions between booths. She asked if this would be acceptable, as more and more people would be eating indoors due to the colder weather.

Mr. Kamptner replied that he was not capable of answering that, although he had heard the question asked before of someone at the Health Department. He said the answer was that the partitions are not effective in that environment. He said this was something that they could look at, however, and come back before November 18 to address it if there were a solution.

Ms. LaPisto-Kirtley said she worried about the restaurants, as many of them had outdoor dining. She said she was very concerned about the independent restaurants being able to survive with no outdoor space for dining and limited indoor dining. She said she thought it was a good thing if they were moving in the right direction, but that she did not know if staff had been in contact to see what kind of effect this would have on independent restaurants.

Mr. Doug Walker, Deputy County Executive, said with respect to partitions inside restaurants, this was addressed with the IMT and Health Department to acknowledge that there was nothing in the CDC guidelines, nor in the local regulations, that would allow partitions as a substitute for the density limitations in restaurants. He said he could follow up with IMT and the Board to get that specific information to the restaurant if, in fact, communication was needed.

Mr. Walker said the Lift Grant, or CARES CRF funding, was being distributed into the community through the Economic Development Office and was committed to help those citizens most directly impacted by the pandemic, particularly those related to food service and tourism. He said a number of the beneficiaries of the Lift Grant that were already awarded were restaurants. He said as the Board saw in an earlier presentation, efforts went into helping the restaurants very quickly with no fee to get seating accommodations outside.

Mr. Walker said the next thing the Board and community would see was a concerted effort on a program called Safe Spaces and Places to enable the restaurants that do have outside accommodations to extend their season into the colder weather with some improvements that will help them continue to provide services outside in accordance with the current limitations on their indoor capacity.

Mr. Walker said these were some measures the County was trying to take to recognize the specific impact of the pandemic and the restrictions put on the businesses to try to help them to be as successful as possible.

Mr. Gallaway opened the public comment portion of the hearing. As there were no speakers, he closed public comment and brought the matter back to the Board.

Ms. Palmer said she had one comment, although she would vote for this as it was important. She said to Ms. LaPisto-Kirtley's comment, there were places in the County going out of business and that the Board had to acknowledge this. She said she did not know if they would do any better if there were no ordinance because she felt that many people would still be staying home and not going out as much. She said there was also self-policing involved, although it was a terrible thing that businesses were hurting.

Ms. Palmer **moved** that the Board adopt the proposed ordinance, with the revisions to Section 9 as recommended by the County Attorney. Ms. Mallek **seconded** the motion.

In further discussion, Ms. Price said that regarding Ms. LaPisto-Kirtley's question, one of the issues she has seen in the studies on indoor dining is the air currents that are created by HVAC systems make it much more difficult, even with partitions, to be able to dine safely. She said this is something that when outdoors, or somewhere without a forced air system, that make it can reduce the risk of infection. She said she understood. Ms. LaPisto-Kirtley's points are well made and that they are all very concerned about the impacts.

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

AYES: Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, Ms. Palmer, and Ms. Price  
NAYS: None

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#### 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

**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)<sup>1</sup>; 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 immunity<sup>2</sup>; and

**WHEREAS**, at this time, there is no known cure, no effective treatment, no vaccine, and because people may be infected but asymptomatic, they may unwittingly infect others<sup>3</sup>; 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 gatherings<sup>4</sup>; 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 classes<sup>5</sup>; 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"<sup>6</sup>; 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 distancing<sup>7</sup>; 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 spreading<sup>8</sup>; 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)<sup>9</sup>; 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 possible<sup>10</sup>; 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-19<sup>11</sup>; 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; as of the date of adoption of this ordinance, “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”)<sup>12</sup>, which became effective at 12:00 a.m. on July 1, 2020, is in effect; 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 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 exceeds the World Health Organization’s recommendation 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”)<sup>13</sup>; the seven-day positivity rate in the Thomas Jefferson Health District is 6.4 percent<sup>14</sup>; the community has 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.<sup>15</sup>

**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.”

#### **Sec. 3. Definitions**

The following definitions apply to this ordinance:

- A. “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.
- B. “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).
- C. “Farm winery” means an establishment that is required to be licensed as a farm winery under Virginia Code § 4.1-207.
- D. “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.
- E. “Gathering” means a planned or spontaneous indoor or outdoor, or both, event with people participating or attending for a common purpose such as a community event, concert, festival, conference, parade, wedding, sporting event, party (including parties at private residences), celebration, and other social events. “Gathering” does not include a place of employment where persons are present to perform their functions of employment, events or activities on the grounds of an institution of higher education- or school-owned property that are institution or school related, or persons engaging in religious exercise at their religious institution or other place of religious significance.

- F. "Limited brewery" means an establishment that is required to be licensed as a limited brewery under Virginia Code § 4.1-208.
- G. "Limited distillery" means an establishment for which a limited distiller's license is required under Virginia Code § 4.1-206.
- H. "Public place" means: (i) any indoor place generally open to the public, including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle; or (ii) any outdoor place where at least six feet of physical distancing between persons not living in the same household cannot be maintained. "Public place" does not include a person's residence or personal vehicle, institutions of higher education and other schools, fitness and other exercise facilities, religious institutions, indoor shooting ranges, and the County courthouse buildings.

