



# Albemarle County

## Legislation Text

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**File #:** 16-233, **Version:** 1

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**AGENDA DATE:** 4/6/2016

**TITLE:**

ZTA201600002 County Code Regulations Regarding Processing Certain Rezoning

**SUBJECT/PROPOSAL/REQUEST:** Amend County Code regulations regarding applications for rezonings to amend proffers that do not affect use or density

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Foley, Walker, Davis, Kamptner, Cilimberg

**PRESENTER (S):** Wayne Cilimberg

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Thomas C. Foley

**BACKGROUND:** Virginia Code § 15.2-2302 authorizes the Board to waive the requirement for a public hearing when an applicant for a rezoning seeks only to amend existing proffers that do not affect use or density. County Code § 18-33.7(f) implements Virginia Code § 15.2-2302 by allowing applications to first come to the Board to allow it to decide how the application may be processed: (1) by referring the application to the Planning Commission for a recommendation, either with or without a public hearing as determined by the Board; or (2) by considering the application without a recommendation of the Planning Commission, either with or without a public hearing. On January 6, 2016, the Board adopted a Resolution of Intent to consider amendments to the County Code pertaining to the application and procedural requirements, as well as the fees, for such rezoning applications, as authorized by Virginia Code § 15.2-2302. (See Attachment A) On March 8, 2016, the Planning Commission held a public hearing on the proposed zoning text amendment (ZTA), recommended approval of ZTA201600002 as recommended by staff (Attachment B2), and further recommended that the Board adopt the attached draft policy for considering requests for a simplified application process for rezonings to amend proffers that do not affect use or density (Attachment C).

**STRATEGIC PLAN:** Goal 2. Critical Infrastructure. Prioritize, plan and invest in critical infrastructure that responds to past and future changes and improves the capacity to serve community needs.

**DISCUSSION:** Although the Board may waive the requirement for a public hearing when an applicant for a rezoning is seeking only to amend existing proffers that do not affect use or density, County Code § 18-33.4 still requires an applicant for such a rezoning to comply with a number of requirements that apply to all rezoning applications, including: (1) a pre-application meeting, unless it is waived by the director of planning; (2) submitting a complete application in the requisite number of copies; (3) paying the applicable fee for a rezoning (the current fee regulations do not distinguish this type of application from any other rezoning application); (4) holding a work session, if required by the director of planning; and (5) holding a community meeting, if required by the director of planning.

Some applications to amend proffers that do not affect use or density may be minor, technical, and/or noncontroversial, and a further simplified application process could be warranted in the Board's discretion.

Thus, amendments to County Code § 18-33.7 are included in the attached proposed ZTA that allow the Board to waive certain procedural requirements (pre-application meetings, work sessions and/or community meetings) and certain application requirements. In addition, County Code § 18-35.1 is proposed to be amended to establish a separate fee for this class of zoning map amendment.

Based on a review of rezonings to amend existing proffers since 2010, the following are the type of amendments that, under certain circumstances, may have been eligible for the Board to consider waiving certain procedural and application requirements:

- Phasing of public improvements, particularly roads
- Change to character of public improvements
- Removal of certain public improvements (E.g., interparcel connection)
- Timing/sunset for public improvements/cash
- Change to cash proffer amounts
- Timing of requiring certain uses based on other uses (E.g., commercial square footage based on residential units)
- Change to private amenities (E.g., trail, tot lot)
- Phasing of development
- Change to form/character of development
- Change in location of features of development

While each eligible request would be reviewed on a case by case basis, to be consistent and objective in determining whether or not to grant a request for a simplified application process there are certain factors staff feels would be important for the Board to consider in each case:

- Was the proffer as originally provided **material** to the approval of the original rezoning? *(In describing the significance of the original proffer to the associated rezoning, staff recommended “essential” rather than “material” to the Planning Commission. By definition “essential” implies “the utmost importance”, while “material” implies “real importance”. In recognition that some proffers proposed for amendment may not have been “essential” to the original rezoning, but were nonetheless important, staff now recommends using “material”).*
- Does the proffer amendment have a potential impact on adjacent properties not anticipated with the original rezoning?
- Has development already occurred within the rezoned area for which current residents/businesses would have relied on the proffer or for which the proffer amendment would materially affect them?
- Is there a general public interest in the proffer as originally accepted that would be materially affected by the requested amendment?

In processing such eligible requests, staff will provide the Board an analysis and recommendation regarding factors relevant to its consideration of the requests. As previously noted, it is envisioned that such requests would be minor, technical, and/or noncontroversial, and will allow for the ultimate Board decision to be made at a single meeting. Should this not be the case for a particular request, it may be an indication that a full review process is needed for that request.

Staff also feels that, procedurally, the Board should consider all such requests on its regular agenda as, in consideration of the above noted factors, the Board will need to decide its expectations for the processing of the requests, including: the appropriate level of public engagement, whether Planning Commission and/or Board public hearings will be required and whether the Board’s ultimate action on the proffer amendment will be part of its consent agenda or regular agenda.

Because ZTA 2016-01 regarding eligible applicants also includes proposed changes to County Code § 18-33.4

and is on the Board's agenda for a public hearing prior to the public hearing for this ZTA 2016-02, staff is providing two versions of the proposed zoning text amendment. Attachment B1 incorporates the proposed ZTA 2016-01 language in the event that ZTA 2016-01 is adopted prior to this ZTA; and Attachment B2 does not incorporate the proposed ZTA 2016-01 language in the event that ZTA 2016-01 is not adopted prior to this ZTA.

**BUDGET IMPACT:** Since 2010, there have been an average of approximately two (2) rezoning applications per year that might have qualified for Board authorization of alternative application and procedural requirements. While the number of rezoning applications for which the Applicant is seeking this authorization could increase as a result of the adoption of this ZTA, assuming each would be relatively straightforward and would allow for Board decision at a single meeting, the budget impact of these changes is not expected to be significant. Those that are authorized should require significantly less time for staff to review than would be necessary under the current requirements. The proposed application fee reflecting this reduced staff review time is \$457, the same fee that exists for Special Exceptions, which are similarly only typically subject to review by the Board, normally on its consent agenda. The standard rezoning application fee is between \$2,688 and \$3,763, depending on the acreage of the land subject to rezoning.

**RECOMMENDATION:**

If the Board adopts ZTA 2016-01 regarding eligible applicants prior to its consideration of this ZTA, staff and the Planning Commission recommend that the Board adopt the proposed ZTA (Attachment B1) and the policy for considering requests for a simplified application process for rezonings to amend proffers that do not affect use and density (Attachment C).

If the Board does not adopt ZTA 2016-01 regarding eligible applicants prior to its consideration of this ZTA, staff and the Planning Commission recommend that the Board adopt the proposed ZTA (Attachment B2) and the policy for considering requests for a simplified application process for rezonings to amend proffers that do not affect use and density (Attachment C).

A - Resolution of Intent

B1 - Proposed Zoning Text Amendment if ZTA 2016-01 is adopted first

B2 - Proposed Zoning Text Amendment if ZTA 2016-01 is not adopted first

C - Policy for Considering Requests

D - Planning Commission minutes