

<p style="text-align: center;">ACTIONS Board of Supervisors Meeting of September 16, 2020</p>		
		September 17, 2020
AGENDA ITEM/ACTION	ASSIGNMENT	VIDEO
1. Call to Order. <ul style="list-style-type: none"> Meeting was called to order at 1:00 p.m., by the Chair, Mr. Gallaway. All BOS members were present. Also present were Jeff Richardson, Greg Kamptner, Claudette Borgersen and Travis Morris. 		Link to Video
4. Adoption of Final Agenda. <ul style="list-style-type: none"> By a vote of 6:0, DEFFERED, agenda item #9 to November 4, 2020, at the request of the applicant. Moved agenda items #20 and 21 up on the agenda to follow agenda item #11. Pulled consent agenda item #8.4, for discussion. By a vote of 6:0, ADOPTED the final agenda as amended. 		
5. Brief Announcements by Board Members. <u>Donna Price:</u> <ul style="list-style-type: none"> Mentioned the closure of one of the two Sentara clinics in Buckingham County, due to the retirement of a physician. Announced that early voting starts on Friday, September 18 and encouraged everyone to vote. 		
6. Proclamations and Recognitions. <ul style="list-style-type: none"> a. Resolution Recognizing Bruce Dotson By a vote of 6:0, ADOPTED resolution and presented to Mr. Dotson. 	(Attachment 1)	
7. From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board. <ul style="list-style-type: none"> <u>Gary Grant</u>, Earlysville resident, spoke on the Boards September 9, 2020 retreat. 		
8.1 FY 2021 Appropriations. <ul style="list-style-type: none"> ADOPTED, resolution to approve appropriation #2021029, for local government projects and programs. 	<u>Clerk:</u> Forward copy of signed resolution to OMB and County Attorney's office. (Attachment 2)	
8.2 Schedule a Public Hearing to Consider the Adoption of an Ordinance to Amend County Code Chapter 1, General Provisions. <ul style="list-style-type: none"> SCHEDULED, public hearing on October 21, 2020 to consider the adoption of the draft ordinance. 	<u>Clerk:</u> Schedule public hearing and advertise in Daily Progress.	
8.3 Third Amendment to Woolen Mills Economic Opportunity Fund Performance Agreement. <ul style="list-style-type: none"> ADOPTED, resolution to approve the Third Amended Agreement extending the performance deadline and allowing the County Executive to approve future extensions as needed but not beyond September 30, 2021, and to authorize the County Executive to sign this Amended Agreement on behalf of Albemarle County once it has been approved as to substance and form by the County Attorney. 	<u>Clerk:</u> Forward copy of signed resolution to Economic Development, and County Attorney's office. (Attachment 3) <u>County Attorney:</u> Provide clerk with copy of fully executed agreement. (Attachment 4)	
8.4 ZMA201900010 3223 Proffit Road, deferred from September 2 . <ul style="list-style-type: none"> By a vote of 5:1(Palmer), ADOPTED ordinance. 	<u>Clerk:</u> Forward copy of signed ordinance to Community Development and County Attorney's office.	

		(Attachments 5, 6, and 7)
9.	HS201900026 Special Exception Northfield Manor. • DEFFERED to November 4, 2020.	<u>Clerk:</u> Schedule on November 4, agenda.
10.	Presentation: Community Development 2020 Work Program. • RECEIVED.	
11.	Presentation: Thomas Jefferson Health District COVID-19 Update. • RECEIVED.	
20.	From the Board: Committee Reports and Matters Not Listed on the Agenda. • There were none.	
21.	From the County Executive: Report on Matters Not Listed on the Agenda. <u>Jeff Richardson:</u> • Reported on the relocation of the “At-ready” monument at Court Square. • Announced that the Board’s retreat summary report had been placed in each Supervisor’s mailbox. <u>Lance Stewart:</u> • Reported on the guidelines for the early voting period starting Friday, September 18.	
12.	Closed Meeting. • At 3:35 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia: • Under Subsection (1), to discuss and consider the annual performance of the Clerk and the County Attorney; and • Under Subsection (7), to consult with legal counsel and briefings by staff members pertaining to actual litigation regarding the interpretation of a proffer that had been accepted in conjunction with a rezoning.	
13.	Certify Closed Meeting. • At 6:02 p.m., the Board reconvened into open meeting and certified the closed meeting.	
14.	From the Public: Matters Not Listed for Public Hearing on the Agenda or on Matters Previously Considered by the Board or Matters that are Pending Before the Board. • <u>The following individuals spoke on climate change and a “Citizens Petition to Periodically Add Solar to County-owned buildings starting in 2020.”</u> • <u>Marcia Geyer</u> • <u>David Redding</u> • <u>Lisa Glassco</u> • <u>Donna Shaunesey</u> • <u>Peter Krebs</u>	
15.	<u>Pb. Hrg.: ZMA202000006 Spring Hill Village Proffer.</u> • By a vote of 6:0, ADOPTED ordinance to approve ZMA202000006.	<u>Clerk:</u> Forward copy of signed ordinance to Community Development and County Attorney’s office. (Attachments 8, 9 and 10)
16.	<u>Pb. Hrg.: SP201900002 Pleasant Green.</u> • By a vote of 6:0, ADOPTED resolution to approve SP201900002.	<u>Clerk:</u> Forward copy of signed resolution to Community Development and County Attorney’s office. (Attachment 11)
17.	<u>Pb. Hrg.: ZTA201900007 Fill Areas and Waste Areas.</u> • By a vote of 6:0, ADOPTED ordinances to amend Chapter 18, Zoning and Chapter 7,	<u>Clerk:</u> Forward copy of signed ordinances to Community Development and County Attorney’s office.

<p>Health and Safety.</p> <ul style="list-style-type: none"> By general consensus DIRECTED staff to report back on post implementation of the ordinance in a year. 	<p>(Attachments 12 and 13)</p> <p><u>Community Development:</u> Report back as directed.</p>	
<p>Recess. The Board recessed at 9:15 p.m., and reconvened at 9:20 p.m.</p>		
<p>18. <u>Pb. Hrg.: Ordinance to Prevent the Spread of the Novel Coronavirus, SARS-CoV-2, and the Disease it Causes, Commonly Referred to as COVID-19.</u></p> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED ordinance, with the revisions to Section 9 recommended by the County Attorney. 	<p><u>Clerk:</u> Forward copy of signed ordinance to County Attorney's office. (Attachment 14)</p>	
<p>19. <u>Pb. Hrg.: Ordinance to Amend Ordinance No. 20-A(8), An Ordinance to Ensure Continuity of Government During the COVID-19 Disaster.</u></p> <ul style="list-style-type: none"> By a vote of 6:0, ADOPTED ordinance with the delayed October 1, 2020 effective date recommended by the County Attorney. 	<p><u>Clerk:</u> Forward copy of signed ordinance to County Attorney's office. (Attachment 15)</p>	
<p>22. Adjourn to September 18, 2020, 5:00 p.m., electronic meeting pursuant to Ordinance No. 20-A(8).</p> <ul style="list-style-type: none"> The meeting was adjourned at 9:45 p.m. 		

ckb/tom

Attachment 1 – Resolution Recognizing Bruce Dotson
Attachment 2 – Resolution to Approve Additional FY 2021 Appropriation
Attachment 3 – Resolution to Approve the Third Amended Economic Opportunity Fund Performance Agreement
Attachment 4 – Third Amended Agreement
Attachment 5 – Ordinance No. 20-A(11), ZMA 2019-00010
Attachment 6 – ZMA 2019-00010, Concept Plan dated September 8, 2020
Attachment 7 – ZMA 2019-00010, Proffers dated September 8, 2020
Attachment 8 – Ordinance No. 20-A(12), ZMA 2020-00006
Attachment 9 – ZMA 2020-00006 – Application Plan dated August 21, 2020
Attachment 10 – ZMA 2020-00006 – Proffers dated August 24, 2020
Attachment 11 – Resolution to Approve SP 201900002 Pleasant Green
Attachment 12 – Ordinance NO. 20-18(3) – Chapter 18
Attachment 13 – Ordinance NO. 20-7(2) – Chapter 7
Attachment 14 – Ordinance NO. 20-A(13)
Attachment 15 – Ordinance NO. 20-A(14)

Resolution Recognizing Bruce Dotson

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

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

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

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

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

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

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

**RESOLUTION TO APPROVE
ADDITIONAL FY 2021 APPROPRIATION**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

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

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

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

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

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

**THIRD AMENDED ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT**

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

WITNESSETH:

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

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

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

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

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

Section 1. Parking and Trail Construction Obligations.

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

Pedestrian Bridge and Trail Construction Obligation. The Company shall provide an easement of adequate area for the construction of a Class A Trail, as defined in the Albemarle County Design Standards Manual, including construction of a pedestrian bridge over Moore's Creek, providing a public pedestrian connection between the Property and Albemarle County Tax Map Parcel 07800-00-00-022A0. Parks and Recreation and Facilities and Environmental Services staff from the County will participate on the project team for design and precise location of the bridge and trail. Final design of the pedestrian bridge and trail connections must be approved by the County Department of Parks and Recreation and the County Engineer before construction of the pedestrian bridge and trail by the Company commences. The County Engineer shall review and approve all plans for the trail's construction before construction of the trail commences. Upon inspection and final approval by the County Engineer, the Company shall execute a deed of dedication and easement to the County. The deed of dedication and easement shall be in a form acceptable to the County Attorney.

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

Section 2. County Grant

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

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

Section 3. Clawback

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

Section 4. Company Inspections.

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

Section 5. Notices.

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

If to the Company, to:

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

With a copy to:

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

If to the County, to:

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

If to the Authority, to:

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

Section 6. Miscellaneous.

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

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

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

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

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

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Date: _____

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

By: _____
Donald D. Long, Chairman

Date: _____

WOOLEN MILLS LLC

By: _____
Brian H. Roy, Manager

Date: _____

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

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

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

ZONING MAP AMENDMENT
CONCEPT PLAN
ZMA201900010

3223 PROFFIT ROAD

TMP 32-A-02-2

project ID: 19.029

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 MAY 2020
Revised 23 JULY 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

Context Map

Sheet 1 of 7

INDEX OF SHEETS

- 1 - Cover Sheet & Context Map
- 2 - Parcel / ZMA Info.
- 3 - Block Plan
- 4 - Conceptual Site Layout
- 5 - Conceptual Street Section
- 6 - Conceptual Street Section
- 7 - Conceptual Street Section



Image provided by Google Maps

SHIMP ENGINEERING, P.C.

3223 PROFFIT ROAD
SITE & ZMA DETAILS
Sheet 2 of 7

USE TABLE			
BLOCK	BLOCK A	BLOCK B	TOTAL
ALLOWED USES	All uses listed under section 18.2.1 of the Albemarle County Zoning Ordinance will be permitted by right within Block A. All uses listed under Section 18.2.2 of the Albemarle County Zoning Ordinance will be permitted through approval of a special use permit within Block A.	All uses listed under Section 18.2.1 of the Albemarle County Zoning Ordinance will be permitted by right within Block B. All uses listed under Section 18.2.2 of the Albemarle County Zoning Ordinance will be permitted through approval of a special use permit within Block B.	
MAXIMUM BUILDING HEIGHT	45' 4" Stories whichever is less	45' 4" Stories whichever is less	
SETBACKS	FRONT MINIMUM: 5' from Right-of-way	FRONT MINIMUM: 5' from Right-of-way	
	FRONT MAXIMUM: 25' from Right-of-way	FRONT MAXIMUM: 25' from Right-of-way	
	SIDE: 5' feet, unless the building shares a common wall; provided that (a) in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back five feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and (b) any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3	SIDE: 5' feet, unless the building shares a common wall; provided that (a) in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back five feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and (b) any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3	
FRONT STEPPED BACKS	REAR: 20'	REAR: 20'	
	For each story that begins above 40 feet in height or for each story above the third story, whichever is less, the minimum setback shall be 15 feet	For each story that begins above 40 feet in height or for each story above the third story, whichever is less, the minimum setback shall be 15 feet	
	Single-family attached and single-family detached units in Block A, Area 1 on Sheet 4 shall be subject to the following: driveways shall be rear-loaded and only enter onto internal "Road E"; Block A, Area 1 may permit double frontage lots without screening or with a modification to screening of double frontage lots required by 32.7.9.7, as permitted by the agent. Waivers and/or exceptions from the prohibition of double frontage lots and screening of double frontage lots may be pursued during site plan or subdivision plat.	Single-family attached and single-family detached units located outside of Block A, Area 1, on Sheet 4 shall be subject to the following: front-loading garages shall be setback a minimum of 3 feet from the building facade of which the garage is located or porch/deck on the facade of which the garage is located.	
PROPOSED AREA OF BLOCK MINIMUM NUMBER OF DWELLING UNITS MINIMUM DENSITY BASED UPON AREA MAXIMUM NUMBER OF DWELLING UNITS MAXIMUM DENSITY BASED UPON AREA	5.2 AC	GARAGE MAXIMUM: None	GARAGE MAXIMUM: None
	44	2.09 AC	7.29 AC
		0	44
	9 DUA	0 DUA	6 DUA
	80	30	80*
	16 DUA	15 DUA	11 DUA
*Total number of dwelling units in the development not to exceed 80			

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

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

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

ACREAGE
TOTAL: 7.29 AC

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

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

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

OWNER/DEVELOPER
Albemarle Land Development LLC
1949 Northside Dr
Charlottesville, VA 22911

PROPERTY ADDRESS
3223 Proffit Rd
Charlottesville, VA 22911

MAGISTERIAL DISTRICT
Rivanna

STEEP SLOPES & STREAM BUFFER
The project area contains areas of managed slopes. There are no stream buffers within the project area.

