

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

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE IV, PROCEDURE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article IV, Procedure, is hereby amended and reordained as follows:

**By Amending, Renumbering, and Reorganizing:****Old**

- Sec. 33.1 Purpose and intent.
- Sec. 33.2 Uniform requirements for the initiation of zoning text amendments and zoning map amendments.
- Sec. 33.3 Uniform procedures for zoning text amendments and county-initiated zoning map amendments.
- Sec. 33.4 Uniform procedures for zoning map amendments not initiated by the county and special use permits.
- Sec. 33.5 Uniform procedures for special exceptions.
- Sec. 33.6 Zoning text amendments and zoning map amendments; relevant factors to be considered; effect of approval.
- Sec. 33.7 Owner-initiated zoning map amendment; authority to accept proffers.
- Sec. 33.8 Special use permits; relevant factors to be considered; conditions; revocation.
- Sec. 33.9 Special exceptions; relevant factors to be considered; conditions.

**New****Division 1. Zoning Text Amendments**

- Sec. 33.1 Introduction.
- Sec. 33.2 Initiating a zoning text amendment.
- Sec. 33.3 Worksessions, stakeholder meetings, community meetings, and other public engagement.
- Sec. 33.4 Public hearings; notice.
- Sec. 33.5 Recommendation by the Planning Commission.
- Sec. 33.6 Action by the Board of Supervisors.

**Division 2. Zoning Map Amendments Initiated by the County**

- Sec. 33.7 Introduction.
- Sec. 33.8 Initiating a zoning map amendment.
- Sec. 33.9 Worksessions, stakeholder meetings, community meetings, and other public engagement.
- Sec. 33.10 Public hearings; notice.
- Sec. 33.11 Recommendation by the Planning Commission.
- Sec. 33.12 Action by the Board of Supervisors.

**Division 3. Zoning Map Amendments Initiated by an Owner**

- Sec. 33.13 Introduction.
- Sec. 33.14 Pre-application meeting.
- Sec. 33.15 Application for a zoning map amendment.
- Sec. 33.16 Information submitted with application; all applications.

- Sec. 33.17 Information submitted with application; conventional districts.
- Sec. 33.18 Information submitted with application; planned development districts, including neighborhood model districts.
- Sec. 33.19 Information submitted with applications; neighborhood model districts.
- Sec. 33.20 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.21 Studies identifying potential impacts of zoning map amendment.
- Sec. 33.22 Proffers.
- Sec. 33.23 Worksessions.
- Sec. 33.24 Community meetings.
- Sec. 33.25 Public hearings; notice.
- Sec. 33.26 Recommendation by the Planning Commission.
- Sec. 33.27 Action by the Board of Supervisors.
- Sec. 33.28 Effect of approval of zoning map amendment; effect of proffers once accepted.
- Sec. 33.29 Resubmitting a similar denied application within one year is prohibited.

#### Division 4. Special Use Permits

- Sec. 33.30 Introduction.
- Sec. 33.31 Pre-application meeting.
- Sec. 33.32 Application for a special use permit.
- Sec. 33.33 Information the Director of Planning may require to be submitted with application.
- Sec. 33.34 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.35 Studies identifying potential impacts of special use permit.
- Sec. 33.36 Worksessions.
- Sec. 33.37 Community meetings.
- Sec. 33.38 Public hearings; notice.
- Sec. 33.39 Recommendation by the Planning Commission.
- Sec. 33.40 Action by the Board of Supervisors.
- Sec. 33.41 Revoking a special use permit for noncompliance with conditions.
- Sec. 33.42 Resubmitting a similar denied application within one year is prohibited.

#### Division 5. Special Exceptions

- Sec. 33.43 Introduction.
- Sec. 33.44 Application for a special exception.
- Sec. 33.45 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.
- Sec. 33.46 Studies identifying potential impacts of special exception.
- Sec. 33.47 Public hearings; when required; notice.
- Sec. 33.48 Recommendation by the Planning Commission when required.
- Sec. 33.49 Action by the Board of Supervisors.
- Sec. 33.50 Revoking a special exception for noncompliance with conditions.
- Sec. 33.51 Resubmitting a similar denied application within one year is prohibited.

#### Division 6. Deferring Action and Withdrawing an Application

- Sec. 33.52 Deferring action.
- Sec. 33.52 Requesting action after deferral.
- Sec. 33.54 Withdrawing an application.

## Chapter 18. Zoning

### Article IV. Procedure

#### Section 33

#### Zoning Text Amendments, Zoning Map Amendments, Special Use Permits, and Special Exceptions

##### **33.1 PURPOSE AND INTENT**

~~The purpose and intent of section 33 is to establish the procedural and substantive requirements and criteria for considering and acting on zoning text amendments, zoning map amendments, special use permits, except for those delegated by this chapter to the board of zoning appeals, and special exceptions.~~

~~(§ 33.1, Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.0, 12-10-80; Ord. 01-18(6), 10-3-01) (§ 33.1, 12-10-80)~~

~~State law reference—Va. Code §§ 15.2-2285, 15.2-2286(A)(3), (4), (7), 15.2-2303.~~

##### **33.2 UNIFORM REQUIREMENTS FOR THE INITIATION OF ZONING TEXT AMENDMENTS AND ZONING MAP AMENDMENTS**

~~The board of supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires. The initiation of this process shall be as follows:~~

- ~~a. *Initiation of a zoning text amendment.* Any zoning text amendment shall be initiated: (i) by resolution of the board of supervisors; or (ii) by motion or resolution of the commission. Any county officer or any other person may request that the board of supervisors or the commission initiate a zoning text amendment. The board of supervisors shall consider an owner-requested zoning text amendment at specified intervals of three (3) months on dates established by resolution of the board in January each year.~~
- ~~b. *Initiation of a zoning map amendment.* Any proposed zoning map amendment shall be initiated: (i) by resolution of the board of supervisors; (ii) by motion or resolution of the commission; or (iii) by application of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor (collectively, the "owner") of the parcel(s) that is the subject of the proposed zoning map amendment ("owner-initiated application").~~
  - ~~1. *Required signatures on owner-initiated application.* Each owner-initiated application for a zoning map amendment shall be signed by the owner of each parcel that is the subject of the proposed zoning map amendment, provided that:~~
    - ~~a. *Amendments to existing proffers.* An owner whose parcel is subject to proffers may apply to amend the proffers applicable solely to the owner's parcel, provided that written notice of the application is provided to the owners of other parcels subject to the same proffers under Virginia Code §§ 15.2-2204(H) and 15.2-2302. However, the signatures of the owners of the other parcels subject to the same proffers shall not be required.~~

b. ~~Amendments to planned developments.~~ An owner within an existing planned development may apply for a zoning map amendment, and the signatures of any other owners within the planned development is required only if the amendment could result in or require: (i) a change in use, density or intensity on that parcel; (ii) a change to any regulation in a code of development that would apply to that parcel; (iii) a change to an owner's express obligation under a regulation in a code of development; or (iv) a change to the application plan that would apply to that parcel.

2. ~~Documentation.~~ The director of planning may require the applicant to submit documentation establishing ownership of any parcel and the authority of the signatory to sign the application on behalf of the owner.

(§ 33.2, Ord. 12-18(7), 12-5-12, effective 4-1-13)(§ 33.0, 12-10-80; Ord. 01-18(6), 10-3-01)(§ 33.1, 12-10-80)(§ 33.2, 12-10-80)(§§ 33.2.1, 33.2.2, 33.2.3, 12-10-80; 5-5-82)(§ 33.10.2, 12-10-80, 3-10-93))

~~State law reference—~~ Va. Code §§ 15.2-2285, 15.2-2286(A) (4), (7), 15.2-2302.

### ~~33.3 UNIFORM PROCEDURES FOR ZONING TEXT AMENDMENTS AND COUNTY-INITIATED ZONING MAP AMENDMENTS~~

Each zoning text amendment and each county initiated zoning map amendment shall be subject to the following:

a. ~~Determining completeness of the application for zoning map amendment; rejecting incomplete applications.~~ An application that provides all of the information required by the director of planning shall be determined to be complete and be accepted for review and decision.

b. ~~Worksessions and community meetings.~~ The director of planning is authorized to schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, and community meetings, as he determines to be appropriate.

c. ~~Public hearings.~~ Before the board of supervisors acts on a zoning text amendment or a zoning map amendment, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board also shall hold at least one public hearing before acting on the zoning text amendment or zoning map amendment.

d. ~~Notice of public hearings.~~ Notice of public hearings shall be provided as follows:

1. ~~Published and mailed notice.~~ Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204 and Virginia Code § 15.2-2285(C).

2. ~~Posted notice.~~ Notice of the public hearing before the commission and the board of supervisors on each application for a zoning map amendment shall be posted as provided in section 33.4(m)(2) to the extent those provisions are applicable in the context of the application.

e. ~~Time for decision.~~ Decisions shall be made within the following periods:

1. ~~By the commission.~~ Once an application is determined to be complete as provided in

~~subsection (a), it shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval, unless the commission extends the ninety (90) day period.~~

~~2. — By the board of supervisors. An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the board extends the twelve (12) month period.~~

~~3. — Referral. The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board is within the twelve (12) month period provided in subsection (e)(2), unless the twelve (12) month period is extended.~~

~~f. — Judicial review. Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).~~

~~(§ 33.3, Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.4, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.5, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.8, 12-10-80; 6-19-96) (§ 33.8.1, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§§ 33.10, 33.10.1, 12-10-80))~~

~~State law reference — Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A) (4), (7).~~

### **33.4 UNIFORM PROCEDURES FOR ZONING MAP AMENDMENTS NOT INITIATED BY THE COUNTY AND SPECIAL USE PERMITS**

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

~~a. — Pre application meeting. A pre application meeting shall be held with each prospective applicant (the “applicant”), and the applicant shall complete and submit information on county provided forms before submitting an application (collectively, the “pre application meeting”), subject to the following:~~

~~1. — Purposes for a meeting. The purposes for a pre application meeting are to: (i) provide the applicant and the county a common understanding of the proposed project; (ii) inform the applicant about the proposed project’s consistency with the comprehensive plan, other relevant policies, and county regulations; (iii) broadly identify the planning, zoning and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the director to identify the information the applicant must submit with the application, including the supplemental information delineated in subsection (c). Receiving the relevant supplemental information will allow the application to be comprehensively and efficiently reviewed.~~

2. ~~*Factors to consider in requiring meeting.*~~ A pre-application meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations he determines to be relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in subsection (c) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.
- b. ~~*Applications.*~~ Each application shall be composed of a completed county-provided application form and supplemental information (collectively, the “application”) required to review and act on the application.
  1. ~~*Who may file an application.*~~ An application for a zoning map amendment or a special use permit may be filed by the owner, the contract purchaser with the owner’s consent, or the owner’s agent for the purpose of the zoning map amendment or the special use permit. An application for a special use permit also may be filed by the easement holder of an easement where the special use for which the permit is sought is a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.
  2. ~~*Application forms.*~~ The director of planning is authorized to establish appropriate application forms for zoning map amendments and special use permits. The application form shall delineate the supplemental information required to be provided, as set forth in subsection (b)(3).
  3. ~~*When supplemental information may be required; establish or amend conventional districts; amend planned development districts; obtain or amend special use permits.*~~ For each application for a zoning map amendment to establish or amend a conventional district, to amend a planned development district, and for each application to obtain or amend a special use permit, the director of planning may require some or all of the supplemental information delineated in subsection (c) to be submitted with each application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed district, and other considerations he determines to be relevant under sound zoning principles.
  4. ~~*When supplemental information required; establish planned development districts.*~~ Each application to establish a planned development district shall submit all of the supplemental information delineated in subsection (c).
- c. ~~*Elements of the supplemental information.*~~ The supplemental information is the following:
  1. ~~*Project proposal.*~~ A narrative of the project proposal, including its public need or benefit; an application to establish a neighborhood model district shall include a statement describing how the proposed district satisfies the intent of this chapter and if one or more characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.

