



# Albemarle County

## Legislation Text

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**File #:** 21-344, **Version:** 1

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**AGENDA DATE:** 7/21/2021

**TITLE:**

ZTA202100002 Resolution of Intent for proposed Zoning Text Amendment to clarify the Board of Supervisors' authority to approve special exceptions, consistent with case law.

**SUBJECT/PROPOSAL/REQUEST:** Adopt a Resolution of Intent to initiate a zoning text amendment to clarify that the Board of Supervisors is to consider and act on special exceptions (waivers, modifications, variations).

**ITEM TYPE:** Consent Action Item

**STAFF CONTACT(S):** Richardson, Walker, Kamptner, Herrick, Filardo, Svaboda, Ragsdale

**PRESENTER (S):** Rebecca Ragsdale

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

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

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

**STRATEGIC PLAN:** Quality Government Operations - Ensure County government's capacity to provide high quality service that achieves community priorities.

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

If the Board adopts the Resolution of Intent, a draft ordinance will be prepared, a public hearing will be scheduled with the Planning Commission for September, and a Board public hearing will tentatively be scheduled for December 2021.

**BUDGET IMPACT:** There is no anticipated budget impact with this zoning text amendment.

**RECOMMENDATION:** Staff recommends that the Board adopt the Resolution of Intent (Attachment A).

**ATTACHMENTS:**

A - Resolution of Intent