SOURCE OF BOUNDARY AND TOPOGRAPHY
Boundary and topographic survey for property provided by: Roger W. Ray & Associates, Inc. April 15, 2019
Boundary and topographic information for adjacent parcels compiled from the Albemarle County Office of Geographic Data Services GIS Data.

FLOODZONE
According to the FEMA Flood Insurance Rate Map, effective date February 4, 2005 (Community Panel 51003C0286D), this property does not lie within a Zone A 100-year flood plain.

WATER SUPPLY WATERSHED
Non-Watershed Supply Watershed

WATER AND SANITARY SERVICES
Provided by Albemarle County Service Authority (ACSA)

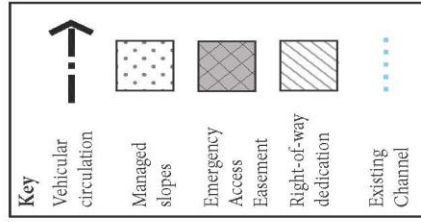
PARKING
All parking shall comply with Sec. 4.12 of the Albemarle County Zoning Ordinance

3223 PROFFIT ROAD BLOCK PLAN

Sheet 3 of 7



On-site right-of-way dedication for full Profit Road cross section shown in Places9; A Master Plan for the Northern Development Areas, Appendix 3: Roadway Cross Sections, dated February 2, 2011

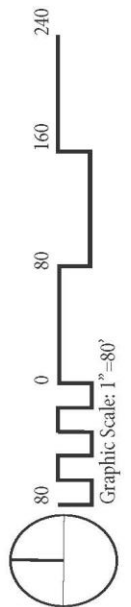


TMP 32-A-02-2

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 May 2020
Revised 23 July 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

project: 19.029

SHIMP ENGINEERING, P.C.



3223 PROFFIT ROAD CONCEPTUAL SITE LAYOUT

Sheet 4 of 7

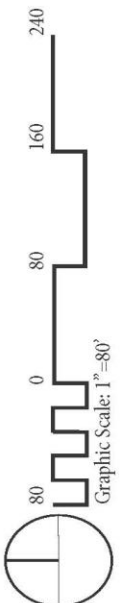
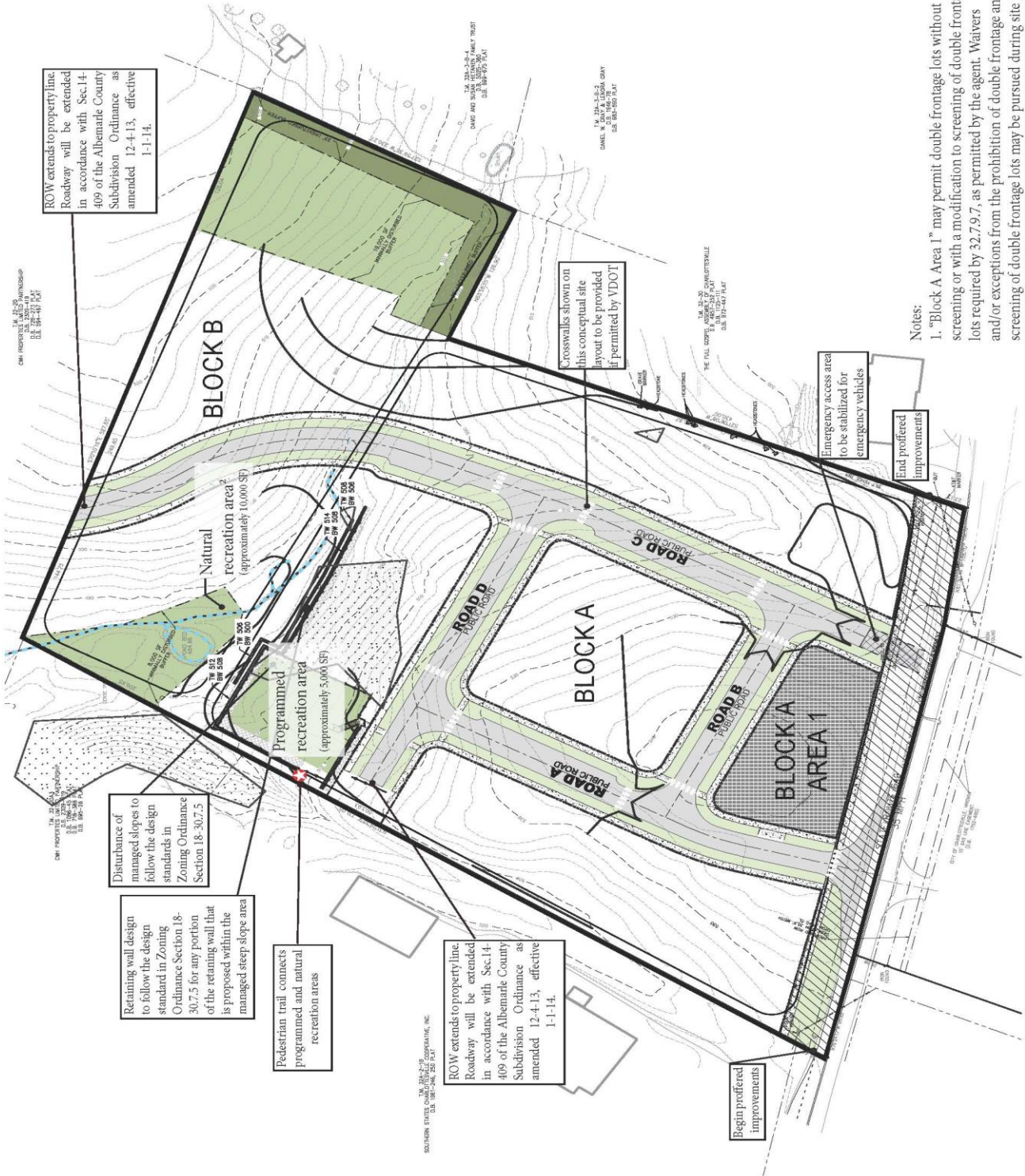
Key	
Managed slopes	
Emergency Access	
Right-of-way dedication	
Sidewalk	
Planting strip	
Open space	
Existing Channel	
Block A Area 1	
Crosswalk	

TMP 32-A-02-2

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 May 2020
Revised 23 July 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

project: 19.029

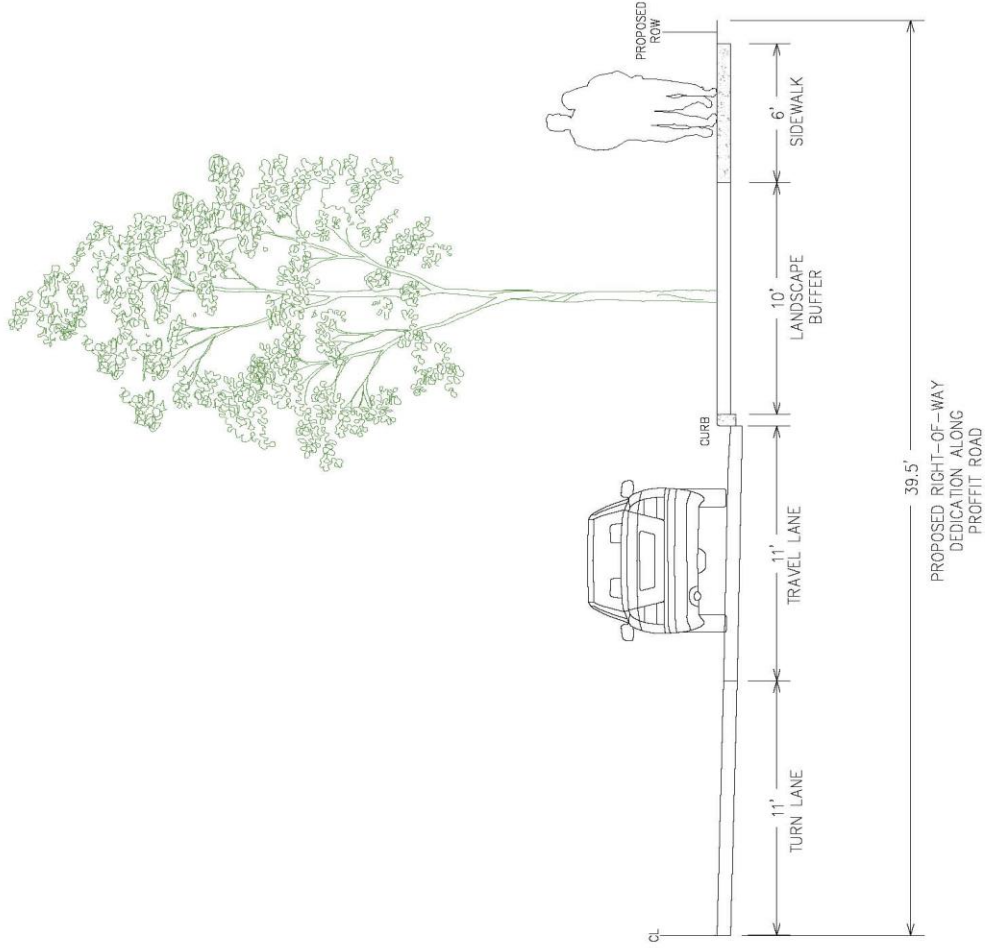
SHIMP ENGINEERING, P.C.



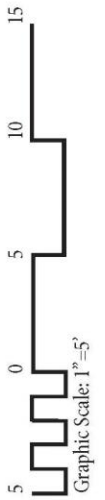
3223 PROFFIT ROAD

TYPICAL STREET SECTION

Sheet 5 of 7



Turn lane to be provided if warranted by final use



TMP 32-A-02-2

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 May 2020
Revised 23 July 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

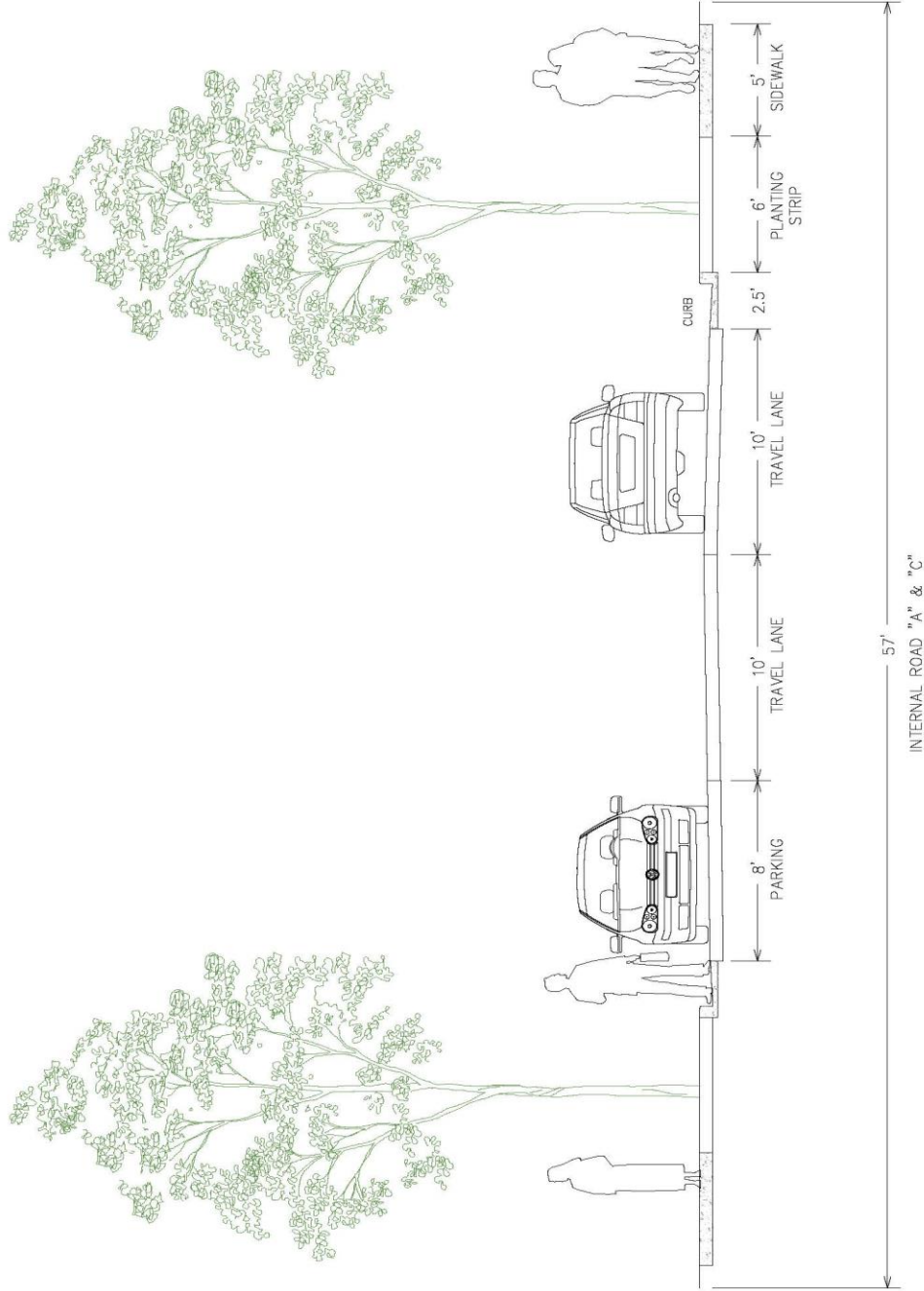
project: 19.029

SHIMP ENGINEERING, P.C.

