

**COUNTY OF ALBEMARLE
PLANNING COMMISSION**

EXECUTIVE SUMMARY

AGENDA TITLE: ZTA2018-02 Commercial and Industrial Zoned Properties Not Served By Public Water PRESENTOR: Rebecca Ragsdale, Senior Planner STAFF CONTRIBUTORS: Rebecca Ragsdale; Amelia McCulley, Zoning Administrator; Leah Brumfield, Senior Planner; Bill Fritz, Chief of Special projects; John Blair, Deputy County Attorney	AGENDA DATE: May 8, 2018 ATTACHMENTS: Yes
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BACKGROUND: This zoning text amendment (ZTA) was initiated by the Board of Supervisors with a resolution adopted on [February 7, 2018](#). The Planning Commission received a brief update on this ZTA on April 10, 2018. The proposed zoning ordinance changes will affect properties zoned commercially or industrially but not served by public water or a central water system. This Zoning Ordinance provision has led to several appeals to the Board of Zoning Appeals. The appeals arise because regulation on water consumption is not listed as a weekly or other periodic average limit, instead it is “per day”, rendering peak days as the consumption standard. In addition, there is no universally accepted industry standard for water consumption, leading to debate as to projected consumptions. Because of the current ordinance provisions, most, if not, all uses on a private well require a special use permit.

The Board has directed staff to draft an ordinance to eliminate the water limit provision and amend the list of uses in the various commercial and industrial districts to allow some uses not served by public water as by-right uses and to allow other more intensive uses not served by public water by special use permit. This will ensure that there are by-right use opportunities for property owners.

The purpose of the proposed changes is to:

- Eliminate the special use permit for uses permitted by right, not served by public water, involving water consumption exceeding four hundred (400) gallons per site acre per day
- Create by-right use opportunities
- Better align the Zoning Ordinance with not only goals for resource protection but other Rural Area goals and strategies of the comprehensive plan
- Provide clarity and remove ambiguity in regulations

Planning and Zoning History

While the first zoning ordinance was adopted in 1969, the first comprehensive plan was not adopted until 1971. The County updates its comprehensive plan every five years but the last comprehensive zoning map and zoning ordinance update was in 1980. The Zoning Ordinance regulations for Industrial (LI, HI and PDIP) zoning districts were amended in 1985, and Commercial (CO, C1, HC, PDSC, and PDMC) districts were amended in 1989, to require a special use permit for by-right uses under the following circumstances: “Uses permitted by right, not served by public water, involving water consumption exceeding four hundred

(400) gallons per site acre per day”. The stated purpose of the regulations was to protect surface and groundwater supplies from overdraft and pollution. The water withdrawal limitation of 400 gallons was based on Health Department assumptions and regulations at the time for water consumption from a dwelling. Health department regulations employed a water usage rate of 150 gallons per day per bedroom. A four-bedroom house would have a daily consumption of 600 gallons. The minimum lot size for a dwelling not served by public water and public sewer was 60,000 square feet. Therefore, the per acre consumption would be 400 gallons per day.

Water impacts remain a concern. Since 1989, new regulations have been put in place in the Water Protection Ordinance (WPO) requiring new construction to use water saving devices. These regulations serve to reduce water consumption and impact on groundwater resources.

The County’s Strategic Plan also sets out the following objectives relevant to the proposed ordinance changes:

Thriving Natural Resources Stewardship: Thoughtfully protect and manage Albemarle County’s ecosystems and natural resources in both the rural and development areas to safeguard the quality of life of current and future generations

Rural Area Character: Preserve the character of rural life with thriving farms and forests, traditional crossroad communities, and protected scenic areas, historic sites, and biodiversity

Economic Prosperity: Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals

Comprehensive Plan

The County’s Comprehensive Plan was last updated on June 10, 2015. It includes a number of objectives and strategies from the Growth Management, Economic Development, Rural Area, and Community Facilities chapters that are relevant and have been considered with regard to the proposed zoning ordinance changes.

This Growth Management Policy directs development into Development Areas while conserving the remainder of the County for rural uses, such as agriculture, forestry, resource protection, and others that rely on these uses. Resource protection and protection of the water supply watersheds is one of the basic purposes behind the County’s Growth Management Policy:

Objective 1: Continue to consistently use the Growth Management Policy as the basis on which to guide decisions on land use, capital expenditures, and service provision.

Strategy 1a: Continue to encourage approval of new development proposals in the Development Areas as the designated location for new residential, commercial, industrial, and mixed-use development. Only approve new development proposals in the Rural Area that are supported by Rural Area goals, objectives, and strategies.

The Economic Development policy recommends:

Objective 1: Promote economic development activities that help build on the County’s assets while recognizing distinctions between expectations for the Development Areas and the Rural Area.

Strategy 1b: Promote agriculture, forestry, and agribusiness enterprises in the Rural Area that help support the Rural Area goals for a strong agricultural and forestal economy.

