

<p style="text-align: center;"><b>ACTIONS</b>  <b>Board of Supervisors Meeting of April 6, 2016</b></p>		
		April 8, 2016
<u><b>AGENDA ITEM/ACTION</b></u>	<u><b>ASSIGNMENT</b></u>	<u><b>VIDEO</b></u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> <li>Meeting was called to order at 1:01 p.m. by the Chair, Ms. Palmer. All BOS members were present. Also present were Larry Davis and Travis Morris.</li> </ul>		<a href="#">Link to video</a>
<p>4. Adoption of Final Agenda.</p> <ul style="list-style-type: none"> <li>By a vote of 6:0, <b>ADOPTED</b> the final agenda.</li> </ul>		
<p>5. Brief Announcements by Board Members.</p> <p><u>Brad Sheffield:</u></p> <ul style="list-style-type: none"> <li>Mentioned that his daughter watches the live streaming of meetings and suggested that everyone sit up and speak into their microphones.</li> </ul> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> <li>Announced that Crozet Tennis Day will be on April 14, 2016 for 12:15 p.m. to 1:15 p.m.</li> </ul> <p><u>Rick Randolph:</u></p> <ul style="list-style-type: none"> <li>Reminded residents of the Town of Scottsville that election day is May 13, 2016.</li> </ul> <p><u>Diantha McKeel:</u></p> <ul style="list-style-type: none"> <li>Announced that all three County high schools as well as Charlottesville High School ranked in the top five percent of Nation's "Smartest Public High Schools".</li> <li>Announced that at a recent MPO meeting, Karen Davis, JAUNT Assistant Executive Director, announced that they had a new one day passenger record.</li> <li>Announced the 50<sup>th</sup> Anniversary of the Vietnam Memorial and that the Charlottesville Dogwood Festival Vietnam Rededication would be held on April 22, 2016.</li> </ul> <p><u>Liz Palmer:</u></p> <ul style="list-style-type: none"> <li>Announced that the Cove Garden Ruritans will be hosting a budget talk on Thursday, April 7, 2016 at 7:00 p.m., at the North Garden Vol. Fire Station.</li> </ul>		
<p>6. Proclamations and Recognitions:</p> <p>a. Resolution recognizing Wayne Cilimberg for service to the County.</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b>, by a vote of 6:0 and presented to Wayne Cilimberg.</li> </ul> <p>b. Proclamation recognizing May 1 through May 7, 2016, as Drinking Water Week.</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b>, by a vote of 6:0 and presented to Gary O'Connell.</li> </ul> <p>c. Proclamation recognizing April 10, 2016 as "Tech. Sgt. Frank Peregoy Day".</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b>, by a vote of 6:0 and presented to Rick Brittan and Joanne Peregoy.</li> </ul> <p>d. Proclamation recognizing April 3-9, 2016 as Local Government Education Week and the Month of April as Local Government Month.</p>	<p>(Attachment 1)</p> <p>(Attachment 2)</p> <p>(Attachment 3)</p> <p>(Attachment 4)</p>	

	<ul style="list-style-type: none"> <li>• <b>ADOPTED</b>, by a vote of 6:0 and presented to Tom Foley.</li> </ul>	
7.	<p>From the Public: Matters Not Listed for Public Hearing on the Agenda.</p> <ul style="list-style-type: none"> <li>• <u>Robert Garland</u>, resident of Jack Jouett district encourage Board to adopt the Virginia Maintenance Code to address blight.</li> <li>• <u>Morgan Butler</u>, spoke on behalf of the Southern Environmental Law Center on Transportation Priorities.</li> </ul>	
8.2	<p>Proposed Easements - East Rivanna Fire Station.</p> <ul style="list-style-type: none"> <li>• <b>SET</b> public hearing on proposed conveyance of easements across East Rivanna Fire Station property on May 4, 2016.</li> </ul>	<u>Clerk</u> : Schedule and advertise for May 4 Board meeting.
8.3	<p>Approval of Underground Right-of-Way License Agreement.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> Resolution approving Underground Right-of-Way License Agreement with Century Link Communications LLC for facilities at Darden Towe Park and <b>AUTHORIZED</b> County executive to execute the Agreement after approval as to form and content by the County Attorney.</li> </ul>	<u>Clerk</u> : Forward copy of adopted resolution to Parks and Rec, and County Attorney's office. (Attachment 5) <u>County Attorney</u> : Provide copy of fully executed agreement to Clerk's office.
8.4	<p>Designation of the County as a Hybrid Entity Under the Health Insurance Portability and Accountability Act of 1996 and the HIPAA Privacy Rule.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> Resolution designating Albemarle County as a hybrid entity pursuant to HIPAA.</li> </ul>	<u>Clerk</u> : Forward copy of adopted resolution to Human Resources and County Attorney's office. (Attachment 6)
8.5	<p>Set public hearing on Proposed Noise Ordinance amendment.</p> <ul style="list-style-type: none"> <li>• <b>SET</b> public hearing for May 4, 2016.</li> </ul>	<u>Clerk</u> : Schedule and advertise for May 4 Board meeting.
8.6	<p>Cancel April 13, 2016, Regular Night Board Meeting.</p> <ul style="list-style-type: none"> <li>• <b>CANCELLED</b> regular night meeting.</li> </ul>	<u>Clerk</u> : Notify appropriate individuals.
9.	<p>Location Alternatives for Courts Project.</p> <ul style="list-style-type: none"> <li>• <b>DISCUSSED</b>.</li> </ul>	
10.	<p>Options to Address Blight and Building Maintenance.</p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>DIRECTED</b> staff to process spot blight complaints.</li> </ul>	<u>Jay Schlothauer</u> : Proceed as directed.
	<b>Recess</b> . Board recessed at 3:04 p.m., and Reconvened at 3:14 p.m.	
11.	<p>Transportation Priorities Information Session.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED</b>.</li> </ul>	
12.	<del>Virginia Department of Transportation (VDOT) Quarterly Report.</del> <b>Removed from agenda.</b>	
13.	<p>County Transportation Planner Quarterly Report.</p> <ul style="list-style-type: none"> <li>• Due to time constraints report was received as presented.</li> </ul>	
14.	<p>Route 29 Solutions Project Delivery Advisory Panel (PDAP) Monthly Update.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED</b>.</li> </ul>	
15.	<p>Albemarle County Service Authority (ACSA) Quarterly Report.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED</b>.</li> </ul>	
16.	<p>Rivanna Water and Sewer Authority (RWSA) Quarterly Report.</p> <ul style="list-style-type: none"> <li>• Chair read and presented Commendation Certificate to Tom Frederick.</li> </ul>	(Attachment 7)

	<ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
17.	<p>Closed Session. Personnel and Legal Matters.</p> <ul style="list-style-type: none"> <li>• At 5:05 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1): 1. To consider appointments to boards, committees and commissions in which there are pending vacancies or requests for reappointments; and 2. To interview, discuss, and consider a candidate for the County Assessor position; and under subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to: 1. The negotiation of easements on the County Office Building property; and 2. The negotiation of an agreement for court facilities.</li> </ul>	
18.	<p>Certified Closed Meeting.</p> <ul style="list-style-type: none"> <li>• At 6:12 p.m., the Board reconvened into open meeting and certified the closed meeting.</li> </ul>	
	<p>Appointment of County Assessor.</p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>ADOPTED</b> resolution appointing Peter J. Lynch as the County Assessor effective April 6, 2016.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Finance, H.R. and County Attorney's office. (Attachment 8)</p>
19.	<p>Boards and Commissions:</p> <p>a. Vacancies and Appointments.</p> <ul style="list-style-type: none"> <li>• All appointments made at the end of the meeting.</li> </ul>	
20.	<p>From the Public: Matters Not Listed for Public Hearing on the Agenda.</p> <ul style="list-style-type: none"> <li>• <u>Ron Brownfield</u>, resident of the Rivanna district asked Board to support a pedestrian bridge on Pantops.</li> </ul>	
21.	<p>Piedmont Virginia Community College (PVCC) Annual Report.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
22.	<p>Zika Virus Update.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
23.	<p>Chesterfield Landing Subdivision Acceptance of Dedication of Open Space.</p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>ADOPTED</b> resolution to accept the dedication of open space for SUB-2016-00044 Chesterfield Landing.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 9)</p>
24.	<p>FY 2016 Budget Amendment and Appropriations.</p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>ADOPTED</b> Resolution to approve the FY 2016 Budget Amendment to increase it by \$4,268,720.14 and to approve appropriations #2016069, #2016070, #2016071, #2016072, #2016073, #2016074, #2016075, and #2016076 for local government and school division projects and programs.</li> </ul>	<p><u>Clerk:</u> Notify OMB, Finance and appropriate individuals. Forward copy of signed resolution to OMB and County Attorney's office. (Attachment 10)</p>
25.	<p><b><u>Pb. Hrg.: ZTA-2016-00001. Eligible Applicants.</u></b></p> <ul style="list-style-type: none"> <li>• By a vote 6:0, <b>ADOPTED</b> ZTA-2016-00001.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 11)</p>
26.	<p><b><u>Pb. Hrg.: ZTA-2016-00002. Proffers.</u></b></p> <ul style="list-style-type: none"> <li>• By a vote 6:0, <b>ADOPTED</b> ZTA-2016-00002.</li> </ul>	<p><u>Clerk:</u> Forward copy of signed ordinance to Community</p>