3223 PROFFIT ROAD

TYPICAL STREET SECTION

Sheet 6 of 7



TMP 32-A-02-2

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 May 2020
Revised 23 July 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

project: 19.029

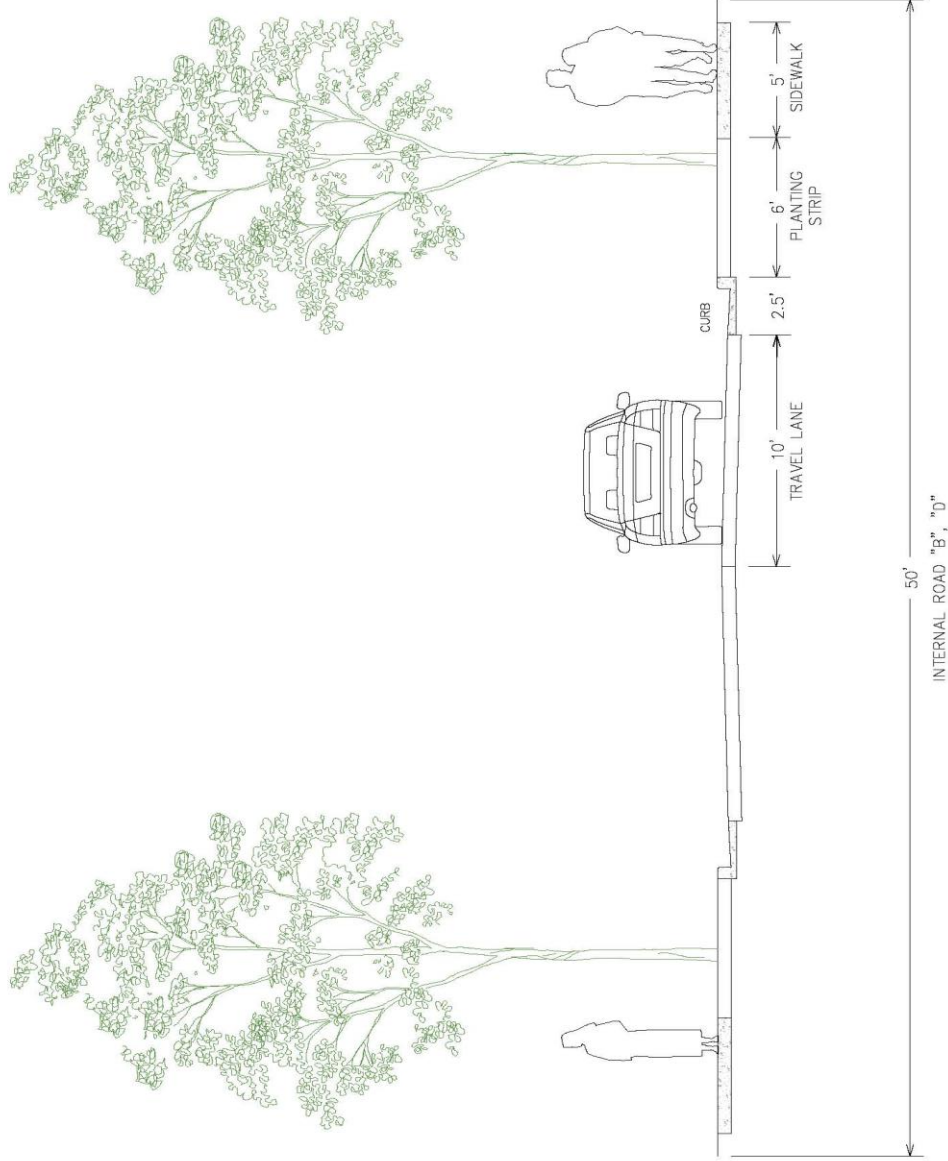
SHIMP ENGINEERING, P.C.



3223 PROFFIT ROAD

TYPICAL STREET SECTION

Sheet 7 of 7



TMP 32-A-02-2

Submitted 17 June 2019
Revised 11 March 2020
Revised 12 May 2020
Revised 23 July 2020
Revised 10 August 2020
REVISED 08 SEPTEMBER 2020

project: 19.029

SHIMP ENGINEERING, P.C.



Original Proffers _____
 Amendment X

PROFFER STATEMENT

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

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

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

Date of Proffer Signature: September 8, 2020

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

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

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

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

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

ZMA2019-10 PROFFER STATEMENT 1

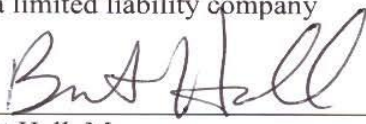
Front building facades shall face Proffit Road.

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

WITNESS the following signature:

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

ALBEMARLE LAND DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Brent Hall, Manager

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

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

My Commission expires: March 31, 2024


Notary Public



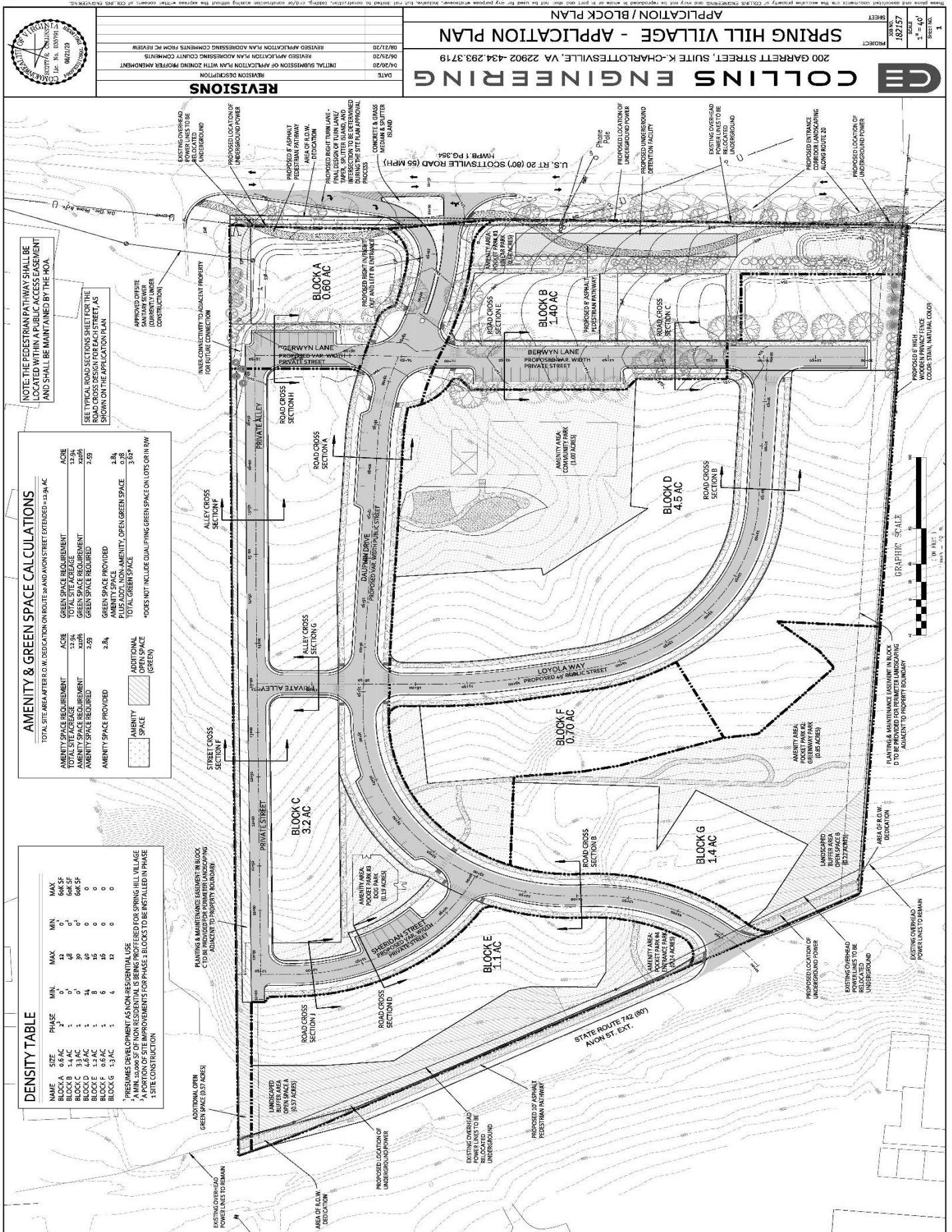
Barbara U. Chumley
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 187406
My Commission Expires
March 31, 2024

ZMA2019-10 PROFFER STATEMENT 3

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

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

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



Original Proffers ZMA2013-00017Amendment YES**Spring Hill Village****PROFFER STATEMENT**Date: **August 24, 2020**ZMA No. 2020-00006, **Spring Hill Village**Tax Map and Parcel Number(s): **TMP 09000-00-00-02800**Owner(s) of Record: **Stanley Martin Companies, LLC**

Project Address: 1776 Scottsville Road

Magisterial District: Scottsville

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

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

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

1. Affordable Housing.

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

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

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

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

- A. Rental Rates. The initial net rent for each for-rent Affordable Housing Unit shall not exceed the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent Affordable Housing Unit may be increased up to three percent (3%). For purpose of this proffer statement, the term “net-rent” means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent Affordable Housing Units may not exceed the maximum rents established in this paragraph shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent Affordable Housing Unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the “Affordable Term”.) The Owner of each Affordable Housing Unit shall, at the request of the Albemarle County Office of Housing, provide written reports documenting rental rates and occupancies of the affordable units.
- B. For Sale. All purchasers of for-sale Affordable Housing Units shall be approved by the Albemarle County Office of Housing or its designee. The Owner shall provide the County or its designee 180 days to identify and pre-qualify an eligible purchaser for the Affordable Housing Units. The 180- day period shall commence upon written notice from the Owner that the units will be available for sale. This notice shall not be given more than 120 days prior to the anticipated receipt of the certification of occupancy. If the County or its designee does not provide a qualified purchaser during this period, the Owner shall have the right to sell the units without any restriction on sales price or income of purchaser. If these units are sold, this proffer shall apply to the first sale of each unit. The maximum sales price for Affordable Housing Units (65% of VHDA’s Maximum Sales Price for First-time Homebuyers.) The calculation currently put the maximum sale price for Affordable Housing units at \$211,250.
- C. Conveyance of Interest. All deeds conveying any interest in the for-rent Affordable Housing Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 1. In addition, all contracts pertaining to a conveyance of any for-rent Affordable Housing Unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by paragraph 1A. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then current owner shall notify the County in writing of the conveyance and provide the name, address, and telephone number

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

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

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

- 3. Over Lot Grading.** The owner shall submit an over-lot grading plan (hereinafter the "Plan") meeting the requirements of this paragraph 3 with the application for each subdivision phase of this paragraph 3 with the application for each subdivision phase of the Property. The plan shall show existing and proposed topographic features. The Plan shall be approved by the County Engineer prior to approval of an Erosion and Sediment Control plan. No building permit shall be issued for any dwelling on a lot where the County Engineer has determined the lot grading is not consistent with the approved Plan. The plan shall satisfy the following:

- a. The Plan shall show all proposed streets, building sites, setbacks, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer.
- b. The Plan shall be drawn to a scale not smaller than (1) inch equals fifty (50) feet.
- c. All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be designed to assure that surface drainage can provide adequate relief from the flooding of dwellings in the event a storm sewer fails.
- d. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1.) Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and

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

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

4. Improvements to Scottsville Rd and Avon Extended

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

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

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

By: _____

By: _____

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

By: 

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

Date: August 24, 2020

**RESOLUTION TO APPROVE
SP 201900002 PLEASANT GREEN**

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

* * * * *

SP2019-02 Pleasant Green Special Use Permit Conditions

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

ORDINANCE NO. 20-18(3)

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

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

By Amending:

Sec. 18-3.1	Definitions.
Sec. 18-4.2.3	Location of structures and improvements
Sec. 18-4.3.1	Fill areas, waste areas.
Sec. 18-5.1.28	Borrow, fill or waste areas.
Sec. 18-31.5	Zoning clearance.