**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 67, 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. *Gatherings of more than 50 persons prohibited.* All public and private in-person gatherings of more than 50 persons are prohibited except as provided in Section 5(B).
- B. *Gatherings not subject to the 50-person limit.* Section 5(A) does not apply to the following gatherings and, instead, the maximum size for gatherings established in EO 67, or as it may be further amended or superseded, or any Order of Public Health Emergency, applies:
  - 1. Outdoor gatherings at food establishments, and at farm wineries, limited breweries, and limited distilleries for activities and events permitted for those uses under County Code Chapter 18.
  - 2. Gatherings for religious exercise including, but not limited to, religious ceremonies.
  - 3. Wedding ceremonies and wedding receptions.
  - 4. Expressive activity on a public street, public sidewalk, in a public park subject to park rules, and on other public property expressly designated for expressive activity by its governmental owner or occupant.
- C. *Gatherings not subject to the 50-person limit; outdoor horse and other livestock shows and horse racing racetrack events without spectators.* Section 5(A) does not apply to outdoor horse and other livestock shows and to outdoor horse racing racetrack events at which spectators are not in attendance at either such shows or events, provided that the owners, operators, and participants comply with EO 67, §§ 1, 10(a), and 10(b), all applicable "Guidelines for All Business Sectors" (pages 1-4) incorporated by reference into EO 67 and, for outdoor horse and other livestock shows, the guidelines for the "Horse and Other Livestock Shows" business sector (pages 37-39) and, for outdoor horse racing racetrack events, the guidelines for the "Horse Racing Racetracks: Multi-Day Events" business sector (pages 40-43). A horse or other livestock show is deemed to be conducted outdoors when, because of inclement weather, it is conducted in an open-air structure having a roof.
- D. *Persons working not counted.* Persons working at gatherings, either as employees or independent contractors, do not count towards the limit on the number of persons at a gathering.
- E. *State requirements, recommendations, and guidance.* Except as provided in Sections 5(A) through (D), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing, that apply to gatherings established in EO 67, 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 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 10 years of age and 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, 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 is unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child 10 years of age or under.
  3. *Certain employees.* On-duty employees covered by workplace safety regulations promulgated by the State Safety and Health Codes Board, or by 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 minimum physical distancing established by any applicable Executive Order of the Governor or Order of Public Health Emergency of the State Health Commissioner is maintained.
  2. *Eating or drinking.* While a person is eating food or drinking a beverage.
  3. *End of waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in EO 67, Section (C)(3), 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 nine in public places. Adults accompanying minors between the ages of 10 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. Section 5(D) is not enforced pursuant to this ordinance.
- 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-E(5) and Duration**

This ordinance succeeds and supersedes Ordinance No. 20-E(5) on and after September 16, 2020 and continues in full force and effect until November 18, 2020 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.
2. 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.
3. 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=EAlaIqobChMI9lvSvJPk6glVGrbICh2TYw9QEAAAYASAAEgKjDfD\\_BwE#medicines](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EAlaIqobChMI9lvSvJPk6glVGrbICh2TYw9QEAAAYASAAEgKjDfD_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>.
4. 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.
5. 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>.
6. 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](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.”)
7. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>.
8. <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>.
9. <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>.
10. <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.
11. <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>.
12. [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf).
13. <https://coronavirus.jhu.edu/testing/testing-positivity>
14. <https://www.vdh.virginia.gov/thomas-jefferson/tjhd-covid-19-data-portal/>
15. <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>

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Agenda Item No. 19. **Public Hearing: Ordinance to Amend Ordinance No. 20-A(8), An Ordinance to Ensure Continuity of Government During the COVID-19 Disaster.** To receive public comment on its intent to adopt an ordinance to amend Ordinance No. 20-A(8), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster, as authorized by Virginia Code § 15.2-1413

during the novel coronavirus (COVID-19) disaster. The proposed amendments would update the ordinance's recitals, amend Sec. 4 to reflect organizational changes; Sec. 6 to clarify and change certain terminology regarding public meeting procedures; Sec. 7 to more specifically identify the circumstances under which certain deadlines established by law may be extended; and Sec. 13 to delete a reference to a superseded ordinance

The Executive Summary forwarded to the Board states that, on March 12, 2020, the County Executive, acting as the Director of Emergency Management, declared a local emergency, and Governor Ralph S. Northam declared a state of emergency, both because of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19 ("COVID-19"), and the resulting COVID-19 pandemic.

On March 27, 2020, the Board adopted Ordinance No. 20-E(3), an emergency ordinance to ensure the continuity of County government. Following a public hearing on April 15, 2020, the Board adopted Ordinance No. 20-A(6), An Ordinance to Ensure Continuity of Government During the COVID-19 Disaster. On May 20, 2020, the Board adopted an emergency amendment to Ordinance No. 20-A(6) to add the Jefferson-Madison Regional Library as one of the entities providing essential governmental functions. This version of the ordinance was adopted as a non-emergency ordinance following a public hearing on June 17, 2020 as Ordinance No. 20-A(8).

The proposed amendments would: (1) update the Ordinance's recitals; (2) amend Section 4 to reflect organizational changes in the County; (3) amend Section 6 to align its terminology with the State Budget legislation pertaining to meetings by electronic communication means and with the Board's Rules of Procedure for Virtual and Hybrid Meetings adopted September 2, 2020; (4) amend Section 7 to specifically identify the circumstances under which certain deadlines established by law may be extended; and (5) amend Section 13 to delete a reference to a superseded ordinance.

Any increased workload could be managed by existing staff.

Staff recommends that the Board adopt the attached proposed Ordinance (Attachment A).

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Mr. Kamptner said this was the fifth time this ordinance had come before the Board. He said the first time was on March 27, and so the County was now about six months into operating under the ordinance. He said there were some minor amendments that came in both emergency and nonemergency forms. He said this was the first "update" to the ordinance. He said now that they were experienced in operating in virtual meetings and in generally operating as government under the conditions, it seemed time to update some of the provisions to acknowledge what they are able to do in operating as a government.

Mr. Kamptner presented a slide about the Board's enabling authority to have the ordinance. He said the COVID-19 pandemic is considered to be a disaster within the meaning of the enabling authority.

Mr. Kamptner said the scope of the proposed amendments before the Board including updating the recitals, as there was new information to add; and updating the organizational changes that had occurred in the County. He said there were two bills that were put into the state budget legislation that gave any public bodies the authority to conduct their meetings by electronic communication means. He said the requirements of the state legislation were not much different than what the County had put into its Continuity of Government ordinance, but that he thought it would be helpful to all public bodies who were relying on the County's ordinance to use the language that is used in the legislation, and so those changes were made.

Mr. Kamptner said he also amended the deadlines regulations in Section 7. He said at the time the original ordinance was drafted, the County did not know what they were walking into. He said they now know that they can function and while there may be some circumstances that will come up with meeting certain deadlines, they also know what they can do. He said Section 7 was amended, and that Section 13 was a cleanup provision.

Mr. Kamptner presented a slide that summarized the changes to Section 6 regarding public meetings and how they have amended this. He said the second bullet on the slide referenced how the Board adopted new rules of procedure to deal with virtual and "hybrid" meetings, and so Subsection B was amended to acknowledge the Board's new rules.

Mr. Kamptner said there were some other changes that were not triggered by the state budget legislation, but were made to simplify some provisions that no longer needed to be as verbose as they were in the original incarnation of the ordinance.

Mr. Kamptner said in terms of the deadlines, there were some media reports that would lead someone to think that if they focused on some of those headlines, the County was not complying with FOIA and that they were using the Continuity of Government ordinance as a way not to respond to FOIA requests. He said as it turned out, the County has been able to meet the FOIA deadlines quite well. He said while there were some circumstances that may be problematic, most of the records requests were electronic and as long as custodians of record were present and healthy, that had not presented a problem.