2. ~~*Comprehensive plan.* A narrative of the proposed project's consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area; an application to establish a neighborhood model district also shall include a narrative as to the project's consistency with the neighborhood model.~~
3. ~~*Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.~~
4. ~~*Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.~~
5. ~~*Proposed proffers to address impacts.* A narrative of the proffers proposed to address impacts from the proposed project.~~
6. ~~*Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions; if the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply.~~
7. ~~*Conceptual plan for zoning map amendments for conventional districts and special use permits.* For an application for a zoning map amendment to establish a conventional district or a special use permit, a conceptual plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross sections to show proportions, scale and streetscape/cross sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; and (ix) conceptual grading.~~
8. ~~*Application plan for zoning map amendments for planned development districts.* For an application to establish a planned development district or to amend an approved application plan for an existing planned development district, an application plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross sections to show proportions, scale and streetscape/cross sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; (ix) conceptual grading; (x) a use table delineating use types, the number of dwelling units, non residential square footage, building stories and/or heights, build to lines, setbacks and yards, and other features; (xi) topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes; (xii) the general layout for water and sewer systems; (xiii) the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas; (xiv) standards of development including proposed yards, open space characteristics, and any landscape or~~

~~architectural characteristics related to scale, proportions, and massing at the edge of the district; (xv) a conceptual lot layout; and (xvi) if the application is to establish a neighborhood model district, the location of proposed green spaces and amenities as provided in section 20A.9.~~

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



~~community development. The director of planning is authorized to establish for each class of application the number of collated copies of the application required to be filed.~~

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

~~project to the board or the commission with the department of community development's analysis of the major issues, seek direction from the board or commission on their expectations in addressing those issues, and to allow the board or commission to receive public comments.~~

- ~~2. *When applicant's consent required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the commission or the board beyond the deadlines in subsection (n).~~
- ~~j. *Community meetings.* A community meeting shall be held for each application, subject to the following:~~
  - ~~1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.~~
  - ~~2. *Factors to consider in requiring meeting.* A community meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting under this subsection unnecessary.~~
  - ~~3. *Guidelines.* The director of planning is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process community meetings should be conducted, and how a community meeting should be conducted including, but not limited to, how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.~~
  - ~~4. *When applicant's consent required.* The applicant's consent to a community meeting shall be required if the community meeting would extend the time for action by the commission or the board beyond the deadlines in subsection (n).~~
- ~~k. *Review of staff comments.* Upon request by the applicant, the director of planning shall meet with the applicant to review comments to the application made by county staff.~~
- ~~l. *Public hearings.* Before the board of supervisors acts on a zoning map amendment or a special use permit, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.~~
- ~~m. *Notice of public hearings.* Notice of public hearings shall be provided as follows:~~
  - ~~1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code §~~

~~15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C); and, for zoning map amendments seeking to amend an existing planned development district, written notice of the proposed amendment also shall be provided to the owner of each parcel within the planned development district and the substance of that notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.~~

~~2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application shall be posted, as follows:~~

~~a. *When sign must be posted.* The sign shall be posted by the zoning administrator at least twenty one (21) days before the commission's public hearing on the application and shall remain posted until the board of supervisors has acted on the application or the application has been withdrawn.~~

~~b. *Where sign to be located.* The sign shall be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and shall be so placed as to be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application shall be deemed to grant consent to the zoning administrator to enter the parcel(s) to erect the signs.~~

~~c. *Content of sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.~~

~~d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the commission or the board of supervisors to defer action on an application until there is reasonable compliance with this subsection.~~

~~e. *Ownership of sign; violation for removing or tampering with sign.* Each sign is the property of the board of supervisors. It shall be unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the zoning administrator.~~

~~f. *Effect of failure to comply.* If the requirements of this subsection to post notice are not complied with:~~

~~1. *Prior to action by board.* The board of supervisors may defer taking action on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.~~

2. ~~Action not invalid.~~ No action on an application shall be declared invalid solely because of the failure to post notice as required by this subsection.
- n. ~~Time for decision.~~ Each application shall be acted on as follows:
1. ~~By the planning commission.~~ An application shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval unless the applicant requests or consents to the ninety (90) day period being extended.
  2. ~~By the board of supervisors.~~ An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
  3. ~~Tolling.~~ The period in which action is required by the commission or the board of supervisors shall be tolled during any period in which the applicant has requested that the review of the application be suspended or the public hearings or action thereon be deferred or continued.
  4. ~~Referral.~~ The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board of supervisors is within twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
- o. ~~Recommendation by commission.~~ The commission shall either recommend approval of the application as proposed, approval subject to changes being made prior to action by the board of supervisors, or disapproval. For any application for a zoning map amendment, the commission's recommendation also should include its recommendations on proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of development, the code of development, and any special exception requested by the applicant under section 8.2. For any application for a special use permit, the commission's recommendation should include its recommendations on the proposed conditions.
- p. ~~Action by the board of supervisors.~~ The board of supervisors may either approve or deny the application, or defer action to allow changes to be made prior to final action by the board. In approving an application for a zoning map amendment, the board may accept the proposed proffers as provided in section 33.7. In approving an application for a special use permit, the board may impose conditions as provided in section 33.8.
- q. ~~Intensification of use classification prohibited without additional notice and hearing.~~ No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).

r. ~~*Withdrawal of application.* An application may be withdrawn, or be deemed to be withdrawn, as provided herein:~~

1. ~~*Request to withdraw by applicant.* An application may be withdrawn upon written request by the applicant. The written request must be received by the body considering the application prior to it beginning consideration of the matter on the meeting agenda. Upon receipt of the request for withdrawal, processing of the application shall cease without further action by the commission or the board of supervisors. An applicant may not submit an application that is substantially the same as the withdrawn application within one (1) year of the date of withdrawal unless the body considering the application at the time of withdrawal specifies that the time limitation shall not apply.~~

2. ~~*When application deemed withdrawn.* An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the commission or the board of supervisors is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the director of planning before the one (1) year period expires, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the clerk of the board of supervisors before the extension of the deferral period granted by the director expires, the board of supervisors may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the proposed use, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.~~

s. ~~*Resubmittal of similar denied application.* An applicant may not submit an application that is substantially the same as the denied application within one (1) year after the date of the denial.~~

t. ~~*Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).~~

~~((§ 33.2, 12-10-80) (§ 33.4, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.5, 12-10-80; Ord. 03-18(2), 3-19-03) (§ 33.6, 12-10-80) (§ 33.7, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8, 12-10-80, 6-19-96) (§ 33.8.1, 12-10-80, 6-19-96; Ord. 01-18(6), 10-3-01) (§ 33.8.2, 12-10-80, 6-19-96) (§ 33.8.3, 12-10-80, 6-19-96); §33.4, Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 14-18(2), 3-5-14; Ord. 16-18(3), 4-6-16; Ord. 16-18(4), 4-6-16)~~

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

### **33.5 UNIFORM PROCEDURES FOR SPECIAL EXCEPTIONS**

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

a. ~~*Matters requiring a special exception.* Notwithstanding any other section of this chapter:~~

1. ~~Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board of supervisors, provided that no special exception shall be required for the development and construction of residential dwellings~~

~~at the use, height and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.~~

- ~~2. Any requirement for a decision by the commission required by this chapter shall be considered and acted upon by the board of supervisors. For the purposes of this section, a decision by the commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any variation or exception provided in section 32.~~
- ~~b. *Application.* Each application for a special exception shall be made as provided by, and include the information required by, the applicable section of this chapter authorizing the waiver, modification, variation or substitution.~~
  - ~~1. *Who may file an application.* An application for a special exception may be filed by the owner, the contract purchaser with the owner's consent, or the owner's agent for the purpose of the special exception, or by the easement holder of an easement where the waiver, modification, or variation for which the special exception is sought pertains to a use allowed by the deed of easement or equivalent instrument. The director of planning is authorized to require from the applicant any documentation deemed necessary to determine that the person filing the application is an eligible applicant.~~
  - ~~2. *When application deemed officially submitted.* An application shall be deemed to be officially submitted when the applicant has submitted all of the required information as determined by the director of planning.~~
- ~~c. *Public hearings.* Before the board of supervisors acts on a special exception that would increase by greater than fifty (50) percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.~~
- ~~d. *Notice to owner of application for special exception filed by easement holder when application determined to be complete.* Within ten (10) days after an application for a special exception filed by an easement holder is determined to be complete, written notice of the proposed special exception shall be provided to the owner of the lot for which the special exception is sought as required by Virginia Code § 15.2-2204(H).~~
- ~~e. *Notice of public hearings.* Notice of public hearing before the commission and the board of supervisors on an application for which a public hearing is required under subsection (c) shall be provided as required by Virginia Code § 15.2-2204(C).~~
- ~~f. *Time for decision.* Each application for a special exception shall be acted on by the board of supervisors within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.~~
- ~~g. *Recommendation by planning commission.* For those applications considered by the commission, the commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the board of supervisors,~~

~~or disapproval. The commission's recommendation should include its recommendations on the proposed conditions.~~

- ~~h. *Action by the board of supervisors.* The board of supervisors may either approve the application, deny the application, or defer action to allow changes to be made prior to final action by the board. In approving the application, the board may impose conditions as provided in section 33.9.~~
- ~~i. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).~~

~~(§ 33.5, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 31.8, Ord. 12-18(1), 2-8-12; Ord. 16-18(3), 4-6-16)~~

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

### ~~**33.6 ZONING TEXT AMENDMENTS AND ZONING MAP AMENDMENTS; RELEVANT FACTORS TO BE CONSIDERED; EFFECT OF APPROVAL**~~

~~A zoning text amendment or a zoning map amendment shall be subject to the following:~~

- ~~a. *Basis to act.* The board of supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires. The commission shall consider these bases when making a recommendation on an application.~~
- ~~b. *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 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; and (xiii) the encouragement of the most appropriate use of land throughout the county.~~
  - ~~1. *Additional factors to be considered when acting; application to establish planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, the commission and the board of supervisors shall consider the following when reviewing an application to establish a planned development district: (i) whether the proposed planned development satisfies the purpose and intent of the planned development district; (ii) whether the area proposed to be rezoned is appropriate for a planned development under the comprehensive plan; and (iii) the relation of the proposed planned development to major roads, utilities, public facilities and services.~~
  - ~~2. *Additional factors to be considered when acting; application to amend existing planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, including those in subsections (b) and (b)(1), the commission and the board of supervisors shall consider the following when reviewing an application to amend an existing planned development district: (i) whether the proposed amendment~~

reduces, maintains or enhances the elements of a planned development set forth in section 8.3; and (ii) the extent to which the proposed amendment impacts the other parcels within the planned development district.

- c. ~~*Effect of approval.* The board of supervisors' approval of a zoning map amendment shall constitute acceptance of the proffers and also, for any application to establish or amend a planned development district, approval of the application plan, all standards of development, the code of development, and any waivers or modifications it has approved by special exception as provided under section 8.2. The district designation, the accepted proffers, and, if applicable, the approved application plan, standards of development, and code of development, and, if applicable, the special exception shall be included as part of the zoning regulations applicable to parcel(s) that were the subject of the zoning map amendment.~~

(§ 33.6, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 33.9, 12-10-80)

~~State law reference~~ — Va. Code §§ 15.2-2284, 15.2-2285, 15.2-2286(A)(7).

### **33.7 OWNER-INITIATED ZONING MAP AMENDMENTS; AUTHORITY TO ACCEPT PROFFERS**

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

- a. ~~*Purpose.* Proffers are conditions that are intended to provide for the protection of the community that are not generally applicable to land similarly zoned. Accordingly, proffers are reasonable conditions that are in addition to the regulations provided for the district under this chapter.~~
- b. ~~*Form.* Proffers shall be in writing and in a form that is approved by the county attorney. The director of planning is authorized to provide applicants with a proffer statement form.~~
- c. ~~*Timing of submittal.* Proffers, signed by the owner of all parcels subject to the zoning map amendment, shall be submitted to the department of community development prior to the public hearing before the board of supervisors on the proposed public hearing. The director of planning is authorized to establish written guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing so as to allow the county and members of the public a reasonable period of time to review the proffers.~~
- d. ~~*Amendments to proposed proffers after public hearing has begun.* The board of supervisors may accept, in its sole discretion, amended proffers once the public hearing on the zoning map amendment has begun if it concludes that the amended proffers do not materially affect the overall proposal. If amended proffers are submitted after the public hearing is closed, the board may accept, in its sole discretion, the amended proffers after holding another public hearing.~~
- e. ~~*Effect of proffers once accepted.* Once proffered and accepted by the board of supervisors in conjunction with an approved zoning map amendment, the proffers shall continue in effect until a subsequent zoning map amendment changes the zoning of the parcel(s) subject to the proffers; provided that the proffers shall continue in effect if the subsequent zoning map amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.~~
- f. ~~*Subsequent amendments to proffers.* Once accepted by the board of supervisors in conjunction with an approved zoning map amendment, proffers may be amended by an owner-initiated zoning map~~



amendment. An application to amend proffers shall be subject to the procedures under section 33.4, provided that if the proposed amendment solely pertains to amending proffers that do not affect conditions of use or density and, following consultation with the director of planning, the applicant submits a request to the clerk of the board of supervisors before filing an application for a zoning map amendment under section 33.4(b):

1. ~~Waiver of requirement for public hearings.~~ The board of supervisors may waive the requirement for a public hearing by the commission or by the board of supervisors, or both, and the associated notice requirements, as otherwise required under section 33.4; and, if the board waives the requirement for a public hearing by the commission, it also may waive the requirement for a recommendation from the commission.
2. ~~Waiver of procedural requirements.~~ The board may waive one or more of the procedural requirements in subsections 33.4(a), (i), and (j).
3. ~~Waiver of application requirements.~~ The board may waive any supplemental information which may otherwise be required to accompany an application under subsections 33.4(b)(2) and (c), and determine the number of copies of the application that must be filed.