<ul style="list-style-type: none"> <li>By a vote of 5:1(Sheffield), <b>APPROVED</b> Policy for Considering Requests for a Simplified Application Process.</li> </ul>	Development and County Attorney's office. (Attachment 12) (Attachment 13)	
27. From the Board: Committee Reports and Matters Not Listed on the Agenda. <u>Brad Sheffield:</u> <ul style="list-style-type: none"> <li>Requested an estimate of cost for two different economic impact study's for the infill and greenfield in regards to the Courts Project.</li> </ul> <u>Ann Mallek:</u> <ul style="list-style-type: none"> <li>Announced that the OneStop Center's lease expires on January 1, 2018 and asked Supervisors to notify her if they run across 15,000 sq. ft. of office space.</li> </ul>	<u>County Executive:</u> Provide information.	
28. From the County Executive: Report on Matters Not Listed on the Agenda. <u>Tom Foley:</u> <ul style="list-style-type: none"> <li>Mentioned that staff expects the Board to have the Ivy MUC agreement in the coming week for review.</li> <li>Mentioned that staff is working on the May Strategic Priorities Session and will review the process at a future meeting.</li> </ul>		
Closed Meeting. <ul style="list-style-type: none"> <li>At 7:55 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under subsection (1): 1. To consider appointments to boards, and commissions in which there are vacancies or requests for reappointments; and under subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to: 1. The negotiation of easements on the County Office Building property.</li> </ul>		
Certify Closed Meeting. <ul style="list-style-type: none"> <li>At 8:25 p.m., the Board reconvened into open meeting and certified the closed meeting.</li> </ul>		
Boards and Commissions: a. Vacancies and Appointments. <ul style="list-style-type: none"> <li><b>APPOINTED</b>, Mr. David Storm to the 5<sup>th</sup> &amp; Avon Community Advisory Committee to fill an unexpired term ending September 30, 2017.</li> <li><b>APPOINTED</b>, Mr. David Powell to the Agricultural and Forestal District Advisory Committee with said term to expire April 17, 2020.</li> <li><b>APPOINTED</b>, Mr. Donald Long as the joint City/County member to the Joint Airport Commission and Airport Authority with said terms to expire December 1, 2018.</li> <li><b>APPOINTED</b>, Mr. Dean Eliason, Mr. James King, Mr. Kostas Alibertis and Mr. Martin Violette to the Crozet Community Advisory Committee with said terms to expire March 31, 2018.</li> <li><b>APPOINTED</b>, Mr. Timothy Kunkel to the Crozet Community Advisory Committee with</li> </ul>	<u>Clerk:</u> Prepare appointment/ reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.	

<ul style="list-style-type: none"> <li>fill an unexpired term ending March 31, 2017.</li> <li>• <b>REAPPOINTED</b>, Mr. David Stoner, Ms. Kim Guenther, Ms. Leslie Burns and Mr. Phillip Best to the Crozet Community Advisory Committee with said terms to expire March 31, 2018.</li> <li>• <b>APPOINTED</b>, Mr. Jonathan Hernandez to the Places 29 (RIO) Community Advisory Committee to fill an unexpired term ending September 30, 2017.</li> <li>• <b>APPOINTED</b>, Ms. Claudette Greene and Mr. Xavier Jackson to the Police Department Citizens Advisory Committee with said terms to expire March 5, 2018.</li> <li>• <b>REAPPOINTED</b>, Ms. Bonnie Brewer, Mr. Richard Hewitt and Mr. William Walsh to the Police Department Citizens Advisory Committee with said terms to expire March 5, 2018.</li> <li>• <b>APPOINTED</b>, Ms. Lynda White to the Village of Rivanna Community Advisory Committee with said term to expire March 31, 2018.</li> <li>• <b>REAPPOINTED</b>, Ms. Betsy Baten, Ms. Cynthia Burton, Ms. Dorothy Martin and Mr. Neil Means to the Village of Rivanna Community Advisory Committee with said terms to expire March 31, 2018.</li> </ul>		
<p>29. Adjourn to April 12, 2016, 6:00 p.m., Lane Auditorium.</p> <ul style="list-style-type: none"> <li>• The meeting was adjourned at 8:27 p.m.</li> </ul>		

ewj/tom

- Attachment 1 – Resolution recognizing Wayne Cilimberg for service to the County
- Attachment 2 – Proclamation recognizing May 1 through May 7, 2016, as Drinking Water Week
- Attachment 3 – Proclamation recognizing April 10, 2016 as “Tech. Sgt. Frank Peregoy Day”
- Attachment 4 – Proclamation recognizing April 3-9, 2016 as Local Government Education Week and the Month of April as Local Government Month
- Attachment 5 – Resolution and Underground Right-of-Way License Agreement
- Attachment 6 – Resolution Albemarle as Hybrid Entity
- Attachment 7 – Commendation by the Albemarle County Board of Supervisors of Thomas L. Frederick, Jr.
- Attachment 8 – Resolution Appointing the County
- Attachment 9 – Resolution Approving the Acceptance of the Dedication of Open Space on a Portion of Tax Map and Parcel Number 05600-00-00-03600
- Attachment 10 – Resolution to Approve Additional FY 16 Appropriations
- Attachment 11 – Ordinance No 16-83(3)
- Attachment 12 – Ordinance No 16-18(4)
- Attachment 13 – Board Policy for Considering Requests for a Simplified Application Process for Rezonings to Amend Proffers That Do Not Affect Use or Density

## RESOLUTION OF APPRECIATION

- WHEREAS,** Vincent Wayne Cilimberg has faithfully served Albemarle County for 30 years, including 27 years as Director of Planning; and
- WHEREAS,** Wayne has served as the Secretary for the Planning Commission, steadfastly providing professional support at countless meetings over the last 27 years; and
- WHEREAS,** Wayne's many contributions to the community and his commitment to the vision of Albemarle County have 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,** Wayne led development and adoption of three comprehensive plans (from 1989 to 2015) and numerous amendments focused on land use, rural areas, natural resource preservation, and the Neighborhood Model, (which received an honor award in design from the American Institute of Architects in 2002) and Master Plans for the County's urban neighborhoods, communities, and villages; and
- WHEREAS,** Wayne provided leadership in the development and adoption of proactive conservation programs/initiatives that protect important resources and provide for high quality urban communities; and
- WHEREAS,** Wayne provided leadership in the development of key policies for the County including affordable housing, economic development, biodiversity, wireless facilities, dark skies, and sustainability; and
- WHEREAS,** Wayne provided support and service to numerous citizen advisory committees including the Development Initiatives Steering Committee, the Natural Heritage Committee, the Public Recreation Facilities Authority, Scenic 250, the Historic Preservation Committee, and the Citizen Advisory Committees; and
- WHEREAS,** Wayne provided leadership and guidance for the larger community through the Planning and Coordination Council, Thomas Jefferson Planning District Commission, and the Metropolitan Planning Organization, which assured cooperative planning procedures among the City, County and University; and
- WHEREAS,** Wayne has diligently worked to advance good planning practices throughout the Commonwealth, including serving on the boards and executive committees of the Virginia Chapter of the American Planning Association and Rural Planning Caucus;
- NOW, THEREFORE, BE IT RESOLVED** by the Albemarle County Board of Supervisors that Vincent Wayne Cilimberg is hereby honored and commended for his many years of exceptional service to the County of Albemarle, the Department of Community Development, Albemarle County residents, the broader community in which we live, and the entire Commonwealth of Virginia with knowledge that Albemarle County is strengthened and distinguished by Wayne's leadership, dedication, commitment, professionalism and compassion in meeting community needs.

**PROCLAMATION**

**DRINKING WATER WEEK**

- WHEREAS,** water is our most valuable natural resource; and
- WHEREAS,** only tap water delivers public health protection, fire protection, support for our economy and the quality of life we enjoy; and
- WHEREAS,** any measure of a successful society – low mortality rates, economic growth and diversity, productivity, and public safety – are in some way related to access to safe water; and
- WHEREAS,** we are all stewards of the water infrastructure upon which future generations depend; and
- WHEREAS,** each citizen of our city is called upon to help protect our source waters from pollution, to practice water conservation, and to get involved in local water issues by getting to know their water;
- NOW, THEREFORE, BE IT RESOLVED,** that we the Albemarle County Board of Supervisors, do hereby proclaim

**May 1-7, 2016**  
**as**  
**Drinking Water Week**

Signed this 6<sup>th</sup> day of April 2016.