Chapter 18. Zoning**Article I. General Provisions****Sec. 18-3.1 Definitions**

.....

Agricultural activity. "Agricultural activity" means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including tilling soil for raising crops; operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers' markets; or any combination of the foregoing activities; but does not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

.....

Clean earth fill. "Clean earth fill" means fill that (i) consists of any soil material that occurs naturally on the surface of the earth that can be dug, plowed, or planted, (ii) can be classified as a soil in accordance with the "Unified Soil Classification System", (iii) contains less than twenty-five (25) percent rock fragments greater than three inches in diameter, and (iv) contains less than five (5) percent by volume of root or woody material. Clean earth fill must be free of:

1. Any contaminants in toxic concentrations or amounts, in accordance with all applicable laws and regulations; and
2. Construction debris and demolition waste, including asphalt, concrete and other materials not found in naturally occurring soils.

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

.....

Inert waste fill. "Inert waste fill" means brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals or clean earth fill. Inert waste is nonreactive, physically, chemically and biologically stable from further degradation, and includes fragmented solid material such as rock, concrete, broken bricks, and block.

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

.....

[(§ 3.1: 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; [Ord. 01-18\(9\)](#), 10-17-01; [Ord. 02-18\(2\)](#), 2-6-02; [Ord. 02-18\(5\)](#), 7-3-02; [Ord. 02-18\(7\)](#), 10-9-02; [Ord. 03-18\(1\)](#), 2-5-03; [Ord. 03-18\(2\)](#), 3-19-03; [Ord. 04-18\(2\)](#), 10-13-04; 05-18(2), 2-2-05; [Ord. 05-18\(7\)](#), 6-8-05; [Ord. 05-18\(8\)](#), 7-13-05; [Ord. 06-18\(2\)](#), 12-13-06; [Ord. 07-18\(1\)](#), 7-11-07; [Ord. 07-18\(2\)](#), 10-3-07; [Ord. 08-18\(3\)](#), 6-11-08; [Ord. 08-18\(4\)](#), 6-11-08; [Ord. 08-18\(6\)](#), 11-12-08; [Ord. 08-18\(7\)](#), 11-12-08; [Ord. 09-18\(3\)](#), 7-1-09; [Ord. 09-18\(5\)](#), 7-1-09; 09-18(8), 8-5-09; [Ord. 09-18\(9\)](#), 10-14-09; [Ord. 09-18\(10\)](#), 12-2-09; [Ord. 09-18\(11\)](#), 12-10-09; Ord. 10-18(3), 5-5-10; [Ord. 10-18\(4\)](#), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; [Ord. 11-18\(5\)](#), 6-1-11; [Ord. 11-18\(6\)](#), 6-1-11; [Ord. 12-18\(3\)](#), 6-6-12; [Ord. 12-18\(4\)](#), 7-11-12; [Ord. 12-18\(6\)](#), 10-3-12, effective 1-1-13; [Ord. 12-18\(7\)](#), 12-5-12, effective 4-1-13; [Ord. 13-18\(1\)](#), 4-3-13; [Ord. 13-18\(2\)](#), 4-3-13; [Ord. 13-18\(3\)](#), 5-8-13; [Ord. 13-18\(5\)](#), 9-11-13; [Ord. 13-18\(6\)](#), 11-13-13, effective 1-1-14; [Ord. 13-18\(7\)](#), 12-4-13, effective 1-1-14; [Ord. 14-18\(2\)](#), 3-5-14; [Ord. 14-18\(4\)](#), 11-12-14; [Ord. 15-18\(1\)](#), 2-11-15; [Ord. 15-18\(2\)](#), 4-8-15; [Ord. 15-18\(4\)](#), 6-3-15; [Ord. 15-18\(5\)](#), 7-8-15; [Ord. 15-18\(10\)](#), 12-9-15; [Ord. 16-18\(1\)](#), 3-2-16; [Ord. 16-18\(7\)](#), 12-14-16; [Ord. 17-18\(1\)](#), 1-18-17; Ord. 17-18(2), 6-14-17; Ord. 17-18(4), 8-9-17; Ord. 17-18(5), 10-11-17; [Ord. 18-18\(1\)](#), 1-10-18; [Ord. 18-18\(4\)](#), 10-3-18; Ord. 19-18(3), 6-5-19) (§ 4.15.03: 12-10-80; 7-8-92, § 4.15.03, [Ord. 01-18\(3\)](#), 5-9-01; [Ord. 05-18\(4\)](#), 3-16-05; [Ord. 10-18\(1\)](#), 1-13-10; [Ord. 10-18\(3\)](#), 5-5-10; [Ord. 10-18\(5\)](#), 5-12-10; [Ord. 11-18\(1\)](#), 1-12-11; [Ord. 12-18\(2\)](#), 3-14-12; [Ord. 14-18\(3\)](#), 6-4-14; [Ord. 15-18\(3\)](#), 5-6-15; § 4.15.3; [Ord. 15-18\(11\)](#), 12-9-15; Ord. 17-18(4), 8-9-17) (§ 4.17.3: Ord. 98-18(1), 8-12-98; [Ord. 01-18\(8\)](#), 10-17-01; [Ord. 17-18\(5\)](#), 10-11-17) (§ 4.18.2: Ord. 00-18(3), 6-14-00; [Ord. 13-18\(4\)](#), 9-4-13) (§ 10.3.3.1: § 20-10.3.3.1, 11-8-89; § 18-10.3.3.1, Ord. 98-A(1), 8-5-98; [Ord. 01-18\(6\)](#), 10-3-01) (§ 30.2.4: § 30.2.4, 12-10-80) (§ 30.3.5: § 30.3.02.1 (part), 12-10-80; 6-10-87; [Ord. 05-18\(1\)](#), 1-5-05, effective 2-5-05; § 30.3.5; [Ord. 14-18\(1\)](#), 3-5-14; [Ord. 17-18\(4\)](#), 8-9-17); § 3.1, [Ord. 19-18\(3\)](#), 6-5-19; [Ord. 19-18\(6\)](#), 8-7-19; Ord. 20-18(3), 9-16-20]

Article II. Basic Regulations

Sec. 18-4.2.3 - Location of structures and improvements.

Except as otherwise provided in section 4.2.2, this section applies to the location of any structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to section 32 of this chapter or to the placement of clean earth fill or inert waste fill.

- a. No structure or improvement shall be located on any lot or parcel in any area other than a building site.
- b. No structure, improvement, land disturbing activity to establish a structure or improvement, or placement of clean earth fill or inert waste fill shall be located on critical or preserved slopes except as otherwise permitted under sections 4.2.5, 4.2.6, 4.3.1 and 30.7.4.

(§ 20-4.2.3, 12-10-80, 11-15-89; § 18-4.2.3, Ord. 98-A(1), 8-5-98; [Ord. 01-18\(7\)](#), 10-17-01; § 20-4.2.3.1, 12-10-80, 11-15-89, § 18-4.2.3.1, Ord. 98-A(1), 8-5-98; § 4.2.3.2, 12-10-80, § 18-4.2.3.2, Ord. 98-A(1), 8-5-98; § 18-4.2.3, [Ord. 12-18\(4\)](#), 7-11-12; [Ord. 14-18\(2\)](#), 3-5-14; Ord. 20-18(3), 9-16-20)

Sec. 18-4.3.1 - Fill areas, waste areas.

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

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

Sec. 18-5.1.28 Clean earth and inert waste fill activity.

- a. Each clean earth fill activity or inert waste fill activity not established and operated in conjunction with a permitted use under section 30.4 of this chapter or established and operated in conjunction with an approved site plan or subdivision are subject to the following requirements:
 1. Each active fill area shall be shaped and sloped so that no undrained pockets or stagnant pools of water are created to the maximum extent reasonably practicable as determined by the program authority. All undrained pockets and stagnant pools of water resulting from drainage shall be treated as required by the Virginia Department of Health to

eliminate breeding places for mosquitoes and other insects. Slope may not exceed 3:1. The height of fill may not exceed 8 feet above natural grade.

2. No fill area shall be located either within the flood hazard overlay district, except as authorized by section 30.3 of this chapter, or in any stream buffer area as defined by Chapter 17 of the Code of Albemarle or on any hydric soils as identified by the United States Department of Agriculture.
3. Each fill area shall be reclaimed within seven (7) days of completion of the fill activity, or such later time authorized by the program authority for reclamation activities of a seasonal nature. Reclamation shall include, but not be limited to, restoring the area so that it approximates natural contours; shaping and sloping the area to satisfy the requirements of subsection (a)(1); and establishing a permanent vegetative ground cover.
4. Inert waste fill must be topped with clean earth fill to a minimum depth of two (2) feet in order to allow for permanent stabilization and reclamation; and establishing a permanent vegetative ground cover; provided that the program authority may reduce the minimum depth of clean earth fill to one (1) foot if the area is unlikely to be redeveloped.
5. The zoning administrator, or the program authority for those fill areas subject to subsection (b), may require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county or the program authority at the owner's expense should the owner fail, after notice is given to perform required reclamation work specified in the notice. The amount of the bond or other surety shall be based on unit pricing for new public or private sector construction in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost to initiate and complete the reclamation of the borrow, fill or waste area, and to comply with all other terms and conditions of the plan or narrative required by subsection (b). If reclamation work is required to be taken by the county or the program authority upon the failure of the owner to do so, the county or the program authority may collect the reasonable cost of the work directly from the owner, to the extent that the cost exceeds the unexpended or unobligated amount of the surety. Within sixty (60) days after the reclamation work is completed and inspected and approved by the county engineer, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner.
6. Fill activity (except for access) must be set back a minimum of 150 feet from any entrance corridor street.
7. Fill activity (except for access) must be set back a minimum of 75 feet from all property lines in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property. No setback is required if adjoining lots are under the same ownership. The access to a fill activity is not subject to the setback from public street right of way.
8. Fill activity must be set back a minimum of 50 feet from all non-residential property lines. No setback is required if adjoining lots are under the same ownership.
9. Minimum lot size for fill activity is 5 acres. Multiple parcels under the same ownership and with the same zoning designation may be considered as a single lot for the purpose of achieving the minimum lot size.
10. No fill activity may occur within the drip line of any tree.
11. The maximum area for fill activity on any parcel in existence on September 16, 2020 is two acres. Determining area for fill activity includes all locations used, or designated to be used, for fill, vehicle storage and vehicle maintenance but does not include area used for exclusively for access.
12. Notwithstanding section 4.3 of this chapter, trees may be cut, provided a plan as required by subsection (b) is submitted. However, no tree of 36 inches or greater in diameter may be cut.