Mr. Kamptner said there were some scenarios that could still arise in the future where it may be

difficult, if not impossible, for the County to timely respond to FOIA requests. He said they have acknowledged some factors that should be considered where it may be either dangerous or impracticable for the County to respond in a timely manner.

Mr. Kamptner said the reality was that even in normal times, when there are certain FOIA requests that were voluminous, the County would work out an agreement with the requester and agree on a date to respond.

Mr. Kamptner said the regulations were tweaked to provide some greater clarity, now that they knew what they were in and what they were facing.

Mr. Kamptner said there was one change that he would want to make to the end of the ordinance. He said there are times when the Board adopts ordinances that do not take effect immediately and because they may be in the middle of some FOIA requests currently, they will want to leave some lead time before the Board's October 7 meeting so that agendas can be properly stated. He recommended that the ordinance become effective on and after October 1, which would give the County staff more lead time to prepare for the recommended changes in the ordinance.

Mr. Gallaway opened the Public Hearing. He noted that no one was signed up to speak on this item, and so the matter was back before the Board.

Ms. LaPisto-Kirtley **moved** that the Board adopt the proposed ordinance with the delayed October 1, 2020 effective date, as recommended by the County Attorney. 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, Ms. Palmer, and Ms. Price  
NAYS: None

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#### **ORDINANCE NO. 20-A(14)**

AN ORDINANCE TO AMEND ORDINANCE NO. 20-A(8), AN ORDINANCE TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

**WHEREAS**, on March 11, 2020, the World Health Organization declared 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 Fifty-One ("EO" and "51") declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; and

**WHEREAS**, 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**, EO 51 ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive "any state requirement or regulation" as appropriate; 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**, on March 17, 2020, Governor Ralph S. Northam and the Virginia State Health Commissioner issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (amended on March 20, 2020) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment; and

**WHEREAS**, on March 18, 2020, the Board of Supervisors consented to the County Executive, acting as the Director of Emergency Management, issuing an amended declaration of local emergency to refer to the COVID-19 pandemic as not only an emergency, but also as a "disaster," as the Governor had included in Executive Order Fifty-One, and the County Executive issued the amended declaration on March 20, 2020; and

**WHEREAS**, on March 20, 2020, the Attorney General for the Commonwealth of Virginia issued an opinion in which he concluded that the COVID-19 pandemic, which the Governor declared is a "disaster" as defined in Virginia Code § 44-146.16, is also a "disaster" as that term is used in Virginia Code § 15.2-1413; and



**WHEREAS**, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to “assure continuity in its government” in the event of a disaster for a period not to exceed six months after the disaster; 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); 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 immunity; and

**WHEREAS**, the COVID-19 disaster continues; and

**WHEREAS**, the Board of Supervisors finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16 and within the meaning of Virginia Code § 15.2-1413; and

**WHEREAS**, the General Assembly recognizes the extreme public danger created by contagious diseases such as COVID-19 by enabling counties, through the exercise of their police powers expressly granted in Virginia Code § 15.2-1200, to “adopt necessary regulations to prevent the spread of contagious diseases among persons” and to adopt “quarantine regulations” affecting persons; and

**WHEREAS**, Virginia § 15.2-1413 authorizes the County, by ordinance adopted by the Board of Supervisors, to “provide a method to assure continuity in its government” in the event of a disaster such as the COVID-19 disaster, and that this authority is granted “[n]otwithstanding any contrary provision of law, general or special”; and

**WHEREAS**, the Board has tailored this ordinance to “assure continuity in [the County’s] government” during the COVID-19 disaster by attempting to vary from existing State law and County Code procedures and requirements to the minimum extent necessary, recognizing the danger to public health and safety posed by public bodies physically assembling to conduct public meetings, and the difficulty in adhering to all of the procedures and deadlines imposed on the County and its public bodies by State law and the County Code, which are routine during normal governmental operations but some of which may be impossible to completely and timely satisfy during the disaster because most County staff are working remotely and, at various stages of the COVID-19 disaster, significant staff resources were and continue to be dedicated to redesigning County government to address the unique issues arising daily during the disaster while continuing County operations and fulfilling its purposes, duties, and responsibilities; and

**WHEREAS**, the Board has identified in Section 4 of this ordinance the functions of County government that it deems to be essential in order for it to continue during the COVID-19 disaster and, in doing so, observes that State and local government is complex, and the powers, duties, and obligations imposed on localities by the State to promote the public health, safety and welfare of their residents are numerous and varied and must continue without interruption, and that they extend well beyond merely those functions related to survival during a disaster; and

**WHEREAS**, this ordinance is solely in response to the disaster caused by the COVID-19 pandemic, promotes and protects the public health, safety, and welfare of the residents of the County, the City of Charlottesville, and the Commonwealth of Virginia, and is consistent with the laws of the Commonwealth of Virginia, the Constitution of Virginia, and the Constitution of the United States of America.

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

**Sec. 1. Purpose**

The purpose of this ordinance is to ensure the continuity of the government of the County of Albemarle, Virginia, during the COVID-19 disaster, which is currently a pandemic, by identifying the many essential governmental functions that must continue and establishing regulations to ensure these functions continue by providing for: (1) the succession of elected officials and appointed officers; (2) meeting procedures that allow the County’s public bodies, whose members are elected or appointed, to meet and conduct business in a manner that is safe for the members of the public bodies, staff, and the public, and allow the public to participate in these meetings to the fullest extent practicable given the current circumstances; (3) provide alternative deadlines for certain matters that are different than those provided by State law or the County Code when it is impractical or dangerous to safely meet those deadlines because of the COVID-19 disaster; (4) establish the method for resuming normal governmental operations; and (5) other matters related to the foregoing.

The requirements, procedures, deadlines, and other provisions of this ordinance vary from those that apply to County government under normal governmental operations. However, for the reasons explained in the recitals, these alternative regulations are deemed to be essential in order to ensure the continuity of County government during the COVID-19 disaster without further risking the health and lives of the public and County officers, appointees, and employees resulting from exposure to the COVID-19 virus and its further spread. The regulations that apply during normal governmental

operations will be followed to the extent they can be in a manner that is consistent with State and Federal orders and declarations and without risking the health and lives of the public and County officers and employees.

