

A regular day meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 17, 2019, at 1:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The night meeting was held at 6:00 p.m.

PRESENT: Mr. Norman G. Dill, Mr. Ned Gallaway, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer and Mr. Rick Randolph.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeff Richardson, Deputy County Executive, Doug Walker, County Attorney, Greg Kamptner, Public Engagement, Emily Kilroy, Clerk, Claudette Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:00 p.m., by the Chair, Mr. Gallaway.

Agenda Item No. 2. Pledge of Allegiance.

Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Adoption of Final Agenda.

Mr. Gallaway said that Ms. Palmer would like to pull Item 8.7 from the consent agenda for a separate discussion.

Ms. McKeel **moved** that the Board approve the final agenda, as amended. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

Introductions. Mr. Gallaway introduced the presiding security officers, Lt. Terri Walls and Officer Jordan DeLange, and County staff at the dais.

Agenda Item No. 5. Brief Announcements by Board Members.

There were no announcements.

Agenda Item No. 6a. Proclamations and Recognitions: Resolution of Appreciation for Mark Graham.

Mr. Gallaway read and **moved** to adopt the follow Resolution of Appreciation for Mark Graham.

Resolution of Appreciation for Mark Graham

WHEREAS, Mark Graham has faithfully served the County of Albemarle for over 20 years, serving in multiple roles, including Senior Civil Engineer, Senior Project Manager and Director in the Department of Engineering and Public Works before his appointment as Director of Community Development in 2004; and

WHEREAS, Mark provided steady and motivational leadership throughout the consolidation of the departments of Engineering and Public Works, Planning and Community Development and Building and Zoning Services into the new Department of Community Development thus creating a “one-stop shop” which significantly improved overall customer service while at the same time leading the launch of a new permit and application tracking software; and

WHEREAS, Mark led the Community Development Department in its inspired work to better plan for the community’s future needs through adoption of the AIA award winning Neighborhood Model and a modernized Subdivision Ordinance, and guided staff through numerous process improvement efforts including the Development Initiatives Steering Committee (DISC) and the legislative process improvement initiative; and

WHEREAS, Mark supported and contributed to myriad policy, planning and project efforts to implement Comprehensive Plan and Strategic Plan strategies to enhance the quality of life for people in Albemarle County, including the Rio/29 Grade Separated Intersection, numerous master plans and area studies and dozens of legislative amendments; and

WHEREAS, Mark sets himself apart as a visionary for the exemplary way he conveys a broad community perspective, often anticipating future trends and conditions while also exemplifying attributes

of a true servant-leader - supporting others to do their best work while demonstrating authenticity, honesty, adaptability, respectfulness, and a positive spirit.

NOW THEREFORE BE IT RESOLVED, by the Albemarle County Board of Supervisors that Mark Graham is hereby honored and commended for his many years of exceptional service to the County of Albemarle, the Department of Community Development, Albemarle County residents, the broader community in which we live, and the entire Commonwealth of Virginia with knowledge that Albemarle County is strengthened and distinguished by Mark's dedication, commitment, professionalism and compassion in meeting community needs; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be spread upon the minutes of this meeting of the Albemarle County Board of Supervisors as a lasting, visible testament to the esteem in which Mark is held by this Board and previous Boards for his lasting legacy of community service and the tangible results from his work to make Albemarle County better for future generations.

The motion was **seconded** by Ms. Palmer. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

Mr. Gallaway congratulated Mr. Graham for his coming retirement. He invited Doug Walker to make a few remarks.

Mr. Doug Walker, Deputy County Executive, said that he has worked with Mr. Graham for six years and many have worked with him for a lot longer. He said Mr. Graham leads from the heart and is authentic, compassionate, and leads with a genuine sense of heartfelt compassion for the role that he plays and in interactions with staff, and the leadership council. He said Mr. Graham can be counted on to say what he means and mean what he says, has the courage to say things in a genuine and authentic manner, and was grounded in the spirit of Albemarle County.

Mr. Walker recognized Mr. Graham's 20 years of experience with the County, his work in combining various divisions into the Department of Community Development, and his commitment to respecting the cultural legacy of the community. He said Mr. Graham adopted the role of contrarian and has been holding up the mirror to things in a way that enables them to be more thoughtful, deliberate, and intentional in the work staff is doing to lead the organization.

Mr. Walker stated that Mr. Graham collected many County-related artifacts, and he invited Supervisors to his office to learn of their significance, adding that Mr. Graham has given the County about 30 leadership books. He quoted Mr. Graham's remarks on leadership as follows: "Leadership isn't telling people what to do, it's getting them to believe in what they are asked to do."

Ms. Mallek asked Mr. Graham to introduce the staff members of the five departments he works with and have them raise their hands.

Mr. Graham said they have five major divisions within Community Development: Building Inspections, Engineering, Information Services, Planning, and Zoning. He pointed out the various staff members who work in these divisions and recognized Ana Kilmer as being invaluable for grounding him. He thanked the Board, recognized the work, effort, and stress Board members take on to themselves voluntarily and said it has been a joy to work with them. He said they have demonstrated that politics was not a bad word, they do a great job of representing the community, and he truly appreciates all they have done. He recognized that everything he has done was because of staff and expressed the joy he experiences when growing a staff person to become a senior staff person. He said that when he came to the County, it was a special place that has become an even more special place, with 60% more people living in urban areas now and fewer in the rural areas. He thanked the Board for working with him and all they have done to support him.