The Rural Area chapter of the comprehensive plan includes a number of recommendations for considering new uses in the Rural Area with respect to zoning text amendments. While the list of criteria informed the recommendations for the proposed zoning changes, the criteria are not meant to be used as special use permit review criteria. The priority for the RA is to encourage uses that support agriculture, tourism, and crossroads communities.

Consideration of New Uses in the Rural Area

This Chapter recommends consideration of a few new land uses in the Rural Area, including supportive uses for agriculture, tourism, and crossroads communities. The County recognizes that a delicate balance exists between providing more opportunities for supporting rural uses and allowing so many of them that the Rural Area features are lost. Frequent tour buses along County roads can cause rapid deterioration of narrow gravel roads. Excessive noise can interfere with a horse or cattle operation.

It is important that any change take place slowly with enough time to evaluate potential impacts. Analysis of the impacts of the recent Zoning Ordinance changes should be conducted before adopting new zoning regulations. Policies, programs and regulations that address only one aspect of the Rural Area to the detriment of others should be avoided or, where already in place, revised. Only by prudent and thoughtful decision making will the Rural Area resources be preserved while encouraging uses that benefit the economy.

Criteria for Review of New Uses

As new uses are proposed in the Rural Area, it is essential that they be able to meet the following standards. New uses should: relate directly to the Rural Area and need a Rural Area location in order to be successful, (e.g., a farm winery has to be located in the Rural Area and would be unlikely to succeed in the Development Areas);

- be compatible with, and have a negligible impact, on natural, cultural, and historic resources;
- not conflict with nearby agricultural and forestal uses;
- reflect a size and scale that complements the character of the area in which they will be located;
- be reversible so that the land can easily return to farming, forestry, conservation, or other preferred rural uses;
- be suitable for existing rural roads and result in little discernible difference in traffic patterns;
- generate little demand for fire and rescue and police service;
- be able to operate without the need for public water and sewer;
- be sustainable with available groundwater; and
- be consistent with other Rural Area policies.

Performance standards will be needed for any new uses to ensure that the size, scale, and location of the new commercial uses recommended for the Rural Area are appropriate. It is of prime importance that the appearance and function of new uses blend and not detract from the key features of the Rural Area. New uses should not overwhelm an area in terms of their function or visibility

Strategy 1h: Change zoning regulations to permit appropriately-scaled collection and distribution facilities for local agricultural products in the Rural Area. Consider allowing these uses by-right.

Strategy 1j: Consider amending the Zoning Ordinance to allow landscape services and storage of landscape materials in the Rural Area.

Strategy 6c: Permit uses at rural interstate interchanges that support agriculture and forestry.

Community Facilities

The County's policy is to serve all properties within the Development Areas of the County with public water and sewer service. The Albemarle County Service Authority Jurisdictional Area (ACSAJA) is established by the Board of Supervisors and this designation establishes whether the properties can be served by ACSA or not. Requests for additional service and changes to the ACSAJA in the Rural Area are reviewed on a case by case basis after a property owner request has been made. The current policy states that service should not be provided unless the parcel is adjacent to existing service lines and there is a public, health, or safety danger.

Strategy 9a: Continue to provide public water and sewer in jurisdictional areas.

Water and sewer jurisdictional areas ensure the County's Growth Management Policy, Land Use Plan, and Develop Area Master Plans are implemented by guiding the direction of public utility placement. The areas also permit these services to be provided in a manner that can be supported by the utility's physical and financial capabilities. The jurisdictional areas are those portions of the County that can be served by water or sewer service, or both, and generally follow the Development Areas boundaries.

The boundaries of the Development Areas are to be followed in delineating jurisdictional areas. Changes to these boundaries outside of the Development Areas should only be allowed when:

- (1) the area to be included is adjacent to existing lines; and
- (2) public health and/or safety is in danger.

Access to the Crozet Sewer Interceptor between the boundary of the Crozet Development Area and the Urban Service Area boundary should continue to be prohibited as well as the installation of private central water and/or sewer systems in the Development Areas. In addition, the funding of public water and sewer capital improvements should be in accordance with the recommendations of the Comprehensive Plan.

The proposed changes associated with this zoning text amendment will allow not only water consumption concerns to be addressed, but other potential impacts and the above stated comprehensive plan goals to be achieved.

Affected Properties

Staff has used GIS to identify properties that will potentially be affected by this zoning text amendment. A review of GIS indicates there are approximately 80 properties zoned commercially and industrially that are not designated for public water and sewer service and are located outside the Development Area. Initial estimates by staff indicated approximately 125 parcels would be affected but that estimate included parcels that are designated for water service. The approximate acreage of parcels affected is 304 acres. These parcels range in size, location, and use. Additional parcel information and maps showing the zoning and

ACSAJA designation for affected properties, along with neighboring properties, are provided as Attachment A.

This text amendment does not propose to take away any entitlements/rights that properties already have, including existing uses and existing prior approvals by the County to designate properties (water only or water and sewer) for Albemarle County Jurisdictional Area service. The current processes requiring Board approval for requesting Albemarle County Service Authority Jurisdictional Area amendments or requesting a central water system will remain in place. Existing uses may continue and already approved special use permits will remain in place as well as proffered rezonings. Properties with special use permits under the water consumption provision will require a new special use permit if they propose expansions or changes to their site not consistent with prior special use permit conditions.