13. If a private street, shared driveway or access easement is used, the applicant must demonstrate that the access is adequate for the proposed activity and that the applicant has the right to use the access. In order for access to be deemed adequate, the owner must limit vehicles associated with the fill activity to not more than 56,000 pounds. In addition, the access must meet the standards of section 4.6.6 of this chapter and have a surface adequate to accommodate a vehicle weighing 56,000 pounds. The owner may increase the weight of vehicles associated with the fill activity to a maximum of 80,000 pounds, provided that the access meets the standards of section 4.6.6 of this chapter and has a surface adequate to accommodate a vehicle weighing 80,000 pounds.
 14. No fill activity may occur until the Virginia Department of Transportation has approved the entrance onto the highway.
 15. Except for properties zoned Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD), tree canopy for area(s) disturbed by fill activity must be established and maintained in compliance with section 32.7.9.8 of this chapter.
- b. Any fill activity with an aggregate area greater than two thousand five hundred (2,500) square feet requires a plan or narrative, subject to the prior approval of the program authority, that satisfies the requirements of subsection (a) and the following provisions:
1. All materials shall be transported in compliance with section 13-301 of the Code of Albemarle. Before a transporting vehicle leaves the parcel or parcels on which the fill area is located, it shall be cleaned so that no materials outside of the vehicle's load-bed can be deposited on a public or private street.
 2. The fill area and the access roads thereto shall be treated or maintained to prevent dust or debris from blowing or spreading onto adjacent properties or public streets.
 3. Fill activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m., except in cases of a public emergency as determined by the director of emergency services for the county.
 4. Fill activity shall be conducted in a safe manner that maintains lateral support, in order to minimize any hazard to persons, physical damage to adjacent land and improvements, and damage to any public street because of slides, sinking, or collapse.
 5. The placement of fill shall be completed within one (1) year of its commencement, except for reclamation activities and any other activities associated with the final stabilization of the area. The program authority may extend the date of completion upon the written request of the applicant, demonstrating that factors beyond the control of the applicant prevented the completion within the one-year period. The program authority may then extend the permit for a period of time that, in its sole discretion, is determined adequate to complete the work.
 6. In lieu of a plan or narrative, the program authority may accept a contractual agreement between the Virginia Department of Transportation and its contractor for a public road project; provided that the program authority determines that the agreement satisfies at least to an equivalent extent the requirements and intent of this section.
- c. Inert waste fill activity is not permitted in the Rural Areas (RA), Village Residential (VR) or Monticello Historic District (MHD) zoning districts without approval of a variation or exception as permitted in section 33.43 of this chapter.
- d. The Board of Supervisors may approve a variation or exception from any requirement of this section.
1. A variation or exception from any requirement of this section may be approved upon a finding that any of the following factors are satisfied: (i) the proposed fill activity would further agricultural use of the property; (ii) the variation or exception would allow for a more natural appearance of the site after the fill activity has occurred; (iii) a reduction in setback from the entrance corridor is recommended by the Architectural Review Board; (iv) the variation or exception is supported by the abutting owners impacted by the variation or exception; (v) approval of any variation or exception is consistent with an approved and valid initial or preliminary site plan or any other land use decision of the

County; (vi) the proposed fill activity will be of limited duration (less than 90 days) and involve not more than 10,000 cubic feet of fill within any 12 months.

2. The agent will provide written notice by first class mail or by hand at least five days before the Board hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owners associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent.
3. A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required waives the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

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

Article IV. Procedure

Sec. 18-31.5 - Zoning clearance.

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

- a. *When required.* A zoning clearance shall be required in the following circumstances:
 1. *New use.* Prior to establishing a new non-residential use, including those provided in subsections (a)(6) and (a)(7), or clean earth fill activity or inert waste fill activity, other than an agricultural use.

(§ 31.2.3.2, 9-9-92; [Ord. 01-18\(6\)](#), 10-3-01; [Ord. 09-18\(3\)](#), 7-1-09; [Ord. 11-18\(1\)](#), 1-12-11; [Ord. 11-18\(8\)](#), 8-3-11; [Ord. 14-18\(4\)](#), 11-12-14; [Ord. 15-18\(10\)](#), 12-9-15; Ord. 20-18(3), 9-16-20)

ORDINANCE NO. 20-7(2)

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE I, NOISE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article I, Noise, is hereby amended and reordained as follows:

By Amending:

Sec. 7-103 Definitions

Chapter 7. Health and Safety

Article 1. Noise

.....

Sec. 7-103 Definitions.

The following definitions apply to this article unless the context requires a different meaning:

Agricultural activity. The term "agricultural activity" means the bona fide production or harvesting of agricultural products as defined in section 3.2-6400 of the Code of Virginia including tilling soil for raising crops; operating agricultural industries or businesses, including, but not limited to, orchards, fruit packing plants, dairies, nurseries, farm sales, farm stands and farmers' markets; or any combination of the foregoing activities- but shall not include the above ground application or storage of sewage sludge, or the storage or disposal of non-agricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act.

.....

(§ 12.1-2, 9-10-80, § 2; 6-10-81; Code 1988, § 12.1-2; Ord. 98-A(1), 8-5-98; Ord. 09-7(3), 12-2-09; Ord. 13-7(2), 9-4-11; Ord. 20-7(1), 3-18-20, effective 5-1-20; Ord. 20-7(2), 9-16-20)

State Law reference— Va. Code § 15.2-1200.

ORDINANCE NO. 20-A(13)

AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19

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

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

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

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

WHEREAS, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet)ⁱ; and.

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

WHEREAS, at this time, there is no known cure, no effective treatment, no vaccine, and because people may be infected but asymptomatic, they may unwittingly infect othersⁱⁱⁱ; and

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

WHEREAS, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes^v; and

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

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

are more likely to come into close contact with someone that has COVID-19 and it is more difficult to maintain social distancing^{vii}; and

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

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

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

WHEREAS, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19^{xi}; and

WHEREAS, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; as of the date of adoption of this ordinance, “Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)” (collectively referred to as “EO 67”)^{xii}, which became effective at 12:00 a.m. on July 1, 2020, is in effect; and

WHEREAS, as of July 21, 2020, the spread of COVID-19 in the Commonwealth, in the Thomas Jefferson Health District of which the County is a member, and in the County itself, had been increasing since late June, shortly before EO 67 moved the Commonwealth into “Phase 3” of its reopening plan, the curve in the positivity rate of persons tested for COVID-19 was no longer flattened, and the community was currently experiencing more transmission of COVID-19; and

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

WHEREAS, as of September 7, Virginia’s 7.30 percent positivity rate in COVID-19 testing over a 14-day period exceeds the World Health Organization’s recommendation that the positivity rate remain at 5 percent or lower for at least 14 days before governments lift public health and social measures (“re-open”)^{xiii}; the seven-day positivity rate in the Thomas Jefferson Health District is 6.4 percent^{xiv}; the community has just entered an uncertain period with approximately 4,400 students having returned to the University of Virginia to live on grounds since September 3, and in-person instruction beginning at the University on September 8.^{xv}

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

Sec. 1. Purpose

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

Sec. 2. Authority

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

Sec. 3. Definitions

The following definitions apply to this ordinance:

- A. "Expressive activity" means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- B. "Face covering" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (*i.e.*, the person's nose and mouth).
- C. "Farm winery" means an establishment that is required to be licensed as a farm winery under Virginia Code § 4.1-207.
- D. "Food establishment" means a food establishment as defined in 12VAC5-421-10 and the term includes, but is not limited, any place where food is prepared for service to the public on or off the premises, or any place where food is served, including restaurants, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs. For purposes of this ordinance, "food establishment" does not include kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under Virginia Code § 53.1-68.
- E. "Gathering" means a planned or spontaneous indoor or outdoor, or both, event with people participating or attending for a common purpose such as a community event, concert, festival, conference, parade, wedding, sporting event, party (including parties at private residences), celebration, and other social events. "Gathering" does not include a place of employment where persons are present to perform their functions of employment, events or activities on the grounds of an institution of higher education- or school-owned property that are institution or school related, or persons engaging in religious exercise at their religious institution or other place of religious significance.
- F. "Limited brewery" means an establishment that is required to be licensed as a limited brewery under Virginia Code § 4.1-208.
- G. "Limited distillery" means an establishment for which a limited distiller's license is required under Virginia Code § 4.1-206.
- H. "Public place" means: (i) any indoor place generally open to the public, including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle; or (ii) any outdoor place where at least six feet of physical distancing between persons not living in the same household cannot be maintained. "Public place" does not include a person's residence or personal vehicle, institutions of higher education and other schools, fitness and other exercise facilities, religious institutions, indoor shooting ranges, and the County courthouse buildings.

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

- A. *Indoor occupancy.* Indoor occupancy at food establishments, farm wineries, limited breweries, and limited distilleries must not be more than 50 percent of the lowest occupancy load on the certificate of occupancy issued by the County of Albemarle. If the building or structure does not have an occupancy load established on a certificate of occupancy issued by the County of Albemarle, indoor occupancy must not be more than 50 persons.
- B. *Persons at gathering are counted.* Persons participating in or attending a gathering who are indoors count towards the occupancy limits established by this section.
- C. *Persons working not counted.* Persons working at food establishments, farm wineries, limited breweries, or limited distilleries, either as employees or independent contractors, do not count towards the occupancy limits established by this section.

- D. *State requirements, recommendations, and guidance.* Except as provided in Sections 4(A), (B), and (C), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing that apply to food establishments, farm wineries, limited breweries, and limited distilleries established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

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

- A. *Gatherings of more than 50 persons prohibited.* All public and private in-person gatherings of more than 50 persons are prohibited except as provided in Section 5(B).
- B. *Gatherings not subject to the 50-person limit.* Section 5(A) does not apply to the following gatherings and, instead, the maximum size for gatherings established in EO 67, or as it may be further amended or superseded, or any Order of Public Health Emergency, applies:
1. Outdoor gatherings at food establishments, and at farm wineries, limited breweries, and limited distilleries for activities and events permitted for those uses under County Code Chapter 18.
 2. Gatherings for religious exercise including, but not limited to, religious ceremonies.
 3. Wedding ceremonies and wedding receptions.
 4. Expressive activity on a public street, public sidewalk, in a public park subject to park rules, and on other public property expressly designated for expressive activity by its governmental owner or occupant.
- C. *Gatherings not subject to the 50-person limit; outdoor horse and other livestock shows and horse racing racetrack events without spectators.* Section 5(A) does not apply to outdoor horse and other livestock shows and to outdoor horse racing racetrack events at which spectators are not in attendance at either such shows or events, provided that the owners, operators, and participants comply with EO 67, §§ 1, 10(a), and 10(b), all applicable “Guidelines for All Business Sectors” (pages 1-4) incorporated by reference into EO 67 and, for outdoor horse and other livestock shows, the guidelines for the “Horse and Other Livestock Shows” business sector (pages 37-39) and, for outdoor horse racing racetrack events, the guidelines for the “Horse Racing Racetracks: Multi-Day Events” business sector (pages 40-43). A horse or other livestock show is deemed to be conducted outdoors when, because of inclement weather, it is conducted in an open-air structure having a roof.
- D. *Persons working not counted.* Persons working at gatherings, either as employees or independent contractors, do not count towards the limit on the number of persons at a gathering.
- E. *State requirements, recommendations, and guidance.* Except as provided in Sections 5(A) through (D), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing, that apply to gatherings established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

Sec. 6. Face Coverings

- A. *Face coverings required.* Face coverings must be worn by all persons in public places except as provided in Sections 6(B) and (C).
- B. *Persons not required to wear face coverings.* Face coverings are not required to be worn by the following persons:
1. *Children.* Children 10 years of age and under.
 2. *Wearing face covering poses certain risks.* Persons for whom wearing a face covering poses a bona fide and substantial mental or physical health risk, such as persons who have trouble breathing, or poses a safety or security risk to persons who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance. For this exception to apply to any person claiming that wearing a face covering poses a substantial mental or physical health risk: (i) the person must present a valid document from a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services, including

mental health services, consistent with State law, specifying the medical necessity for not wearing a face covering and the date on which the person may begin wearing a face covering again; and (ii) the public place is unable to provide goods, services, or activities outdoors to the person or to the adult accompanying a child 10 years of age or under.

3. *Certain employees.* On-duty employees covered by workplace safety regulations promulgated by the State Safety and Health Codes Board, or by face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency by the State Health Commissioner.
- C. *Circumstances when face coverings are not required to be worn by any persons.* Face coverings are not required to be worn by any persons in the following circumstances:
1. *Outdoor activities.* While persons are engaged in outdoor activities in public places such as parks and other open spaces, provided that minimum physical distancing established by any applicable Executive Order of the Governor or Order of Public Health Emergency of the State Health Commissioner is maintained.
 2. *Eating or drinking.* While a person is eating food or drinking a beverage.
 3. *End of waiver of Virginia Code § 18.2-422.* When the waiver of Virginia Code § 18.2-422, currently established in EO 67, Section (C)(3), or as it may be further amended or superseded, ends.
- D. *Responsibility of adults accompanying minors.* Adults accompanying minors should use their best judgment regarding placing face coverings on any minor between the ages of two through nine in public places. Adults accompanying minors between the ages of 10 through 17 must use reasonable efforts to prompt the minor to wear face coverings while in public places.

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

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

Sec. 8. Penalties

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

Sec 9. Succession to Ordinance No. 20-E(5) and Duration

This ordinance succeeds and supersedes Ordinance No. 20-E(5) on and after September 16, 2020 and continues in full force and effect until November 18, 2020 unless it is amended, superseded, or repealed on or before that date.