**Sec. 2. Authority**

This ordinance ensures the continuity of government during the COVID-19 disaster and is authorized by Virginia Code § 15.2-1413, which enables the Board of Supervisors to provide by ordinance “a method to assure continuity in its government.”

**Sec. 3. Scope**

This ordinance applies not only to the government of the County of Albemarle, Virginia, but also to the Albemarle County Public Schools, the County’s authorities identified in this ordinance, public bodies established pursuant to a joint exercise of powers agreement or other agreements, and other public bodies and offices described in Section 4.

**Sec. 4. Essential Governmental Functions**

Under the county executive form of government, Virginia Code § 15.2-502 provides that the “powers of the county as a body politic and corporate” are vested in the Board of Supervisors. Any actions of the Board in which it exercises its powers are essential governmental functions that must be performed to ensure the continuity of County government. By providing vital support for the Board, the activities of the Clerk of the Board and her office are also essential governmental functions that must be performed to ensure the continuity of County government.

The Board of Supervisors also finds that the essential governmental functions that must be performed in order to ensure the continuity of government during the COVID-19 disaster are those activities or functions of the County established by Virginia Code § 15.2-518 (departments of finance, social services, law enforcement, education, records, and health), those that the Board has previously deemed to be “necessary to the proper conduct of the business” of the County pursuant to Virginia Code § 15.2-518, the authorities that provide essential public services, the County public bodies that oversee the proper administration and enforcement of State laws and the County Code, and the other public bodies and offices that facilitate the proper administration and implementation of State laws and the County Code to the extent necessary and practicable during the COVID-19 disaster.

A. Essential governmental functions provided by County offices and departments. The following offices and departments provide essential governmental functions that must be performed to ensure the continuity of County government as described below:

1. County Executive’s Office. The County Executive is the administrative head of the County, whose duties include executing and enforcing all Board resolutions and orders, that all laws of the Commonwealth required to be enforced through the Board, or some other County officer subject to the control of the Board, are faithfully executed, and performing other duties as may be required by the Board and as may be otherwise required by law. *Virginia Code § 15.2-516.* The functions of the Office of Equity and Inclusion and the Communications and Public Engagement Office, which exist within the County Executive’s Office, are included in this designation. The Project Management Office is also within the County Executive’s Office, but its functions are identified separately below.
2. County Attorney’s Office. The County Attorney is the legal advisor to County government whose duties are to advise the Board and “all boards, departments, agencies, officials and employees” of the County on civil matters, draft or prepare ordinances, and defend or bring actions in which the County or any of its boards, departments, agencies, officials, or employees are a party; and in any other manner advising or representing the County, its boards, departments, agencies, officials and employees. *Virginia Code § 15.2-1542(A).*
3. Department of Finance and Budget. The Director of Finance’s duties include administering the financial affairs of the County, including the budget; assessing property for taxation; collecting taxes, license fees, and other revenues; being the custodian of all public funds belonging to or handled by the County; supervising the expenditures of the County and its subdivisions; disbursing County funds; keeping and supervising all accounts; and performing other duties as the Board of Supervisors requires. *Virginia Code § 15.2-519.* The Budget Division is also within the Department of Finance and Budget, but its functions are identified separately below.
4. Economic Development Office. This office is responsible for promoting the economic development of the County and the region, consistent with the County’s Economic Development Strategic Plan, and providing staffing assistance to the Economic Development Authority. During the COVID-19 disaster, this office also is providing economic assistance to County businesses, and its services will also include any additional State or Federal assistance or services programs, either on its own or in its work with the Economic Development Authority.
5. Department of Community Development. This department oversees a wide range of functions related to the physical development of the County, including developing proposed plans for the physical development of the County, reviewing all types of land use-related applications,

ensuring that its zoning, subdivision, and water protection regulations are current and continue to be reasonable, and enforcing the Albemarle County Zoning, Subdivision, and Water Protection Ordinances, and administering and enforcing the Virginia Uniform Statewide Building Code and other related codes are essential functions.

6. Department of Facilities and Environmental Services. This department maintains and operates the County's buildings, manages the lands owned by the County, manages County capital projects and administers related construction contracts, and oversees environmental-related County responsibilities including, but not limited to, ensuring the County's compliance with the County's Clean Water Act permit, and its obligations as a municipal separate storm sewer system (MS4) program.
7. Department of Fire Rescue. This department provides fire protection and emergency medical services and, through the Fire Marshal, administers and enforces the Virginia Fire Prevention Code.
8. Department of Human Resources. This department provides human resources support for the County and Albemarle County Public Schools. The department provides services in seven key human resources functional areas: (1) recruitment/staffing support; (2) classification and compensation; (3) benefits and leave administration; (4) training and development; (5) employee relations; (6) workplace safety; and (7) teacher licensure and certification.
9. Department of Parks and Recreation. This department protects, maintains, and operates the County's parks and provides numerous recreational programs, which during normal governmental operations, are essential to the public health and welfare.
10. Department of Social Services. This department provides a range of: (1) child welfare services including child protective services, family support, family preservation services, a foster care program, and adoption services; (2) economic assistance for those in need, including administering the supplemental nutritional assistance program (SNAP), the temporary assistance to needy families (TANF) program, energy assistance, and auxiliary grants; (3) self-sufficiency services, including services related to employment training, career services, and child care services; (4) health care services, including administering the Medicaid program; (5) adult and elder care services, including adult protective services; (6) housing assistance; and (7) language assistance. During the COVID-19 disaster, these services also include any additional State or Federal assistance or services programs.
11. Budget Division. This division, which is part of the Department of Finance and Budget, has the following responsibilities: (1) developing and implementing the County's operating and capital budgets; establishing budget policies, and monitoring departmental and agency budgetary and program performance; (2) preparing the five-year Financial Plan, five-year Capital Improvement Plan, and the long range Capital Needs Assessment; (3) developing and managing the performance management system; and (4) managing the local government grants application and awards process.
12. Police Department. This department provides law enforcement and community safety services.
13. Project Management Office. This office, which is part of the County Executive's Office, provides planning, organizational, and management responsibilities for the County's project portfolio, including organizational projects, strategic plan objectives, and technology solutions. This office also plays a critical role in planning, organizing, and managing a range of projects related to the County's response to the COVID-19 disaster.
14. Department of Information Technology. This department provides, manages, and supports the use of critical technology that allows the County to operate and communicate internally and with the public.
- B. Albemarle County Public Schools. Under the County Executive form of government, the County is required to have a "department of education." *Virginia Code § 15.2-518.* The "department of education" is composed of the Albemarle County School Board, the Superintendent of the "school division," and the "officers and employees thereof." *Virginia Code § 15.2-531.* Article VIII, Section 1 of the Constitution of Virginia states: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained." Albemarle County Public Schools provide essential governmental functions that must be performed to ensure the continuity of County government.
- C. Authorities. The following authorities and their boards provide essential governmental functions:
  1. Albemarle Conservation Easement Authority. The Albemarle Conservation Easement Authority ("ACEA") was created as a parks and recreational facilities authority by resolution