~~(§ 33.7, Ord. 12-18(7), 12-5-12, effective 4-1-13 (§ 33.3, 12-10-80; 4-4-90; Ord. 07-18(1), 7-11-07) (§ 33.3.1, 12-10-80; 4-4-90; Ord. 16-18(4), 4-6-16)~~

~~State-law reference—Va. Code §§ 15.2-2296, 15.2-2302, 15.2-2303.~~

### **~~33.8 SPECIAL USE PERMITS; RELEVANT FACTORS TO BE CONSIDERED; CONDITIONS; REVOCATION~~**

Special use permits shall be subject to the following:

- 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).~~
- e. ~~Conditions related to residential uses. Any conditions imposed in connection with residential special use permits: (i) shall be consistent with the objective of providing affordable housing if the applicant proposes affordable housing; and (ii) shall consider the impact of the conditions on the affordability of housing where the conditions specify the materials and methods of construction or specific design features.~~
- d. ~~Conditions deemed to be essential and nonseverable. Except as the board of supervisors may specify in a particular case, any condition imposed on a special use shall be deemed to be essential and nonseverable from the permit itself and any condition determined to be invalid, void or unlawful shall invalidate the special use permit.~~
- e. ~~Revocation for noncompliance with conditions. A special use permit may be revoked by the board of supervisors after a public hearing if the board determines that there has not been compliance with the conditions of the permit. Notice of the public hearing shall be as provided in Virginia Code § 15.2-2204, provided that the written notice provided by the board of supervisors to the owners, their agents, or the occupants of abutting parcels and parcels immediately across the street from the parcel(s) subject to the special use permit, the board of supervisors may be given by first class mail rather than by registered or certified mail.~~

(§ 33.8, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 31.6.1, § 31.2.4, 12-10-80; Ord. 09-18(3), 7-1-09)

~~State law reference~~—Va. Code §§ 15.2-2286(A)(3), 15.2-2309(7).

### **~~33.9 SPECIAL EXCEPTIONS; RELEVANT FACTORS TO BE CONSIDERED; CONDITIONS~~**

~~Special exceptions shall be subject to the following:~~

- a. ~~Factors to be considered when acting. In acting upon a special exception, the board of supervisors shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the board shall not be required to make specific findings in support of its decision.~~

b. ~~Conditions. In approving a special exception, the board of supervisors may impose reasonable conditions to address any possible impacts of the special exception.~~

~~(§ 33.9, Ord. 12-18(7), 12-5-12, effective 4-1-13; § 31.8, Ord. 12-18(1), 2-8-12)~~

~~State law reference—Va. Code § 15.2-2286(A)(3).~~

**Comment:** Section 33 is amended, renumbered, and reorganized to provide the procedures for each of five legislative actions (zoning text amendments, zoning map amendments initiated by the county, zoning map amendments initiated by an owner, special use permits, and special exceptions) in their own division. This will allow the reader to more easily understand the procedural and substantive requirements for each legislative action. The language style has been standardized and staff has endeavored to write the regulations in “plain English.”

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 for deferring action, requesting action after deferral, withdrawing an application (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 the Board of Supervisors’ decision on a ZMA or SP (current County Code § 18-33.4(t)).

## **Division 1. Zoning Text Amendments**

### **Sec. 33.1 Introduction.**

This division establishes the procedures and requirements for amending the text of this chapter by adopting an ordinance (as used in this division, a “zoning text amendment”). The Board of Supervisors may adopt a zoning text amendment whenever the public necessity, convenience, general welfare, or good zoning practices requires. The Commission shall consider these bases when making a recommendation on a zoning text amendment.

State law reference-Va. Code §§ 15.2-2280, 15.2-2285, 15.2-2286.

**Comment:** Section 33.1 consolidates the purpose and intent language of current sections 33.1 and

**33.2 (introductory paragraph), as well as the basis for the Board to amend the zoning ordinance stated in current section 33.6(a).**

**Sec. 33.2 Initiating a zoning text amendment.**

A zoning text amendment may be initiated as follows:

- A. *By the Board of Supervisors.* The Board of Supervisors may initiate a zoning text amendment by adopting a resolution.
- B. *By the Commission.* The Commission may initiate a zoning text amendment by adopting either a motion or a resolution.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.2 is current section 33.2(a). Under State law, the Commission is enabled to initiate a zoning text amendment by motion, though the longstanding Commission practice is to do so by resolution.**

**Sec. 33.3 Worksessions, stakeholder meetings, community meetings, and other public engagement.**

The Director of Planning may schedule worksessions before the Board of Supervisors, the Commission, and the Architectural Review Board, if applicable. The Director is also authorized to hold stakeholder meetings, community meetings, and other forms of public engagement, as the Director determines to be appropriate or as directed by the Board of Supervisors or the Commission, to consider any proposed zoning text amendment.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.3 is current section 33.3(b), which refers to community meetings and worksessions. In this revised section, “stakeholder meetings” are added.**

**Sec. 33.4 Public hearings; notice.**

Public hearings on a proposed zoning text amendment are required as follows:

- A. *When public hearings are required.* The Commission shall hold at least one public hearing before it makes its recommendation to the Board of Supervisors. After the Board receives the recommendation from the Commission, it shall hold at least one public hearing before acting.
- B. *Notice of public hearings, generally.* The Department of Community Development shall provide notice of the public hearings before the Commission and the Board pursuant to Virginia Code § 15.2-2204.
- C. *Notice of public hearings, imposing or increasing fees.* The Department of Community Development shall provide notice of the public hearings before the Commission and the Board of Supervisors pursuant to Virginia Code §§ 15.2-107 and 15.2-2204 if the proposed zoning text amendment would impose or increase fees under this chapter.

State law reference-Va. Code §§ 15.2-107, 15.2-2204, 15.2-2285, 15.2-2286.

**Comment:** Section 33.4 is current sections 33.3(c) and (d), revised to apply only to zoning text amendments. Subsection (C) is new but it does not impose a new requirement.

#### **Sec. 33.5 Recommendation by the Planning Commission.**

The Commission shall act on a proposed zoning text amendment as follows:

- A. *Recommendation.* The Commission shall either recommend approval of the zoning text amendment as proposed, approval of the zoning text amendment with recommended changes to the text, or disapproval.
- B. *Factors to be considered.* In making its recommendation, the Commission shall consider the same factors considered by the Board of Supervisors pursuant to Section 33.6.
- C. *Time for recommendation.* The Commission shall make its recommendation on the proposed zoning text amendment within 90 days after the first Commission meeting at which it is considered. The Commission's failure to make a recommendation within the 90-day period is deemed to be a recommendation of approval, unless the Commission extends the 90-day period. If the Commission extends the 90-day period, the Board may at any time direct the Commission to make a recommendation before the deadline established by the Board.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285.

**Comment:** Section 33.5(A) is new for zoning text amendments but does not impose a new requirement. Section 33.5(B) is current section 33.6(b). Section 33.5(C) is current section 33.3(e)(1) and is required by Virginia Code § 15.2-2285(B) (which requires a recommendation in 100 days or a shorter period prescribed by the ordinance). The language in Section 33.5(C) is greatly simplified because, for a zoning text amendment, there is no "applicant" to which the current 90-day trigger normally applies; the 90-day period is also an outside period; the expectation is that the Commission will not need the full 90-day period between, for example, a first worksession on a zoning text amendment and the date on which it makes its recommendation. The last clause of Section 33.5(C) ("unless the Commission extends the 90-day period") is new to expressly authorize the County to extend the time for a Commission recommendation its own application.

#### **Sec. 33.6 Action by the Board of Supervisors.**

The Board of Supervisors shall act on a proposed zoning text amendment as follows:

- A. *Action.* The Board may either adopt the zoning text amendment, defer action to allow further amendments to the text to be made, not adopt the zoning text amendment, or refer the matter back to the Commission for further consideration and recommendation within the time for an action provided in subsection (C).
- B. *Factors to be considered.* In acting on a zoning text amendment, the Board shall reasonably consider the following factors: (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 community's transportation requirements; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services; (viii) the conservation of natural resources; (ix) preserving flood plains; (x) protecting life and property from impounding structure failures; (xi) preserving agricultural and forestal land; (xii)

conserving properties and their values; and (xiii) encouraging the most appropriate use of land throughout the County. The Board's failure to expressly consider all of these factors does not invalidate its action.

- C. *Time for action.* The Board shall act on a zoning text amendment within a reasonable period as may be necessary not to exceed 12 months after the first meeting at which it was considered by the Commission, unless the Board extends the 12 month period.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285, 15.2-2286.

**Comment:** Section 33.6(A) is new for zoning text amendments but does not impose a new requirement. Section 33.6(B) is current section 33.6(B). Section 33.6(C) is current sections 33.3(e)(2) and (3) and is required by Virginia Code § 15.2-2286(7) (which requires action within 12 months). The calculation of the 12 month period has been simplified and changed to be consistent with the changes to Section 33.5. The last clause of Section 33.6(C) ("unless the board extends the twelve (12) month period") is new to expressly authorize the County to extend the time for board action on its own application.

**Comment:** There are two subsections in the current regulations that are not addressed in this division or in this ordinance at all: (1) current section 33.3(a), which pertains to the completeness of an application for, among other types of applications, a zoning text amendment; under the current and prior regulations, the County has allowed anyone to apply for a zoning text amendment and once that application is filed, it goes to either the Commission or the Board to consider whether to adopt a resolution of intent; this procedure is neither provided for or required under Virginia law; without this procedure, any person may nonetheless persuade a Commissioner or a Board member to ask staff to analyze an amendment to the text and have the matter come to the Commission or the Board to consider adopting a resolution; and (2) current section 33.3(f), which states that any action contesting a decision of the Board shall be as provided in Virginia Code § 15.2-2285(C). This provision is unnecessary.

## **Division 2. Zoning Map Amendments Initiated by the County**

### **Sec. 33.7 Introduction.**

This division establishes the procedures and requirements for amending the zoning map when the proposed amendment is initiated by the County (as used in this division, a "zoning map amendment"). The Board of Supervisors may adopt a zoning map amendment whenever the public necessity, convenience, general welfare, or good zoning practice requires.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285 15.2-2286.

**Comment:** Section 33.7 consolidates the purpose and intent language of current sections 33.1 and 33.2 (introductory paragraph), as well as the basis for the Board to amend the zoning ordinance stated in current section 33.6(a).

### **Sec. 33.8 Initiating a zoning map amendment.**

A zoning map amendment may be initiated by the County as follows:

- A. *By the Board of Supervisors.* The Board of Supervisors may initiate a zoning map amendment by adopting a resolution.

- B. *By the Planning Commission.* The Planning Commission may initiate a zoning map amendment by adopting either a motion or a resolution.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.8 is current section 33.2(a). Under State law, the Commission is enabled to initiate a zoning map amendment by motion, though the longstanding Commission practice is to do so by resolution.**

**Sec. 33.9 Worksessions, stakeholder meetings, community meetings, and other public engagement.**

The Director of Planning may schedule worksessions before the Board of Supervisors, the Commission, and the Architectural Review Board, if applicable. The Director is also authorized to hold stakeholder meetings, community meetings, and other forms of public engagement, as the Director determines to be appropriate or as directed by the Board of Supervisors or the Commission, to consider any proposed zoning map amendment initiated by the County.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.9 is current section 33.3(b).**

**Sec. 33.10 Public hearings; notice.**

Public hearings on a proposed zoning map amendment are required as follows:

- A. *When public hearings are required.* The Commission shall hold at least one public hearing before it makes its recommendation to the Board of Supervisors. After the Board receives the recommendation from the Commission, it shall hold at least one public hearing before acting.
- B. *Notice of public hearings.* Notice of the public hearings shall be provided as follows:
1. *Published and mailed notice.* The Department of Community Development shall provide notice of the public hearings before the Commission and the Board as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
  2. *Posted notice.* The Department of Community Development shall post notice of the public hearings by posting one or more signs as follows:
    - a. *When a sign must be posted.* The sign shall be posted at least 21 days before the Commission's public hearing and shall remain posted until the Board has acted on the zoning map amendment.
    - b. *Where a sign is to be located.* The sign shall be erected within 10 feet of each boundary line of the parcel(s) that is the subject of the zoning map amendment abutting a street and shall be placed so that it is clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the zoning map amendment is approved is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign

would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land that is not subject to the zoning map amendment in locations that are most conspicuous to the public. Before posting a sign on a parcel, the Zoning Administrator shall obtain the consent of the owner to do so if the parcel is not owned by the County.

- c. *Content of a sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
- d. *Maintaining the sign.* The County shall endeavor to protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible.
- e. *Ownership of a sign; violation for removing or tampering with a sign.* Each sign is the property of the County. It is unlawful for any person to remove or tamper with any sign, except the County or its employees or authorized agents performing maintenance required by this subsection.
- f. *Effect of failure to comply.* If the Department of Community Development fails to post any sign required by this subsection (B)(2):
  - 1. *Prior to action by the Board.* The Board may defer acting on a zoning text amendment if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
  - 2. *Action is not invalid.* Neither the Commission's recommendation nor the Board's approval of a zoning map amendment is invalid solely because of the failure to post notice as required by this subsection.

State law reference-Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286.

**Comment:** Section 33.10 is current sections 33.3(c) and (d), and 33.4(m)(2), revised to apply only to zoning map amendments initiated by the County.

