



ALBEMARLE COUNTY PLANNING
ZONING TEXT AMENDMENT
STAFF REPORT SUMMARY

Project Name: ZTA202100002 for proposed Zoning Text Amendment to clarify the Board of Supervisors' authority to approve special exceptions, consistent with case law.	Staff: Rebecca Ragsdale, Principal Planner
Planning Commission (PC) Hearing: September 28, 2021	Board of Supervisors (BOS) Hearing: December 1, 2021
Proposal: Amendment to correct references in the ordinance to Planning Commission, Planning Director, or other administrative officers for Administrative waivers, modifications, or variations of ordinance provisions. These are legislative acts reserved for local governing bodies.	
Factors Favorable: <ol style="list-style-type: none">1. Corrects technical errors in the existing ordinance.2. Complies with State Code.3. Continues to allow special exceptions, providing flexibility in land use regulations.	Factors Unfavorable: <ol style="list-style-type: none">1. None identified.
Recommendation: Staff recommends that the Planning Commission support the proposed ordinance and recommend approval to the Board of Supervisors.	

STAFF CONTACT: Rebecca Ragsdale, Principal Planner
PLANNING COMMISSION: September 28, 2021
BOARD OF SUPERVISORS: December 1, 2021

ZTA: ZTA202100002 Zoning Text Amendment to clarify the Board of Supervisors' authority to approve special exceptions, consistent with case law.

ORIGIN: Board of Supervisors resolution of intent adopted on July 21, 2021. (Attachment A)

BACKGROUND: In the 2012 case of *Sinclair v. New Cingular Wireless*, the Virginia Supreme Court held that waivers, modifications, or variations of local zoning ordinances are legislative acts reserved for local governing bodies, in the absence of state enabling authority that expressly authorizes another body or official. The Court found that the General Assembly had not enabled localities to delegate that legislative authority to planning commissions or administrative officers.

Shortly after that ruling, the Board adopted ZTA2012-00001 to add special exception provisions (now County Code § 18-33.5). This was intended as a short-term solution to avoid application delays and did not remove all references to the Planning Commission or administrative officers in other County Code sections.

PUBLIC PURPOSE TO BE SERVED: The purpose of this zoning text amendment (ZTA) is to align the Zoning Ordinance with the *Sinclair* decision and to update provisions of the Zoning Ordinance that still reference the Planning Commission, Planning Director, or other administrative officers. Under both the *Sinclair* decision and ZTA2012-00001, only the Board of Supervisors has the authority to grant waivers, modifications, and variations through the special exception process. This Zoning Text Amendment is not meant to make substantive changes, but to clarify the Zoning Ordinance and provide consistency with case law and avoid confusion with outdated references.

PROPOSED CHANGES: The proposed ordinance is provided as Attachment B. It includes repealing Section 2.5 Administrative Waivers because waivers can only be granted by the Board of Supervisors and this section is no longer needed. Other changes apply to Sections 4, 5, 8, and 20B and include replacing references to the Commission or other administrative officers who are not authorized to grant such waivers, modifications, or variations. In some instances, there was an appeal process of an administrative or Commission decision to the Board of Supervisors. Those sections have been repealed as they are no longer needed because the Board is authorized to grant the waivers, modifications, or variations.

STAFF COMMENT:

Zoning Ordinance section 33.6(B) establishes factors to be reasonably considered by the Planning Commission and Board of Supervisors in the review of ZTAs:

Factors to be considered when acting. The Commission and the Board of Supervisors will reasonably consider the following factors when reviewing and acting upon zoning text amendments and zoning map amendments: (i) the existing use and character of property; (ii) the comprehensive plan; (iii) the suitability of property for various uses; (iv) the trends of growth or change; (v) the current and future

requirements of the community as to land for various purposes as determined by population and economic studies and other studies; (vi) the transportation requirements of the community; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services; (viii) the conservation of natural resources; (ix) the preservation of flood plains; (x) the protection of life and property from impounding structure failures; (xi) the preservation of agricultural and forestal land; (xii) the conservation of properties and their values; (xiii) the encouragement of the most appropriate use of land throughout the county; and (xiv) equity.

Legislative reviews are a significant component of encouraging the most appropriate use of land throughout the County. An efficient, understandable, enforceable procedure for the review of legislative actions allows for the implementation of the recommendations of the Comprehensive Plan and innovative designs.

Strategic Plan: This ordinance will be reviewed by the three (3) criteria previously established by the Board for amendments:

1. Administration/Review Process:

The proposed amendments clarify the review process and will clear up confusion about the process for seeking waivers and modifications since outdated language, inconsistent with State Law, is still in the Zoning Ordinance.

2. Housing Affordability:

The proposed amendments have no direct impact on housing affordability. A more efficient land use review process, that allows for flexibility through waivers and modifications, may reduce overall development cost and indirectly improve housing affordability. During the review of any application, the impact on housing affordability may be considered.

3. Implications to Staffing/Staffing Costs: The proposed amendments are expected to improve efficiency by avoiding any applicant or staff confusion about who is authorized to grant waivers/modifications through the special exception process.

RECOMMENDED ACTION: Staff recommends that the Planning Commission support the proposed ordinance and recommend approval to the Board of Supervisors.

ATTACHMENTS

- A. Resolution of Intent
- B. Proposed Ordinance Language