adopted by the Board of Supervisors on November 20, 1989 pursuant to the Public Recreational Facilities Authority Act (Virginia Code § 15.2-5600 *et seq.*). The ACEA was called the Public Recreational Facilities Authority until its name was changed by resolution adopted by the Board of Supervisors on July 11, 2018. The ACEA's articles of incorporation state that its purpose is to accept, hold, and administer open-space land and interests therein under the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*). *Amended Articles of Incorporation adopted July 11, 2018.* The types of interests held include open-space easements that are donated by landowners, easements acquired by the County under its Acquisition of Conservation Easements ("ACE") program, and easements created pursuant to Rural Preservation Developments allowed under the County's zoning regulations. The functions of the ACEA include monitoring and enforcing these easements.

2. Albemarle County Broadband Authority. The Albemarle Broadband Authority ("ABBA") was created as a wireless service authority "to provide qualifying communications services as authorized by Article 5.1 (Virginia Code § 56-484.7:1 *et seq.*) of Chapter 15 of Title 56 of the Virginia Code." One of the primary functions of ABBA is to facilitate the ongoing deployment of broadband infrastructure and services in the underserved areas of the County.
3. Albemarle-Charlottesville Regional Jail Authority. The Albemarle-Charlottesville Regional Jail Authority ("Jail Authority") was created as an authority under the Jail Authorities Law (Virginia Code § 53.1-95.2 *et seq.*) by agreement among the County, the County of Nelson, and the City of Charlottesville on November 15, 1995. The Jail Authority replaced the Regional Jail Board as the operator of the Albemarle-Charlottesville Joint Security Complex.
4. Albemarle County Service Authority. The Albemarle County Service Authority ("ACSA") was created as an authority under the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The ACSA's articles of incorporation state that its purpose is to undertake projects for distributing and selling potable water to retail customers, collecting wastewater from retail customers, and delivering the wastewater to the Rivanna Water and Sewer Authority. *Amendment to the ACSA Articles of Incorporation, dated December 16, 1985; County Code § 2-701.*
5. Economic Development Authority of Albemarle County, Virginia. The Economic Development Authority ("EDA"), officially identified as the "Economic Development Authority of Albemarle County, Virginia," was created as an industrial development authority (now, an economic development authority) by ordinance adopted by the Board of Supervisors on May 12, 1976 pursuant to the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900 *et seq.*). *County Code § 2-600.* The EDA has all of the powers of such an authority under the Act. The EDA operates in cooperation with the County pursuant to a Memorandum of Understanding and the Albemarle County Economic Development Strategic Plan, also known as Project ENABLE (Enabling a Better Life Economically). The functions of the EDA include promoting the economic development of the County as it is enabled to do pursuant to Virginia Code § 15.2-4900 *et seq.*, providing economic assistance to County businesses within the scope of its enabling authority, and providing any services related to any additional State or Federal assistance or services program either on its own or in its work with the Economic Development Office.
6. Rivanna Solid Waste Authority. The Rivanna Solid Waste Authority ("RSWA") was created on November 5, 1990 by the Solid Waste Organizational Agreement entered into between the County and the City of Charlottesville, together with a concurrent resolution of the Charlottesville City Council and the Albemarle County Board of Supervisors and the RSWA's articles of incorporation, all pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RSWA's articles of incorporation state that its purposes are to "develop a regional refuse collection and disposal system, as such terms are defined in Virginia Code Section 15.2-5101 of the Virginia Water and Waste Authorities Act, including development of systems and facilities for recycling, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing, and/or operating and maintaining regional solid waste disposal areas, systems and facilities, all pursuant to the Virginia Water and Waste Authorities Act." *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated November 6, 2009.*
7. Rivanna Water and Sewer Authority. The Rivanna Water and Sewer Authority ("RWSA") was created on June 7, 1972 by the City of Charlottesville and the County pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RWSA's articles of incorporation state that its purpose "is to acquire, finance, construct, operate and maintain facilities for developing a supply of potable water for the City of Charlottesville and Albemarle County and for the abatement of pollution resulting from sewage in the Rivanna River Basin, by the impoundment, treatment and transmission of potable water and the interception, treatment and discharge of wastewater, together with all appurtenant equipment and appliances necessary or suitable therefore and all properties, rights, easements or franchises relating thereto and deemed necessary or convenient for their operations. *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated May 5,*

2017. The RWSA operates five reservoirs at Ragged Mountain, Sugar Hollow, South Fork Rivanna, Totier Creek, Beaver Creek, along with five water treatment plants, and wastewater treatment plants.

- D. Public bodies existing under joint exercise of powers agreements. The following public bodies exist under joint exercise of powers agreements, and they and their boards exercise essential governmental functions:
1. Charlottesville-Albemarle Convention and Visitors' Bureau. The Charlottesville-Albemarle Convention and Visitors' Bureau ("CACVB") has existed in various forms for more than 20 years. Its current iteration was established by the County and the City on June 28, 2018, and it became effective July 1, 2018. Individually, both the County and the City are enabled by Virginia Code § 15.2-940 to "expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality." The purpose of the CACVB is to jointly promote the resources and advantages of the County and the City, including marketing of tourism and initiatives that attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County. *Second Amended Agreement to Operate a Joint Convention and Visitors' Bureau, dated October 2, 2019*. The County and the City contribute funds to support the CACVB's facilities and operations from their respective transient occupancy tax revenues. During the COVID-19 disaster, the CACVB also supports the County's hospitality business sector.
  2. Emergency Communications Center. The Emergency Communications Center ("ECC") was established by the County, the City of Charlottesville, and the University of Virginia on January 20, 1984. The ECC was established to provide a centralized dispatching facility for the respective parties' law enforcement and emergency service providers operating in the County and the City, and to provide a 911 emergency system. *Agreement By and Among the County of Albemarle, Virginia, the City of Charlottesville, Virginia, and the Rector and Visitors of the University of Virginia, dated January 20, 1984*. The ECC also provides coordination and assistance in emergency management for the Emergency Operations Plan adopted by its participating agencies.
- E. Jefferson Madison Regional Library. The Jefferson Madison Regional Library ("JMRL") system was established by an agreement entered into on August 11, 1972 (the current agreement is dated January 1, 2013) among the County, the City of Charlottesville, and the counties of Greene, Louisa, and Nelson pursuant to the enabling authority in Virginia Code § 42.1-37 *et seq.* JMRL provides essential governmental functions by maintaining a regional free library system pursuant to the terms of the agreement.
- F. Other public bodies and offices. Other public bodies and offices of the County also exercise essential governmental functions. They include, but are not limited to, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, any advisory bodies established by the Board of Supervisors, and the office of the General Registrar.