Public Input

The County hosted an informational meeting on April 16, 2018 to discuss potential zoning changes. A postcard mailing was sent to owners of properties potentially affected by zoning changes and meeting notice was sent through the County's A-mail system. There were a total of 13 attendees at the meeting. This included one Planning Commissioner, four property owners or their representative, neighbors of a commercially zoned property proposed for development, and other interested parties. Staff made a presentation to the group that included the background and purpose of the proposed changes, relevant zoning and comprehensive planning history and policy, overview of affected properties, and a list of potential changes to include by-right opportunities and those uses that would remain by special use permit. Detailed comments and staff response are provided in Attachment D.

Recommended Uses

Staff has proposed a list of by-right uses for properties not served by public or central water and sewer and a list of those that should remain as special use permit uses as provided in Attachment B. In doing so, we are seeking to strike a balance between the Rural Area (RA) comprehensive plan goals and economic vitality. Specific uses mentioned in comprehensive plan strategies to serve the RA have been added as by-right uses, such as storage, distribution, or processing of agricultural products. Other uses listed as by-right include those that may be uses that require more land, like storage yards, or are those that are frequently requested uses in the Rural Areas. Among other uses, the following uses are proposed by-right in the Commercial Zoning Districts:

- Veterinary offices and hospitals, commercial kennels, and animal shelters
- Clubs and lodges, schools of special instruction
- Daycare Centers
- Farmers Markets and farm stands
- Retail nurseries and greenhouses
- Livestock sales
- Feed and Seed Stores
- Home and business services such as grounds care, cleaning, exterminators, landscaping and other repair and maintenance service
- Storage/Warehousing/Distribution/Transportation of agricultural products less than 4,000 square feet
- Manufacturing/Processing/Assembly/Fabrication and Recycling of agricultural products less than 4,000 square feet

The following uses are proposed by-right in the Light Industrial zoning district:

- Organic fertilizer manufacture or processing
- Temporary or permanent sawmills, planing mills, wood yards
- Storage yards
- Storage/Warehousing/Distribution/Transportation of agricultural products;
- Manufacturing/Processing/Assembly/Fabrication and Recycling of agricultural products

This list does include uses that are now required to get a special use permit in the Commercial districts, including veterinary uses. Staff believes that encouraging use of existing Commercial or Industrial zoned properties for uses such as veterinary offices, rather than using RA zoned properties, would be beneficial to property owners in providing additional by-right opportunities. Rural Area property owners often request to use RA zoned properties for these types of uses. Staff believes that utilizing already zoned Commercial property for these uses may help preserve RA zoned parcels. Regulations limiting sound, light, setbacks, including undisturbed buffers, would remain in place for all uses.

Those uses remaining as special use permit uses are those that staff believes should continue to receive a higher level of consideration so that factors in addition to water consumption such as size, scale, visibility, and traffic/capacity of adjacent roads can be considered. Special use permits will continue to be reviewed under the criteria of County Code §33.8:

- a. ***Factors to be considered when acting.*** The commission and the board of supervisors shall reasonably consider the following factors when they are reviewing and acting upon an application for a special use permit:
 1. ***No substantial detriment.*** The proposed special use will not be a substantial detriment to adjacent lots.
 2. ***Character of district unchanged.*** The character of the district will not be changed by the proposed special use.
 3. ***Harmony.*** The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in section 5 as applicable, and with the public health, safety and general welfare.
 4. ***Consistency with comprehensive plan.*** The use will be consistent with the comprehensive plan.
- b. ***Conditions.*** The commission may recommend, and the board of supervisors may impose, conditions upon the special use to address impacts arising from the use in order to protect the public health, safety or welfare. The conditions may pertain to, but are not limited to, the following:
 1. The prevention or minimization of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substances or conditions.

2. The provision of adequate police and fire protection.
3. The provision of adequate improvements pertaining to transportation, water, sewage, drainage, recreation, landscaping and/or screening or buffering.
4. The establishment of special requirements relating to building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building heights, and other particular aspects of occupancy or use.
5. The period by which the use must begin or the construction of any structure required for the use must commence.
6. The materials and methods of construction or specific design features, provided such a condition for residential uses shall comply with subsection (c).

BUDGET IMPACTS: Amending the County Code to address the water consumption regulation should not result in budget impacts. The proposed amendment should save existing staff resources necessary for review under the current ordinance. While this provision doesn't arise frequently, it does involve staff time from multiple County divisions and departments including Planning, Zoning, Engineering, and the County Attorney's Office.

RECOMMENDATION: Staff recommends that the Commission act to recommend an ordinance (Attachment D) to the Board of Supervisors for approval at their scheduled June 13, 2018 public hearing.

ATTACHMENTS:

- A. [Maps of Affected Properties](#)
- B. [Summary of Proposed Ordinance Tables](#)
- C. [Proposed Ordinance Changes](#)
- D. [Public Input Meeting detailed comments](#)