ALBEMARLE COUNTY PLANNING
ZONING TEXT AMENDMENT
STAFF REPORT SUMMARY

Project Name: ZTA201900007 Fill Areas and Waste Areas	Staff: William D. Fritz, AICP
Planning Commission (PC) Hearing: August 4, 20201	Board of Supervisors (BOS) Hearing: September 16, 2020
Proposal(s): A proposed ordinance to amend the Albemarle County Code to define types of fill activity and establish regulations for the placement of fill.	
Factors Favorable: - Establishes performance standards that minimize impacts on surrounding property. - Reduces fill in the Rural Area. - Allows for fill in the Development Area.	Factors Unfavorable: - Imposes new regulations that may make disposal of fill material more difficult.
Recommendation: Staff recommends approval of ZTA201900007 Fill Areas and Waste Areas	

STAFF CONTACT: William D. Fritz, AICP
PLANNING COMMISSION: August 4, 2020
BOARD OF SUPERVISORS: September 16, 2020

ZTA: ZTA201900007 Fill Areas and Waste Areas

ORIGIN:
On November 6, 2019 the Board of Supervisors adopted a resolution of intent to consider amending the Zoning Ordinance regulations for fill and waste areas.

PROPOSAL:
A proposed ordinance to amend the Albemarle County Code to define types of fill activity and establish regulations for the placement of fill. Among other revisions, the proposed ordinance would:
Amend § 7-103 by excluding the application, storage, or disposal of certain material from the definition of "agricultural activity";
Amend § 18-3.1 to modify and expand the existing regulations for fill and waste areas by defining two types of fill: clean earth fill and inert waste fill;
Amend § 18-4.2.3 to prohibit the placement of clean earth fill or inert waste fill on critical or preserved slopes except as otherwise permitted;
Amend § 18-4.3.1 to permit inert waste fill and clean earth fill in all zoning districts;
Amend § 18-5.1.28(a)(11) by permitting tree cutting by-right for fill activity;
Amend § 18-5.1.28(a)(14) to require a tree canopy be re-established in zoning districts other than the Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts;
Amend § 18-5.1.28(b) to subject all fill activity of 2,500 square feet or greater to regulations, including: setbacks, maximum fill height, hours of operation, access standards, prohibition of placement of fill on critical slopes or hydric soils, a minimum lot size for fill activity of 5 acres, and a maximum fill area of 2 acres;
Amend § 18-5.1.28(c) to require a variation or special exception for inert waste fill activity in the RA, VR, or MHD zoning districts;
Amend § 18-5.1.28(d) to allow the Board of Supervisors to modify regulations and to permit the placement of inert waste fill in the RA, VR, or MHD zoning districts by special exception; and
Amend § 18-31.5 to exclude clean earth fill activity and inert waste fill activity from a zoning clearance requirement.

PUBLIC PURPOSE TO BE SERVED:
Address impacts such as truck traffic on rural roads, hours of operation, placement of fill on critical slopes and the loss of agricultural resources. Establishes regulations for the placement of fill covering a wide variety of issues such as slope, fill height, setbacks, lot size, activity area, hours, access standards and prohibiting placement on hydric soils and limits the type of fill material permitted by right in agricultural districts. The amendment is intended to facilitate the placement of fill in the development areas.

BACKGROUND:
On September 18, 2019 the Board of Supervisors conducted a midyear review of the Community Development work program. The Board directed staff to prioritize the review of fill and waste regulations. On November 6, 2019 the Board of Supervisors adopted a resolution of intent to consider amending the Zoning Ordinance regulations for fill and waste areas. The Board of Supervisors directed staff to begin work immediately and to hold a work session in January 2020. The Board of Supervisors held a work session on January 15, 2020. During the work session the Board of Supervisors endorsed the ordinance approach presented by staff.

STAFF COMMENT:
Attachment A provides a comparison of the proposed and existing regulations.

The proposed regulations permit clean earth fill in all zoning districts by-right. Clean earth fill consists of soil and limited rock. Inert waste fill would be permitted by right in all districts except for Rural Area (RA), Village Residential (VR), or Monticello Historic (MHD) districts. Inert waste fill includes brick, concrete, asphalt and other non-reactive materials. Any fill activity of 2,500 square feet or greater would be subject to performance requirements. These requirements are intended to minimize adverse impacts on abutting properties and protect natural resources.