## **Sec. 5. Succession**

This section establishes the procedures to fill vacancies in elected and appointed offices arising during the COVID-19 disaster in order to ensure the continuity of County government. This section also applies to Albemarle County Public Schools and may be applied by the authorities and the other public bodies identified in Section 4 to the extent practicable. The Albemarle County School Board, in its discretion, may establish by resolution its own procedures to fill vacancies in elected offices arising during the COVID-19 disaster.

- A. Elected officials. When a vacancy occurs either on the Board of Supervisors or the Albemarle County School Board, the vacancy shall be filled according to the procedure generally established by Virginia Code § 24.2-228, as modified below:
1. Appointment by remaining members. When a vacancy occurs, the remaining members of the Board, within 45 days of the office becoming vacant, may appoint a qualified voter of the magisterial district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the Board cannot agree, or do not act, the vacancy must be filled by judicial appointment as provided in Virginia Code § 24.2-227.
  2. If a qualified voter from the magisterial district cannot be found. If the Board is unable to find and appoint a qualified voter from the magisterial district in which the vacancy exists after a reasonable effort, it may appoint a qualified voter from any other magisterial district.
  3. Duration of appointment. The person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to Virginia Code § 24.2-682 and the person so elected has qualified.
  4. Effect of being appointed. Any person appointed to fill a vacancy holds office the same way as an elected person, is authorized to exercise all powers of the elected office, and this includes having that person's vote be considered the vote of an elected member.

5. Majority of seats are vacant. If four or more seats on the Board are vacant, the vacancies must be filled by judicial appointments as provided in Virginia Code § 24.2-227.
  6. Holding over. If, during the COVID-19 disaster, a general election cannot be held, any member whose term expires may continue to hold over in office until a successor is appointed.
  7. Temporary vacancies. If a member is unable to participate in any meeting of the Board for more than 30 days and the number of members available to meet and act falls below that required for a quorum as provided in Section 6, and action by the Board is determined to be essential to continue the functions of the County or the Albemarle County Public Schools, as applicable, the remaining members may, in their discretion, appoint a qualified voter to temporarily exercise the powers and duties of the office until the permanent member is able to participate.
- B. Appointed officers. This subsection applies to the County government and not to Albemarle County Public Schools, which is recommended to establish its own succession plan for appointed officers.
1. If the County Executive and the Deputy County Executive are incapacitated. If the County Executive and the Deputy County Executive are both incapacitated such that they cannot perform the duties of the County Executive, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Executive.
  2. If the County Attorney and the Deputy County Attorney are incapacitated. If the County Attorney and the Deputy County Attorney are incapacitated such that they cannot perform the duties of the County Attorney, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Attorney.
  3. If the Clerk and the Senior Deputy Clerk are incapacitated. If the County Clerk and the Senior Deputy County Clerk are incapacitated such that they cannot perform the duties of the County Clerk, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Clerk of the Board of Supervisors.
  4. If any department head and deputy department head or equivalent position are incapacitated. If any department head and any deputy department head, or any equivalent position are incapacitated, the County Executive may appoint any person he deems qualified to serve as the acting department head.

## **Sec. 6. Public Meetings**

This section establishes the procedures for public meetings of the Board of Supervisors, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, and any advisory bodies established by the Board of Supervisors to transact any business statutorily required or necessary to continue operations of the public body, and the public bodies' discharge of their lawful purposes, duties, and responsibilities. These procedures may also be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent this section is practicable for those public bodies. References to the "Board" and the "Supervisors" in this section should be modified as appropriate when applied by public bodies other than the Board of Supervisors.

- A. The need to change how meetings are conducted during COVID-19. The Board fully endorses the statements in Virginia Code § 2.2-3700, which is the introductory section of the Virginia Freedom of Information Act, that the "affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government," and that unless an exception to open meetings is invoked "every meeting shall be open to the public." The regulations in this section for conducting public meetings are necessary because the COVID-19 disaster makes it impracticable or unsafe for public bodies, as well as their staff and the public, to physically assemble in one location or to conduct meetings in accordance with normal practices and procedures. Although the regulations in this section establish rules for conducting public meetings that are different from normal practices and procedures, the regulations are intended and designed to achieve the policies expressed in Virginia Code § 2.2-3700.
- B. Applicability. This section applies when some or all of the persons participating in the meeting are connected to the meeting by electronic communication means (defined as "hybrid" and "virtual" meetings in the Board of Supervisors' Rules of Procedure for Virtual and Hybrid Meetings (adopted September 2, 2020), provided that if a quorum of the Board is physically assembled in one location, participation by any other Supervisor by electronic communication means is permitted only as provided in Virginia Code § 2.2-3708.2 and Rule 8 of the Board of Supervisors' Rules of Procedure (adopted January 8, 2020).
- C. Meeting format. Any meeting to discuss or transact business may be held through real time electronic communication means (including audio, telephonic, video, or any other practical electronic medium) without a quorum physically assembled in one location.