### **Sec. 33.11 Recommendation by the Planning Commission.**

The Commission shall act on a proposed zoning map amendment as follows:

- A. *Recommendation.* The Commission shall either recommend approval of the zoning map amendment as proposed, approval of the zoning map amendment with recommended changes, or denial of the application.
- B. *Factors to be considered.* In making its recommendation, the Commission shall consider the same factors considered by the Board of Supervisors pursuant to section 33.12.
- C. *Time for recommendation.* The Commission shall make its recommendation on the proposed zoning map amendment within 90 days after the first Commission meeting at which it is considered. The failure of the Commission to make a recommendation on the matter within the 90-day period shall be deemed to be a recommendation of approval, unless the Commission extends the 90-day period.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285, 15.2-2286.



**Comment:** Section 33.11(A) is new for zoning map amendments initiated by the County but does not impose a new requirement. Section 33.11(B) is current section 33.6(b). Section 33.11(C) is current section 33.3(e)(1) and is required by Virginia Code § 15.2-2285(B) (which requires a recommendation in 100 days or a shorter period prescribed by the ordinance). The language is greatly simplified because, for a zoning map amendment initiated by the County, there is no “applicant” to which the current 90-day trigger normally applies; the 90-day period is also an outside period; the expectation is that the Commission will not need the full 90-day period between, for example, a first worksession on a zoning map amendment and the date on which it makes its recommendation. The last clause of Section 33.11(C) (“unless the Commission extends the 90-day period”) is new to expressly authorize the County to extend the time for a Commission recommendation for its own application.

### **Sec. 33.12 Action by the Board of Supervisors.**

The Board of Supervisors shall act on a proposed zoning map amendment as follows:

- A. *Action.* The Board may either adopt the zoning map amendment, deny the application for a zoning map amendment, or refer the matter back to the Commission for further consideration and recommendation within the time for an action provided in subsection (C). The Board may not adopt a zoning map amendment allowing a more intensive use, or including more land, than was contained in the public notice without an additional public hearing after notice is provided pursuant to Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- B. *Factors to be considered.* In acting on a zoning map amendment, the Board shall reasonably consider the following factors: (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 community’s transportation requirements; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services; (viii) the conservation of natural resources; (ix) preserving flood plains; (x) protecting life and property from impounding structure failures; (xi) preserving agricultural and forestal land; (xii) conserving properties and their values; and (xiii) encouraging the most appropriate use of land throughout the County. The Board’s failure to expressly consider all of these factors does not invalidate its action.
- C. *Time for action.* The Board shall act on a zoning text amendment within a reasonable period as may be necessary, not to exceed 12 months after the first meeting at which it was considered by the Commission, unless the Board extends the 12 month period.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285, 15.2-2286.

**Comment:** Section 33.12(A) is new for zoning text amendments but does not impose a new requirement. The last sentence of Section 33.12(A) does not impose a new requirement; it is an element of Virginia law that is partially covered in current section 33.4(q), a section that applies only to zoning map amendments initiated by an owner. Section 33.12(B) is current section 33.6(b). Section 33.12(C) is current sections 33.3(e)(2) and (3) and is required by Virginia Code § 15.2-2286(7) (which requires action within 12 months). The calculation of the 12 month period has been simplified and changed to be consistent with the changes to Section 33.11. The last clause of Section 33.12(C) (“unless the Board extends the 12 month period”) is new to expressly authorize the County to extend the time for Board action on its own application.

**Comment:** There are two subsections in the current regulations that are not addressed in this division or in this ordinance at all: (1) current section 33.3(a), which pertains to the completeness of an application for, among other types of applications, a zoning map amendment initiated by the County; this procedure is unnecessary for this type of application; and (2) current section 33.3(f), which states that any action contesting a decision of the Board shall be as provided in Virginia Code § 15.2-2285(C). This statute is self-executing and does not need to be in the Zoning Ordinance.

### **Division 3. Zoning Map Amendments Initiated by an Owner**

#### **Sec. 33.13 Introduction.**

This division establishes the procedures and requirements for amending the zoning map when the amendment is initiated by an owner or other persons authorized by Section 33.15 (as used in this division, a “zoning map amendment”). The Board of Supervisors may adopt a zoning map amendment whenever the public necessity, convenience, general welfare, or good zoning practice requires.

State law reference-Va. Code §§ 15.2-2280, 15.2-2284, 15.2-2285 15.2-2286.

**Comment:** Section 33.13 consolidates the purpose and intent language of current sections 33.1 and 33.2 (introductory paragraph), as well as the basis for the Board to amend the zoning ordinance stated in current section 33.6(a).

#### **Sec. 33.14 Pre-application meeting.**

Any prospective applicant for a zoning map amendment shall request and hold a meeting with the Department of Community Development before filing an application to the County. This meeting is referred to as the “pre-application meeting.”

- A. *Submitting information.* The applicant shall complete and submit information on County-provided forms before or during the pre-application meeting.
- B. *Purposes for a pre-application meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the County a common understanding of the proposed project; (ii) inform the applicant about the proposed project’s consistency with the Comprehensive Plan, other relevant policies, and County regulations; (iii) broadly identify the planning, zoning, and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the Director of Planning to identify the information the applicant must submit with the application pursuant to Sections 33.16 through 33.19.
- C. *When a pre-application meeting is not required.* The Director may exercise discretion and decide that a pre-application meeting is not required upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale, potential impacts, and other relevant considerations applying sound zoning principles do not warrant a pre-application meeting; (ii) whether the information that may be required pursuant to Sections 33.16 through 33.19 can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Section 33.14 is current section 33.4(a).

**Sec. 33.15 Application for a zoning map amendment.**

Each application for a zoning map amendment is subject to the following:

- A. *Who may file an application.* An owner, a contract purchaser with the owner's consent, or the owner's authorized agent may file an application for a zoning map amendment (collectively in this division, the "owner" or the "applicant"). In addition:
1. *Amendments to existing proffers.* Proffers that have been accepted by the Board of Supervisors in conjunction with a zoning map amendment may be amended by a later zoning map amendment. An owner whose parcel is subject to proffers may apply to amend the proffers applicable solely to that owner's parcel. An application to amend proffers is subject to the procedures and requirements of this division, provided that the requirements described below may be waived if the proposed amendment solely pertains to amending proffers that do not affect conditions of use or density and, following consultation with the Director of Planning, the applicant submits a request to the Clerk of the Board before submitting its application for a zoning map amendment:
    - a. *Waiving the requirement for public hearings.* The Board may waive the requirement for a public hearing by the Commission or by the Board, or both, and the associated notice requirements, as otherwise required by this division; and, if the Board waives the requirement for a public hearing by the Commission, it also may waive the requirement for a recommendation from the Commission.
    - b. *Waiving procedural requirements.* The Board may waive one or more of the procedural requirements in Sections 33.14, 33.22, and 33.23.
    - c. *Waiving application requirements.* The Board may waive any supplemental information which may otherwise be required to be submitted with an application under Sections 33.16 through 33.19, and determine the number of copies of the application that must be filed.
  2. *Amendments to existing planned developments.* An owner within an existing planned development may apply for a zoning map amendment applicable solely to that owner's parcel if it would not result in or require: (i) a change in use, density, or intensity on any other parcel in the planned development; (ii) a change to any regulation in a code of development that would apply to any other parcel in the planned development; (iii) a change to any other owner's express obligation under a regulation in a code of development; or (iv) a change to the application plan that would apply to any other parcel in the planned development.
- B. *Who must sign an application.* The application shall be signed by the owner of each parcel that is the subject of the proposed zoning map amendment. In addition:
1. *Amendments to existing proffers.* The signatures of the owners of any other parcels subject to the same proffers are not required when an owner applies to amend the proffers applicable solely to its parcel.
  2. *Amendments to existing planned developments.* The signatures of any other owners within an existing planned development are not required if the owner-applicant is eligible to apply for a zoning map amendment applicable solely its parcel as provided in subsection (A)(2).

- C. *Documentation regarding the authority to apply.* The Director of Planning may require the applicant to submit documentation establishing ownership of any parcel that is the subject of the application and the authority of each signatory to sign the application on behalf of the owner.
- D. *Application forms.* The Director of Planning may establish appropriate application forms for zoning map amendments. The application forms may identify the information required to be provided pursuant to Sections 33.16 through 33.19.
- E. *Information submitted with an application.* Each application shall include the information identified in Sections 33.16 through 33.19, as applicable, provided that the Director of Planning may, upon written request received from the owner, determine that the owner is not required to provide certain information, depending on: (i) the nature or extent of the proposed zoning map amendment; (ii) the proposed use; (iii) the proposed density; (iv) the proposed district; (v) whether the application is to establish or amend a planned development district, including a neighborhood model district; and (vi) other considerations the Director determines to be relevant applying sound zoning principles.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286, 15.2-2302.

**Comment:** Section 33.15(A) is current sections 33.2(b)(iii), 33.4(b)(1). Section 33.15(A)(1) is current section 33.7(f). Section 33.15(A)(2) is current section 33.2(b)(1)(b). Section 33.15(B) is based on current sections 33.2(b)(1)(a) and (b). Section 33.15(C) is current section 33.2(b)(1). Section 33.15(D) is current section 33.4(b)(2). Section 33.15(E) is current section 33.4(b)(3) and (4); Section 33.15(E) also revises the criteria for the Director of Planning in deciding whether the owner is allowed to not provide certain information. Section 33.15(F) is current section 33.4(f)(first sentence).

**Sec. 33.16 Information submitted with application; all applications.**

Each application for a zoning map amendment shall include the following information:

- A. *Project proposal.* A narrative of the project proposal, including its public need or benefit.
- B. *Comprehensive Plan.* A narrative of the proposed project's consistency with the Comprehensive Plan, including the land use plan and the master plan for the applicable development area.
- C. *Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.
- D. *Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.
- E. *Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions.
- F. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.
- G. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application and all other related documents.

- H. *Contact person.* The name, address, telephone number, and email address of a single contact person for communications between the county and the applicant.
- I. *Payment of delinquent taxes and other charges.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the parcel that is the subject of the application, that are owed to the County, and have been properly assessed against the parcel, have been paid.
- J. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the County on the pre-application comment form.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Section 33.16 is current section 33.4(e)(1), (2), (3), (4), (5), (6)(part), (13), (14), (15), and (16), and section 33.4(d) (payment of delinquent taxes and other charges).

**Sec. 33.17 Information submitted with application; conventional districts.**

In addition to the information that may be required by Section 33.16, each application for a zoning map amendment to establish or amend a conventional district shall include a conceptual plan showing, as applicable:

- A. *Street network.* The street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project.
- B. *Cross-sections.* Typical street cross-sections to show proportions, scale and streetscape/cross-sections/circulation.
- C. *Pedestrian and bicycle facilities.* The general location of pedestrian and bicycle facilities.
- D. *Buildings and parking.* Building envelopes and parking envelopes.
- E. *Public areas.* Public spaces and amenities.
- F. *Conservation and preservation areas.* Areas to be designated as conservation areas and preservation areas.
- G. *Stormwater management.* Conceptual stormwater detention facility locations.
- H. *Grading.* Conceptual grading.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Section 33.17 is current section 33.4(e)(7).

**Sec. 33.18 Information submitted with application; planned development districts, including neighborhood model districts.**

In addition to the information that may be required by Section 33.16, each application for a zoning map amendment to establish or amend a planned development district, including a neighborhood model district, shall include the following information:

- A. *Map*. If the application is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district. The map shall also identify any area to be added to or deleted from the district, or identify the area to which the amended application plan, code of development, proffers, or any special use permit or special exception would apply.
- B. *Application plan*. If the application is to establish a planned development district, including a neighborhood model district, or to amend an approved application plan for an existing district, the applicant shall submit an application plan showing, as applicable:
1. *Street network*. The street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project.
  2. *Cross-sections*. Typical street cross-sections to show proportions, scale, and streetscape/cross-sections/circulation.
  3. *Pedestrian and bicycle facilities*. The general location of pedestrian and bicycle facilities.
  4. *Buildings and parking*. Building envelopes and parking envelopes.
  5. *Public areas*. Public spaces and amenities.
  6. *Conservation and preservation areas*. Areas to be designated as conservation areas and preservation areas.
  7. *Stormwater management*. Conceptual stormwater detention facility locations.
  8. *Grading*. Conceptual grading.
  9. *Use table*. A use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features.
  10. *Topography*. Topography, using the County's geographic information system or more accurate topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing steep slopes.
  11. *Water and sewer systems*. The general layout for water and sewer systems.
  12. *Central features and major elements*. The location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities, and recreation areas.
  13. *Development standards*. Development standards, including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district.
  14. *Lot layout*. A conceptual lot layout.