Analysis of the proposed zoning text amendment:

Zoning Ordinance section 33.6(B) establishes factors to be reasonably considered by the Planning Commission and Board of Supervisors in the review of ZTAs. Each factor is reviewed below:

(i) the existing use and character of property

The rural area of the County has been used to dispose of fill material. The rural area of the County include primarily land zoned Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts. Not all fill activity is subject to regulation. Fill activity that is for agricultural purposes is currently exempt. Agricultural activity is broadly defined and subject to interpretation. The proposed ordinance would clarify that fill activity is not permitted as an agricultural activity. However, the proposed ordinance would permit the by-right application of clean earth fill in all districts. This clean earth fill could be used to support agricultural activity. The proposed ordinance would permit inert waste fill in the Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts subject to the issuance of a special exception. The proposed ordinance includes provisions for special exception. The proposed ordinance includes agricultural activity as a factor supporting the issuance granting a special exception.

The proposed ordinance permits use of property within the development areas for the fill activities. Currently, fill may only be placed on property within the development areas if there is an approved site plan, road plan, building permit or if the property has no trees. The current ordinance only permits tree removal if there is an approved site plan, road plan or building permit. The proposed ordinance would permit some tree clearing by-right without a site plan, road plan or building permit. This will allow material generated within the development area to remain within the development area.

(ii) the Comprehensive Plan

Attachment B contains content from the Comprehensive Plan that was considered by staff when preparing the proposed ordinance. The proposed ordinance supports the following concepts of the Comprehensive Plan:

- Protects the rural character of the County by limiting by-right fill activity. Limiting fill activity protects land for agricultural and forestal use and may reduce the volume of trucks in the rural area.
- Protects air quality by reducing truck miles. The proposed ordinance allows fill to occur more easily in the development area. The development area is the primary source of fill material.
- Protects critical slopes. The current provisions do not limit fill on critical slopes.
- Protects the natural environment and encourages more terrain sensitive development by establishing performance standards for the disposal of fill material.
- May facilitate economic development by allowing by-right fill activity on sites in the development area. This may allow for easier disposal of excess material generated by developments and may allow for some pre-development of sites making future development easier.

(iii) the suitability of property for various uses

The rural area is intended primarily for agricultural and forestal activity. The proposed amendments limit the use of the rural area as a location for disposal of fill material generated in the development area.

The Comprehensive Plan states in part:

> Policy and Zoning Ordinance changes are recommended to promote the County's preferred uses for the Rural Area, including supportive uses for agriculture, historic preservation, tourism, crossroads communities, and strengthening land conservation initiatives. The strategies discussed in this Chapter all share the goal of helping to keep the Rural Area rural.

The performance standards are intended to allow the use of all properties in the County for fill without resulting in adverse impacts on adjoining property or the natural resources of the County.

(iv) the trends of growth or change

Development may result in the need for the disposal of fill. Redevelopment often results in the need for the disposal of fill due to removal of asphalt, concrete and other inert activities. It is recognized that there will be a need to dispose of fill material to accommodate the development of the County.

The proposed amendments allow for increased use of land within the development area for fill activity. The ability to use land within the development area may facilitate the ultimate development of the land for development.

The restriction of fill activity in the rural area serves to protect those areas for agricultural and forestal uses.

(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

As stated previously it is recognized that development may result in the need to dispose of fill materials. The proposed ordinance attempts to balance the need to dispose of material with the impacts generated by the disposal.

(vi) the community's transportation requirements

The proposed ordinance limits by-right fill activity in the rural area. This may serve to reduce total truck traffic in the rural area. Roads in the rural area may not be of adequate design to accommodate truck traffic resulting in roads that are less safe and requiring increased maintenance.

(vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services

This ordinance does not directly impact these items.

(viii) the conservation of natural resources

The proposed regulations include provisions prohibiting the placement of fill on critical slopes or hydric soils. Protection of critical slopes is a strategy of the Comprehensive Plan. Protection of hydric soils will help to protect the water resources of the County as recommended by the Comprehensive Plan. Current regulations allow these areas to be filled.