- D. Agenda. The agenda for a meeting conducted pursuant to this section (an “electronic meeting”) should: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items on the agenda neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- E. Notice. Before holding a regular electronic meeting, the Clerk must provide notice at least three days in advance of the meeting, and this notice must be provided to the public contemporaneously with the notice provided to the Supervisors. The notice must: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting, including the opportunity to comment on those matters for which comments from the public will be received. Any notice provided before the effective date of this ordinance, for a public meeting or public hearing after its effective date, that complied with the law when it was given but which is inconsistent with this ordinance, including with respect to the location of the meeting or the public hearing, is deemed to satisfy any notice requirements and no action taken at that meeting or regarding any public hearing is invalid for that reason.
- F. Statement by the Chair. At the beginning of the meeting, the Chair should: (1) state that the meeting is being held pursuant to and in compliance with this ordinance; (2) identify the Supervisors physically and electronically present; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- G. Public participation. Any electronic meeting must be open to electronic participation by the public. In addition, for any matters requiring a public hearing, public comment may be solicited by electronic communication means in advance and must also be solicited through telephonic or other electronic communication means during the electronic meeting. The public comments received before the electronic meeting will be provided to the Supervisors at or before the electronic meeting and made part of the record for the meeting.
- H. Postponing certain matters. Any non-emergency public hearing and action item on the Board’s agenda may be postponed to a later date provided that public notice is given so that members of the public are aware of how and when to present their views.
- I. Quorum. If three Supervisors are unable to participate in a public meeting because each of those three Supervisors is sick from the COVID-19 virus, and at least one temporary vacancy has not been filled pursuant to Section 5, a quorum of the Board of Supervisors to conduct business is reduced from four to three for any matter that a vote is required by the Board at that meeting in order to ensure the continuity of County government. If four or more Supervisors are unable to participate in a public meeting for the reasons stated above, the only action that the participating Supervisors may take is to adjourn the meeting until the temporary vacancies can be filled.
- J. Voting. State laws, as may be implemented in the County Code, may impose different voting requirements.
  - 1. Vote required to act. Although most actions require the majority vote of those Supervisors present and voting, there are some actions that require a supermajority vote, the majority vote of the elected members, or impose some other requirement. These different voting requirements continue to apply unless: (1) one or more Supervisors is sick from the COVID-19 virus; (2) the sick Supervisors are unable to participate in the public meeting; (3) the temporary vacancy has not been filled pursuant to Section 5 and the voting requirement imposed by State law or the County Code cannot be complied with; and (4) a vote is required by the Board at that meeting in order to ensure the continuity of government. If all four of those prerequisites are satisfied, the Board may approve the matter on the affirmative vote of those Supervisors present and voting. Following are examples of different voting requirements for certain matters, and how they are addressed if the four prerequisites are satisfied:
    - a. When the affirmative vote of the elected members is required. Article VII, Section 7 of the Constitution of Virginia and its statutory companion in Virginia Code § 15.2-1428 require, among other things, the affirmative vote of a majority of all members elected to the governing body on certain matters. As provided in Section 5(A)(4), and based on language in Virginia Code § 24.2-228, any appointed Supervisor’s vote is considered to be the vote of an elected Supervisor.
    - b. When a supermajority vote is required. Virginia Code § 15.2-2405 requires a two-thirds vote of the elected Supervisors to impose taxes in a service district. The Board is unique because it is a six-member Board and, for it, a majority vote is also a supermajority when a two-thirds vote is required. There are no service districts in the County. If another matter requires a supermajority under Virginia law, the Board may approve a matter by a majority of the Supervisors participating and voting.
    - c. When the vote by those present and voting is required. The requirement that a matter be approved by a majority vote of those present and voting is common, one example being

found in Virginia Code § 15.2-1427(A). For the purposes of this voting requirement, any Supervisor who is participating in the matter is “present.”

2. Roll call vote. A roll call vote should be taken on all matters requiring a vote and must be taken on any action on an ordinance and any other matter requiring a roll call vote pursuant to State or Federal law.
- K. Closed meetings. The Board may have a closed meeting for any purpose authorized by Virginia Code § 2.2-3711(A).
- L. Minutes. Minutes of a meeting must be in writing and include: (1) the date, time, and location of the meeting; (2) the Supervisors recorded as present or absent; (3) a summary of the discussion on matters proposed, deliberated, or decided; (4) a record of any votes taken; (5) the fact that the meeting was held by electronic communication means because of the emergency created by the COVID-19 disaster; and (6) the type(s) of electronic communication means by which the meeting was held.
- M. Recordings. An audio recording, video recording, or verbatim transcript of any electronic meeting must be made and retained as provided by law. The recording must be posted on the County’s website.
- N. Other requirements not modified. Any requirements for conducting a public meeting in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.* that are not modified by this section, including those pertaining to special and emergency meetings, apply to conducting a public meeting.
- O. Alternative authority. If Section 6 is determined to be unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, the authority for public bodies to meet by electronic communication means conferred by the budget amendments in HB 29 and HB 30 of the Commonwealth of Virginia’s 2020-2022 biennium budget is deemed to apply, as applicable, on and after May 21, 2020.

## **Sec. 7. Deadlines**

This section applies to the County government. State law and the County Code impose many deadlines by which the County, Board of Supervisors, and other public bodies must act. The following deadlines may be extended to the earliest date thereafter practicable when it is impractical or dangerous to safely meet those deadlines because of the COVID-19 disaster, with the proviso that the Board of Supervisors and the County will endeavor to the extent practicable to meet the deadlines established by State law and the County Code. Subsections (D), (E), and (F) may be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4.

- A. The tax rates. It is the intention of the Board to meet all of the deadlines established by State law to fix the tax rates. However, the May 15 deadline established by Virginia Code § 58.1-3321(E) for fixing the real estate tax rate, and the June 30 deadline to fix other tax rates established by Virginia Code § 58.1-3001, may be extended by the Board to the earliest dates thereafter practicable in order to allow the tax rates to be fixed.
- B. The budget. It is the intention of the Board to meet all of the deadlines established by State law to approve the County’s annual budget. However, the May 15 deadline established by Virginia Code § 22.1-93 requiring the Board to “prepare and approve an annual budget for educational purposes by May 15 or within 30 days of the receipt by the county . . . of the estimates of state funds, whichever shall later occur,” and the July 1 deadline to approve the budget established by Virginia Code § 15.2-2503 (“the date on which the fiscal year begins”), may be extended by the Board to the earliest date thereafter practicable in order to approve the County’s annual budget.
- C. Land use applications. Any deadline established by State law or the County Code for action by the County, the Board of Supervisors, or any County public body within the scope of Chapter 14, Subdivision of Land, Chapter 17, Water Protection, or Chapter 18, Zoning, may be extended by the County, the Board, or other County public body to the earliest date thereafter practicable to allow any public body or County staff to act. Any provision in State law or the County Code to deem the failure of any County action to be timely taken to be approval of the pending matter is of no force or effect.
- D. Requests for records under the Virginia Freedom of Information Act. Any deadline by which a response to a request for records under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) is due, and the time for which the records sought may be inspected or produced, may be extended to the earliest date thereafter practicable in order to respond to the request or allow any records to be inspected or produced.
- E. Factors to be considered in determining whether the COVID-19 disaster prevents a deadline from being met. In determining whether the COVID-19 disaster prevents a deadline from being met, the following factors should be considered: (1) whether a federal or State lockdown is in place prohibiting necessary travel to conduct business; (2) whether COVID-19 illnesses prevent the Board, any County public body, or County staff from meeting or conducting business; (3) whether County buildings where applications, documents, and other public records are kept are closed because of COVID-19 contamination; (4) the custodian of records or other County employee is a



member of a vulnerable population group and would be required to retrieve physical public records in a manner that would endanger the employee's health and alternative persons are not available to retrieve the records; and (5) other similar reasons that prevent the Board, any County public body, or County staff to meet or conduct its business without endangering their health or the health of others.