**PROCLAMATION**

- Whereas,** Technical Sergeant Frank Dabney Peregoy, born in Central Virginia on April 10, 1916, living in the Proffit area of Albemarle County, was a member of one of our area's most famous World War II-era fighting commands: "The Monticello Guard," Company K, 116th Infantry, 29th Division; and
- Whereas,** Peregoy, as a member of said unit, was awarded the Soldier's Medal—America's highest award for non-combat gallantry—on June 17, 1942, for saving the life of a fellow soldier; and
- Whereas,** Peregoy was awarded the Medal of Honor posthumously on June 4, 1945, for singlehandedly attacking and defeating a strongly held enemy position at Grandecamp, France, on D-Day plus two, killing 8 enemy soldiers and capturing 35 including machine gunners; and
- Whereas,** Peregoy is one of only two Central Virginia World War II recipients of the Medal of Honor; and
- Whereas,** Peregoy's name is misspelled as "P-e-r-e-g-o-r-y" on numerous historical markers, buildings, and, sadly, on his gravestone in the U.S. cemetery in St.-Laurent-Sur-Mer, France;

**NOW, THEREFORE, BE IT RESOLVED,** that we the Albemarle County Board of Supervisors, do hereby declare **April 10, 2016**, "Tech. Sgt. Frank Peregoy Day," and support a citizen campaign to correct the misinformation.

Signed this 6<sup>th</sup> day of April 2016.



**PROCLAMATION**

**April 3 – 9, 2016 as Local Government Education Week  
and the month of April as Local Government Month**

- WHEREAS,** the nation's 3,069 counties serving more than 300 million Americans provide essential services to create healthy, safe, economically-resilient, and engaged communities; and
- WHEREAS,** in celebration and appreciation of the work performed by local governments, the National Association of Counties recognizes April as National County Government Month and the Virginia General Assembly designated the first week in April as Local Government Education Week in Virginia; and
- WHEREAS,** Albemarle County takes great pride in our responsibility to protect and enhance the health, well-being and safety of our residents in efficient and cost-effective ways; and
- WHEREAS,** in order to remain healthy, vibrant, safe, and economically competitive, Albemarle County provides public health, justice, emergency management and economic services that play a key role in everything from residents' daily health to disaster response; and
- WHEREAS,** Albemarle County encourages active and meaningful community engagement in local government activities through partnerships like the Community Advisory Committees, Neighborhood Leadership Summit and Learning Series, and community policy groups;
- NOW, THEREFORE, BE IT RESOLVED,** that the Albemarle County Board of Supervisors does hereby proclaim April 3 – 9, 2016 **Local Government Education Week** and the month of April as **Local Government Month**. The Board of Supervisors encourages all County officials, employees, schools and residents to participate in the promotion of civic education and engagement in an effort to educate citizens about their local government, strengthen the sense of community, and engage the next generation of local government managers.

Signed and sealed this 6<sup>th</sup> day of April 2016.

**RESOLUTION TO APPROVE AN UNDERGROUND RIGHT-OF-WAY LICENSE AGREEMENT WITH  
CENTURYLINK COMMUNICATIONS LLC FOR UNDERGROUND FIBER OPTIC FACILITIES AT DARDEN  
TOWE PARK**

**WHEREAS**, the County and the City of Charlottesville entered into 5-year license agreements with Qwest Communications Corporation ("Qwest") in 2006 and in 2011 for Qwest's installation and maintenance of underground fiber optic facilities across a portion of Darden Towe Park, which is jointly owned by the County and the City; and

**WHEREAS**, the Board finds it is in the best interest of the County to enter into a new 5-year license agreement with CenturyLink Communications LLC, Qwest's legal successor, for the continued operation of the underground fiber optic facilities.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Albemarle County, Virginia hereby approves the Underground Right-of-Way License Agreement with CenturyLink Communications LLC for underground fiber optic facilities at Darden Towe Park and authorizes the County Executive to execute the Agreement after approval as to form and content by the County Attorney.

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**UNDERGROUND RIGHT-OF-WAY LICENSE**

Permission is hereby granted by the **CITY OF CHARLOTTESVILLE** and the **COUNTY OF ALBEMARLE**, political subdivisions of the Commonwealth of Virginia and the joint owners of the property that is subject to this License (hereinafter referred to as "Licensors") to **CENTURYLINK COMMUNICATIONS, LLC**, a limited liability company authorized to transact business in Virginia (hereinafter referred to as "Licensee") to make excavation into the real property owned by Licensors and as described herein, under the terms and conditions set forth in this License.

**1. Term:**

This License shall be valid for a period of five (5) years beginning January 1, 2016 and ending December 31, 2020, unless this License is terminated as provided herein.

**2. Rights Not Exclusive:**

Nothing contained in this License shall ever be held or construed to confer upon Licensee, its successors and / or assigns, exclusive rights or privileges of any nature whatsoever.

**3. Conditions of Use:**

a. Prior to beginning any work on the property subject to this License, Licensee shall submit detailed engineering drawings to the County of Albemarle for approval, and obtain from the County any permits or approvals that may be required by the County or any other governing authority for the installation of a total of 4,500 linear feet of fiber optic cable at the location more specifically described in section 4 herein. Licensee is further required, before beginning any excavation on the property described herein, to contact all applicable utility companies for location of buried cable, water or sewer services or mains, electric lines, gas lines, and the like. All construction allowed under this License shall be accomplished under the supervision and direction of the County Engineer, or such other person as the County of Albemarle may designate. Licensee shall not unnecessarily obstruct or impair traffic upon any street, road or other public way within Albemarle County and shall comply with all of the County's rules and regulations designed to prevent damage to trees and shrubbery that may be caused by its installation hereunder.

b. Upon making an opening in any portion of the property subject to this License for the purpose of laying, constructing, repairing and/or maintaining Licensee's System, Licensee shall, without unnecessary delay, replace and restore the same to its former condition as nearly as possible, and in full compliance with the provisions of the County of Albemarle's policies, rules, regulations and / or ordinances. Licensee shall re-sod disturbed grassed areas and replace all excavated areas to their original or better condition in order to minimize the disruption of public property. Licensee shall, at its sole cost, repair paving cuts in a good workmanlike manner to specifications outlined by the County.

c. Licensee shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas. Work shall be performed at night, if requested by the County, so as not to impede the regular use of

Darden Towe Park. Licensee shall use directional boring in all areas where possible unless otherwise required or approved by the County of Albemarle. Licensee shall meet all local and State requirements for traffic control and notify the County at least 24 hours prior to the commencement of work or the accessing of conduit installed pursuant to this License, except in cases of emergency.

d. Licensee shall not cut or install any ditches or trenches within the root zone of any tree but rather shall bore under the same unless written permission to do otherwise is provided in advance by the County Engineer or his designee.

e. The work authorized by this License shall be the installation, repair, replacement and maintenance of two (2) two-inch (2") conduits containing fiber optic cable, as well as related other facilities and equipment (collectively, the "Facilities"). All such Facilities within Darden Towe Park shall be placed underground.

f. Licensee shall file with the County Engineer true and correct maps or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public property, public ways, street, road and conduits where the work is to be undertaken. Maps shall be drawn in a scale and in such detail so as to allow proper review and interpretation by the County Engineer, and the same will be filed with the County not less than ten (10) working days before any excavation or installation of said cable or equipment or facilities commences.

g. If, at any time during the term of this Permit, Licensors shall determine, in their sole discretion, that the Facilities of Licensee installed pursuant to this License are in conflict with an intended use of Darden Towe Park by the City or County (and not, for example, to accommodate another private party or utility) and must be relocated, Licensee, upon reasonable notice from Licensors, shall remove, relay and relocate its Facilities at its own expense and within reasonable time schedules established by Licensors, to another location mutually agreeable to Licensors and Licensee. Should Licensee refuse or fail to remove its equipment or plant as provided for herein within 45 days after written notification, Licensors shall have the right to do such work or cause it to be done and the full cost thereof shall be chargeable to the Licensee, or in the alternative, to consider such failure by the Licensee to remove its equipment or plant as abandonment of all ownership rights in said property. Upon relocation, Licensee shall prepare at its own expense and provide to Licensors a revised survey plat that shows the new location of Licensee's wires, cables and equipment.

h. Licensee shall keep Licensors fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Licensee's System installed hereunder. Licensee shall report to Licensors such other information relating to the Licensee as Licensors may reasonably request in writing. Licensee shall respond to such inquiries on a timely basis.

i. Licensee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all applicable County codes, ordinances and regulations, and in such a manner that they will not interfere with any existing installations of the County or of a public utility serving the residents of the County of Albemarle or the City of Charlottesville.

#### **4. Permit Specifications; Payment:**

a. The right-of-way occupancy permitted under this License shall be approximately 4,500 linear feet of Licensee's System, to be installed in Darden Towe Park in the location shown on the attached survey plat prepared by Thomas B. Lincoln Land Surveyor, Inc., and dated January 6, 2006, revised February 10, 2006, a copy of which is attached to this License as Exhibit A.

b. The granting of this License is conditioned upon the payment by Licensee to Licensors of the annual sum of One Thousand, Six Hundred Eighty and 00/100 Dollars (\$1,680.00), which represents the fee for the placement and occupation of the facilities for approximately 4,500 linear feet of property in Albemarle County that is subject to this License. Annual payments shall be due and payable on or before January 10th of each year commencing for the year 2016 and shall be due and payable at a like date each year during the term of the Permit. In the event that Licensee's payments are not timely made, a ten percent (10%) surcharge shall be due and payable to Licensors. All payments by Licensee pursuant to this License shall be made to the County of Albemarle, as agent of the Licensors.