Ms. Palmer remarked that she has a file of emails from Mr. Graham, plans to save them as a reference, and noted his clarity of writing.

Ms. Mallek said she has a fond memory of Mr. Graham's presentation at the Development Review Task Force in 2005 with a big white board in front of a packed room where he used charts to demonstrate the process. She expressed appreciation for the tremendous change he has led.

Ms. McKeel recognized Mr. Graham for his truthfulness and for often suggesting a better approach.

Mr. Randolph said they live in a time when many demand changes from the government, which can be impulsive, not well thought out, and often strategically inept. He recognized Mr. Graham's understanding of the imperative of continuity in terms of affirmation and support of staff, the internal and external history of the organization in the community, and his willingness to be adaptive to usher in well thought through change. He said the remarkable changes the Planning Department has undergone over the last four years would not have occurred without Mr. Graham's understanding of the value of those changes and his affirmation of those undertaking these changes and allowing them to go where they needed to go with his understanding of the capacity of the community to adapt to those changes. He

noted that it takes an understanding of balance, nuance, people, and the capacity of a community to accept enduring change. He said Mr. Graham will leave a large set of shoes in the Community Development Department to be filled.

Mr. Dill recalled that when he first came on the Board, Mr. Graham was the first staff person he spoke with and he remembered the overwhelming feeling he had that Mr. Graham really knows what he was talking about and could explain things in an understandable way, which gave him confidence in the organization. He recognized staff for their professionalism and dedication, with Mr. Graham being the first to demonstrate this to him.

Mr. Gallaway recognized all the staff present and standing behind Mr. Graham, which he said was a mark of a good leader, and expects that they would continue their work while Mr. Graham was enjoying his retirement. He thanked Mr. Graham for his many years of service.

Agenda Item No. 7. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Ms. Marty Topel, resident of Dunlora in the Rio District, addressed the Board. She said that since she has lived in the area more single-family homes, crowded detached homes, and four-story apartment complexes have been added and traffic along Rio Road and John Warner Parkway have become extremely congested and dangerous. She said a friend of hers was t-boned at the entrance to her community; she has witnessed a number of motor bike accidents; the roads were not constructed to handle existing traffic; and VDOT and the County do not have any existing plans for improvements. She recognized the already substantial traffic coming on to Rio Road from Belvedere, with more to come with the construction of the new center and the Martha Jefferson outpatient center.

Ms. Topel remarked that the character and beauty of the area was deteriorating and asked if they must sacrifice the neighborhood atmosphere to achieve more urban density. She recalled that the three-story apartments at 999 Rio Road could be justified partly due to the fact that there are three-level houses in the neighboring development that backs up to Rio Road. She said that rather than capitalizing on this unattractiveness she would look forward to the growth of the existing planted trees and the addition of more trees and shrubs to soften and mask this. She said the neighborhood was fortunate to have a school and two churches and recognized that the Covenant Church recently added a second story, which was recessed on the site. She noted that the existing malls within walking and biking distance are almost empty, which verifies that there was not a need for more commercial building.

Ms. Topel said that as a member of Charlottesville Area Tree Stewards Board she has a deep appreciation for the value of trees in our natural surroundings and that it was critical they balance the urban core with a reasonable density that would maintain both a healthful and aesthetic environment. She noted that both 999 Rio Road and the Wetzel property are zoned R4 for single-family homes; it would be a challenge to have more development with new residents pouring on to the two-lane road, and requested that the Board deny the rezoning. She said she agrees with the principle of an urban density core to discourage sprawl but asked the Board to consider that this needs to be tempered to maintain a quality of life.

Ms. Marcy Springett, a 22-year resident of Dunlora, addressed the Board. She expressed her awareness that the Comprehensive Plan safeguards 95% of the County as rural area and creates four, highly developed urban areas in 5% of the County, with Dunlora designated as part of Neighborhood 2 of the Places 29 in the Northern Development Area. She noted that according to the Division of Information Services in May 2017, the Comprehensive Plan showed that the estimates of the designated urban density areas already held 64,101 people, which was 60% of the County's population of 105,372, Neighborhood 2 already held 10,539 people, and the designated rural areas held only 40% of the County's population. She characterized the 95% rural, 5% urban designation as arbitrary and unreasonable numbers.

Ms. Springett recognized that Dunlora residents have presented petitions to the Board requesting that it deny the applications for 999 East Rio Road and Wetzel Farm and not change the by-right R4 zoning. Ms. Springett stated that East Rio Road was unsafe for pedestrians, cars, bicycles and school buses; Albemarle High School was over capacity and enrollment was projected to grow further; malls along Rio/29 are losing businesses; the 64-unit lofts at Meadowcreek apartments are almost finished; there are more apartments in the pipeline for the Stonefield area, and there was destruction of greenspace with the destruction of existing trees and steep slopes leading to pollution and destroys the watershed. She noted that the Comprehensive Plan adopted June 10, 2015 indicates the future land use plan follows the principles of the Neighborhood Model and organizes new development and major redevelopment into a pattern of mixed-use centers and surrounding land uses oriented toward the centers. She quoted the Comprehensive Plan: "However, established suburban neighborhoods like Forest Lakes, Raintree, Dunlora, and Woodbrook retain their current land use pattern and do not include new, mixed-use centers." She asked that the Board not approve any more new urban density in their surrounding neighborhood.