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

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

Sec. 11. Severability

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

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

ORDINANCE NO. 20-A(14)

AN ORDINANCE TO AMEND ORDINANCE NO. 20-A(8), AN ORDINANCE TO ENSURE THE CONTINUITY OF GOVERNMENT DURING THE COVID-19 DISASTER

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

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

WHEREAS, also on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One ("EO" and "51") declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; and

WHEREAS, EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a "disaster" as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, EO 51 ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive "any state requirement or regulation" as appropriate; and

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

WHEREAS, on March 17, 2020, Governor Ralph S. Northam and the Virginia State Health Commissioner issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (amended on March 20, 2020) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment; and

WHEREAS, on March 18, 2020, the Board of Supervisors consented to the County Executive, acting as the Director of Emergency Management, issuing an amended declaration of local emergency to refer to the COVID-19 pandemic as not only an emergency, but also as a "disaster," as the Governor had included in Executive Order Fifty-One, and the County Executive issued the amended declaration on March 20, 2020; and

WHEREAS, on March 20, 2020, the Attorney General for the Commonwealth of Virginia issued an opinion in which he concluded that the COVID-19 pandemic, which the Governor declared is a "disaster" as defined in Virginia Code § 44-146.16, is also a "disaster" as that term is used in Virginia Code § 15.2-1413; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to "assure continuity in its government" in the event of a disaster for a period not to exceed six months after the disaster; and

WHEREAS, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet); and

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

WHEREAS, the COVID-19 disaster continues; and

WHEREAS, the Board of Supervisors finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a "disaster" as defined by Virginia Code § 44-146.16 and within the meaning of Virginia Code § 15.2-1413; and

WHEREAS, the General Assembly recognizes the extreme public danger created by contagious diseases such as COVID-19 by enabling counties, through the exercise of their police powers expressly granted in Virginia Code § 15.2-1200, to “adopt necessary regulations to prevent the spread of contagious diseases among persons” and to adopt “quarantine regulations” affecting persons; and

WHEREAS, Virginia § 15.2-1413 authorizes the County, by ordinance adopted by the Board of Supervisors, to “provide a method to assure continuity in its government” in the event of a disaster such as the COVID-19 disaster, and that this authority is granted “[n]otwithstanding any contrary provision of law, general or special”; and

WHEREAS, the Board has tailored this ordinance to “assure continuity in [the County’s] government” during the COVID-19 disaster by attempting to vary from existing State law and County Code procedures and requirements to the minimum extent necessary, recognizing the danger to public health and safety posed by public bodies physically assembling to conduct public meetings, and the difficulty in adhering to all of the procedures and deadlines imposed on the County and its public bodies by State law and the County Code, which are routine during normal governmental operations but some of which may be impossible to completely and timely satisfy during the disaster because most County staff are working remotely and, at various stages of the COVID-19 disaster, significant staff resources were and continue to be dedicated to redesigning County government to address the unique issues arising daily during the disaster while continuing County operations and fulfilling its purposes, duties, and responsibilities; and

WHEREAS, the Board has identified in Section 4 of this ordinance the functions of County government that it deems to be essential in order for it to continue during the COVID-19 disaster and, in doing so, observes that State and local government is complex, and the powers, duties, and obligations imposed on localities by the State to promote the public health, safety and welfare of their residents are numerous and varied and must continue without interruption, and that they extend well beyond merely those functions related to survival during a disaster; and

WHEREAS, this ordinance is solely in response to the disaster caused by the COVID-19 pandemic, promotes and protects the public health, safety, and welfare of the residents of the County, the City of Charlottesville, and the Commonwealth of Virginia, and is consistent with the laws of the Commonwealth of Virginia, the Constitution of Virginia, and the Constitution of the United States of America.

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

Sec. 1. Purpose

The purpose of this ordinance is to ensure the continuity of the government of the County of Albemarle, Virginia, during the COVID-19 disaster, which is currently a pandemic, by identifying the many essential governmental functions that must continue and establishing regulations to ensure these functions continue by providing for: (1) the succession of elected officials and appointed officers; (2) meeting procedures that allow the County’s public bodies, whose members are elected or appointed, to meet and conduct business in a manner that is safe for the members of the public bodies, staff, and the public, and allow the public to participate in these meetings to the fullest extent practicable given the current circumstances; (3) provide alternative deadlines for certain matters that are different than those provided by State law or the County Code when it is impractical or dangerous to safely meet those deadlines because of the COVID-19 disaster; (4) establish the method for resuming normal governmental operations; and (5) other matters related to the foregoing.

The requirements, procedures, deadlines, and other provisions of this ordinance vary from those that apply to County government under normal governmental operations. However, for the reasons explained in the recitals, these alternative regulations are deemed to be essential in order to ensure the continuity of County government during the COVID-19 disaster without further risking the health and lives of the public and County officers, appointees, and employees resulting from exposure to the COVID-19 virus and its further spread. The regulations that apply during normal governmental operations will be followed to the extent they can be in a manner that is consistent with State and Federal orders and declarations and without risking the health and lives of the public and County officers and employees.

Sec. 2. Authority

This ordinance ensures the continuity of government during the COVID-19 disaster and is authorized by Virginia Code § 15.2-1413, which enables the Board of Supervisors to provide by ordinance “a method to assure continuity in its government.”

Sec. 3. Scope

This ordinance applies not only to the government of the County of Albemarle, Virginia, but also to the Albemarle County Public Schools, the County's authorities identified in this ordinance, public bodies established pursuant to a joint exercise of powers agreement or other agreements, and other public bodies and offices described in Section 4.

Sec. 4. Essential Governmental Functions

Under the county executive form of government, Virginia Code § 15.2-502 provides that the "powers of the county as a body politic and corporate" are vested in the Board of Supervisors. Any actions of the Board in which it exercises its powers are essential governmental functions that must be performed to ensure the continuity of County government. By providing vital support for the Board, the activities of the Clerk of the Board and her office are also essential governmental functions that must be performed to ensure the continuity of County government.

The Board of Supervisors also finds that the essential governmental functions that must be performed in order to ensure the continuity of government during the COVID-19 disaster are those activities or functions of the County established by Virginia Code § 15.2-518 (departments of finance, social services, law enforcement, education, records, and health), those that the Board has previously deemed to be "necessary to the proper conduct of the business" of the County pursuant to Virginia Code § 15.2-518, the authorities that provide essential public services, the County public bodies that oversee the proper administration and enforcement of State laws and the County Code, and the other public bodies and offices that facilitate the proper administration and implementation of State laws and the County Code to the extent necessary and practicable during the COVID-19 disaster.

A. Essential governmental functions provided by County offices and departments. The following offices and departments provide essential governmental functions that must be performed to ensure the continuity of County government as described below:

1. County Executive's Office. The County Executive is the administrative head of the County, whose duties include executing and enforcing all Board resolutions and orders, that all laws of the Commonwealth required to be enforced through the Board, or some other County officer subject to the control of the Board, are faithfully executed, and performing other duties as may be required by the Board and as may be otherwise required by law. *Virginia Code § 15.2-516*. The functions of the Office of Equity and Inclusion and the Communications and Public Engagement Office, which exist within the County Executive's Office, are included in this designation. The Project Management Office is also within the County Executive's Office, but its functions are identified separately below.
2. County Attorney's Office. The County Attorney is the legal advisor to County government whose duties are to advise the Board and "all boards, departments, agencies, officials and employees" of the County on civil matters, draft or prepare ordinances, and defend or bring actions in which the County or any of its boards, departments, agencies, officials, or employees are a party; and in any other manner advising or representing the County, its boards, departments, agencies, officials and employees. *Virginia Code § 15.2-1542(A)*.
3. Department of Finance and Budget. The Director of Finance's duties include administering the financial affairs of the County, including the budget; assessing property for taxation; collecting taxes, license fees, and other revenues; being the custodian of all public funds belonging to or handled by the County; supervising the expenditures of the County and its subdivisions; disbursing County funds; keeping and supervising all accounts; and performing other duties as the Board of Supervisors requires. *Virginia Code § 15.2-519*. The Budget Division is also within the Department of Finance and Budget, but its functions are identified separately below.
4. Economic Development Office. This office is responsible for promoting the economic development of the County and the region, consistent with the County's Economic Development Strategic Plan, and providing staffing assistance to the Economic Development Authority. During the COVID-19 disaster, this office also is providing economic assistance to County businesses, and its services will also include any additional State or Federal assistance or services programs, either on its own or in its work with the Economic Development Authority.

5. Department of Community Development. This department oversees a wide range of functions related to the physical development of the County, including developing proposed plans for the physical development of the County, reviewing all types of land use-related applications, ensuring that its zoning, subdivision, and water protection regulations are current and continue to be reasonable, and enforcing the Albemarle County Zoning, Subdivision, and Water Protection Ordinances, and administering and enforcing the Virginia Uniform Statewide Building Code and other related codes are essential functions.
 6. Department of Facilities and Environmental Services. This department maintains and operates the County's buildings, manages the lands owned by the County, manages County capital projects and administers related construction contracts, and oversees environmental-related County responsibilities including, but not limited to, ensuring the County's compliance with the County's Clean Water Act permit, and its obligations as a municipal separate storm sewer system (MS4) program.
 7. Department of Fire Rescue. This department provides fire protection and emergency medical services and, through the Fire Marshal, administers and enforces the Virginia Fire Prevention Code.
 8. Department of Human Resources. This department provides human resources support for the County and Albemarle County Public Schools. The department provides services in seven key human resources functional areas: (1) recruitment/staffing support; (2) classification and compensation; (3) benefits and leave administration; (4) training and development; (5) employee relations; (6) workplace safety; and (7) teacher licensure and certification.
 9. Department of Parks and Recreation. This department protects, maintains, and operates the County's parks and provides numerous recreational programs, which during normal governmental operations, are essential to the public health and welfare.
 10. Department of Social Services. This department provides a range of: (1) child welfare services including child protective services, family support, family preservation services, a foster care program, and adoption services; (2) economic assistance for those in need, including administering the supplemental nutritional assistance program (SNAP), the temporary assistance to needy families (TANF) program, energy assistance, and auxiliary grants; (3) self-sufficiency services, including services related to employment training, career services, and child care services; (4) health care services, including administering the Medicaid program; (5) adult and elder care services, including adult protective services; (6) housing assistance; and (7) language assistance. During the COVID-19 disaster, these services also include any additional State or Federal assistance or services programs.
 11. Budget Division. This division, which is part of the Department of Finance and Budget, has the following responsibilities: (1) developing and implementing the County's operating and capital budgets; establishing budget policies, and monitoring departmental and agency budgetary and program performance; (2) preparing the five-year Financial Plan, five-year Capital Improvement Plan, and the long range Capital Needs Assessment; (3) developing and managing the performance management system; and (4) managing the local government grants application and awards process.
 12. Police Department. This department provides law enforcement and community safety services.
 13. Project Management Office. This office, which is part of the County Executive's Office, provides planning, organizational, and management responsibilities for the County's project portfolio, including organizational projects, strategic plan objectives, and technology solutions. This office also plays a critical role in planning, organizing, and managing a range of projects related to the County's response to the COVID-19 disaster.
 14. Department of Information Technology. This department provides, manages, and supports the use of critical technology that allows the County to operate and communicate internally and with the public.
- B. Albemarle County Public Schools. Under the County Executive form of government, the County is required to have a "department of education." *Virginia Code § 15.2-518*. The "department of

education” is composed of the Albemarle County School Board, the Superintendent of the “school division,” and the “officers and employees thereof.” *Virginia Code § 15.2-531*. Article VIII, Section 1 of the Constitution of Virginia states: “The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.” Albemarle County Public Schools provide essential governmental functions that must be performed to ensure the continuity of County government.