**5. Safety Requirements:**

a. Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury to the public or to constitute a nuisance. Licensee shall install such equipment and employ such personnel to maintain its facilities so as to assure efficient service, and shall have the equipment and personnel necessary to make repairs promptly.

b. Licensee shall install and maintain its System in accordance with the requirements of applicable building codes and regulations of the County of Albemarle and the statutes and regulations of appropriate Federal and State agencies, including but not limited to the Federal Communications Commission and the U.S. Army Corps of Engineers, which may now be in effect or enacted, and in such a manner that will not interfere with any installations of the County of Albemarle or the City of Charlottesville or of any public utility serving residents of the County of Albemarle or the City of Charlottesville.

c. Licensee's System, wherever situated, or located, shall at all times be kept and maintained in a safe operating condition and in good order and repair.

**6. Liability and Indemnification:**

a. By acceptance of this License, Licensee agrees that it shall indemnify, protect, defend and hold forever harmless the Licensors, their elected officials, officers, agents, representatives and employees, and their successors, legal representatives and assigns, from any and all claims of every kind and nature whatsoever, and from liabilities, losses, costs, judgments, penalties, damages, and expenses, including reasonable attorney's fees and expenses of litigation incurred in the defense of any such claim arising out of or relating to the installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this License, including but not limited to claims for injury or death to any person or persons, or damages to any property, as may be incurred by or asserted against Licensors, or either of them, their elected officials, officers, agents, representatives and/or employees, directly or indirectly, by reason of the installation, operation or maintenance by the Licensee of the Licensee's System within the area subject to this License. Licensee shall pay, and by acceptance of this Permit, the Licensee specifically agrees that it will pay all damages and penalties which Licensors, or either of them, may legally be required to pay as a result of installation, operation or maintenance by the Licensee of the Licensee's System or the Licensee's failure to perform any of the obligations of this Permit. These damages or penalties shall include all damages arising from the installation, operation or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Permit, and Licensors shall not be responsible in any manner for any damage to the System and which may be caused by Licensee or other persons regardless of the cause of damage. Notwithstanding the foregoing, Licensee shall not be required to indemnify, protect, defend or hold harmless Licensor(s) for claims arising out of or relating, in whole or in part, to the negligence or willful conduct of either or both Licensor(s).

b. Licensee shall maintain, and by its acceptance of this License, specifically agrees that it will provide throughout the term of the Permit, workers compensation insurance in such amounts of coverage as required by the Commonwealth of Virginia and liability insurance coverage with regard to all damages mentioned in subsection (a) above in the following minimum amounts, whichever is greater:

1. General Liability Insurance- \$1,000,000 per occurrence, \$2,000,000 aggregate limits. Commercial General Liability is to include bodily injury and property damage, personal injury, advertising injury, contractual liability, and products and completed operations coverage. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to General Liability coverage.

2. Comprehensive Automobile Liability Insurance including owned, non-owned and hired vehicles. Minimum coverage of \$1,000,000 combined single limit for each accident. The County of Albemarle and City of Charlottesville are to be included as additional insureds with respect to Auto Liability coverage.

c. Licensee agrees that all insurance contracts providing any of the above-required coverage will be issued by one or more insurance carriers duly authorized to do business in the Commonwealth of Virginia and will contain the following required provisions:

1. Both of the Licensors, their elected officials, officers, agents, employees and representatives shall be included as additional insureds (as the interests of each may appear) as to all applicable coverage:

2. The amount and conditions of said liability and comprehensive insurance may be increased upon sixty (60) days written notice by Licensors should the protection afforded by this insurance be deemed by Licensors to be insufficient for the risk created by this License. At no time, however, will any such increase in the amount of required liability and comprehensive insurance exceed that which is customarily required of other franchises or contractors of services for similar situations of risk.

3. Prior to the commencement of any work pursuant to this License and at least annually thereafter Licensee shall make available to Licensors evidence of such insurance coverage certifying that such coverage is in full force and effect. Evidence of Licensee's insurance is available at [www.centurylink.com/moi](http://www.centurylink.com/moi).

**7. Licensors' Rights in License:**

a. Licensee shall construct, maintain and operate said System in the locations described in Exhibit A and will at all times comply with all reasonable requirements, regulations, laws and ordinances now in force, and which may hereafter be adopted by the County of Albemarle and be applicable to the construction, repair or maintenance of said system or use of the property subject to this License. Failure of the Licensee to comply with any of the terms of this License or failure to pay the License fees prescribed by this Agreement shall be cause for Licensors to revoke this License. Without limiting the generality of the foregoing, Licensors also reserve the right to terminate and cancel this License and all rights and privileges of the Licensee hereunder in the event that the Licensee: (1) violates any rule, order or determination of Albemarle County made pursuant to this License, except where such violation is without fault or through excusable neglect; (2) becomes insolvent, unable or unwilling to pay its legal debts, or is adjudged a bankrupt; (3) attempts to evade any of the provisions of this License; (4) practices any fraud or deceit upon the Licensors, or either of them or; (5) fails to begin construction of its System within one hundred eighty (180) days from the date this License is granted and to continue such construction without unreasonable delay or interruption until completed.

b. Licensors' right to revoke this License pursuant to section 7.a. may be exercised only after written notice of default and a thirty (30) day period for Licensee to cure such default except for any act of default involving the payment of money or failing to provide any insurance coverage required hereunder in which event said thirty (30) day period shall be reduced to three (3) business days. The right is hereby reserved to the County of Albemarle to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations of general applications to all similarly situated Licensees as it shall find necessary in the exercise of its police power provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

**8. Assignment:**

The License granted pursuant to this Agreement shall not be assigned by the Licensee without the prior written consent of the Licensors, which consent may be granted or withheld in Licensors' sole discretion; provided, however, that Licensee may assign this License to a governmental entity without consent of the Licensors, and provided further that the sale or transfer of a controlling interest in Licensee shall not be considered an assignment within the meaning of this paragraph.

**9. Notice:**

For the purpose of giving notice as provided for in this Permit, the following addresses are provided:

For the Licensee:

CenturyLink Communications, LLC  
100 CenturyLink Drive  
Monroe, Louisiana 71203  
Attention: National ROW

For the Licensors:

Maurice Jones  
City Manager  
P. O. Box 911  
Charlottesville, VA 22902

*With a copy to:*

S. Craig Brown  
City Attorney  
P. O. Box 911  
Charlottesville, VA 22902

And

Thomas C. Foley  
County Executive  
401 McIntire Road  
Charlottesville, VA 22902

*With a copy to:*  
Larry W. Davis  
County Attorney  
401 McIntire Road  
Charlottesville, VA 22902

Unless and until a different address is provided in writing by Licensee to Licensors, the placing of notices in the United States Mail addressed to the Licensee as set forth above by registered or certified mail, return receipt requested, shall constitute compliance with the provisions of this Section.

**10. Miscellaneous:**

If any section, subsection, sentence, clause, phrase or portion of this Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent, and severable provision and such holding shall not affect the validity of the remaining portions hereof. This Permit shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia. All claims, disputes and other matters in question between the Licensee and Licensors, or either of them, arising out of or relating to this Permit, or the breach thereof, shall be decided in a state or federal court in the Commonwealth of Virginia that has subject matter jurisdiction over the claim or dispute. The Licensee, by accepting this Permit, specifically consents to venue in either state or federal court in Virginia and waives any right to contest venue in Virginia.

**WHEREFORE**, this Permit has been authorized by the City Council of the City of Charlottesville, Virginia in an open meeting on \_\_\_\_\_, 2016 and by the Board of Supervisors of Albemarle County, Virginia in an open meeting on \_\_\_\_\_, 2016, and each governing body has authorized the execution of this License by the City Manager and County Executive, respectively, as attested by the Clerk of each governing body, and the Licensee has accepted the terms and conditions of this License as evidenced by its corporate presents which have been executed by and through its authorized officers and the seal of the corporation affixed.

This \_\_\_\_ day of \_\_\_\_\_, 2016.