Mr. Neil Williamson, President of the Free Enterprise Forum, addressed the Board. He said the Forum was a privately funded public policy organization that covers Charlottesville and surrounding localities. He recognized the contributions of Retired General, Chairman of the Joint Chiefs of Staff, and Secretary of State Colin Powell, noting how he was respected by many regardless of their politics. He

said that General Powell has written extensively on leadership and quoted him as follows: "Diplomacy is listening to what the other guy needs, preserving your own position, but listening to the other guy. You have to develop relationships with other people so when the tough times come you can work together."

Mr. Williamson said that Albemarle County has vastly improved its public engagement efforts over the last few years, including video streaming of Board meetings, stakeholder meetings on economic development and other topics, and the hosting of a Rio/29 form-based code discussion at a brewery in the heart of the impacted area. He praised the County for listening and not just presenting and for working on possible solutions. Referring to the last item on this agenda, zero lot lines, he said there was an extensive email trail between staff, builders, and developers. He said staff has fashioned an ordinance that solves the problem while preserving the concept of reduced setbacks by working with developers, which was one example of positive legislation that can occur when they are able to work together and hold their positions. He thanked the Board for listening.

Mr. Morgan Butler, of the Southern Environmental Law Center (SELC), addressed the Board. He said he was following up on an email he sent yesterday regarding Item 8.7 on the consent agenda, a request for a special exception to vary the Stonefield Code of Development. He said it was not clear that the request should be treated as a special exception but should qualify as a request for a variation from a Code of Development for a project in the Neighborhood Model District, and should fall within Section 8.5.5.3 of the Zoning Ordinance, under which it does not meet any of the categories of variation that the Director of Planning may authorize. He said it was not a request to change the arrangement of uses shown in the Code of Development, which can be authorized by the Director of Planning, but rather was a request to expand the number of by-right uses shown in the Code of Development. He noted that since it was not a variation that staff can authorize, it would appear from Subsection E to require a zoning map amendment, which would require a Planning Commission review and recommendation before the Board could consider it.

Mr. Butler said that if there was something they are not aware of that does allow this to be treated as a special exception the results should be the same because the Board has deliberately adopted a policy requiring that requests to allow drive-thru windows in Neighborhood Model District developments that were approved without by right drive-thru windows go to the Planning Commission before they come to the Board. He recounted how Mr. Randolph explicitly made this important process point as part of the motion he made to approve the Zoning Ordinance changes unanimously adopted three years ago. He said there are very good reasons why the Board should adhere to that policy with the request before it, beyond the obvious one of wanting to adhere to the public process commitments made to the public.

Mr. Butler said that SELC is not necessarily opposed to allowing a drive-thru window in a bank in this block of Stonefield, but to open up the entire block to drive-thru windows, as this request would do, which would undermine a primary goal of the Hydraulic/29 Small Area Plan and the Places 29 Master Plan, which was to transform the area from suburban development forms that center around the automobile to more urban forms that invite and appeal more to pedestrians. He said the Planning Commission has the expertise to weight the pros and cons of a request like this and to help fashion a compromise. He asked the Board to make sure the request whether it is treated as a zoning text amendment or a special exception goes through an appropriate review process that includes the Planning Commission before it comes to the Board.

Mr. Butler added some words of appreciation for Mark Graham. He praised Mr. Graham as being one of the few public servants to lend an open ear and mind and for always responding in a meaningful way, even if he did not agree. He expressed how it was important for the community to feel that it was being heard and responded to, and that this community was a better place for having Mr. Graham at its service for the last 20 years.

Agenda Item No. 8. Consent Agenda

(Discussion: Mr. Gallaway noted that the Board had pulled Item 8.7.)

Ms. McKeel **moved** that the Board approve the Consent Agenda, as amended. The motion was seconded by Ms. Mallek.

Before calling the vote, Mr. Gallaway said he had some comments on Item 8.6, the Longhorn Steakhouse application. He thanked staff for promptly answering his questions. He noted that staff has worked through and agreed to special exceptions and he wishes to clarify some past public comments he made when he did not believe the project was going to happen until they did an about face on the special exceptions to make the project work for the County and the applicants, which he was glad for. He stated that they should scrutinize new developments within the Small Area Plan, which he believes staff applied in this instance, so that while the long term plan plays out, they do not work in cross purposes.

Roll was then called and the motion **carried** by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

Mr. Gallaway had read the minutes of February 28, 2019, and found them to be in order.

By the above-recorded vote, the Board approved the minutes as read.

Item No. 8.2. Commonwealth's Attorney Memorandum of Understanding.

The Executive Summary forwarded the Board states that pursuant to the direction of prior Boards, the County offered Constitutional Officers the opportunity to include their employees in the County's pay and classification system, resulting in market-based pay and benefits as well as pay raises comparable to other County employees. In addition to assuring that Constitutional Officer employees were paid at a market level comparable to other County employees, it assured these employees that they would receive County-approved pay raises rather than raises provided by the State and would enjoy other privileges and benefits arising from employment with the County. The County entered into Memorandums of Understanding with the Sheriff and Clerk of Circuit Court in 2012 and 2016. Those documents required the Sheriff's and Clerk's employees to adhere to most County personnel and administrative policies in exchange for having the employees placed on the County's pay and classification system.

