

COUNTY OF ALBEMARLE

STAFF REPORT

<p>AGENDA TITLE: ZTA 2017-06 Updates and Clarifications to Section 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions</p> <p>SUBJECT/PROPOSAL/REQUEST: Public hearing on changes to Section 33-Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions</p> <p>STAFF CONTACT(S): Greg Kamptner, Elaine Echols, Bill Fritz</p>	<p>AGENDA DATE: 8/7/18</p> <p>ACTION: X INFORMATION:</p> <p>CONSENT AGENDA: ACTION: INFORMATION:</p> <p>ATTACHMENTS: Yes</p>
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DESCRIPTION: An ordinance amending Secs. 18-33.1, Purpose and intent, through Sec. 18-33.9, Special exceptions; relevant factors to be considered conditions, of Chapter 18, Zoning, of the Albemarle County Code. Section 18-33 establishes the procedures and requirements for zoning text amendments (ZTAs), zoning map amendments (ZMAs), special use permits (SPs), and special exceptions (SEs). The proposed ordinance would reorganize Section 18-33 by, among other things, splitting existing sections into multiple sections and organizing those sections into divisions based on the type of application or action, and would revise, clarify and standardize the text. The primary proposed substantive changes would: (1) amend the times by which recommendations and actions must be taken on ZTAs and County-initiated ZMAs (County Code §§ 18-33.5, 18-33.6, 18-33.11, and 18-33.12); (2) amend the criteria considered by the Director of Planning to not require certain information with applications for ZMAs and SPs (County Code §§ 18-33.15 and 18-33.32); (3) allow applications for ZMAs, SPs, and SEs to be electronically filed (County Code §§ 18-33.20, 18-33.34, and 18-33.45); (4) require notice to be given to open-space and conservation easement holders when complete ZMA, SP, or SE applications affecting the property are filed (County Code §§ 18-33.20, 18-33.34, and 18-33.45); (5) establish procedures and consequences when applications for ZMAs, SPs, and SEs are incomplete (County Code §§ 18-33.20, 18-33.34, and 18-33.45); (6) authorize the Director of Planning to require studies to identify impacts of ZMAs, SPs, and SEs (County Code §§ 18-33.21, 18-33.35, and 18-33.46); (7) incorporate the requirements of Virginia Code § 15.2-2303.4 for proffers related to residential and mixed use residential ZMAs; (8) amend the criteria for determining when a community meeting may be required for a ZMA or SP (County Code §§ 18-33.24 and 18-33.37); (9) establish when an application for an SE must be reviewed by the Planning Commission (County Code § 18-33.48); (10) authorize an SE to be revoked for noncompliance with conditions (County Code § 18-33.50); and (11) amend the procedures and requirements to withdraw an application, to suspend application review and defer action, and to take action after deferral (County Code §§ 18-33.52, 18-33.53, and 18-33.54). The proposed ordinance would also: (1) delete the procedure that allowed any member of the public to apply for a ZTA (current County Code § 18-33.2); and (2) delete the State law reference to judicial review of Board of Supervisors' decision on a ZMA or SP (current County Code § 18-33.4(t)).

PUBLIC PURPOSE TO BE SERVED: To clarify and modify regulations and procedures related to the administration of Section 33 for ease of understanding and administration for the staff and the public.

BACKGROUND: A resolution of intent was adopted by the Board of Supervisors on April 5, 2017 and a work session specifically for deferrals and community meeting changes was held by the Commission on July 17, 2018 (See Attachment A).

DISCUSSION: Section 33 contains procedural requirements related to ZTAs, ZMAs, SPs, and SEs. At the July 17 meeting on deferrals and community meeting changes, staff mentioned that the proposed ordinance amendment would also recommend changes from the County Attorney. These changes include:

- reorganizing Section 18-33 by, among other things, splitting existing sections into multiple sections and organizing those sections into divisions based on the type of application or action, and would revise, clarify and standardize the text;
- amending the times by which recommendations and actions must be taken on ZTAs and County-initiated ZMAs;
- amending the criteria considered by the Director of Planning to not require certain information with applications for ZMAs and SPs;
- allowing applications for ZMAs, SPs, and SEs to be electronically filed;
- requiring that notice to be given to open-space and conservation easement holders when complete ZMA, SP, or SE applications affecting the property are filed;
- establishing procedures and consequences when applications for ZMAs, SPs, and SEs are incomplete;
- authorizing the Director of Planning to require studies to identify impacts of ZMAs, SPs, and SEs
- incorporating the requirements of Virginia Code § 15.2-2303.4 for proffers related to residential and mixed use residential ZMAs;
- authorizing an SE to be revoked for noncompliance with conditions; and
- deleting the State law reference to judicial review of Board of Supervisors' decision on a ZMA or SP.

Attachments B and C contain the proposed changes and an annotated version for proposed changes to Section 33, respectively. Due to the extensive reorganization of the section, staff was not able to create a "table of changes" as was done for the deferral section. Instead, the County Attorney has provided an explanation of each change in the annotated version.

These attachments also include the proposed changes discussed by the Commission on July 17. The format of the changes is different than what the Commission previously viewed; however, the content is the same. Attachment D provides the flow chart that was distributed at the July 17 meeting.

At the work session on July 17, the Planning Commission generally agreed with the changes proposed by staff. The Commission requested that staff look at two additional changes which are explained below:

1. Add language that allows the Planning Director to require a second community meeting if a deferral has taken place and substantive changes have occurred to an application. *Staff has incorporated changes for community meetings in Sections 33.24 and 33.27 to give the Planning Director authority to require a second community meeting in certain circumstances.*

2. See whether any opportunity exists to place the burden of responsibility on the applicant to respond to staff comments or withdraw an application rather than bring an underdeveloped proposal to the Commission for public hearing. *The County Attorney has advised that no such opportunity exists because state law requires that a public hearing be held within 90 days of official submittal.*

An additional question was raised at the Planning Commission meeting regarding the County's ability to consider a request withdrawn under the current language,

"An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the commission or the board of supervisors is not requested by the application to take action on the application within one (1) year after the date the deferral was requested."

While this statement might appear adequate, it does not capture all of the circumstances in which a postponement may take place. Some examples include:

- An applicant requests deferral to a definite date then fails to resubmit or pay a public hearing fee; or
- An applicant fails to request a deferral; or
- A deferral is requested and an applicant resubmits but never requests a public hearing date.

At present, the County's only option would be to advertise and hold a public hearing without receiving payment for the notifications from the applicant. However, payment of the fee by the applicant is required under Section 35 Fees.

As mentioned at the July 17 meeting, the proposed changes to Section 33 involve the need for concurrent adoption of changes to Section 35 Fees. A separate staff report for Section 35 includes a resolution of intent and additional information related to this proposed ordinance amendment.

BUDGET IMPACT: Time savings will occur from these changes and no additional staff or funding is expected from these amendments.

RECOMMENDATION: Staff recommends that the Commission recommend approval of the draft ordinance found in Attachment B.

ATTACHMENTS:

Attachment A: [July 17, 2018 Staff Report](#)

Attachment B: [Proposed Section 33 Amendment dated July 23, 2018](#)

Attachment C: [Proposed Section 33 Amendment dated July 23, 2018 Annotated](#)

Attachment D: [Flow Chart presented at July 17, 2018 meeting](#)