**Licensee:**

**CenturyLink Communications, LLC**

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

**Licensors:**

**City of Charlottesville**

\_\_\_\_\_  
By: Maurice Jones  
Title: City Manager

**County of Albemarle**

\_\_\_\_\_  
By: Thomas C. Foley  
Title: County Executive

**RESOLUTION TO DESIGNATE THE COUNTY OF ALBEMARLE, VIRGINIA  
AS A HYBRID ENTITY UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF  
1996 AND THE HIPAA PRIVACY RULE**

**WHEREAS**, the County of Albemarle, Virginia (the “County”) is committed to compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services “HIPAA Regulations”); and

**WHEREAS**, the County is a “covered entity” as that term is defined under HIPAA because the County administers a health plan to its employees and bills for emergency medical vehicle transports; and

**WHEREAS**, the Board of Supervisors of Albemarle County has determined that the County may more effectively and efficiently comply with HIPAA and administer the HIPAA Regulations by designating the County as a “hybrid entity,” as that term is defined under HIPAA, 45 C.F.R. § 164.103; and

**WHEREAS**, the County’s Human Resources Department and Fire and Rescue Department have adequate training, policies, and procedures for HIPAA compliance in place; and

**WHEREAS**, the County has contracted with a third party to administer its health plan such that no County employee responsible for administration of the plan normally has contact with “protected health information” as that term is defined under HIPAA, 45 C.F.R. § 160.103; and

**WHEREAS**, all third parties who contract with the County to receive, process, or transmit protected health information held by the County are required to execute a “Business Associate Agreement” as required under HIPAA, 45 C.F.R. § 164.308(b), thereby agreeing to comply with HIPAA regulations in their handling of “protected health information”.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Albemarle, Virginia, hereby designates the County as a “hybrid entity,” pursuant to the HIPAA Privacy Rule, 45 C.F.R. § 164.105.

**BE IT FURTHER RESOLVED** that the following are hereby designated as the health care components of the County’s hybrid entity: (i) the County’s health plan, and (ii) the County’s Fire and Rescue Department. The health plan is defined for purposes of HIPAA as those County employees responsible for administration of the health plan, including the Human Resources Department and the County Executive’s Office, only to the extent that their duties involve administration of the plan.

**BE IT FURTHER RESOLVED** that the following departments are designated as part of the health care component of the County’s hybrid entity only to the extent that they receive protected health information in the course of providing support services to the health plan or the Fire and Rescue Department; (i) the Finance Department; (ii) the Information Technology Department; (iii) the County Attorney’s Office; (iv) the County Executive’s Office, and (v) the Human Resources Department.

**BE IT FURTHER RESOLVED** that departments providing support services to the health care component of the County’s hybrid entity shall receive a level of HIPAA training commensurate with their level of access to “protected health information”.

**Commendation by the Albemarle County Board of Supervisors**  
of  
**Thomas L. Frederick, Jr.**  
Executive Director,  
Rivanna Water and Sewer Authority  
Rivanna Solid Waste Authority  
2004-2016

With deep appreciation and gratitude, the Albemarle County Board of Supervisors, this 6th day of April, 2016, hereby commends Thomas L. Frederick, Jr., for his 12 years of outstanding service as Executive Director of the Rivanna Water and Sewer Authority and the Rivanna Solid Waste Authority. The Charlottesville/Albemarle community is stronger, and a better place to live, work and grow, as a result of Mr. Fredericks' tireless dedication to duty and principle.

During his tenure, Mr. Frederick successfully led in the development of a long range (50 year) water supply plan to secure this community's water supply future, while at the same time incorporating future environmental protection for our rivers and streams and the entire watershed upon which we depend. His prodigious accomplishments also have included improvement of drinking water quality, modernization of our waste water treatment system and implementation of an effective corrective action plan for the closed Ivy landfill. Mr. Fredericks' successes were the result of his ability to meet and exceed the highest professional standards; his unquestioned integrity; and, in his human ability to respect all points of view among the citizenry and governmental officials.

Thank you, Tom, for your remarkable service. We will remember you for the mark you have left, and we wish you, and other Communities you will serve in the future, the very best.

April, 2016



**RESOLUTION APPOINTING THE COUNTY ASSESSOR**

**BE IT RESOLVED** by the Board of Supervisors of Albemarle County, Virginia, upon the recommendation of the County Executive, that Peter J. Lynch is hereby appointed the County Assessor effective April 6, 2016 pursuant to Virginia Code Section 15.2-521.

**RESOLUTION APPROVING THE ACCEPTANCE OF  
THE DEDICATION OF OPEN SPACE ON A PORTION OF  
TAX MAP AND PARCEL NUMBER 05600-00-00-03600  
IN THE PROPOSED CHESTERFIELD LANDING SUBDIVISION  
FROM SM CHARLOTTESVILLE, LLC**

**WHEREAS**, SM Charlottesville, LC (the “Owner”) is the record owner of Tax Map and Parcel Number 05600-00-00-03600 (the “Property”) consisting of 20.926 acres and composing the proposed Chesterfield Landing Subdivision; and

**WHEREAS**, the Owner proposes to dedicate 3.497 acres of the Property to the County in order to receive a density bonus under County Code § 18-13.4.2; and

**WHEREAS**, the Board finds it is in the best interest of the County to accept the dedication of open space.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves the acceptance of the dedication of open space on a portion of Tax Map and Parcel Number 05600-00-00-03600 in the proposed Chesterfield Landing Subdivision from SM Charlottesville, LLC, and authorizes the County Executive to sign the Deed of Dedication and Easement accepting the conveyance of the open space easement to the County once the County Attorney has approved the Deed as to form and substance.

**RESOLUTION TO APPROVE  
ADDITIONAL FY 16 APPROPRIATIONS**

**BE IT RESOLVED** by the Albemarle County Board of Supervisors:

- 1) That the FY 16 Budget is amended to increase it by \$4,268,720.14;
- 2) That Appropriations #2016069, #2016070, #2016071, #2016072, #2016073, #2016074, #2016075, and #2016076 are approved; and
- 3) That the appropriations referenced in Paragraph #2, above, are subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2016.

**ORDINANCE NO. 16-18(3)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, 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 IV, Procedure, is hereby amended and reordained as follows:

**By Amending:**

- Sec. 33.5 Uniform procedures for special exceptions  
 Sec. 34.4 Variances

**By Amending and Renaming:**

- Sec. 33.4 Uniform procedures for zoning map amendments not initiated by the county and special use permits

**Chapter 18. Zoning****Article IV. Procedure****Sec. 33.4 Uniform procedures for zoning map amendments not initiated by the county and special use permits**

Each application for a zoning map amendment that is not initiated by the county or a special use permit, except for those delegated by this chapter to the board of zoning appeals under section 4.15.5, shall be subject to the following:

- a. *Pre-application meeting.* A pre-application meeting shall be held with each prospective applicant (the "applicant"), and the applicant shall complete and submit information on county-provided forms before submitting an application (collectively, the "pre-application meeting"), subject to the following:
  1. *Purposes for a meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the county a common understanding of the proposed project; (ii) inform the applicant about the proposed project's consistency with the comprehensive plan, other relevant policies, and county regulations; (iii) broadly identify the planning, zoning and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the director to identify the information the applicant must submit with the application, including the supplemental information delineated in subsection (c). Receiving the relevant supplemental information will allow the application to be comprehensively and efficiently reviewed.
  2. *Factors to consider in requiring meeting.* A pre-application meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations he determines to be relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in subsection (c) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.
- b. *Applications.* Each application shall be composed of a completed county-provided application form and supplemental information (collectively, the "application") required to review and act on the application.
  1. *Who may file an application.* An application for a zoning map amendment or a special use permit may be filed by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the zoning map amendment or the special use permit. An application for a special use permit also may be filed by the easement holder of an easement where the special use for which the permit is sought is a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.

2. *Application forms.* The director of planning is authorized to establish appropriate application forms for zoning map amendments and special use permits. The application form shall delineate the supplemental information required to be provided, as set forth in subsection (b)(3).
  3. *When supplemental information may be required; establish or amend conventional districts; amend planned development districts; obtain or amend special use permits.* For each application for a zoning map amendment to establish or amend a conventional district, to amend a planned development district, and for each application to obtain or amend a special use permit, the director of planning may require some or all of the supplemental information delineated in subsection (c) to be submitted with each application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed district, and other considerations he determines to be relevant under sound zoning principles.
  4. *When supplemental information required; establish planned development districts.* Each application to establish a planned development district shall submit all of the supplemental information delineated in subsection (c).
- c. *Elements of the supplemental information.* The supplemental information is the following:
1. *Project proposal.* A narrative of the project proposal, including its public need or benefit; an application to establish a neighborhood model district shall include a statement describing how the proposed district satisfies the intent of this chapter and if one or more characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.
  2. *Comprehensive plan.* A narrative of the proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area; an application to establish a neighborhood model district also shall include a narrative as to the project's consistency with the neighborhood model.
  3. *Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.
  4. *Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.
  5. *Proposed proffers to address impacts.* A narrative of the proffers proposed to address impacts from the proposed project.
  6. *Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions; if the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply.
  7. *Conceptual plan for zoning map amendments for conventional districts and special use permits.* For an application for a zoning map amendment to establish a conventional district or a special use permit, a conceptual plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; and (ix) conceptual grading.
  8. *Application plan for zoning map amendments for planned development districts.* For an application to establish a planned development district or to amend an approved application plan for an existing planned development district, an application plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and

streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; (ix) conceptual grading; (x) a use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features; (xi) topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes; (xii) the general layout for water and sewer systems; (xiii) the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas; (xiv) standards of development including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district; (xv) a conceptual lot layout; and (xvi) if the application is to establish a neighborhood model district, the location of proposed green spaces and amenities as provided in section 20A.9.