The Department of Human Resources, the County Executive's Office, and the County Attorney's Office have been working with the Commonwealth's Attorney to develop an MOU with terms that are agreeable to both parties. Staff prepared, and the Commonwealth's Attorney has signed, the attached MOU (Attachment A). As in the MOUs with the Sheriff and the Clerk of Circuit Court, the employees of the Commonwealth's Attorney will not be covered under the grievance policy, several policies related to hiring, discipline, and termination of employees, and any policies or provisions that are superseded by State law. The policies that will apply to the Commonwealth's Attorney's employees include those related to salary administration, leave, benefits, course reimbursement, and retirement. Benefits will not accrue to the Commonwealth's Attorney, but only to the employees. The MOU also clarifies which County administrative policies will apply to the employees.

Constitutional Officers and their operations are legally separate and independent from localities, except that localities are required by State law to provide office space and certain limited benefits. State law requires that a locality provide constitutional officer employees two weeks of paid leave, seven days of sick leave, and health insurance. In Albemarle County, the operations of the constitutional officers receive substantial subsidies and benefits beyond those required by State law. Constitutional officer employees on the County pay plan receive a substantial salary supplement beyond the salary provided by the State Compensation Board to assure they are paid at a market rate and comparable to other County employees in similar positions. To establish and clarify what employment rules, procedures, and benefits apply to constitutional office employees, common practice is for constitutional officers to enter into an MOU with the local government.

Because the MOU will not be effective until the County signs, staff asks the Board to declare it effective as of June 28, 2019, when the Commonwealth's Attorney signed. Also, because the MOU is silent as to whether pre-MOU years of service should be credited for benefits purposes, staff recommends that prior years of service be credited because: i) the Department of Human Resources has interpreted the Constitutional Officers' MOUs to recognize years of service; and ii) there are at least two employees with at least two decades of dedicated service to Albemarle County who possibly would not be similarly recognized.

Qualified employees will become eligible for the longevity bonus (\$200 per year starting after five years of service) and VERIP (\$712 per month for up to 60 months).

Staff recommends that the Board adopt the attached resolution (Attachment B) approving the MOU with an effective date of June 28, 2019 so that all of the employees of the Commonwealth Attorney's office will be given credit for all of their years of service provided to that office prior to June 28, 2019.

By the above-recorded vote, the Board adopted the following Resolution approving the MOU with an effective date of June 28, 2019 so that all of the employees of the Commonwealth Attorney's office will be given credit for all of their years of service provided to that office prior to June 28, 2019:

**RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF ALBEMARLE AND
THE COUNTY'S COMMONWEALTH'S ATTORNEY**

WHEREAS, the Board finds it is in the best interest of the County to enter into a Memorandum of Understanding with the County's Commonwealth's Attorney to formalize the agreement whereby the Constitutional Officer's employees adhere to certain County personnel and administrative policies in exchange for participating in the County's pay and classification system.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive to execute a Memorandum of Understanding between the County of Albemarle and the County's Commonwealth's Attorney once it has been approved as to substance and form by the County Attorney, that the Memorandum of Understanding be made effective as of June 28,

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2019, and that all County Commonwealth's Attorney employees be given credit for all of their years of service provided to that office before June 28, 2019.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF ALBEMARLE, VIRGINIA AND
THE COMMONWEALTH'S ATTORNEY FOR ALBEMARLE COUNTY

This Memorandum of Understanding (the "Agreement") is made and entered into on the 20th day of June, 2018, by and between the County of Albemarle, Virginia (the "County") and the Commonwealth's Attorney for Albemarle County (the "Commonwealth's Attorney");

WHEREAS, the County and the Commonwealth's Attorney desire to enter into an agreement setting forth their understanding with respect to compensation, benefits, and personnel policies applicable to the employees of the Commonwealth's Attorney; and

WHEREAS, the Commonwealth's Attorney's Office is a constitutional office independent in all respects from the County of Albemarle. Individuals employed by the Commonwealth's Attorney are, and shall remain, appointees and employees of the Commonwealth's Attorney and are not employees of the County. Nothing in this Agreement shall alter or diminish the Commonwealth's Attorney's duties and rights with respect to his employees pursuant to Virginia Code §§ 15.2-1603 and 15.2-1604. Moreover, nothing in this Agreement shall alter, diminish, or supersede the constitutional independence or prosecutorial discretion of this office. Finally, nothing in this Agreement provides the County or the Albemarle County Board of Supervisors oversight, dominion, influence, or control over the Office of Commonwealth's Attorney.

NOW THEREFORE, the parties hereto covenant and agree as follows:

1. Personnel Policies. All Personnel Policies referenced in this Agreement are the personnel policies applicable to Albemarle County classified employees. Personnel Policies shall be referenced as Policy P-(number of policy) for purposes of this Agreement.