15. *Green spaces and amenities.* If the application is to establish a neighborhood model district, the location of proposed green spaces and amenities as provided in Section 20A.9.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.18(A) is current section 33.4(e)(6)(part). Section 33.18(B) is current section 33.4(e)(8).**

**Sec. 33.19 Information submitted with application; neighborhood model districts.**

In addition to the information that may be required by Sections 33.16 and 33.18, if the application is to establish a neighborhood model district, the applicant shall provide the following information:

- A. *Statement.* A statement describing how the proposed district satisfies the intent of this chapter and, if one or more characteristics of the neighborhood model delineated in Section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.
- B. *Neighborhood model principles.* A narrative explaining the project's consistency with the neighborhood model as described in the Comprehensive Plan.
- C. *Code of development.* A code of development satisfying the requirements of Section 20A.5.
- D. *Parking and loading needs study.* A parking and loading needs study that demonstrates parking needs and requirements. The study shall include strategies to address the parking needs and requirements, including phasing plans, parking alternatives as provided in Section 4.12.8, and transportation demand management strategies as provided in Section 4.12.12. The Director of Planning may authorize the applicant to submit the parking and loading needs study in conjunction with the initial site plan for the development if the applicant shows to the Director's satisfaction that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
- E. *Stormwater management.* Strategies to establish shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing to establish stormwater management facilities.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment: Section 33.19 is current section 33.4(e)(1)(part), (2)(part), (9), (10) and (11).**

**Sec. 33.20 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.**

Each application for a zoning map amendment shall be filed as follows:

- A. *Where to file.* The application shall be filed in the Department of Community Development.
- B. *Number of copies to file.* The Director of Planning may establish for each class of application the number of collated copies of the application required to be filed, to accept electronic applications for filing, or both.

- C. *Determining completeness of the application.* The Director of Planning shall review each filed application as follows:
1. *Timing of the determination of completeness.* The Director shall determine whether an application is complete within 10 days after the application was received. An application that provides all of the required information shall be determined to be complete and be accepted for review and decision. An application omitting any required information is incomplete and shall be deemed to not be filed and shall not be accepted for review and action.
  2. *Informing an applicant if the application is incomplete.* If the Director determines that an application is incomplete, he shall inform the applicant by letter identifying what information must be submitted in order for the application to be complete. The letter shall be sent by first class mail or, if consented to by the applicant in writing, by fax or email (collectively, “sent”), or be personally delivered. The letter shall be sent or personally delivered within 10 days after the application was received.
  3. *Effect if a timely determination is not made.* If the Director does not send or personally deliver the letter as provided in subsection (C)(2) within the 10-day period, the application shall be deemed to be complete, provided that: (i) the Director may require the applicant to later provide the omitted information within a period specified by the Director; and (ii) the Director may reject the application because it is incomplete if the applicant fails to timely provide the omitted information.
  4. *If an application is incomplete; submitting information.* If an application is incomplete, the applicant may submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. The Director shall review the information submitted to determine whether the application is complete as provided in this subsection (C). An incomplete application is void if the applicant fails to submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. If the applicant fails to timely submit the information identified in the letter, the applicant may proceed only by filing a new application.
- D. *Mailed notice that a complete application has been filed.* For zoning map amendments pertaining to a parcel subject to an open-space easement or a conservation easement, the Director of Planning shall provide written notice within 10 days after the application is determined to be complete to each holder of the open-space easement, other than the County, or the conservation easement. The notice shall inform the recipient that the application has been filed. An action on an application shall not be declared invalid solely because of the failure to timely mail this notice.
- E. *Paying fees.* The applicant shall pay the fees required by Section 35.1 when the application is determined to be complete. The application shall not be reviewed, and any time by which action must be taken by the Commission or the Board of Supervisors shall not begin, until the applicant pays the fees.
- F. *When an application is determined to be complete; effect.* When the Director of Planning determines that the applicant has submitted all of the required information, it is determined to be complete, it is officially submitted for review and it is deemed to be referred to the Commission for the purpose of calculating the time in which action must be taken pursuant to Sections 33.26 and 33.27.

**State law reference-**Va. Code §§ 15.2-2285, 15.2-2286.



**Comment:** Section 33.20(A) is current section 33.4(e)(part). Section 33.20(B) is current section 33.4(e)(part) and revised to expressly enable the Department of Community Development to accept electronic filings. Sections 33.20(C)(1), (2) and (3) are current section 33.4(f)(part). Section 33.20(C)(4) is new, at the request of the Department of Community Development, and replaces current section 33.4(h). Section 33.20(D) is new, at the request of the Board of Supervisors. Section 33.20(E) is current section 33.4(g). Section 33.20(F) is new, intended to address and clarify a State law requirement.

#### **Sec. 33.21 Studies identifying potential impacts of zoning map amendment.**

When the filed application is complete, the Director of Planning may require an applicant to submit studies identifying the nature and extent of potential impacts resulting from a proposed zoning map amendment. In addition:

- A. *Studies pertaining to particular impacts.* The following requirements apply to particular impacts:
1. *Impacts on traffic, generally.* The Director may require a traffic study for any application for a zoning map amendment. The scope of the appropriate traffic study shall be determined by the County's transportation engineer in consultation with the Virginia Department of Transportation.
  2. *Impacts on public transportation facilities, public safety facilities, public school facilities, and public parks; zoning map amendments for new residential development or new residential uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, studies that identify the impacts of the project on public transportation facilities, public safety facilities, public school facilities, and public parks. The studies shall identify impacts that are specifically attributable to the project and, for impacts to public facilities that are located outside of the project, shall also identify: (i) the extent to which the project creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the zoning map amendment; and (ii) the extent to which the applicant or its successors would receive direct and material benefits from any proffer related to any public facility improvements.
- B. *Form and content of studies; authority of the Director of Planning.* The Director may establish the form and determine the required content of any study.
- C. *Time to submit studies.* The Director may establish deadlines by which any studies must be submitted by the applicant in order to provide County staff adequate time to review the study before scheduling the Commission's public hearing on the application.

**State law reference-**Va. Code §§ 15.2-2285, 15.2-2286, 15.2-2303, 15.2-2303.4.

**Comment:** Section 33.21 is new, necessitated in part by the recent change in the law pertaining to proffers for residential rezonings (Virginia Code § 15.2-2303.4).

#### **Sec. 33.22 Proffers.**

The Board of Supervisors may accept proffers pursuant to Virginia Code §§ 15.2-2303 and 15.2-2303.4 in conjunction with zoning map amendments as follows:

- A. *Purpose.* Proffers are reasonable conditions proposed by the applicant governing the use of parcels being rezoned. The conditions are in addition to the regulations in this chapter that apply to the district.
- B. *Form.* Proffers shall be in writing and be in a form that is approved by the County Attorney. The Director of Planning may provide applicants with a proffer statement form.
- C. *Proffers addressing impacts on public transportation facilities, public safety facilities, public school facilities, and public parks; zoning map amendments for new residential development or new residential uses.* For zoning map amendments that propose new residential development or new residential uses as defined in and subject to Virginia Code § 15.2-2303.4, any proposed proffers addressing the impacts resulting from the new residential development or new residential uses shall comply with the requirements of Virginia Code § 15.2-2303.4(C).
- D. *Time to submit.* The applicant shall submit proffers by the following deadlines:
  - 1. *Before the Commission's public hearing.* Proposed proffers, regardless of whether they are signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development at least 14 days before the Commission's public hearing on the zoning map amendment.
  - 2. *Before the Board of Supervisors' public hearing.* Proposed proffers, signed by the owners of all parcels subject to the zoning map amendment, shall be submitted to the Department of Community Development before the Board's public hearing on the zoning map amendment. The Director of Planning may establish written guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing to allow County officers and employees and members of the public a reasonable period of time to review the proffers.

State law reference-Va. Code §§ 15.2-2303, 15.2-2303.4.

**Comment: Section 33.22(A) is current section 33.7(a), with revisions. Section 33.22(B) is current section 33.7(b). Section 33.22(C) is new to implement in part the recent change in the law pertaining to proffers for residential rezonings (Virginia Code § 15.2-2303.4). Section 33.22(D)(1) is new, to ensure that County staff has sufficient time to include an analysis of the proposed proffers in the staff report. Section 33.22(D)(2) is current section 33.7(c).**

### **Sec. 33.23 Worksessions.**

The Director of Planning may schedule one or more worksessions before the Board of Supervisors, the Commission, and the Architectural Review Board ("ARB"), if applicable, on any application for a zoning map amendment, subject to the following:

- A. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the Board, the Commission, or the ARB with the Department of Community Development's analysis of the major issues, seek direction from the Board, the Commission, or the ARB on their expectations in addressing those issues.
- B. *Factors to consider in requiring a worksession.* When deciding whether to conduct a worksession, the Director shall consider: (i) the nature of the approval requested; (ii) the acreage affected; (iii) the possible impacts that could result from an approved application; and (iv) any other factors deemed relevant upon applying sound zoning principles.

- C. *When an applicant's consent is required.* The applicant's consent to a worksession is required if the worksession would extend the time for action by the Commission or the Board beyond the deadlines in Sections 33.25 and 33.26.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Section 33.23 is current section 33.4(i).

**Sec. 33.24 Community meetings.**

The applicant shall schedule and conduct one or more community meetings on any application for a zoning map amendment, unless the requirement for a community meeting is waived as provided in subsection (B), subject to the following:

- A. *Purposes for a community meeting.* The purposes for a community meeting are to provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the Comprehensive Plan, other relevant policies, and the regulations applicable to the proposed project, and to allow the public to ask questions about the proposed project.
- B. *Guidelines.* The Director of Planning shall establish written guidelines pertaining to notification of nearby landowners, scheduling, and conducting community meetings.
- C. *Community meeting may be waived; factors to consider.* The Director may waive the requirement for holding a community meeting. The community meeting may be waived when the Director, exercising reasonable discretion, decides that the meeting would not achieve the purposes for the meeting upon considering: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application, making a community meeting under this section unnecessary.
- D. *Holding in conjunction with a citizen advisory committee meeting.* A community meeting may be held during a citizen advisory committee meeting.
- E. *When community meeting is to be held.* A community meeting shall be held prior to the first public hearing on the application for a zoning map amendment.
- F. *Additional community meetings.* The Director may require that an additional community meeting be held prior to a public hearing if a deferral has been requested and a project is resubmitted which is substantially different than the original project.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Sections 33.24(A) through (D) is current section 33.4(j). Section 33.24(E) is new to expressly codify the current practice. Section 33.24(F) is new.

**Sec. 33.25 Public hearings; notice.**

Public hearings on an application for a zoning map amendment are required as follows:

- A. *When public hearings are required.* The Commission shall hold at least one public hearing before it makes its recommendation to the Board of Supervisors. After the Board receives the recommendation from the Commission, it shall hold at least one public hearing before acting.
- B. *Notice of public hearings.* Notice of the public hearings shall be provided as follows:
1. *Published and mailed notice.* The Department of Community Development shall provide notice of the public hearings before the Commission and the Board as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
  2. *Posted notice.* The Department of Community Development shall post notice of the public hearings by posting one or more signs as follows:
    - a. *When a sign must be posted.* The sign shall be posted at least 21 days before the Commission's public hearing and shall remain posted until the Board has acted on the application or the application has been withdrawn.
    - b. *Where a sign to be located.* The sign shall be erected within 10 feet of each boundary line of the parcel(s) that is the subject of the zoning map amendment abutting a street and shall be placed so that it is clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the zoning map amendment is approved is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land that is not subject to the zoning map amendment in locations that are most conspicuous to the public. Before posting a sign on a parcel, the Zoning Administrator shall obtain the consent of the owner to do so if the parcel is not owned by the County.
    - c. *Content of a sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
    - d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the Commission or the Board to defer action on an application until there is reasonable compliance with this subsection.
    - e. *Ownership of a sign; violation for removing or tampering with sign.* Each sign is the property of the County. It is unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the Zoning Administrator except the County or its employees or authorized agents performing maintenance required by this subsection.
    - f. *Effect of failure to comply.* If the Department of Community Development fails to post any sign required by this subsection (B)(2):

1. *Prior to action by the Board.* The Board may defer acting on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
2. *Action is not invalid.* Neither the Commission's recommendation nor the Board's approval of a zoning map amendment is invalid solely because of the failure to post notice as required by this subsection.

State law reference-Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286.

**Comment: Section 33.25 is current section 33.4(m).**

### **Sec. 33.26 Recommendation by the Planning Commission.**

The Commission shall act on an application for a zoning map amendment as follows:

- A. *Recommendation.* The Commission shall either recommend approval of the zoning map amendment as proposed, approval of the zoning map amendment with recommended changes, or disapproval. The Commission's recommendation also should include its recommendations on any proposed proffers and, for any application to establish or amend a planned development district, including a neighborhood model district, its recommendations on the application plan, the code of development, and any special exception requested.
- B. *Factors to be considered.* In making its recommendation, the Commission shall consider the same factors considered by the Board of Supervisors pursuant to Section 33.27.
- C. *Time for recommendation.* The Commission shall make its recommendation on the proposed zoning map amendment within 90 days after the application is determined to be complete. The failure of the Commission to make a recommendation on the matter within the 90-day period shall be deemed to be a recommendation of approval. The 90-day period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code §§ 15.2-2284, 15.2-2285, 15.2-2286.