9. *Code of development in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a code of development satisfying the requirements of section 20A.5.
  10. *Parking and loading needs study in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8, and transportation demand management strategies as provided in section 4.12.12; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
  11. *Stormwater management in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities.
  12. *Traffic impact statement.* For zoning map amendments, a local traffic impact statement as required by Virginia Code § 15.2-2222.1 and 24 VAC 30-155-40.
  13. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.
  14. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application, the proffer statement, if applicable, and all other related documents.
  15. *Contact person.* The name, address, telephone number and e-mail address of a single contact person for communications between the county and the applicant.
  16. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the county on the pre-application comment form.
- d. *Payment of delinquent taxes.* The applicant shall provide satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a special use permit is an easement holder.
  - e. *Filing the application; number of copies.* The application shall be filed with the department of community development. The director of planning is authorized to establish for each class of application the number of collated copies of the application required to be filed.

- f. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
1. *Timing of determination of completeness.* The director of planning shall determine whether an application is complete within ten (10) days after the application was received.
  2. *Procedure if application is incomplete.* The director of planning shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
  3. *Effect if timely determination not made.* If the director of planning does not send or deliver the notice as provided in subsection (f)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the director may reject the application as provided herein if the applicant fails to timely provide the omitted information.
  4. *Notice to other owners of application for zoning map amendment to amend existing proffers.* Within ten (10) days after an application for a zoning map amendment seeking to amend existing proffers is determined to be complete, written notice of the proposed amendment shall be provided to each owner subject to the same proffers as required by Virginia Code §§ 15.2-2204(H) and 15.2-2302.
  5. *Notice to owner of application for special use permit filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special use permit filed by an easement holder is determined to be complete, written notice of the proposed special use permit shall be provided to each owner of the lot for which the special use permit is sought as required by Virginia Code § 15.2-2204(H).
- g. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.
- h. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the director of planning as provided in subsection (f)(2), the applicant may resubmit the application with all of the information required by subsections (b) and (c) for a new determination of completeness under subsection (f).
- i. *Worksessions.* For any application, the director of planning may schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, as he determines to be appropriate considering the nature of the approval requested, the acreage affected, the possible impacts that could result from an approved application, and any other factors deemed relevant upon applying sound zoning principles, subject to the following:
1. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the board or the commission with the department of community development's analysis of the major issues, seek direction from the board or commission on their expectations in addressing those issues, and to allow the board or commission to receive public comments.
  2. *When applicant's consent required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- j. *Community meetings.* A community meeting shall be held for each application, subject to the following:
1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and

regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.

2. *Factors to consider in requiring meeting.* A community meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting under this subsection unnecessary.
  3. *Guidelines.* The director of planning is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process community meetings should be conducted, and how a community meeting should be conducted including, but not limited to, how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.
  4. *When applicant's consent required.* The applicant's consent to a community meeting shall be required if the community meeting would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- k. *Review of staff comments.* Upon request by the applicant, the director of planning shall meet with the applicant to review comments to the application made by county staff.
- l. *Public hearings.* Before the board of supervisors acts on a zoning map amendment or a special use permit, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- m. *Notice of public hearings.* Notice of public hearings shall be provided as follows:
1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C); and, for zoning map amendments seeking to amend an existing planned development district, written notice of the proposed amendment also shall be provided to the owner of each parcel within the planned development district and the substance of that notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
  2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application shall be posted, as follows:
    - a. *When sign must be posted.* The sign shall be posted by the zoning administrator at least twenty-one (21) days before the commission's public hearing on the application and shall remain posted until the board of supervisors has acted on the application or the application has been withdrawn.
    - b. *Where sign to be located.* The sign shall be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and shall be so placed as to be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application shall be deemed to grant consent to the zoning administrator to enter the parcel(s) to erect the signs.



- c. *Content of sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
- d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the commission or the board of supervisors to defer action on an application until there is reasonable compliance with this subsection.
- e. *Ownership of sign; violation for removing or tampering with sign.* Each sign is the property of the board of supervisors. It shall be unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the zoning administrator.
- f. *Effect of failure to comply.* If the requirements of this subsection to post notice are not complied with:
  - 1. *Prior to action by board.* The board of supervisors may defer taking action on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
  - 2. *Action not invalid.* No action on an application shall be declared invalid solely because of the failure to post notice as required by this subsection.
- n. *Time for decision.* Each application shall be acted on as follows:
  - 1. *By the planning commission.* An application shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval unless the applicant requests or consents to the ninety (90) day period being extended.
  - 2. *By the board of supervisors.* An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
  - 3. *Tolling.* The period in which action is required by the commission or the board of supervisors shall be tolled during any period in which the applicant has requested that the review of the application be suspended or the public hearings or action thereon be deferred or continued.
  - 4. *Referral.* The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board of supervisors is within twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
- o. *Recommendation by commission.* The commission shall either recommend approval of the application as proposed, approval subject to changes being made prior to action by the board of supervisors, or disapproval. For any application for a zoning map amendment, the commission's recommendation also should include its recommendations on proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of development, the code of development, and any special exception requested by the applicant under section 8.2. For any application for a special use permit, the commission's recommendation should include its recommendations on the proposed conditions.
- p. *Action by the board of supervisors.* The board of supervisors may either approve or deny the application, or defer action to allow changes to be made prior to final action by the board. In approving an application for a

zoning map amendment, the board may accept the proposed proffers as provided in section 33.7. In approving an application for a special use permit, the board may impose conditions as provided in section 33.8.

- q. *Intensification of use classification prohibited without additional notice and hearing.* No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- r. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
  - 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the commission or the board of supervisors. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply.
  - 2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the commission or the board of supervisors is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the director of planning before the one (1) year period expires, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the clerk of the board of supervisors before the extension of the deferral period granted by the director expires, the board of supervisors may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- s. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.
- t. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

((§ 33.2, 12-10-80) (§ 33.4, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.5, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.6, 12-10-80) (§ 33.7, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8, 12-10-80, 6-19-96) (§ 33.8.1, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8.2, 12-10-80, 6-19-96) (§ 33.8.3, 12-10-80, 6-19-96); §33.4, Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 14-18(2), 3-5-14)

**State law reference** – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(3), (4), (5), (7), (B).

### **Sec. 33.5 Uniform procedures for special exceptions**

Each application for a special exception shall be subject to the following:

- a. *Matters requiring a special exception.* Notwithstanding any other section of this chapter:
  - 1. Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board of supervisors, provided that no special exception shall be required for the development and construction of residential dwellings at the use, height and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.
  - 2. Any requirement for a decision by the commission required by this chapter shall be considered and acted upon by the board of supervisors. For the purposes of this section, a decision by the

commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any variation or exception provided in section 32.

- b. *Application.* Each application for a special exception shall be made as provided by, and include the information required by, the applicable section of this chapter authorizing the waiver, modification, variation or substitution.
  - 1. *Who may file an application.* An application for a special exception may be filed by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the special exception, or by the easement holder of an easement where the waiver, modification, or variation for which the special exception is sought pertains to a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.
  - 2. *When application deemed officially submitted.* An application shall be deemed to be officially submitted when the applicant has submitted all of the required information as determined by the director of planning.
- c. *Public hearings.* Before the board of supervisors acts on a special exception that would increase by greater than fifty (50) percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- d. *Notice to owner of application for special exception filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special exception filed by an easement holder is determined to be complete, written notice of the proposed special exception shall be provided to the owner of the lot for which the special exception is sought as required by Virginia Code § 15.2-2204(H).
- e. *Notice of public hearings.* Notice of public hearing before the commission and the board of supervisors on an application for which a public hearing is required under subsection (c) shall be provided as required by Virginia Code § 15.2-2204(C).
- f. *Time for decision.* Each application for a special exception shall be acted on by the board of supervisors within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.
- g. *Recommendation by planning commission.* For those applications considered by the commission, the commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the board of supervisors, or disapproval. The commission's recommendation should include its recommendations on the proposed conditions.
- h. *Action by the board of supervisors.* The board of supervisors may either approve the application, deny the application, or defer action to allow changes to be made prior to final action by the board. In approving the application, the board may impose conditions as provided in section 33.9.
- i. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

(§ 33.5, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 31.8, Ord. 12-18(1), 2-8-12)

**State law reference** – Va. Code § 15.2-2286(A)(3), 15.2-2288.1.

#### **Sec. 34.4 Variances**

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

- a. *Who may file an application.* An application may be filed by any owner, tenant, the easement holder of an easement where the use for which the variance is sought is a use allowed by the deed of easement or

equivalent instrument, government official, department, board or bureau (the “applicant”). The zoning administrator is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.