2. Employee Status. Individuals employed by the Commonwealth's Attorney are, and shall remain, appointees and employees of the Commonwealth's Attorney and are not employees of the County. Nothing in this Agreement shall alter or diminish the Commonwealth's Attorney's duties and rights with respect to his employees pursuant to Virginia Code §§ 15.2-1603 and 15.2-1604. The Commonwealth's Attorney's employees shall not be covered by the County's

employee grievance procedure contained in Policy P-03 and remain, in all respects, at-will employees of the Commonwealth's Attorney.

3. Compensation. The County and the Commonwealth's Attorney agree that employees of the Commonwealth's Attorney shall participate and be included in the County's classification and pay plan. The Commonwealth's Attorney understands that future compensation increases funded by the Commonwealth of Virginia through the Compensation Board will not be passed automatically to the Commonwealth's Attorney employees because his employees will be covered by the County's pay plan. Notwithstanding the above, compensation for the employees of the Commonwealth's Attorney will be no less than the compensation approved by the Compensation Board.

Employees of the Commonwealth's Attorney shall be eligible to receive any market rate salary increase that County employees are eligible to receive. An employee of the Commonwealth's Attorney shall receive the market rate salary increase upon the Commonwealth's Attorney submitting a completed satisfactory performance review to the County's Department of Human Resources pursuant to Policy P-23. The Commonwealth's Attorney's employees will not be eligible to receive any additional merit-based salary increase dependent upon the County's performance review process, however, they may be eligible to receive special one-time merit based pay if authorized by the Board of Supervisors.

4. Benefits. Health insurance, annual and sick leave (except as limited by State law, including Virginia Code § 15.2-1605), insurance protection, tuition assistance repayment, retirement programs, participation in deferred compensation programs, and certain other benefits available to County employees shall be available to the employees of the Commonwealth's Attorney and governed by the personnel policies and procedures of the County. However, because employees of the Commonwealth's Attorney are not County employees, they will not be included for recognition at the annual Albemarle County employee recognition ceremony.

5. County Personnel System. Without diminishing the Commonwealth's Attorney's authority to appoint, hire, or discharge his employees, the Commonwealth's Attorney agrees that he and his employees will follow the County's personnel policies in force during the period of this Agreement except as otherwise required by law (Under Virginia Code § 15.2-1605, the employees of the Commonwealth's Attorney's Office will accrue and accumulate leave pursuant to the County's personnel policies, including accrual of amounts to exceed the six week vacation leave accrued limit due to the entry of this Agreement) and except as

specifically excluded by this section. The Commonwealth's Attorney agrees to follow all County personnel policies except the following:

1. Assignment and Transfer (Policy P-38)
2. Employee Reduction in Force Procedures (Policy P-30)
3. Employee Discipline (Policy P-22)
4. Employee Grievance Procedure (Policy P-03)
5. Employee Relations Principles (Policy P-01)
6. Termination of Employment (Policy P-26)
7. Effect of Criminal Conviction or Arrest (Policy P-05)

The County agrees to provide assistance and services to the Commonwealth's Attorney concerning the personnel matters referenced in this Agreement through its Department of Human Resources and its Finance Department. The Parties agree that the Department of Human Resources shall maintain personnel records of the employees of the Commonwealth's Attorney except for documents related to payroll, which shall be maintained by the County's Finance Department. The Commonwealth's Attorney agrees to forward any such documentation to the appropriate County department in a timely fashion.

The Commonwealth's Attorney agrees not to fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of appointment or employment, because of such individual's race, color, religion, sex, or national origin pursuant to Virginia Code § 15.2-1604 (A). The Commonwealth's Attorney agrees to assume all liability if he disregards employment advice provided by the County's Department of Human Resources. Further, the Commonwealth's Attorney agrees that he will conduct all aspects of a prospective employee background check except for a criminal background check. The Department of Human Resources will conduct the prospective employee's criminal background check.

6. Administrative Policies. The Commonwealth's Attorney further agrees to comply with all Albemarle County Administrative Policies except AP-11 (Grants Process), AP-5 (Media Relations), and AP-4 (Inclement Weather). The Commonwealth's Attorney will follow the inclement weather schedule established by the Albemarle County Circuit Court.

7. Limitations on Benefits to Commonwealth's Attorney. The County and the Commonwealth's Attorney agree that only the Commonwealth's Attorney's employees shall receive the compensation and benefits as set forth herein. Such compensation and benefits shall be available to the Commonwealth's Attorney only to

the extent required by applicable State law, such as Virginia Code § 15.2-1517(B) regarding group life, accident and health insurance.

8. Holidays. The County and the Commonwealth's Attorney acknowledge that the current holiday schedules maintained by the Commonwealth of Virginia and the County are not congruent. The Commonwealth's Attorney agrees to have his employees follow the legal holidays recognized by the Commonwealth of Virginia pursuant to Virginia Code §§ 15.2-1605 and 2.2-3300. However, the Commonwealth's Attorney's employees shall be subject to the other provisions of Policy P-81 (Holidays).

9. Office of the Commonwealth's Attorney Status. Virginia Code § 15.2-1600 and Article VII, Section 4 of the Constitution of Virginia establish that the Office of the Commonwealth's Attorney is independent from the oversight, dominion, or control of the County or the Albemarle County Board of Supervisors. Nothing in this Agreement shall alter, diminish, or supersede the constitutional independence or prosecutorial discretion of the Commonwealth's Attorney.