**Comment: Section 33.26(A) is current section 33.4(o). Section 33.26(B) is current section 33.6(b). Section 33.26(C) is current section 33.4(n)(1), but the language is simplified. Current section 33.4(n)(3), which pertained to "tolling" the time in which action is required, is addressed in Section 33.52.**

### **Sec. 33.27 Action by the Board of Supervisors.**

The Board of Supervisors shall act on an application for a zoning map amendment as follows:

- A. *Action.* The Board may either adopt the zoning map amendment, deny the application for a zoning map amendment, defer acting for a period of up to 36 months from the date the application was determined to be complete to allow changes to be made to the application by the applicant prior to action by the Board, or refer the matter back to the Commission for further consideration and recommendation within the time for an action provided in subsection (C).
  1. *Authority to accept proffers.* In approving an application for a zoning map amendment, the Board may accept the proposed proffers.

2. *Intensification of use classification or expanding the land being rezoned is prohibited without additional notice and hearing.* The Board may not adopt a zoning map amendment allowing a more intensive use, or including more land, than was contained in the public notice without an additional public hearing after notice is provided pursuant to Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- B. *Factors to be considered.* In acting on a zoning map amendment, the Board shall reasonably consider the following factors: (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 community's transportation requirements; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services; (viii) the conservation of natural resources; (ix) preserving flood plains; (x) protecting life and property from impounding structure failures; (xi) preserving agricultural and forestal land; (xii) conserving properties and their values; and (xiii) encouraging the most appropriate use of land throughout the County. The Board's failure to expressly consider all of these factors does not invalidate its action. In addition:
1. *Additional factors to be considered when acting on an application to establish planned development district, including a neighborhood model district.* In addition to the other factors relevant to the consideration of a zoning map amendment, the Board shall consider the following when it reviews an application to establish a planned development district, including a neighborhood model district: (i) whether the proposed planned development satisfies the purpose and intent of the planned development district; (ii) whether the area proposed to be rezoned is appropriate for a planned development under the Comprehensive Plan; and (iii) the relation of the proposed planned development to major roads, utilities, public facilities, and public services.
  2. *Additional factors to be considered when acting on an application to amend existing planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, the Board shall consider the following when it reviews an application to amend an existing planned development district: (i) whether the proposed amendment reduces, maintains, or enhances the criteria of a planned development stated in Section 8.3; and (ii) the extent to which the proposed amendment impacts the other parcels within the planned development district.
- C. *Amendments to proposed proffers after the public hearing has begun.* The Board may accept, in its sole discretion, amended proffers after the public hearing on the zoning map amendment has begun if it concludes that the amended proffers do not materially affect the overall proposal. If amended proffers are submitted after the public hearing is closed, the Board may accept, in its sole discretion, the amended proffers after holding another public hearing.
- D. *Time for action.* The Board shall act on an application for a zoning map amendment within a reasonable period as may be necessary, not to exceed 12 months after the application was determined to be complete. The 12 month period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code §§ 15.2-2204, 15.2-2284, 15.2-2285, 15.2-2286, 15.2-2303.

**Comment:** Sections 33.27(A) and 33.27(A)(1) are current section 33.4(p). Section 33.27(A)(2) is an element of Virginia law that is partially covered in current section 33.4(q). Section 33.27(B) is

current section 33.6(b). Section 33.27(C) is current section 33.7(d), but the language is greatly simplified. Section 33.27(D) is current section 33.4(n)(2). Current section 33.4(n)(3), which pertained to “tolling” the time in which action is required, is addressed in Section 33.52.

**Sec. 33.28 Effect of approval of zoning map amendment; effect of proffers once accepted.**

The Board of Supervisors’ adoption of a zoning map amendment constitutes acceptance of the proffers and also, for any application to establish or amend a planned development district, approval of the application plan, all standards of development, and the code of development. In addition:

- A. *Become part of zoning regulations.* The district designation, the accepted proffers, the approved application plan, the standards of development, and the code of development, are part of the zoning regulations applicable to the parcel(s) that was the subject of the zoning map amendment.
- B. *Effect of proffers once they are accepted.* Once proffered and accepted by the Board in conjunction with an adopted zoning map amendment, the proffers continue in effect until a subsequent zoning map amendment changes the zoning of the parcel(s) subject to the proffers; provided that the proffers continue in effect if the subsequent zoning map amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286, 15.2-2303.

**Comment:** Sections 33.28(introduction) and 33.28(A) are current section 33.6(c). Section 33.28(B) is current section 33.7(e).

**Sec. 33.29 Resubmitting a similar denied application within one year is prohibited.**

An owner may not submit an application for a zoning map amendment that is substantially the same as a denied application for a zoning map amendment for the same parcel(s) within one year after the date of the denial by the Board of Supervisors.

State law reference-Va. Code §§ 15.2-2285, 15.2-2286.

**Comment:** Section 33.29 is current section 33.4(s).

**Comment:** Current 33.4(t), which states that any action contesting a decision of the Board of Supervisors shall be as provided in Virginia Code § 15.2-2285(C), is omitted from this ordinance. Virginia Code § 15.2-2285(C) is self-executing and does not need to be in the Zoning Ordinance.

**Division 4. Special Use Permits**

**Sec. 33.30 Introduction.**

This division establishes the regulations and safeguards for filing, reviewing, and acting on applications for special use permits.

- A. *Power to grant special use permits is reserved by the Board of Supervisors.* The Board of Supervisors reserves the power to consider and approve or deny all applications for special use permits except as the power has been delegated to the Board of Zoning Appeals to consider and approve or deny applications for special use permits as provided in Section 34.5.

- B. *Matters eligible for a special use permit.* The Board may approve special use permits for those use classifications identified in the district regulations allowing identified uses by special use permit.

State law reference-Va. Code § 15.2-2286.

**Comment: Sections 33.30 (introduction) and 33.30(A) consolidate the purpose and intent language of current sections 33.1 and 33.4 (introductory paragraph). Section 33.30(B) is new but does not impose a new requirement.**

**Sec. 33.31 Pre-application meeting.**

Any prospective applicant for a special use permit shall request and hold a meeting with the Department of Community Development before filing an application with the Department. This meeting is referred to as the “pre-application meeting.”

- A. *Submitting information.* The applicant shall complete and submit information on County-provided forms before or during the pre-application meeting.
- B. *Purposes for a pre-application meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the County a common understanding of the proposed project; (ii) inform the applicant about the proposed project’s consistency with the Comprehensive Plan, other relevant policies, and County regulations; (iii) broadly identify the planning, zoning, and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the Director of Planning to identify the information the applicant must submit with the application pursuant to Section 33.33.
- C. *When a pre-application meeting is not required.* The Director of Planning, exercising reasonable discretion, may decide that the pre-application meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, and other relevant considerations applying sound zoning principles do not warrant a pre-application meeting; (ii) whether the information delineated in section 33.33 can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.

State law reference-Va. Code § 15.2-2286.

**Comment: Section 33.31 is current section 33.4(a).**

**Sec. 33.32 Application for a special use permit.**

Each application for a special use permit shall be filed as follows:

- A. *Who may file an application.* An owner, a contract purchaser with the owner’s consent, the owner’s authorized agent (collectively in this division, the “owner” or the “applicant”), or an eligible easement holder may file an application for a special use permit. An “eligible easement holder” is a holder of an easement for which the special use permit is sought for a use allowed by the deed of easement or equivalent instrument.



- B. *Who must sign an application.* The application shall be signed by the owner or the eligible easement holder of each parcel that is the subject of the special use permit.
- C. *Documentation regarding the authority to apply.* The Director of Planning may require the applicant to submit documentation establishing ownership of, or the easement interest in, any parcel that is the subject of the application and the authority of each signatory to sign the application on behalf of the owner or the eligible easement holder.
- D. *Application forms.* The Director of Planning may establish appropriate application forms for special use permits.
- E. *Information required to be submitted with an application.* Each application shall include the information identified in Section 33.33 required by the Director of Planning to be submitted. In determining what information the applicant must submit, the Director shall consider the proposed use and other relevant considerations applying sound zoning principles.

State law reference-Va. Code § 15.2-2286.

**Comment: Section 33.32(A) is current section 33.4(b)(1). Section 33.15(B) is new, is based on current section 33.2(b)(1), and does not impose a new requirement. Section 33.15(C) is new, is based on current section 33.2(b)(1), and does not impose a new requirement. Section 33.15(D) is current section 33.4(b)(2). Section 33.32(E) is current section 33.4(b)(3). Section 33.32(E) also revises the criteria for the Director of Planning in deciding whether the owner is allowed to not provide certain information.**

**Sec. 33.33 Information the Director of Planning may require to be submitted with application.**

The Director of Planning may require any of the following information to be submitted with an application for a special use permit:

- A. *Project proposal.* A narrative of the project proposal, including its public need or benefit.
- B. *Comprehensive plan.* A narrative of the proposed project's consistency with the Comprehensive Plan, including the land use plan and the master plan for the applicable development area.
- C. *Impacts on public facilities and infrastructure.* A narrative of the proposed project's impacts on public facilities and public infrastructure.
- D. *Impacts on environmental features.* A narrative of the proposed project's impacts on environmental features.
- E. *Maps.* One or more maps showing the proposed project's regional context and existing natural and manmade physical conditions.
- F. *Conceptual plan.* A conceptual plan showing, as applicable:
  - 1. *Street network.* The street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project.
  - 2. *Cross-sections.* Typical street cross-sections to show proportions, scale, and streetscape/cross-sections/circulation.

3. *Pedestrian and bicycle facilities.* The general location of pedestrian and bicycle facilities.
  4. *Buildings and parking.* Building envelopes and parking envelopes.
  5. *Public areas.* Public spaces and amenities.
  6. *Conservation and preservation areas.* Areas to be designated as conservation areas and preservation areas.
  7. *Stormwater management.* Conceptual stormwater detention facility locations.
  8. *Grading.* Conceptual grading.
- G. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries. If the applicant is an easement holder, also the most recently recorded easement plat showing the boundaries of the easement.
- H. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application and all other related documents.
- I. *Contact person.* The name, address, telephone number, and email address of a single contact person for communications between the County and the applicant.
- J. *Payment of delinquent taxes.* Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on any parcel that is the subject of the application, that are owed to the County and have been properly assessed against the parcel, have been paid; provided that the payment of delinquent taxes, nuisance charges, stormwater management utility fees, or other charges shall not be required when the applicant for a special use permit is an easement holder.
- K. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the County on the pre-application comment form.

State law reference-Va. Code § 15.2-2286.

**Comment: Sections 33.33(A), (B), (C), (D), (E), (F), (G), (H), (I), and (K) are current sections 33.4(c)(1)(part), (2)(part), (3), (4), (6)(part), (7)(part), (13), (14), (15), and (16) respectively. Section 33.33(J) is current section 33.4(g).**

**Sec. 33.34 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.**

Each application for a special use permit shall be filed as follows:

- A. *Where to file.* The application shall be filed with the Department of Community Development.

- B. *Number of copies to file.* The Director of Planning may establish for each class of application the number of collated copies of the application required to be filed, to accept electronic applications for filing, or both.
- C. *Determining completeness of the application.* The Director of Planning shall review each filed application as follows:
1. *Timing of the determination of completeness.* The Director shall determine whether an application is complete within 10 days after the application was received. An application that provides all of the required information shall be determined to be complete and be accepted for review and decision. An application omitting any required information is incomplete and shall be deemed to not be filed and shall not be accepted for review and action.
  2. *Informing an applicant if the application is incomplete.* If the Director determines that an application is incomplete, the Director shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, or, if consented to by the applicant in writing, by fax or email (collectively, “sent”), or be personally delivered. The letter shall be sent or personally delivered within 10 days after the application was received.
  3. *Effect if a timely determination is not made.* If the Director does not send or personally deliver the letter as provided in subsection (C)(2) within the 10-day period, the application shall be determined to be complete, provided that: (i) the Director may require the applicant to later provide the omitted information within a period specified by the Director; and (ii) the Director may reject the application because it is incomplete if the applicant fails to timely provide the omitted information.
  4. *If an application is incomplete; submitting information.* If an application is incomplete, the applicant may submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. The Director shall review the information submitted to determine whether the application is complete as provided in this subsection (C). An incomplete application is void if the applicant fails to submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. If the applicant fails to timely submit the information identified in the letter, the applicant may proceed only by filing a new application.
- D. *Paying fees.* The applicant shall pay the fees required by Section 35.1 when the application is determined to be complete. The application shall not be further reviewed until the applicant pays the fees.
- E. *When an application is determined to be complete; effect.* When the Director of Planning determines that the applicant has submitted all of the required information, it is determined to be complete, and it is officially submitted for review for the purpose of calculating the time in which action must be taken pursuant to Sections 33.39 and 33.40.
- F. *Notice to the owner about an application for a special use permit filed by an easement holder when the application is determined to be complete.* The Department of Community Development shall provide written notice to the owner of the parcel for which a special use permit is sought as provided by Virginia Code § 15.2-2204(H) when an application is filed by an eligible easement holder. The notice shall be provided within 10 days after the application for the special use permit is determined to be complete.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.34(A) is current section 33.4(e)(part). Section 33.34(B) is current section 33.4(e)(part) and revised to expressly enable the Department of Community Development to accept electronic filings. Section 33.34(C)(1), (2), and (3) is current section 33.4(f)(part). Section 33.34(C)(4) is new, at the request of the Department of Community Development, and replaces current section 33.4(h). Section 33.34(D) is current section 33.4(g). Section 33.34(E) is current section 33.4(f)(first sentence) with revised terminology. Section 33.34(F) is is current section 33.4(f)(5).