C. Authorities. The following authorities and their boards provide essential governmental functions:

1. Albemarle Conservation Easement Authority. The Albemarle Conservation Easement Authority (“ACEA”) was created as a parks and recreational facilities authority by resolution adopted by the Board of Supervisors on November 20, 1989 pursuant to the Public Recreational Facilities Authority Act (*Virginia Code § 15.2-5600 et seq.*). The ACEA was called the Public Recreational Facilities Authority until its name was changed by resolution adopted by the Board of Supervisors on July 11, 2018. The ACEA’s articles of incorporation state that its purpose is to accept, hold, and administer open-space land and interests therein under the Open-Space Land Act (*Virginia Code § 10.1-1700 et seq.*). *Amended Articles of Incorporation adopted July 11, 2018*. The types of interests held include open-space easements that are donated by landowners, easements acquired by the County under its Acquisition of Conservation Easements (“ACE”) program, and easements created pursuant to Rural Preservation Developments allowed under the County’s zoning regulations. The functions of the ACEA include monitoring and enforcing these easements.
2. Albemarle County Broadband Authority. The Albemarle Broadband Authority (“ABBA”) was created as a wireless service authority “to provide qualifying communications services as authorized by Article 5.1 (*Virginia Code § 56-484.7:1 et seq.*) of Chapter 15 of Title 56 of the Virginia Code.” One of the primary functions of ABBA is to facilitate the ongoing deployment of broadband infrastructure and services in the underserved areas of the County.
3. Albemarle-Charlottesville Regional Jail Authority. The Albemarle-Charlottesville Regional Jail Authority (“Jail Authority”) was created as an authority under the Jail Authorities Law (*Virginia Code § 53.1-95.2 et seq.*) by agreement among the County, the County of Nelson, and the City of Charlottesville on November 15, 1995. The Jail Authority replaced the Regional Jail Board as the operator of the Albemarle-Charlottesville Joint Security Complex.
4. Albemarle County Service Authority. The Albemarle County Service Authority (“ACSA”) was created as an authority under the Virginia Water and Waste Authorities Act (*Virginia Code § 15.2-5100 et seq.*). The ACSA’s articles of incorporation state that its purpose is to undertake projects for distributing and selling potable water to retail customers, collecting wastewater from retail customers, and delivering the wastewater to the Rivanna Water and Sewer Authority. *Amendment to the ACSA Articles of Incorporation, dated December 16, 1985; County Code § 2-701*.
5. Economic Development Authority of Albemarle County, Virginia. The Economic Development Authority (“EDA”), officially identified as the “Economic Development Authority of Albemarle County, Virginia,” was created as an industrial development authority (now, an economic development authority) by ordinance adopted by the Board of Supervisors on May 12, 1976 pursuant to the Industrial Development and Revenue Bond Act (*Virginia Code § 15.2-4900 et seq.*). *County Code § 2-600*. The EDA has all of the powers of such an authority under the Act. The EDA operates in cooperation with the County pursuant to a Memorandum of Understanding and the Albemarle County Economic Development Strategic Plan, also known as Project ENABLE (Enabling a Better Life Economically). The functions of the EDA include promoting the economic development of the County as it is enabled to do pursuant to *Virginia Code § 15.2-4900 et seq.*, providing economic assistance to County businesses within the scope of its enabling authority, and providing any services related to any additional State or Federal assistance or services program either on its own or in its work with the Economic Development Office.
6. Rivanna Solid Waste Authority. The Rivanna Solid Waste Authority (“RSWA”) was created on November 5, 1990 by the Solid Waste Organizational Agreement entered into between the County and the City of Charlottesville, together with a concurrent resolution of the Charlottesville City Council and the Albemarle County Board of Supervisors and the RSWA’s articles of incorporation, all pursuant to what is now the Virginia Water and Waste Authorities Act (*Virginia Code § 15.2-5100 et seq.*). The RSWA’s articles of incorporation state that its

purposes are to “develop a regional refuse collection and disposal system, as such terms are defined in Virginia Code Section 15.2-5101 of the Virginia Water and Waste Authorities Act, including development of systems and facilities for recycling, waste reduction and disposal alternatives with the ultimate goal of acquiring, financing, constructing, and/or operating and maintaining regional solid waste disposal areas, systems and facilities, all pursuant to the Virginia Water and Waste Authorities Act.” *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated November 6, 2009.*

7. Rivanna Water and Sewer Authority. The Rivanna Water and Sewer Authority (“RWSA”) was created on June 7, 1972 by the City of Charlottesville and the County pursuant to what is now the Virginia Water and Waste Authorities Act (Virginia Code § 15.2-5100 *et seq.*). The RWSA’s articles of incorporation state that its purpose “is to acquire, finance, construct, operate and maintain facilities for developing a supply of potable water for the City of Charlottesville and Albemarle County and for the abatement of pollution resulting from sewage in the Rivanna River Basin, by the impoundment, treatment and transmission of potable water and the interception, treatment and discharge of wastewater, together with all appurtenant equipment and appliances necessary or suitable therefore and all properties, rights, easements or franchises relating thereto and deemed necessary or convenient for their operations. *Concurrent Resolution of the City Council of the City of Charlottesville, Virginia and the Board of Supervisors of the County of Albemarle, Virginia to Amend and Restate the Articles of Incorporation of the Rivanna Solid Waste Authority, dated May 5, 2017.* The RWSA operates five reservoirs at Ragged Mountain, Sugar Hollow, South Fork Rivanna, Totier Creek, Beaver Creek, along with five water treatment plants, and wastewater treatment plants.
- D. Public bodies existing under joint exercise of powers agreements. The following public bodies exist under joint exercise of powers agreements, and they and their boards exercise essential governmental functions:
1. Charlottesville-Albemarle Convention and Visitors’ Bureau. The Charlottesville-Albemarle Convention and Visitors’ Bureau (“CACVB”) has existed in various forms for more than 20 years. Its current iteration was established by the County and the City on June 28, 2018, and it became effective July 1, 2018. Individually, both the County and the City are enabled by Virginia Code § 15.2-940 to “expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality.” The purpose of the CACVB is to jointly promote the resources and advantages of the County and the City, including marketing of tourism and initiatives that attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County. *Second Amended Agreement to Operate a Joint Convention and Visitors’ Bureau, dated October 2, 2019.* The County and the City contribute funds to support the CACVB’s facilities and operations from their respective transient occupancy tax revenues. During the COVID-19 disaster, the CACVB also supports the County’s hospitality business sector.
 2. Emergency Communications Center. The Emergency Communications Center (“ECC”) was established by the County, the City of Charlottesville, and the University of Virginia on January 20, 1984. The ECC was established to provide a centralized dispatching facility for the respective parties’ law enforcement and emergency service providers operating in the County and the City, and to provide a 911 emergency system. *Agreement By and Among the County of Albemarle, Virginia, the City of Charlottesville, Virginia, and the Rector and Visitors of the University of Virginia, dated January 20, 1984.* The ECC also provides coordination and assistance in emergency management for the Emergency Operations Plan adopted by its participating agencies.
- E. Jefferson Madison Regional Library. The Jefferson Madison Regional Library (“JMRL”) system was established by an agreement entered into on August 11, 1972 (the current agreement is dated January 1, 2013) among the County, the City of Charlottesville, and the counties of Greene, Louisa, and Nelson pursuant to the enabling authority in Virginia Code § 42.1-37 *et seq.* JMRL provides essential governmental functions by maintaining a regional free library system pursuant to the terms of the agreement.
- F. Other public bodies and offices. Other public bodies and offices of the County also exercise essential governmental functions. They include, but are not limited to, the Planning Commission,

the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, any advisory bodies established by the Board of Supervisors, and the office of the General Registrar.

Sec. 5. Succession

This section establishes the procedures to fill vacancies in elected and appointed offices arising during the COVID-19 disaster in order to ensure the continuity of County government. This section also applies to Albemarle County Public Schools and may be applied by the authorities and the other public bodies identified in Section 4 to the extent practicable. The Albemarle County School Board, in its discretion, may establish by resolution its own procedures to fill vacancies in elected offices arising during the COVID-19 disaster.

- A. Elected officials. When a vacancy occurs either on the Board of Supervisors or the Albemarle County School Board, the vacancy shall be filled according to the procedure generally established by Virginia Code § 24.2-228, as modified below:
1. Appointment by remaining members. When a vacancy occurs, the remaining members of the Board, within 45 days of the office becoming vacant, may appoint a qualified voter of the magisterial district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the Board cannot agree, or do not act, the vacancy must be filled by judicial appointment as provided in Virginia Code § 24.2-227.
 2. If a qualified voter from the magisterial district cannot be found. If the Board is unable to find and appoint a qualified voter from the magisterial district in which the vacancy exists after a reasonable effort, it may appoint a qualified voter from any other magisterial district.
 3. Duration of appointment. The person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to Virginia Code § 24.2-682 and the person so elected has qualified.
 4. Effect of being appointed. Any person appointed to fill a vacancy holds office the same way as an elected person, is authorized to exercise all powers of the elected office, and this includes having that person's vote be considered the vote of an elected member.
 5. Majority of seats are vacant. If four or more seats on the Board are vacant, the vacancies must be filled by judicial appointments as provided in Virginia Code § 24.2-227.
 6. Holding over. If, during the COVID-19 disaster, a general election cannot be held, any member whose term expires may continue to hold over in office until a successor is appointed.
 7. Temporary vacancies. If a member is unable to participate in any meeting of the Board for more than 30 days and the number of members available to meet and act falls below that required for a quorum as provided in Section 6, and action by the Board is determined to be essential to continue the functions of the County or the Albemarle County Public Schools, as applicable, the remaining members may, in their discretion, appoint a qualified voter to temporarily exercise the powers and duties of the office until the permanent member is able to participate.
- B. Appointed officers. This subsection applies to the County government and not to Albemarle County Public Schools, which is recommended to establish its own succession plan for appointed officers.
1. If the County Executive and the Deputy County Executive are incapacitated. If the County Executive and the Deputy County Executive are both incapacitated such that they cannot perform the duties of the County Executive, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Executive.
 2. If the County Attorney and the Deputy County Attorney are incapacitated. If the County Attorney and the Deputy County Attorney are incapacitated such that they cannot perform the duties of the County Attorney, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Attorney.

3. If the Clerk and the Senior Deputy Clerk are incapacitated. If the County Clerk and the Senior Deputy County Clerk are incapacitated such that they cannot perform the duties of the County Clerk, the Board of Supervisors may appoint any person it deems qualified to serve as Acting County Clerk of the Board of Supervisors.
4. If any department head and deputy department head or equivalent position are incapacitated. If any department head and any deputy department head, or any equivalent position are incapacitated, the County Executive may appoint any person he deems qualified to serve as the acting department head.

Sec. 6. Public Meetings

This section establishes the procedures for public meetings of the Board of Supervisors, the Planning Commission, the Architectural Review Board, the Board of Equalization, the Board of Appeals, the Board of Zoning Appeals, the Electoral Board, and any advisory bodies established by the Board of Supervisors to transact any business statutorily required or necessary to continue operations of the public body, and the public bodies' discharge of their lawful purposes, duties, and responsibilities. These procedures may also be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4 to the extent this section is practicable for those public bodies. References to the "Board" and the "Supervisors" in this section should be modified as appropriate when applied by public bodies other than the Board of Supervisors.

- A. The need to change how meetings are conducted during COVID-19. The Board fully endorses the statements in Virginia Code § 2.2-3700, which is the introductory section of the Virginia Freedom of Information Act, that the "affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government," and that unless an exception to open meetings is invoked "every meeting shall be open to the public." The regulations in this section for conducting public meetings are necessary because the COVID-19 disaster makes it impracticable or unsafe for public bodies, as well as their staff and the public, to physically assemble in one location or to conduct meetings in accordance with normal practices and procedures. Although the regulations in this section establish rules for conducting public meetings that are different from normal practices and procedures, the regulations are intended and designed to achieve the policies expressed in Virginia Code § 2.2-3700.
- B. Applicability. This section applies when some or all of the persons participating in the meeting are connected to the meeting by electronic communication means (defined as "hybrid" and "virtual" meetings in the Board of Supervisors' Rules of Procedure for Virtual and Hybrid Meetings (adopted September 2, 2020), provided that if a quorum of the Board is physically assembled in one location, participation by any other Supervisor by electronic communication means is permitted only as provided in Virginia Code § 2.2-3708.2 and Rule 8 of the Board of Supervisors' Rules of Procedure (adopted January 8, 2020).
- C. Meeting format. Any meeting to discuss or transact business may be held through real time electronic communication means (including audio, telephonic, video, or any other practical electronic medium) without a quorum physically assembled in one location.
- D. Agenda. The agenda for a meeting conducted pursuant to this section (an "electronic meeting") should: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items on the agenda neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- E. Notice. Before holding a regular electronic meeting, the Clerk must provide notice at least three days in advance of the meeting, and this notice must be provided to the public contemporaneously with the notice provided to the Supervisors. The notice must: (1) state that the meeting is being held pursuant to this ordinance; and (2) identify the opportunities for the public to access and participate in the electronic meeting, including the opportunity to comment on those matters for which comments from the public will be received. Any notice provided before the effective date of this ordinance, for a public meeting or public hearing after its effective date, that complied with the law when it was given but which is inconsistent with this ordinance, including with respect to the location of the meeting or the public hearing, is deemed to satisfy any notice requirements and no action taken at that meeting or regarding any public hearing is invalid for that reason.