10. Term of Agreement. This Agreement shall take effect upon the full execution of this Agreement by the Commonwealth's Attorney and the County and shall remain in force for one calendar year, unless terminated by either party upon thirty (30) days prior written notice. This Agreement may be amended only upon the written agreement of both the Commonwealth's Attorney and the County.

By: Robert N. Tracci Date: 6-28-19
Robert N. Tracci,
Commonwealth's Attorney

COUNTY OF ALBEMARLE, VIRGINIA

By: _____ Date: _____
Jeffrey B. Richardson
County Executive

Approved as to Form:

County Attorney

Item No. 8.3. Biscuit Run Park Zoning Map Amendment.

The Executive Summary forwarded to the Board states that Biscuit Run Park consists of Tax Map Parcels (TMPs) 090A0-00-00-001A0, 090A0-00-00- 001B0, 090A0-00-00-00300, 090A1-00-00-00100, 09000-00-00-00500, 09000-00-00-006D0, 09000-00-00- 017D0, 09000-00-00-015A0, and 09000-00-00-006C1 and is located in Albemarle County just south of the City of Charlottesville. The Park consists of approximately 1,190 acres with frontage on Routes 20 and 631. On September 12, 2007 the Board of Supervisors re-zoned the parcels now constituting the park from the R1 and R2 Residential Zoning Districts to Neighborhood Model District - NMD (ZMA2005-17) with associated application plan, proffers and Code of Development. The Commonwealth of Virginia acquired these parcels from Forest Lodge LLC in December 2009 with the intended purpose of ultimately developing a state park. With the adoption of the County Comprehensive Plan on June 10, 2015, these lands were designated Parks and Green Systems and identified for the future Biscuit Run State Park. On January 4, 2018, Albemarle County and the Virginia Department of Conservation and Recreation (DCR) signed a 99-year lease for the property designed to provide for the development of a County park in lieu of a state park while assuring the protection of the park's natural and cultural resources. After a subsequent planning process, the Biscuit Run Park Master Plan (Attachment A) was approved by the Board of Supervisors on December 12, 2018 and DCR on May 15, 2019 (Attachment B). Since its approval of the master plan, the Board has agreed to use \$2.2 million originally identified for Hedgerow Park in FY2020 for the initial phase of the Biscuit Run Park development instead.

The County Attorney has advised that if the Commonwealth uses the property for the state's own public purpose, then the property is exempt from local zoning laws. However, if the state leases the property to another entity, that entity is subject to local zoning laws. Since the County is leasing the property from the Commonwealth and the County subjects itself to its own zoning laws, the County is subject to the NMD zoning currently in place for Biscuit Run. The current NMD zoning does not permit a public park over the entirety of the property. In order to change this condition and begin development of the park, the County needs to rezone the property to a more appropriate designation that allows for a large public park. While noting that the Commonwealth is not subject to local zoning regulations, DCR has provided its consent for the rezoning of the Biscuit Run property (Attachment C). It should be noted that there remains land that was part of the NMD zoning approved with ZMA2005-17 that is privately owned (TMP 09000-00-00-005A0) and not proposed for inclusion in this rezoning initiative. The Breeden family, owners of this property, was advised as to the effect of this rezoning on them and consulted about

their interest in joining in this rezoning. After some discussion and consideration, they decided they would keep their NMD zoning with the possibility of seeking a separate rezoning of their property at some point in the future. Rural Area zoning allows public uses such as a park by-right and will reflect the intent for this land as established in the Comprehensive Plan. The attached Resolution of Intent will initiate this process.

There will be costs associated with processing the rezoning that will result from approval of this Resolution of Intent, such as legal advertising.

Staff recommends that the Board adopt the attached Resolution of Intent (Attachment D).

By the above-recorded vote, the Board adopted the following Resolution of Intent:

**RESOLUTION OF INTENT
ZONING OF COUNTY-OWNED BISCUIT RUN PROPERTY**

WHEREAS, the Neighborhood Model (NMD) zoning currently in place for County-owned Tax Parcels 090A0-00-00-001A0, 090A0-00-00-001B0, 090A0-00-00-00300, 090A1-00-00-00100, 09000-00-00500, 09000-00-00-006D0, 09000-00-00-017D0, 09000-00-00-015A0, and 09000-00-00-006C1 (the "Biscuit Run Property") does not permit a public park over the entirety of the Biscuit Run Property; and

WHEREAS, in order to begin development of the proposed Biscuit Run Park, as previously directed by the Board of Supervisors, the Biscuit Run Property would need to be rezoned to allow for a large public park.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare, and good zoning and development practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending (a) the zoning designations of the Biscuit Run Property and (b) any provisions of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the amendment(s) proposed by this resolution of intent, and make its recommendations to the Board of Supervisors, at the earliest possible date.

Item No. 8.4. Real Property Acquisitions for Capital Improvement Program (CIP) Projects.

The Executive Summary forwarded to the Board states that execution of Capital Improvement Program (CIP) projects may require the acquisition of real property, whether by easement or full title. Under Virginia Code §15.2-1803, deeds conveying real estate to a locality are valid only when accepted by the locality and executed by a person authorized to act on behalf of the locality. Though the Board of Supervisors approves all Capital projects through the adoption of an annual Capital budget, the attached resolution (Attachment A) would clarify and confirm the authority of the County Executive to accept conveyances of real property necessary for the completion of those approved projects. The efficiency of government would be improved by confirming this current practice through a resolution.