#### **Sec. 33.35 Studies identifying potential impacts of special use permit.**

When the filed application is complete, the Director of Planning may require an applicant to submit studies identifying the nature and extent of potential impacts resulting from a proposed special use permit.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.35 is new, to expressly provide for an implied authority arising from the applicant's obligation to show that it favorably satisfies the criteria for a special use permit (*e.g.*, consistency with the comprehensive plan, no substantial detriment to adjacent parcels).

#### **Sec. 33.36 Worksessions.**

The Director of Planning may schedule one or more worksessions before the Board of Supervisors, the Commission, and the Achitectural Review Board ("ARB"), if applicable, on any application for a zoning map amendment, subject to the following:

- A. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the Board, the Commission, or the ARB with the Department of Community Development's analysis of the major issues, seek direction from the Board, the Commission, or the ARB on their expectations in addressing those issues.
- B. *Factors to consider in requiring a worksession.* When deciding whether to conduct a worksession, the Director shall consider: (i) the nature of the approval requested; (ii) the acreage affected; (iii) the possible impacts that could result from an approved application; and (iv) any other factors deemed relevant upon applying sound zoning principles.
- C. *When an applicant's consent is required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the Commission or the Board beyond the deadlines in Sections 33.39 and 33.40.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.36 is current section 33.4(i).

#### **Sec. 33.37 Community meetings.**

The applicant shall schedule and conduct one or more community meetings on any application for a special use permit, unless the requirement for a community meeting is waived as provided in subsection (B), subject to the following:

- A. *Purposes for a community meeting.* The purposes for a community meeting are to provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the Comprehensive Plan and other relevant policies, and the regulations applicable to the proposed project, and to allow the public to ask questions about the proposed project.
- B. *Guidelines.* The Director of Planning shall establish written guidelines pertaining to notification of nearby landowners, scheduling, and conducting community meetings.
- C. *Community meeting may be waived; factors to consider.* The Director may waive the requirement for holding a community meeting. The community meeting may be waived when the Director, exercising reasonable discretion, decides that the meeting would not achieve the purposes for the meeting upon considering: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application, making a community meeting under this section unnecessary.
- D. *Holding in conjunction with a citizen advisory committee meeting.* A community meeting may be held during a citizen advisory committee meeting.
- E. *When community meeting is to be held.* A community meeting shall be held prior to the first public hearing on the application for a zoning map.
- F. *Additional community meetings.* The Director may require that an additional community meeting be held prior to a public hearing if a deferral has been requested and a project is resubmitted which is substantially different than the original project.

State law reference-Va. Code § 15.2-2286.

**Comment:** Sections 33.37(A) through (C) are current section 33.4(j), but with substantive changes. Section 33.37(D) is new to expressly codify the current practice.

### **Sec. 33.38 Public hearings; notice.**

Public hearings on an application for a special use permit are required as follows:

- A. *When public hearings are required.* The Commission shall hold at least one public hearing before it makes its recommendation to the Board of Supervisors. After the Board receives the recommendation from the Commission, it shall hold at least one public hearing before acting.
- B. *Notice of public hearings.* Notice of the public hearings shall be provided as follows:
1. *Published and mailed notice.* The Department of Community Development shall provide notice of the public hearing before the Commission and the Board as required by Virginia Code § 15.2-2204(A) and (B), as otherwise required for a zoning map amendment, and Virginia Code § 15.2-2204(C).
  2. *Posted notice.* The Department of Community Development shall post notice of the public hearings before the Commission and the Board as follows:

- a. *When a sign must be posted.* The sign shall be posted at least 21 days before the Commission's public hearing on the application and shall remain posted until the Board has acted on the application or the application has been withdrawn.
- b. *Where a sign is to be located.* The sign shall be erected within 10 feet of each boundary line of the parcel(s) that is the subject of the special use permit abutting a street and shall be placed so that it is clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the zoning map amendment is approved is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same manner as above on at least two boundaries of the parcel(s) abutting land that is not subject to the zoning map amendment in locations that are most conspicuous to the public. Before posting a sign on a parcel, the Zoning Administrator shall obtain the consent of the owner to do so if the parcel is not owned by the County.
- c. *Content of a sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
- d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the Commission or the Board to defer action on an application until there is reasonable compliance with this subsection.
- e. *Ownership of a sign; violation for removing or tampering with sign.* Each sign is the property of the County. It is unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the Zoning Administrator.
- f. *Effect of failure to comply.* If the Department of Community Development fails to post any sign required by this subsection (B)(2):
  1. *Prior to action by the Board.* The Board may defer acting on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
  2. *Action is not invalid.* Neither the Commission's recommendation nor the Board's approval of a zoning map amendment is invalid solely because of the failure to post notice as required by this subsection.

State law reference-Va. Code §§ 15.2-2204, 15.2-2286.

**Comment: Section 33.38 is current section 33.4(m).**

#### **Sec. 33.39 Recommendation by the Planning Commission.**

The Commission shall act on an application for a special use permit as follows:

- A. *Recommendation.* The Commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the Board of Supervisors, or denial of the application.
- B. *Factors to be considered.* In making its recommendation, the Commission shall consider the same factors considered by the Board under Section 33.40.
- C. *Conditions.* The Commission's recommendation should include its recommendations on any proposed conditions, applying the same criteria applied by the Board under section 33.40.
- D. *Time for recommendation.* The Commission shall make its recommendation on the application within 90 days after the application is determined to be complete. The failure of the Commission to make a recommendation on the matter within the 90-day period shall be deemed to be a recommendation of approval. The 90-day period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code § 15.2-2286.

**Comment: Section 33.39(A) is current section 33.4(o). Section 33.39(B) is current section 33.8(a). Section 33.39(C) is current section 33.8(b). Section 33.39(D) is current section 33.4(n)(1). Current section 33.4(n)(3), which pertained to “tolling” the time in which action is required, is addressed in Section 33.52.**

#### **Sec. 33.40 Action by the Board of Supervisors.**

The Board of Supervisors shall act on an application for a special use permit as follows:

- A. *Action.* The Board may either approve the special use permit, deny the application, or defer action to either allow changes to be made to the application or any proposed conditions prior to final action by the Board, or to refer the matter back to the Commission for further consideration and recommendation within the time for an action provided in subsection (D).
- B. *Factors to be considered.* In acting on a special use permit, the Board shall consider the following factors, provided that the Board is not required to make specific findings in support of its action:
  - 1. *No substantial detriment.* Whether the proposed special use will be a substantial detriment to adjacent parcels.
  - 2. *Character of the nearby area is unchanged.* Whether the character of the adjacent parcels and the nearby area will be changed by the proposed special use.
  - 3. *Harmony.* Whether 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 the Comprehensive Plan.* Whether the proposed special use will be consistent with the Comprehensive Plan.
- C. *Conditions.* In approving a special use permit, the Board may impose reasonable conditions to address any possible impacts of the special use. Except as the Board may specify in a particular case, any condition imposed on a special use shall be deemed to be essential and nonseverable from the

permit itself. Any condition determined to be unreasonable, invalid, void, or unlawful shall invalidate the special use permit. The conditions may pertain to, but are not limited to, the following:

1. Preventing or minimizing smoke, dust, noise, traffic congestion, flood, and other hazardous, deleterious or otherwise undesirable substances or conditions.
2. Providing adequate police and fire protection.
3. Providing adequate improvements pertaining to transportation, water, sewage, drainage, recreation, landscaping, and screening or buffering.
4. Establishing 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 or the construction of any structure required for the use must begin.
6. The materials and methods of construction or specific design features; provided that any condition imposed in connection with a residential special use permit: (i) shall be consistent with the objective of providing affordable housing if the applicant proposes affordable housing; and (ii) shall consider the impact of the condition on the affordability of housing.

D. *Time for action.* The Board shall act on an application for a special use permit within a reasonable period not to exceed nine months after the date the Commission made its recommendation on the application. The 12 month period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.40(A) is current section 33.4(p). Section 33.40(B) is current section 33.8(a), but Section 33.40(B)(3) is revised to refer to the proposed use changing the character of the “adjacent parcels and the nearby area” rather than changing the character of the “district,” which was interpreted in the past to refer to both the zoning district and the geographical district.. Section 33.40(C) is current sections 33.8(b), (c), and (d). Section 33.40(D) is current section 33.4(n)(2), though how the period is calculated is revised; the result is the same as under the current regulations – the Board must act within 12 months after the application is determined to be complete. Current section 33.4(n)(3), which pertained to “tolling” the time in which action is required, is addressed in Section 33.52.

#### **Sec. 33.41 Revoking a special use permit for noncompliance with conditions.**

The Board of Supervisors may revoke a special use permit if it determines, after a public hearing, that the permittee or any successor has not complied with any conditions of the permit. Notice of the public hearing shall be as provided in Section 33.38. The written notice given by the Clerk of the Board to the owners, their agents, or the occupants of abutting parcels and parcels immediately across the street from the parcel(s) subject to the special use permit may be given by first-class mail rather than by registered or certified mail.

State law reference-Va. Code §§ 15.2-2204, 15.2-2286.



**Comment:** Section 33.41 is current section 33.8(e), but by referencing Section 33.38, the rule is clarified so that the notice of the public hearing to revoke the permit is the same as the notice to approve the permit.

**Sec. 33.42 Resubmitting a similar denied application within one year is prohibited**

An owner may not submit an application for a special use permit that is substantially the same as a denied application for a special use permit for the same parcel(s) within one year after the date of the denial by the Board of Supervisors.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.42 is current section 33.4(s).

**Comment:** Current 33.4(t), which states that any action contesting a decision of the Board of Supervisors shall be as provided in Virginia Code § 15.2-2285(C), is omitted from this ordinance. Virginia Code § 15.2-2285(C) is self-executing and does not need to be in the Zoning Ordinance.

**Division 5. Special Exceptions**

**Sec. 33.43 Introduction.**

This division establishes the regulations and safeguards for filing, reviewing, and acting on applications for special exceptions.

- A. *Power to grant special exceptions is reserved by the Board of Supervisors.* The Board of Supervisors reserves the power to consider and approve or deny all applications for special exceptions.
- B. *Matters eligible for a special exception.* The Board may approve special exceptions to waive, modify, vary, or substitute any requirement of this chapter that is expressly authorized to be waived, modified, varied, or substituted.
- C. *Variations and exceptions distinguished.* A special exception is not required for any matter that may be varied or excepted under Section 32 or Chapter 14, or for developing and constructing residential dwellings at the use, height, and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.43 is current section 33.5(a).

**Sec. 33.44 Application for a special exception.**

Each application for a special exception shall be filed as follows:

- A. *Who may file an application.* An owner, a contract purchaser with the owner's consent, the owner's authorized agent (collectively in this division, the "owner" or the "applicant"), or an eligible easement holder may file an application for a special exception permit. An "eligible easement holder" is a holder of an easement for which the special exception is sought that pertains to a use allowed by the deed of easement or equivalent instrument.

- B. *Who must sign an application.* The application shall be signed by the owner or the eligible easement holder of each parcel that is the subject of the special exception.
- C. *Documentation regarding the authority to apply.* The Director of Planning may require the applicant to submit documentation establishing ownership of, or the easement interest in, any parcel that is the subject of the application and the authority of each signatory to sign the application on behalf of the owner or the eligible easement holder.
- D. *Application forms.* The Director of Planning may establish appropriate application forms for special exceptions.
- E. *Information required to be submitted with an application.* Each application shall include the information required by the applicable section of this chapter authorizing the waiver, modification, variation, or substitution.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.44(A) is current section 33.5(b)(1). Section 33.44(B) is new, is based on current section 33.2(b)(1), and does not impose a new requirement. Section 33.44(C) is current section 33.5(b)(1) part. Section 33.44(D) is new, is based on current section 33.4(b)(2). Section 33.44(E) is new, is based on current section 33.4(b)(3). Section 33.44(F) is new, is based on current section 33.4(f)(first sentence). Section 33.44(G) is new, at the request of the Board of Supervisors. Sections 33.44(B), (C), (E), and (F) are intended to fill in procedural gaps based on the procedures used for special use permits.

**Sec. 33.45 Filing the application; determining completeness of the application; paying fees; resubmitting an application originally determined to be incomplete.**

Each application for a special exception shall be filed as follows:

- A. *Where to file.* The application shall be filed with the Department of Community Development.
- B. *Number of copies to file.* The Director of Planning may establish for each class of application the number of collated copies of the application required to be filed, to accept electronic applications for filing, or both.
- C. *Determining completeness of the application.* The Director of Planning shall review each filed application as follows:
  - 1. *Timing of the determination of completeness.* The Director shall determine whether an application is complete within 10 days after the application was received. An application that provides all of the required information shall be determined to be complete and be accepted for review and decision. An application omitting any required information is incomplete and shall be deemed to not be filed and shall not be accepted for review and action.
  - 2. *Informing an applicant if the application is incomplete.* If the Director determines that an application is incomplete, the Director shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, or, if consented to by the applicant in writing, by fax or by email (collectively, “sent”), or be personally delivered. The letter shall be sent or personally delivered within 10 days after the application was received.