- F. Hold harmless. The failure to meet any deadline imposed by State law, including the Prompt Payment Act, or the County Code does not constitute a default, violation, approval, recommendation or otherwise.
- G. Other deadlines may be extended. Any other deadlines not extended by this section may be extended by a separate ordinance.

## **Sec. 8. Procurement**

This section pertains to procuring goods and services by the County. This section also may be applied by the Albemarle County Public Schools, the authorities, and the other public entities identified in Section 4 that do their own procurements, to the extent this section is practicable for their public entities. References to the "County Executive" and other County-specific references in subsections (A) and (C) should be modified as appropriate when this section is applied by public entities other than the County.

- A. Authority to modify requirements or procedures for procurements not directly related to the COVID-19 disaster. The County Executive is authorized to modify any requirement or procedure imposed pursuant to the Virginia Public Procurement Act (Virginia Code § 2.2-4300 *et seq.*), the Albemarle County Purchasing Manual, or by custom, that requires or allows any procurement-related documents to be hand-delivered or delivered by a carrier to the County Office Building, or that requires or allows bidders and vendors to physically assemble for bid openings and other steps in the procurement process. Requirements or procedures may be modified as follows:
  - 1. Documents. Any modification pertaining to documents should require electronic documents to be submitted by any person submitting an inquiry, or responding to a request for information, request for proposals, an invitation for bids, or any other solicitation.
  - 2. Physical assemblies. Any modification pertaining to physical assemblies should require any steps in the procurement process by which people would otherwise physically assemble to participate through electronic communication means or to be conducted in a location that complies with any County, State, and Federal orders or declarations regarding gatherings.
- B. Authority of the County Executive for COVID-19 disaster related procurements is unaffected. Subsection (A) does not affect the County Executive, acting as the Director of Emergency Management pursuant to Virginia Code § 44-146.21(C), to "enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available."
- C. Notice. Modifications to requirements or procedures made under this section do not need to be published in the Albemarle County Purchasing Manual to be effective. Notice reasonably calculated to make the public aware of these changes, including on the Albemarle County Purchasing Department's website, is sufficient.

## **Sec 9. Duration**

This ordinance is effective immediately and expires not later than six months after the COVID-19 disaster ends. The COVID-19 disaster will be deemed to be ended when the Board of Supervisors adopts a resolution ending the declared local emergency.

## **Sec. 10. Method for Resuming Normal Governmental Authority and Operations**

- A. When normal governmental authority and operations will resume. Normal governmental authority and operations will resume after the County Executive, acting as the Director of Emergency Management, reports to the Board of Supervisors that all emergency actions that can be taken by the County have been taken, the Board ends the local emergency, the Governor ends the state of emergency, and the State Health Commissioner advises that it is safe for people to once again gather in public so that normal governmental authority and operations, including normal public meetings (or words to that effect), may be re-established.
- B. Method to resume normal governmental authority. When the events in subsection (A) have occurred, normal government authority will resume as follows, subject to further amendment to this section as may be necessary:

1. Succession. The appointment of any person to the Board pursuant to Section 5(A)(2) or 5(A)(7) terminates and any resulting vacancy will be filled as provided by law.
2. Public meetings. Section 6 will no longer apply.
3. Deadlines. Section 7 will no longer apply, subject to the County Executive establishing revised guidelines to allow for a reasonable transition period back to full normal County operation.
4. Procurement. Section 8 will no longer apply to any steps in the procurement process that have not already been completed or been substantially completed.

**Sec. 11. 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. The intention of the Board of Supervisors is that this ordinance and any powers exercised by the Director complement one another.

**Sec. 12. Effect of this Ordinance on Albemarle County Courts and Constitutional Officers**

This ordinance does not apply to the Albemarle County Circuit Court, General District Court, or Juvenile and Domestic Relations District Court. This ordinance also does not apply to the offices of the Albemarle County Clerk of the Circuit Court, Commonwealth's Attorney, or Sheriff.

**Sec. 13. This Ordinance Supersedes Prior Continuity of Government Ordinances; Exception**

This ordinance supersedes any previous continuity of government ordinance adopted by the Board of Supervisors.

**Sec. 14. 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.

**Sec. 15. Liberal Construction**

Because its purpose is to ensure the continuity of government, this ordinance should be liberally construed to accomplish this purpose and to facilitate the performance of the governmental functions and related services determined by the Board of Supervisors, either expressed or implied, to be essential.

**State law reference** – Va. Code § 15.2-1413.

This ordinance is effective on and after October 1, 2020.

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Agenda Item No. 22. Adjourn.

Regarding the ribbon cutting ceremony at Southwood on September 18, Mr. Kamptner explained it was possible there could be a quorum there. He said there may be some matters at Southwood pending in front of the County, which could ultimately come before the Board. He said there is also a standing agreement that exists between the County and Habitat for Humanity, and so the recommended approach was to adjourn to that day and time.

Ms. Price asked if the three members attending the ceremony had to come together and undergo any formal process.

Mr. Gallaway said he could review this after the meeting.

Mr. Kamptner said it becomes an issue when there are four Supervisors there.

On a different subject, Ms. McKeel noted before adjourning that she just received word that a cluster of COVID-19 cases had been identified at a UVA residence hall. She said the Board had to remember that while Albemarle County's numbers looked encouraging, the City was a concern, and many residents live on the edge of the City.

Ms. Price said these were no "magic" numbers of where things should be change and that the numbers they had were guides.

Ms. McKeel said there is also a delay, and that the peak for the area is targeted to be the middle to end of October.

At 9:45 p.m., Mr. Gallaway adjourned the meeting to the Southwood ribbon-cutting ceremony on September 18, 2020 at 11:00 a.m. at the Southwood Community Center basketball court at 387 Hickory Street, Charlottesville, VA 22902.

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Chair

Approved by Board
Date 06/01/2022
Initials CKB