- b. *Application.* Each application shall be composed of a completed county-provided application form required to review and act on the application. The application may pertain to one or more lots owned or occupied by the applicant. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:
  - 1. *Criteria to establish right to a variance.* Information pertaining to the criteria to establish the right to a variance in subsection (i).
  - 2. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a variance is an easement holder.
- c. *Filing the application; number of copies.* The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.
- d. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
  - 1. *Timing of determination of completeness.* The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.
  - 2. *Procedure if application is incomplete.* If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
  - 3. *Effect if timely determination not made.* If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.
  - 4. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.
  - 5. *Notice to owner of application for variance filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a variance filed by an easement holder is determined to be complete, written notice of the proposed variance shall be provided to the owner of the lot for which the variance is sought as required by Virginia Code § 15.2-2204(H).
- e. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.
- f. *Transmittal of information.* The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

- g. *Procedural requirements prior to the hearing.* The following procedures apply prior to the board's hearing on the application:
1. *Scheduling the hearing on the application.* The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).
  2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the variance, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).
  3. *Contact by parties with board members.* The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.
  4. *Sharing information produced by county staff.* Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.
- h. *Procedural requirements at the hearing.* The following procedures apply at the board's hearing on the application:
1. *The right to equal time for a party to present its side of the case.* The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.
  2. *Burden of proof.* The applicant has the burden to prove by a preponderance of the evidence that his application meets the definition of a variance in Virginia Code § 15.2-2201 and the criteria in subsection (i).
- i. *Criteria to establish basis to grant a variance.* The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:
1. *Good faith acquisition and hardship not self-inflicted.* The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
  2. *No substantial detriment.* Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
  3. *Condition of situation not general or recurring.* The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
  4. *Use variance prohibited.* Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
  5. *Special use permit or special exception not available.* The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

- j. *Factors not to be considered.* The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.
- k. *Time for decision.* The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.
- l. *Action by the board; vote required to grant variance.* The concurring vote of three (3) members of the board is required to grant a variance.
- m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:
  - 1. *Nature of conditions.* The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.
  - 2. *Guarantee or bond to ensure compliance.* The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
  - 3. *Conditions deemed to be essential and nonseverable.* Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.
- n. *Effect of granting variance; expansion of structure.* The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.
- o. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
  - 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the board prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the board. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the board, at the time of withdrawal, specifies that the time limitation shall not apply.
  - 2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- p. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.

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

(§ 34.4, 12-10-80; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 15-18(5), 7-8-15)

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

**ORDINANCE NO. 16-18(4)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, 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 IV, Procedure, is hereby amended and reordained as follows:

**By Amending:**

Sec. 33.4 Uniform procedures for owner-initiated zoning map amendments and special use permits  
 Sec. 33.7 Owner-initiated zoning map amendments; authority to accept proffers  
 Sec. 35.1 Fees

**Chapter 18. Zoning****Article IV. Procedure****Sec. 33.4 Uniform procedures for zoning map amendments not initiated by the county and special use permits**

Each application for a zoning map amendment that is not initiated by the county or a special use permit, except for those zoning map amendments subject to alternative application and procedural requirements authorized by the board of supervisors under section 33.7(f) and those special use permit applications delegated by this chapter to the board of zoning appeals under section 4.15.5, shall be subject to the following:

- a. *Pre-application meeting.* A pre-application meeting shall be held with each prospective applicant (the "applicant"), and the applicant shall complete and submit information on county-provided forms before submitting an application (collectively, the "pre-application meeting"), subject to the following:
  1. *Purposes for a meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the county a common understanding of the proposed project; (ii) inform the applicant about the proposed project's consistency with the comprehensive plan, other relevant policies, and county regulations; (iii) broadly identify the planning, zoning and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the director to identify the information the applicant must submit with the application, including the supplemental information delineated in subsection (c). Receiving the relevant supplemental information will allow the application to be comprehensively and efficiently reviewed.
  2. *Factors to consider in requiring meeting.* A pre-application meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations he determines to be relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in subsection (c) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.
- b. *Applications.* Each application shall be composed of a completed county-provided application form and supplemental information (collectively, the "application") required to review and act on the application.
  1. *Who may file an application.* An application for a zoning map amendment or a special use permit may be filed by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the zoning map amendment or the special use permit. An application for a special use permit also may be filed by the easement holder of an easement where the special use for which the permit is sought is a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.



2. *Application forms.* The director of planning is authorized to establish appropriate application forms for zoning map amendments and special use permits. The application form shall delineate the supplemental information required to be provided, as set forth in subsection (b)(3).
  3. *When supplemental information may be required; establish or amend conventional districts; amend planned development districts; obtain or amend special use permits.* For each application for a zoning map amendment to establish or amend a conventional district, to amend a planned development district, and for each application to obtain or amend a special use permit, the director of planning may require some or all of the supplemental information delineated in subsection (c) to be submitted with each application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed district, and other considerations he determines to be relevant under sound zoning principles.
  4. *When supplemental information required; establish planned development districts.* Each application to establish a planned development district shall submit all of the supplemental information delineated in subsection (c).
- c. *Elements of the supplemental information.* The supplemental information is the following:
1. *Project proposal.* A narrative of the project proposal, including its public need or benefit; an application to establish a neighborhood model district shall include a statement describing how the proposed district satisfies the intent of this chapter and if one or more characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.
  2. *Comprehensive plan.* A narrative of the proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area; an application to establish a neighborhood model district also shall include a narrative as to the project's consistency with the neighborhood model.
  3. *Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.
  4. *Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.
  5. *Proposed proffers to address impacts.* A narrative of the proffers proposed to address impacts from the proposed project.
  6. *Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions; if the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply.
  7. *Conceptual plan for zoning map amendments for conventional districts and special use permits.* For an application for a zoning map amendment to establish a conventional district or a special use permit, a conceptual plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; and (ix) conceptual grading.
  8. *Application plan for zoning map amendments for planned development districts.* For an application to establish a planned development district or to amend an approved application plan for an existing planned development district, an application plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities;

(iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; (ix) conceptual grading; (x) a use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features; (xi) topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes; (xii) the general layout for water and sewer systems; (xiii) the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas; (xiv) standards of development including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district; (xv) a conceptual lot layout; and (xvi) if the application is to establish a neighborhood model district, the location of proposed green spaces and amenities as provided in section 20A.9.

9. *Code of development in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a code of development satisfying the requirements of section 20A.5.
  10. *Parking and loading needs study in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8, and transportation demand management strategies as provided in section 4.12.12; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
  11. *Stormwater management in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities.
  12. *Traffic impact statement.* For zoning map amendments, a local traffic impact statement as required by Virginia Code § 15.2-2222.1 and 24 VAC 30-155-40.
  13. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.
  14. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application, the proffer statement, if applicable, and all other related documents.
  15. *Contact person.* The name, address, telephone number and e-mail address of a single contact person for communications between the county and the applicant.
  16. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the county on the pre-application comment form.
- d. *Payment of delinquent taxes.* The applicant shall provide satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid; provided that the payment of such delinquent taxes, charges or fees shall not be required when the applicant for a special use permit is an easement holder.
  - e. *Filing the application; number of copies.* The application shall be filed with the department of community development. The director of planning is authorized to establish for each class of application the number of collated copies of the application required to be filed.

- f. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.
1. *Timing of determination of completeness.* The director of planning shall determine whether an application is complete within ten (10) days after the application was received.
  2. *Procedure if application is incomplete.* The director of planning shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.
  3. *Effect if timely determination not made.* If the director of planning does not send or deliver the notice as provided in subsection (f)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the director may reject the application as provided herein if the applicant fails to timely provide the omitted information.
  4. *Notice to other owners of application for zoning map amendment to amend existing proffers.* Within ten (10) days after an application for a zoning map amendment seeking to amend existing proffers is determined to be complete, written notice of the proposed amendment shall be provided to each owner subject to the same proffers as required by Virginia Code §§ 15.2-2204(H) and 15.2-2302.
  5. *Notice to owner of application for special use permit filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special use permit filed by an easement holder is determined to be complete, written notice of the proposed special use permit shall be provided to each owner of the lot for which the special use permit is sought as required by Virginia Code § 15.2-2204(H).
- g. *Payment of fees.* When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.
- h. *Resubmittal of application originally determined to be incomplete.* Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the director of planning as provided in subsection (f)(2), the applicant may resubmit the application with all of the information required by subsections (b) and (c) for a new determination of completeness under subsection (f).
- ii. *Worksessions.* For any application, the director of planning may schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, as he determines to be appropriate considering the nature of the approval requested, the acreage affected, the possible impacts that could result from an approved application, and any other factors deemed relevant upon applying sound zoning principles, subject to the following:
1. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the board or the commission with the department of community development's analysis of the major issues, seek direction from the board or commission on their expectations in addressing those issues, and to allow the board or commission to receive public comments.
  2. *When applicant's consent required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- j. *Community meetings.* A community meeting shall be held for each application, subject to the following:
1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and

regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.