This resolution would have no budgetary impact.

Staff recommends that the Board approve the resolution authorizing the County Executive to accept conveyances of real property for Capital (CIP) projects, provided that the deeds for such conveyances are approved as to form and content by the County Attorney.

By the above-recorded vote, the Board adopted the following Resolution authorizing the County Executive to accept conveyances of real property for Capital (CIP) projects, provided that the deeds for such conveyances are approved as to form and content by the County Attorney:

**RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO
ACCEPT CONVEYANCES OF REAL PROPERTY FOR
CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS**

WHEREAS, certain projects in the County's Capital Improvement Program (CIP) require the acquisition of real property, whether by easement or full title; and

WHEREAS, sufficient funding for the estimated cost of each real property acquisition is included in the approved budget for each Capital project; and

WHEREAS, title to the needed property interests is transferred by deeds that are reviewed and approved by the County Attorney or his designee; and

WHEREAS, such deeds set forth the rights and responsibilities of the landowners and the County, including the rights, obligations, and remedies of the County, to make improvements in or on the conveyed properties; and

WHEREAS, under *Virginia Code § 15.2-1803*, no deed purporting to convey real estate to a locality shall be valid unless accepted by the locality, and executed by a person authorized to act on behalf of the locality; and

WHEREAS, though the Board of Supervisors approves all Capital projects through the adoption of an annual Capital budget, a separate Resolution would clarify and confirm the authority of the County Executive to accept CIP-related property conveyances on behalf of the County; and

WHEREAS, such a Resolution would increase the efficiency of County project development, and decrease the negative budgetary impact on County projects; and

WHEREAS, the efficiency of government would be improved by confirming the authority of the County Executive to accept such deeds on behalf of the County.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby authorizes the County Executive, on behalf of the County of Albemarle, to accept conveyances of real property necessary for the completion of the Capital projects approved in the County's past, present, and future adopted budgets, provided that the deeds for such conveyances are approved as to form and content by the County Attorney.

Item No. 8.5. Resolution of Intent to Amend Who is Authorized to Submit Special Use Permit Applications.

The Executive Summary forwarded to the Board states that Electric cooperatives provide necessary electrical service to the community. Expansion and improvement of the transmission system requires a special use permit. The nature of the electrical grid results in long corridors of infrastructure potentially impacting multiple parcels. Improvement of the electric grid may be consistent with the County's Climate Action Planning and Economic Development Program.

Electric cooperatives are member-owned organizations. The expansion and improvement of the electric grid sometimes requires a special use permit. In some cases, existing easements may be adequate to allow the expansion, while in other cases new or expanded easements may be necessary. The current Zoning Ordinance limits who may submit a special use permit application to the owners or designees of property or to easement holders. In those cases where easements do not exist, electric cooperatives must either obtain the owner's permission to submit a special use permit application or obtain the easement. Electric cooperatives have the power of eminent domain to obtain easements. Requiring electric cooperatives to obtain easements prior to County approval may create an unnecessary burden. The Ordinance may be amended to allow the electric cooperative to submit a special use permit application prior to obtaining the owner's permission or the necessary easements. Property owners would be notified of the submittal of a special use permit application. If the County approves a special use permit the electric cooperative would still be required to obtain the necessary easements from the property owner, either voluntarily or by exercising eminent domain.

Staff recommends that the Board of Supervisors adopt the attached resolution of intent.

By the above-recorded vote, the Board adopted the following Resolution of Intent:

**RESOLUTION OF INTENT
ZONING TEXT AMENDMENT
SUBMITTAL OF SPECIAL USE PERMIT APPLICATIONS**

WHEREAS, pursuant to Albemarle County Code § 18-33.32 applications for special use permits may be made an owner, a contract purchaser with the owner's consent, the owner's authorized agent, or an eligible easement holder; and

WHEREAS, electric cooperatives provide necessary electrical service to the Community; and

WHEREAS, it is necessary for electric cooperatives to periodically install new infrastructure to maintain and expand service to the community; and

WHEREAS, installation of new infrastructure by electric cooperatives requires a special use permit; and

WHEREAS, electric cooperatives may not be the owner, contract purchaser, the owner's authorized agent, or an eligible easement holder of land on which new infrastructure is proposed; and

WHEREAS, electric cooperatives may acquire ownership or easements on property by consent of the owner or by exercising eminent domain; and

WHEREAS, it is desired to review and amend Albemarle County Code § 18-33.32 to permit electric cooperatives to submit an application for a special use permit.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare, and good zoning and development practices, the Albemarle County Planning Commission hereby adopts a resolution of intent to consider amending Albemarle County Code § 18-33.32 and any

other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein.

Item No. 8.6. SDP2018-66 Longhorn Steakhouse - Special Exception to vary SDP1979-7 Application Plan.

The Executive Summary forwarded to the Board states that the applicant has requested a special exception to vary the approved application plan for the Fashion Square Mall development, SDP1979-7, as authorized by County Code Section 18-8.5.5.3. With regards to the findings contained in staff's analysis (Attachment A), staff recommends approval with conditions requiring the construction of sidewalks and associated improvements in certain locations.