3. *Effect if a timely determination is not made.* If the Director does not send or personally deliver the notice as provided in subsection (C)(2) within the 10-day period, the application shall be deemed to be complete, provided that: (i) the Director may require the applicant to later provide the omitted information within a period specified by the Director; and (ii) the Director may reject the application as provided herein if the applicant fails to timely provide the omitted information.
  4. *If an application is incomplete; submitting information.* If an application is incomplete, the applicant may submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. The Director shall review the information submitted to determine whether the application is complete as provided in this subsection (C). An incomplete application is void if the applicant fails to submit all of the information identified in the letter provided in subsection (C)(2) within 90 days after the letter was sent or personally delivered. If the applicant fails to timely submit the information identified in the letter, the applicant may proceed only by filing a new application.
- D. *Paying fees.* The applicant shall pay the fees required by Section 35.1 when the application is determined to be complete. The application shall not be further reviewed until the applicant pays the fees.
- E. *When an application is determined to be complete; effect.* When the Director of Planning determines that the applicant has submitted all of the required information, it is determined to be complete, and it is officially submitted for review for the purpose of calculating the time in which action must be taken pursuant to Sections 33.48 and 33.49.
- F. *Notice to the owner about an application for a special exception filed by an easement holder when the application is determined to be complete.* The Department of Community Development shall provide written notice to the owner of the parcel for which a special exception is sought as provided by Virginia Code § 15.2-2204(H) when an application is filed by an eligible easement holder. The notice shall be provided within 10 days after the application for the special exception is determined to be complete.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.45 is intended to fill in procedural gaps based on the procedures for special exceptions. Section 33.45(A) is new, is based on current section 33.4(e), and does not impose new requirements. Section 33.45(B) is new, is based on current section 33.4(e)(part), does not impose new requirements, and is revised to expressly enable the Department of Community Development to accept electronic filings. Section 33.45(C) is new and is based on current section 33.4(f). Section 33.45(C)(4) is at the request of the Department of Community Development. Section 33.45(D) is new, but is based on current section 33.4(g), and does not impose new requirements. Section 33.45(E) is new, but is based on current section 33.4(f) (first sentence). Section 33.45(F) is new, but is based on current section 33.4(f)(5).

#### **Sec. 33.46 Studies identifying potential impacts of special exception.**

When the filed application is complete, the Director of Planning may require an applicant to submit studies identifying the nature and extent of potential impacts resulting from a proposed special exception.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.46 is new, to expressly provide for the implied authority arising from the applicant's obligation to show that it favorably satisfies the criteria for a special exception (*e.g.*, consistency with the comprehensive plan, no substantial detriment to adjacent parcels).

**Sec. 33.47 Public hearings; when required; notice.**

Public hearings on an application for a special exception are required as follows:

- A. *When public hearings are required.* The Commission and the Board of Supervisors shall each hold at least one public hearing on any application for a special exception that would increase by greater than 50 percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality.
- B. *When the Board of Supervisors may elect to have the Commission make a recommendation on the application and to hold one or more public hearings.* When public hearings are not required under subsection (A), the Board may elect, either by policy or for an individual application, to have the Commission first make a recommendation on the application for a special exception and for either the Commission or itself to hold one or more public hearings.
- C. *Notice of public hearings.* When public hearings are required under subsection (A), the Department of Community Development shall provide notice of the public hearings before the Commission and the Board pursuant to Virginia Code § 15.2-2204(C).

State law reference-Va. Code §§ 15.2-2204, 15.2-2286.

**Comment:** Section 33.47(A) is current section 33.5(c). Section 33.47(B) is new, is intended to acknowledge the existing policy between the Board and the Department of Community Development as to when the Commission will make a recommendation on an application and when public hearings may be held, and is intended to provide the Board of flexibility in a given situation. Section 33.47(C) is current section 33.5(e).

**Sec. 33.48 Recommendation by the Planning Commission when required.**

The Commission shall act on an application for a special exception as follows:

- A. *When a Commission recommendation is required.* The Commission is required to act on an application for a special exception only if a public hearing on the application is required by Section 33.47(A) or the Board of Supervisors elects to have the Commission consider the application under Section 33.47(B).
- B. *Recommendation.* The Commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the Board, or denial of the application.
- C. *Factors to be considered.* In making its recommendation, the Commission shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter.
- D. *Conditions.* The Commission's recommendation should include its recommendations on the proposed conditions.

- E. *Time for a recommendation.* The Commission shall make its recommendation on the application within 45 days after the application is determined to be complete. The failure of the Commission to make a recommendation on the matter within the 45-day period shall be deemed to be a recommendation of approval. The 45-day period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code § 15.2-2286.

**Comment: Section 33.48(A) is new, to clarify the specific circumstances when Commission review and action is required. Section 33.48(B) is current section 33.5(g). Section 33.48(C) is current section 33.9(a). Section 33.48(D) is current section 33.5(g). Section 33.48(E) is new to provide a deadline for Commission recommendation.**

#### **Sec. 33.49 Action by the Board of Supervisors.**

The Board of Supervisors shall act on an application for a special exception as follows:

- A. *Action.* The Board may either approve the application, deny the application, or defer action to either allow changes to be made to the application or any proposed conditions prior to final action by the Board, or to refer the matter to the Commission for further consideration and recommendation within the time for an action provided in subsection (D).
- B. *Factors to be considered.* In acting on a special exception, the Board shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the Board shall not be required to make specific findings in support of its action.
- C. *Conditions.* In approving a special exception, the Board may impose reasonable conditions to address any possible impacts of the special exception. Except as the Board may specify in a particular case, any condition imposed on a special exception shall be deemed to be essential and nonseverable from the special exception itself. Any condition determined to be unreasonable, invalid, void, or unlawful shall invalidate the special exception.
- D. *Time for action.* The Board shall act on an application for a special exception within 90 days after the application is determined to be complete. The 90-day period may be extended if the applicant requests a deferral pursuant to Section 33.52.

State law reference-Va. Code § 15.2-2286.

**Comment: Section 33.49(A) is current section 33.5(h). Section 33.49(B) is current section 33.9(a). Section 33.49(C) is current section 33.9(c). Section 33.49(D) is current section 33.5(f).**

#### **Sec. 33.50 Revoking a special exception for noncompliance with conditions**

The Board of Supervisors may revoke a special exception if the Board determines, after a public hearing, that the permittee or any successor has not complied with any conditions of the special exception. Notice of the public hearing shall be as provided in Virginia Code § 15.2-2204. The written notice given by the Clerk of the Board to the owners, their agents, or the occupants of abutting parcels and parcels immediately across the street from the parcel(s) subject to the special exception may be given by first-class mail rather than by registered or certified mail.

State law reference-Va. Code §§ 15.2-2204, 15.2-2286.

**Comment:** Section 33.50 is new, intended to add the authority that exists for revoking a special use permit for violating conditions.

**Sec. 33.51 Resubmitting a similar denied application within one year is prohibited.**

An owner may not submit an application for a special exception that is substantially the same as a denied application for a special exception for the same parcel(s) within one year after the date of the denial by the Board of Supervisors.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.51 is new, intended to add the same prohibition that exists for denied special use permit applications.

**Comment:** Current 33.5(i), which states that any action contesting a decision of the Board of Supervisors shall be as provided in Virginia Code § 15.2-2285(C), is omitted from this ordinance. Virginia Code § 15.2-2285(C) is self-executing and does not need to be in the Zoning Ordinance.

**Division 6. Deferring Action and Withdrawing an Application**

**Sec. 33.52 Deferring action.**

After submitting an application but before action by the Board of Supervisors, an applicant for a zoning map amendment, special use permit, or special exception as follows:

A. Request for deferral on applications submitted on and after [effective date of the ordinance]. For any application submitted on and after [effective date of the ordinance], the applicant may request that the County suspend review of the application and extend the time period for action by the Commission or the Board (the terms “suspend review” and “extend the tie for action” are collectively referred to as a “deferral” or a variation of that word) as follows:

1. Request for deferral. The applicant shall submit the written request to defer to the Director of Planning. The request shall state the date by which the applicant requests the Board will act on the application, which may not exceed 36 months after the date the application was determined to be complete.

2. Limitation. The application may not be in a state of deferral beyond 32 months after the date the application was determined to be complete if the Commission has not yet held a public hearing on the application; and further provided that the application may not be in a state of deferral beyond 33 months after the date the application was determined to be complete if the Commission has held a public hearing and made a recommendation on the application.

3. Effect of receiving request. Upon the Director of Planning receiving a request for a deferral, review of the application shall stop and any advertised public hearing shall be cancelled. However, an applicant may resubmit information for review according to the published schedule established by the Director in anticipation of action by the Board before the deferral period ends.

B. Request for deferral on applications submitted more than 36 months before [effective date of the ordinance]. For any application submitted more than 36 months before [effective date of the ordinance], the applicant shall submit a written request to defer to the Director within 30 days after

the applicant receives written notice from the Director about the requirements of this subsection. The Board shall act on the application within 12 months after [effective date of the ordinance].

- C. *Request for deferral on applications submitted less than 36 months before [effective date of the ordinance].* For any application submitted less than 36 months before [effective date of the ordinance], the applicant shall submit a written request to defer to the Director within 30 days after the applicant receives written notice from the Director about the requirements of this subsection. The Board shall act on the application within the 36-month period or a reasonable period of time beyond the 36-month period required to complete the review of the application and to hold any required public hearings.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.52 is current section 33.4(r)(part), with significant changes to simplify the current regulations, which are difficult for staff to administer and which allow applications to be deferred multiple times.

### **Sec. 33.53 Requesting action after deferral.**

After the applicant's request for a deferral is granted by the Director of Planning, the applicant is responsible for requesting action by the Commission or the Board of Supervisors as follows:

- A. *Request for action by the Commission.* When the applicant is ready for action by the Commission, the applicant shall make a written request to the Director of Planning and submit all information necessary for action according to the published schedule established by the Director.
- B. *Request for action by the Board of Supervisors.* When the applicant is ready for action by the Board, the applicant shall make a written request to the Director of Planning and submit all information necessary for action according to the published schedule established by the Director.
- C. *When the request for action must be received.* The written request shall be received by the Director no later than 120 days before the end of the deferral period.
- D. *Action on an application by the Board of Supervisors.* The Board may act on the application at any time before the end of the deferral period; provided that the Board may act on the application as soon thereafter as: (i) the Commission has held a public hearing and made a recommendation; and (ii) County staff has had sufficient time to analyze the application and satisfy all public notice requirements. On any application pending before the Board, the Director of Planning shall coordinate scheduling the application for public hearing or action, or both, with the Clerk of the Board.
- E. *Extension of action beyond the end of the deferral period in extenuating circumstances.* The time for action may be extended beyond the end of the deferral period if there are extenuating circumstances which include, but are not limited to, inclement weather, civil emergencies, or errors in providing public notice as required by State law.

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.53 is primarily new, but is an extension of the deferral-related regulations in current section 33.4(r)(part).

**Sec. 33.54 Withdrawing an application.**

An applicant for a zoning map amendment, special use permit, or special exception may request that its application be withdrawn, or an application may be deemed withdrawn.

- A. *Withdrawing an application.* An applicant for a zoning map amendment, special use permit, or special exception may request that its application be withdrawn by submitting a written request to withdraw the application as follows:
1. *To whom the request is to be sent.* The written request must be sent to the Director of Planning. If the application is pending before the Board of Supervisors at the time the request is received, the Director shall immediately inform the Clerk of the Board of the request.
  2. *When the request must be received.* The request must be received by the Director or the Clerk before the Commission or the Board, as applicable, begins to consider the application on a meeting agenda.
  3. *Effect of timely receipt of request to withdraw.* When the request to withdraw is received, the application shall not be further processed or reviewed by County staff, nor acted on by the Commission or the Board.
  4. *Resubmitting a similar withdrawn application within one year prohibited.* An owner may not submit an application that is substantially the same as a withdrawn application for the same parcel(s) within one year after the date of the withdrawal.

B. *When an application is deemed withdrawn.* An application shall be deemed to be voluntarily withdrawn if the applicant requests deferral pursuant to subsection 33.52(A) and fails to provide within 90 days of the end of the deferral period all of the information required to allow the Board to act on the application, or fails to request a deferral as provided in subsection 33.52(B) or (C).

State law reference-Va. Code § 15.2-2286.

**Comment:** Section 33.54 is current section 33.4(r)(part), with significant changes to simplify the current regulations, which are difficult for staff to administer. This section also is amended to apply to applications for special exceptions.

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of \_\_\_\_\_ to \_\_\_\_\_, as recorded below, at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Dill	_____	_____
Mr. Gallaway	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Randolph	_____	_____