2. *Factors to consider in requiring meeting.* A community meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting under this subsection unnecessary.
  3. *Guidelines.* The director of planning is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process community meetings should be conducted, and how a community meeting should be conducted including, but not limited to, how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.
  4. *When applicant's consent required.* The applicant's consent to a community meeting shall be required if the community meeting would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- k. *Review of staff comments.* Upon request by the applicant, the director of planning shall meet with the applicant to review comments to the application made by county staff.
- l. *Public hearings.* Before the board of supervisors acts on a zoning map amendment or a special use permit, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- m. *Notice of public hearings.* Notice of public hearings shall be provided as follows:
1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C); and, for zoning map amendments seeking to amend an existing planned development district, written notice of the proposed amendment also shall be provided to the owner of each parcel within the planned development district and the substance of that notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
  2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application shall be posted, as follows:
    - a. *When sign must be posted.* The sign shall be posted by the zoning administrator at least twenty-one (21) days before the commission's public hearing on the application and shall remain posted until the board of supervisors has acted on the application or the application has been withdrawn.
    - b. *Where sign to be located.* The sign shall be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and shall be so placed as to be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application shall be deemed to grant consent to the zoning administrator to enter the parcel(s) to erect the signs.

- c. *Content of sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
- d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the commission or the board of supervisors to defer action on an application until there is reasonable compliance with this subsection.
- e. *Ownership of sign; violation for removing or tampering with sign.* Each sign is the property of the board of supervisors. It shall be unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the zoning administrator.
- f. *Effect of failure to comply.* If the requirements of this subsection to post notice are not complied with:
  - 1. *Prior to action by board.* The board of supervisors may defer taking action on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
  - 2. *Action not invalid.* No action on an application shall be declared invalid solely because of the failure to post notice as required by this subsection.
- n. *Time for decision.* Each application shall be acted on as follows:
  - 1. *By the planning commission.* An application shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval unless the applicant requests or consents to the ninety (90) day period being extended.
  - 2. *By the board of supervisors.* An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
  - 3. *Tolling.* The period in which action is required by the commission or the board of supervisors shall be tolled during any period in which the applicant has requested that the review of the application be suspended or the public hearings or action thereon be deferred or continued.
  - 4. *Referral.* The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board of supervisors is within twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
- o. *Recommendation by commission.* The commission shall either recommend approval of the application as proposed, approval subject to changes being made prior to action by the board of supervisors, or disapproval. For any application for a zoning map amendment, the commission's recommendation also should include its recommendations on proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of development, the code of development, and any special exception requested by the applicant under section 8.2. For any application for a special use permit, the commission's recommendation should include its recommendations on the proposed conditions.
- p. *Action by the board of supervisors.* The board of supervisors may either approve or deny the application, or defer action to allow changes to be made prior to final action by the board. In approving an application for a zoning map amendment, the board may accept the proposed proffers as provided in section 33.7. In

approving an application for a special use permit, the board may impose conditions as provided in section 33.8.

- q. *Intensification of use classification prohibited without additional notice and hearing.* No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- r. *Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:
  - 1. *Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the commission or the board of supervisors. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply.
  - 2. *When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the commission or the board of supervisors is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the director of planning before the one (1) year period expires, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the clerk of the board of supervisors before the extension of the deferral period granted by the director expires, the board of supervisors may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.
- s. *Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.
- t. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

((§ 33.2, 12-10-80) (§ 33.4, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.5, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.6, 12-10-80) (§ 33.7, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8, 12-10-80, 6-19-96) (§ 33.8.1, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8.2, 12-10-80, 6-19-96) (§ 33.8.3, 12-10-80, 6-19-96); §33.4, Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 14-18(2), 3-5-14)

**State law reference** – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(3), (4), (7), (B).

### **Sec. 33.7 Owner-initiated zoning map amendments; authority to accept proffers**

The board of supervisors is authorized to accept proffers pursuant to Virginia Code § 15.2-2303 in conjunction with owner-initiated zoning map amendments as follows:

- a. *Purpose.* Proffers are conditions that are intended to provide for the protection of the community that are not generally applicable to land similarly zoned. Accordingly, proffers are reasonable conditions that are in addition to the regulations provided for the district under this chapter.
- b. *Form.* Proffers shall be in writing and in a form that is approved by the county attorney. The director of planning is authorized to provide applicants with a proffer statement form.
- c. *Timing of submittal.* Proffers, signed by the owner of all parcels subject to the zoning map amendment, shall be submitted to the department of community development prior to the public hearing before the board of supervisors on the proposed public hearing. The director of planning is authorized to establish written

guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing so as to allow the county and members of the public a reasonable period of time to review the proffers.

- d. *Amendments to proposed proffers after public hearing has begun.* The board of supervisors may accept, in its sole discretion, amended proffers once the public hearing on the zoning map amendment has begun if it concludes that the amended proffers do not materially affect the overall proposal. If amended proffers are submitted after the public hearing is closed, the board may accept, in its sole discretion, the amended proffers after holding another public hearing.
- e. *Effect of proffers once accepted.* Once proffered and accepted by the board of supervisors in conjunction with an approved zoning map amendment, the proffers shall continue in effect until a subsequent zoning map amendment changes the zoning of the parcel(s) subject to the proffers; provided that the proffers shall continue in effect if the subsequent zoning map amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.
- f. *Subsequent amendments to proffers.* Once accepted by the board of supervisors in conjunction with an approved zoning map amendment, proffers may be amended by an owner-initiated zoning map amendment. An application to amend proffers shall be subject to the procedures under section 33.4, provided that if the proposed amendment solely pertains to amending proffers that do not affect conditions of use or density and, following consultation with the director of planning, the applicant submits a request to the clerk of the board of supervisors before filing an application for a zoning map amendment under section 33.4(b):
  - 1. *Waiver of requirement for public hearings.* The board of supervisors may waive the requirement for a public hearing by the commission or by the board of supervisors, or both, and the associated notice requirements, as otherwise required under section 33.4; and, if the board waives the requirement for a public hearing by the commission, it also may waive the requirement for a recommendation from the commission.
  - 2. *Waiver of procedural requirements.* The board may waive one or more of the procedural requirements in subsections 33.4(a), (i), and (j).
  - 3. *Waiver of application requirements.* The board may waive any supplemental information which may otherwise be required to accompany an application under subsections 33.4(b)(2) and (c), and determine the number of copies of the application that must be filed.

(§ 33.7, Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.3, 12-10-80; 4-4-90; Ord. 07-18(1), 7-11-07) (§ 33.3.1, 12-10-80; 4-4-90)

**State law reference** – Va. Code §§ 15.2-2296, 15.2-2302, 15.2-2303.

### **Sec. 35.1 Fees**

Each applicant shall pay the following applicable fees, provided that neither the county nor the county school board shall be required to pay any fee if it is the applicant:

- a. Zoning text amendments: \$1,075.00
- b. Zoning map amendments:
  - 1. Less than 50 acres; application and first resubmission: \$2,688.00
  - 2. Less than 50 acres; each additional resubmission: \$1,344.00
  - 3. 50 acres or greater; application and first resubmission: \$3,763.00
  - 4. 50 acres or greater; each additional resubmission: \$1,881.00
  - 5. Deferral of scheduled public hearing at applicant's request: \$194.00
  - 6. Amendments submitted under section 30.7.6: (i) because the slopes are not steep slopes: no fee; (ii) to change any slope's designation from preserved to managed or to remove steep slopes from the steep slopes overlay district: any application fee under subsections (b)(1) through (5).
  - 7. Amendments solely pertaining to proffers that do not affect use or density, when the board of supervisors authorizes alternative application and procedural requirements under section 33.7(f): \$457.00.

**Board Policy for Considering Requests for a Simplified Application Process for Rezoning to Amend Proffers That Do Not Affect Use or Density:**

- Staff will consider the eligibility of each rezoning application to amend proffers in which the Applicant is requesting a simplified application process in accordance with Albemarle County Code § 18-33.4(f).
- The Board will consider all eligible requests for a simplified application process on its regular agenda.
- To be consistent and objective in determining whether to grant a request that is eligible for a simplified application process, the Board will consider the following factors relevant to the proposed proffer amendment:
  - Was the proffer as originally provided material to the approval of the original rezoning?
  - Does the proposed proffer amendment have a potential impact on adjacent properties not anticipated with the original rezoning?
  - Has development already occurred within the rezoned area for which current residents/businesses would have relied on the proffer or for which an amendment to the proffer would materially affect them?
  - Is there a general public interest in the proffer as originally accepted that would be materially affected by the requested amendment?
- It is the Board's expectation that proposed proffer amendments will be minor, technical, and/or noncontroversial, and will allow for ultimate Board decision at a single meeting?
- In consideration of the above noted factors, the Board will determine the following regarding the processing of such eligible requests:
  - Whether to waive Planning Commission and/or Board of Supervisors public hearing(s)
  - Whether to waive certain procedural requirements
    - Pre-application meetings
    - Work sessions
    - Community meetings
  - Whether to waive certain application requirements
  - Whether its ultimate action on the rezoning application to amend proffers will be considered as part of its consent agenda or regular agenda