The proposed ordinance imposes by-right performance regulations which may make disposal of fill material more difficult. Special exceptions are possible from all regulations. The by-right regulations may discourage the disposal of inert waste material which may serve to discourage the generation of inert waste. This would encourage the reuse of existing resources such as reuse of buildings and parking areas which may otherwise be demolished and disposed of as waste material. Reuse of existing building and parking areas conserves natural resources required for the manufacture and transportation of new building materials. During the County's work on the Climate Action Plan there was significant support for regulations that would encourage the reuse of existing development.

(ix) preserving flood plains

The proposed regulations have no impact on the preservation of flood plains. Both the existing and proposed ordinance contain the same prohibitions on the placement of fill in flood plains.

(x) protecting life and property from impounding structure failures

The proposed ordinance does not address impounding structures. Both the existing and proposed ordinance do contain provisions to protect life and property from slope failure.

(xi) preserving agricultural and forestal land

The proposed ordinance will serve to protect agricultural and forestal land. This is accomplished by limiting the placement of fill in the rural area to clean earth fill which has less of an impact than the placement of inert waste fill. The use of inert waste fill for agricultural and forestal purposes can be approved by the Board of Supervisors.

(xii) conserving properties and their values

The proposed ordinance includes performance standards that will serve to reduce the impacts on adjoining properties. The proposed ordinance does not impact the value of the property receiving the fill.

(xiii) encouraging the most appropriate use of land throughout the County

The Comprehensive Plan encourages development to respect the existing terrain. Regulations that allow for disposal of fill with minimal regulations facilitates terraforming activities. The proposed regulations include performance standards that minimize terraforming.

The proposed regulations attempt to use the rural area for rural uses and the development area for development uses. The regulations attempt to encourage the placement of fill generated from within the development area in the development area.

The proposed performance standards minimize adverse impacts on adjoining property.

The proposed regulations do not impact fill activity associated with a building permit, site plan or road plan.

Strategic Plan:

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

This ordinance will be reviewed against the three (3) criteria previously established by the Board for amendments:

Administration/Review Process:

The proposed ordinance allows for the by-right placement of clean earth fill in all zoning districts. In the Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts the only type of by-right fill is clean earth fill. In all other districts inert waste fill is permitted by-right in addition to clean earth fill.

The proposed ordinance includes a provision allowing for the issuance of a special exception for the placement of inert waste fill in the Rural Areas (RA), Village Residential (VR), or Monticello Historic (MHD) districts. Staff investigated an option that would permit by-right placement of inert waste material in these districts if certain criteria were met. Staff was not able to identify objective criteria that would permit administrative approval of inert waste in these districts. Staff also investigated the option of allowing inert waste by special use permit in these districts. Staff does not recommend this approach due to the extended review time and cost to the applicant and County. In addition, the identification of the location to receive fill material often occurs close to the timing of construction. This does not afford

the developer the time necessary to process a special use permit application. Staff is recommending the use of the special exception process. This is a discretionary process similar to the special use permit process. However, the special exception process allows for a more expedited review. The current special exception regulations do not contain a requirement to notify abutting owners of all applications for a special exception. (The current ordinance only requires notification of abutting owners for special exceptions to the noise regulations.) Staff is proposing the inclusion of a provision that will require notice to abutting owners of a special exception request to the fill regulations. Special exceptions would be reviewed by the Board of Supervisors within 90 days of the submittal of an application.

All of the performance standards may be modified by the Board of Supervisors by special exception.

The proposed regulations do not change the administration or review process for by-right fill activities. They would be processed in the same manner that fill activities are currently administered.

Housing Affordability:
This proposal would have no impact on housing affordability.

Implications to Staffing/Staffing Costs:
Staff estimates workload impacts to include a 0.05 FTE for a Civil Engineer II to perform plans review, a 0.05 FTE for a Senior Engineering Inspector, and a 0.10 FTE for a Zoning Compliance Officer for compliance/enforcement activity. This specific estimated workload impact may be absorbed by current staffing.

It is unknown how many special exception requests will be received. Staff estimates workload impacts to include a 0.05 FTE for a Senior Planner to perform special exception review. This estimated workload impact may be absorbed by current staffing.

RECOMMENDED ACTION:
Staff recommends approval of the proposed zoning text amendment.

ATTACHMENTS
Attachment A – Comparison of Current and Proposed Regulations
Attachment B – Comprehensive Plan
Attachment C – Proposed Ordinance Language
Attachment D – Public Comment