- F. Statement by the Chair. At the beginning of the meeting, the Chair should: (1) state that the meeting is being held pursuant to and in compliance with this ordinance; (2) identify the Supervisors physically and electronically present; and (3) identify the opportunities for the public to access and participate in the electronic meeting. The failure to state these items neither makes the electronic meeting illegal nor invalidates any action taken at the meeting.
- G. Public participation. Any electronic meeting must be open to electronic participation by the public. In addition, for any matters requiring a public hearing, public comment may be solicited by electronic communication means in advance and must also be solicited through telephonic or other electronic communication means during the electronic meeting. The public comments received before the electronic meeting will be provided to the Supervisors at or before the electronic meeting and made part of the record for the meeting.
- H. Postponing certain matters. Any non-emergency public hearing and action item on the Board's agenda may be postponed to a later date provided that public notice is given so that members of the public are aware of how and when to present their views.
- I. Quorum. If three Supervisors are unable to participate in a public meeting because each of those three Supervisors is sick from the COVID-19 virus, and at least one temporary vacancy has not been filled pursuant to Section 5, a quorum of the Board of Supervisors to conduct business is reduced from four to three for any matter that a vote is required by the Board at that meeting in order to ensure the continuity of County government. If four or more Supervisors are unable to participate in a public meeting for the reasons stated above, the only action that the participating Supervisors may take is to adjourn the meeting until the temporary vacancies can be filled.
- J. Voting. State laws, as may be implemented in the County Code, may impose different voting requirements.
1. Vote required to act. Although most actions require the majority vote of those Supervisors present and voting, there are some actions that require a supermajority vote, the majority vote of the elected members, or impose some other requirement. These different voting requirements continue to apply unless: (1) one or more Supervisors is sick from the COVID-19 virus; (2) the sick Supervisors are unable to participate in the public meeting; (3) the temporary vacancy has not been filled pursuant to Section 5 and the voting requirement imposed by State law or the County Code cannot be complied with; and (4) a vote is required by the Board at that meeting in order to ensure the continuity of government. If all four of those prerequisites are satisfied, the Board may approve the matter on the affirmative vote of those Supervisors present and voting. Following are examples of different voting requirements for certain matters, and how they are addressed if the four prerequisites are satisfied:
 - a. When the affirmative vote of the elected members is required. Article VII, Section 7 of the Constitution of Virginia and its statutory companion in Virginia Code § 15.2-1428 require, among other things, the affirmative vote of a majority of all members elected to the governing body on certain matters. As provided in Section 5(A)(4), and based on language in Virginia Code § 24.2-228, any appointed Supervisor's vote is considered to be the vote of an elected Supervisor.
 - b. When a supermajority vote is required. Virginia Code § 15.2-2405 requires a two-thirds vote of the elected Supervisors to impose taxes in a service district. The Board is unique because it is a six-member Board and, for it, a majority vote is also a supermajority when a two-thirds vote is required. There are no service districts in the County. If another matter requires a supermajority under Virginia law, the Board may approve a matter by a majority of the Supervisors participating and voting.
 - c. When the vote by those present and voting is required. The requirement that a matter be approved by a majority vote of those present and voting is common, one example being found in Virginia Code § 15.2-1427(A). For the purposes of this voting requirement, any Supervisor who is participating in the matter is "present."
 2. Roll call vote. A roll call vote should be taken on all matters requiring a vote and must be taken on any action on an ordinance and any other matter requiring a roll call vote pursuant to State or Federal law.

- K. Closed meetings. The Board may have a closed meeting for any purpose authorized by Virginia Code § 2.2-3711(A).
- L. Minutes. Minutes of a meeting must be in writing and include: (1) the date, time, and location of the meeting; (2) the Supervisors recorded as present or absent; (3) a summary of the discussion on matters proposed, deliberated, or decided; (4) a record of any votes taken; (5) the fact that the meeting was held by electronic communication means because of the emergency created by the COVID-19 disaster; and (6) the type(s) of electronic communication means by which the meeting was held.
- M. Recordings. An audio recording, video recording, or verbatim transcript of any electronic meeting must be made and retained as provided by law. The recording must be posted on the County's website.
- N. Other requirements not modified. Any requirements for conducting a public meeting in Virginia Code §§ 2.2-3700 *et seq.* and 15.2-1400 *et seq.* that are not modified by this section, including those pertaining to special and emergency meetings, apply to conducting a public meeting.
- O. Alternative authority. If Section 6 is determined to be unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, the authority for public bodies to meet by electronic communication means conferred by the budget amendments in HB 29 and HB 30 of the Commonwealth of Virginia's 2020-2022 biennium budget is deemed to apply, as applicable, on and after May 21, 2020.

Sec. 7. Deadlines

This section applies to the County government. State law and the County Code impose many deadlines by which the County, Board of Supervisors, and other public bodies must act. The following deadlines may be extended to the earliest date thereafter practicable when it is impractical or dangerous to safely meet those deadlines because of the COVID-19 disaster, with the proviso that the Board of Supervisors and the County will endeavor to the extent practicable to meet the deadlines established by State law and the County Code. Subsections (D), (E), and (F) may be applied by the Albemarle County Public Schools, the authorities, and the other public bodies identified in Section 4.

- A. The tax rates. It is the intention of the Board to meet all of the deadlines established by State law to fix the tax rates. However, the May 15 deadline established by Virginia Code § 58.1-3321(E) for fixing the real estate tax rate, and the June 30 deadline to fix other tax rates established by Virginia Code § 58.1-3001, may be extended by the Board to the earliest dates thereafter practicable in order to allow the tax rates to be fixed.
- B. The budget. It is the intention of the Board to meet all of the deadlines established by State law to approve the County's annual budget. However, the May 15 deadline established by Virginia Code § 22.1-93 requiring the Board to "prepare and approve an annual budget for educational purposes by May 15 or within 30 days of the receipt by the county . . . of the estimates of state funds, whichever shall later occur," and the July 1 deadline to approve the budget established by Virginia Code § 15.2-2503 ("the date on which the fiscal year begins"), may be extended by the Board to the earliest date thereafter practicable in order to approve the County's annual budget.
- C. Land use applications. Any deadline established by State law or the County Code for action by the County, the Board of Supervisors, or any County public body within the scope of Chapter 14, Subdivision of Land, Chapter 17, Water Protection, or Chapter 18, Zoning, may be extended by the County, the Board, or other County public body to the earliest date thereafter practicable to allow any public body or County staff to act. Any provision in State law or the County Code to deem the failure of any County action to be timely taken to be approval of the pending matter is of no force or effect.
- D. Requests for records under the Virginia Freedom of Information Act. Any deadline by which a response to a request for records under the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) is due, and the time for which the records sought may be inspected or produced, may be extended to the earliest date thereafter practicable in order to respond to the request or allow any records to be inspected or produced.
- E. Factors to be considered in determining whether the COVID-19 disaster prevents a deadline from being met. In determining whether the COVID-19 disaster prevents a deadline from being

met, the following factors should be considered: (1) whether a federal or State lockdown is in place prohibiting necessary travel to conduct business; (2) whether COVID-19 illnesses prevent the Board, any County public body, or County staff from meeting or conducting business; (3) whether County buildings where applications, documents, and other public records are kept are closed because of COVID-19 contamination; (4) the custodian of records or other County employee is a member of a vulnerable population group and would be required to retrieve physical public records in a manner that would endanger the employee's health and alternative persons are not available to retrieve the records; and (5) other similar reasons that prevent the Board, any County public body, or County staff to meet or conduct its business without endangering their health or the health of others.

- F. Hold harmless. The failure to meet any deadline imposed by State law, including the Prompt Payment Act, or the County Code does not constitute a default, violation, approval, recommendation or otherwise.
- G. Other deadlines may be extended. Any other deadlines not extended by this section may be extended by a separate ordinance.

Sec. 8. Procurement

This section pertains to procuring goods and services by the County. This section also may be applied by the Albemarle County Public Schools, the authorities, and the other public entities identified in Section 4 that do their own procurements, to the extent this section is practicable for their public entities. References to the "County Executive" and other County-specific references in subsections (A) and (C) should be modified as appropriate when this section is applied by public entities other than the County.

- A. Authority to modify requirements or procedures for procurements not directly related to the COVID-19 disaster. The County Executive is authorized to modify any requirement or procedure imposed pursuant to the Virginia Public Procurement Act (Virginia Code § 2.2-4300 *et seq.*), the Albemarle County Purchasing Manual, or by custom, that requires or allows any procurement-related documents to be hand-delivered or delivered by a carrier to the County Office Building, or that requires or allows bidders and vendors to physically assemble for bid openings and other steps in the procurement process. Requirements or procedures may be modified as follows:
 - 1. Documents. Any modification pertaining to documents should require electronic documents to be submitted by any person submitting an inquiry, or responding to a request for information, request for proposals, an invitation for bids, or any other solicitation.
 - 2. Physical assemblies. Any modification pertaining to physical assemblies should require any steps in the procurement process by which people would otherwise physically assemble to participate through electronic communication means or to be conducted in a location that complies with any County, State, and Federal orders or declarations regarding gatherings.
- B. Authority of the County Executive for COVID-19 disaster related procurements is unaffected. Subsection (A) does not affect the County Executive, acting as the Director of Emergency Management pursuant to Virginia Code § 44-146.21(C), to "enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available."
- C. Notice. Modifications to requirements or procedures made under this section do not need to be published in the Albemarle County Purchasing Manual to be effective. Notice reasonably calculated to make the public aware of these changes, including on the Albemarle County Purchasing Department's website, is sufficient.

Sec 9. Duration

This ordinance is effective immediately and expires not later than six months after the COVID-19 disaster ends. The COVID-19 disaster will be deemed to be ended when the Board of Supervisors adopts a resolution ending the declared local emergency.

Sec. 10. Method for Resuming Normal Governmental Authority and Operations

- A. When normal governmental authority and operations will resume. Normal governmental authority and operations will resume after the County Executive, acting as the Director of Emergency Management, reports to the Board of Supervisors that all emergency actions that can be taken by the County have been taken, the Board ends the local emergency, the Governor ends the state of emergency, and the State Health Commissioner advises that it is safe for people to once again gather in public so that normal governmental authority and operations, including normal public meetings (or words to that effect), may be re-established.
- B. Method to resume normal governmental authority. When the events in subsection (A) have occurred, normal government authority will resume as follows, subject to further amendment to this section as may be necessary:
1. Succession. The appointment of any person to the Board pursuant to Section 5(A)(2) or 5(A)(7) terminates and any resulting vacancy will be filled as provided by law.
 2. Public meetings. Section 6 will no longer apply.
 3. Deadlines. Section 7 will no longer apply, subject to the County Executive establishing revised guidelines to allow for a reasonable transition period back to full normal County operation.
 4. Procurement. Section 8 will no longer apply to any steps in the procurement process that have not already been completed or been substantially completed.

Sec. 11. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the County Executive, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster. The intention of the Board of Supervisors is that this ordinance and any powers exercised by the Director complement one another.

Sec. 12. Effect of this Ordinance on Albemarle County Courts and Constitutional Officers

This ordinance does not apply to the Albemarle County Circuit Court, General District Court, or Juvenile and Domestic Relations District Court. This ordinance also does not apply to the offices of the Albemarle County Clerk of the Circuit Court, Commonwealth's Attorney, or Sheriff.

Sec. 13. This Ordinance Supersedes Prior Continuity of Government Ordinances; Exception

This ordinance supersedes any previous continuity of government ordinance adopted by the Board of Supervisors.

Sec. 14. Severability

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

Sec. 15. Liberal Construction

Because its purpose is to ensure the continuity of government, this ordinance should be liberally construed to accomplish this purpose and to facilitate the performance of the governmental functions and related services determined by the Board of Supervisors, either expressed or implied, to be essential.

State law reference – Va. Code § 15.2-1413.

This ordinance is effective on and after October 1, 2020.

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

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

ⁱⁱⁱ *South Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (May 29, 2020) (Roberts concurring in denial of application for injunctive relief); on the fact that there is no effective treatment as of the date of this ordinance, see also https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters?gclid=EAIaIQobChMI9lvSvJPk6gIVGrbCh2TYw9QEAAAYASAAEgKjDfD_BwE#medicines; <https://www.health.harvard.edu/diseases-and-conditions/treatments-for-covid-19>; <https://www.mayoclinic.org/diseases-conditions/coronavirus/diagnosis-treatment/drc-20479976>.

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

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

^{vi} World Health Organization Scientific Brief, July 9, 2020 <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; see also Statement of Dr. Michael Ryan, World Health Organization COVID-19 Virtual Press Conference, transcript page 12, https://www.who.int/docs/default-source/coronaviruse/transcripts/covid-19-virtual-press-conference---17-july.pdf?sfvrsn=dd7f91a1_0 (“So it’s all about the setting, it is about the duration you spend in that setting and it’s about the intensity of the activities that you participate in in that setting and when you get into a particular setting, a very overcrowded situation in an indoor environment then effectively all bets are off because so many of the modes of transmission come into play; the aerosol route, the airborne route, the fomite or contamination route. So the more close you are to other people, the more you are inside, the more the activity is intense or involves very close social contact the more that multiple modes of transmission come into play. So in that sense it is about you understanding your risk, it is about you managing that risk and being aware of the situation that you find yourself in personally and reducing that risk for you, for your family, for your children and for your community. It is important, as I’ve said previously, that governments communicate those risks very, very carefully and it is also important that providers, authorities and others ensure that those environments are as safe as possible and that the risks are also managed.”)

^{vii} <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>.

^{viii} <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>; see also <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

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

^x <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

^{xi} <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>.

^{xii} [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf).

^{xiii} <https://coronavirus.jhu.edu/testing/testing-positivity>

^{xiv} <https://www.vdh.virginia.gov/thomas-jefferson/tjhd-covid-19-data-portal/>

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