Special Exceptions that are recommended for approval by staff are typically scheduled for action on the Board's consent agenda. The applicant in this case had previously opposed certain conditions of approval recommended by staff. Pursuant to the Board of Supervisor's policy for processing Special Exceptions, because the applicant opposed a condition of approval, the item was scheduled for the Planning Commission's review and recommendation prior to the Board's review of the proposal. At the Planning Commission meeting on June 25, 2019, the applicant advised staff and the Commission that they agreed with, and did not oppose, the conditions recommended by staff. The conditions of approval listed in the staff report were also slightly revised prior to the Planning Commission meeting to address technical issues. The Planning Commission recommended approval with conditions as recommended by staff (and now agreed to by the applicant). Since the applicant does not oppose the recommended conditions of approval, this item is scheduled for action on the Board's consent agenda.

Staff recommends that the Board adopt the attached Resolution (Attachment B) to approve the special exception request, subject to the conditions attached thereto.

By the above-recorded vote, the Board adopted the following Resolution to approve the special exception request, subject to the conditions attached thereto:

**RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SDP 2018-66 LONGHORN STEAKHOUSE –
SPECIAL EXCEPTION TO VARY SDP 1979-7 FASHION SQUARE MALL**

WHEREAS, the applicant filed a request for a special exception to vary the Application Plan approved in conjunction with SDP1979-7 Fashion Square Mall to develop a 89,948 square foot area on Tax Parcel 06100-00-00-13200 that currently functions as over overflow surface parking for the Fashion Square Mall, in conjunction with SDP201800066 Longhorn Steakhouse – Special Exception to Vary SDP1979-7 Application Plan (SDP 18-66); and

WHEREAS, because the applicant initially opposed certain conditions of approval recommended by staff, the special exception request was presented to the Planning Commission for its review and recommendation at its June 25, 2019 meeting, at which time the applicant informed staff and the Planning Commission that the applicant is now in agreement with staff's recommended conditions of approval; and

WHEREAS, on June 25, 2019, the Planning Commission recommended approval of the special exception request with the conditions recommended by staff, including minor technical revisions.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Memorandum prepared in conjunction with the special exception request and the attachments thereto, including the Planning Commission's staff report, staff's supporting analysis, and all of the factors relevant to the special exception in Albemarle County Code §§ 18-8.5.5.3, 18-33.43, and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Application Plan approved in conjunction with SDP1979-7 as requested, subject to the conditions attached hereto.

**Special Exception to Vary the SDP1979-7 Fashion Square Mall
Application Plan Condition**

1. The final site plan must provide a shared use path, at least ten (10) feet wide, along the entire expanse of the eastern boundary of the lease area. The path must:
 - a. Connect to the required sidewalk along the southern egress for the site.
 - b. Include a six (6) foot wide landscape strip between the shared use path and the mall "ring road" travelway, planted with street trees meeting the requirements of Section 32.7.9.5.
2. If VDOT does not approve a connection of the northernmost proposed shared use path to the existing sidewalk on Route 29, then the applicant must provide in place of the required sidewalk along the southern egress of the site either a ten (10) feet wide shared use path and a six (6) foot wide landscape strip OR a ten (10) feet wide sidewalk and a six (6) foot wide landscape strip for the duration of the southern egress road. In either case the landscape strip must abut the road and be provided the required street trees pursuant to Section 32.7.9.5 to buffer pedestrians. The total width of these improvements shall be sixteen (16) feet wide.

Item No. 8.7. Special Exception to Vary Stonefield Code of Development ZMA2001-7 to allow for drive-thru per 18-8.5.5.3.

This item was pulled for a separate discussion and action.

Item No. 8.8. ZMA201800011 Brookhill Proffer Amendment.

PROJECT: ZMA201800011 Brookhill Proffer Amendment.

MAGISTERIAL DISTRICT: Rivanna.

TAX MAP/PARCEL: 046000000019B1, 046000000019B3, 046000000019B4, 046000000018A0, 04600000001800, 046000000019A1, 046000000019A2; High school site or other public institution and road improvements: 046B5000001C0; 046000000018B0 and 046000000018D0.

LOCATION: 2571 Seminole Trail (Route 29) at the intersection of Polo Grounds Road.

PROPOSAL: Amend the previously approved proffers (ZMA201500007) associated with the Brookhill development to reflect changes to the status of VDOT road improvement projects.

PETITION: Amend ZMA201500007 Proffer #1D to revise the developer's role and timing requirements for construction of connector road between Berkmar Drive and Rio Mills Road.

Amend ZMA201500007 Proffer #1H to remove reference to Proffer #1D. Amend ZMA201500007 Proffer #6 to reduce the total value of credit for in-kind contributions available to the developer by removing reference to the Rio Mills Connector road. Amend Proffer #8 to reduce the minimum acreage required for dedication of land for use as a public high school site or institutional use. No change to the zoning district, application plan, or Code of Development is proposed. ZONING: Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses. RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

OVERLAY DISTRICT: EC- Entrance Corridor; FH- Flood Hazard; AIA- Airport Impact Area; Managed and Preserved Steep Slopes.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3 – 6 units/acre) supporting uses such as religious institutions, schools and other small-scale non-residential uses; Urban Density Residential - residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses; Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space; NS-Neighborhood Service Center; Privately Owned Open Space/Environmental Features – privately owned recreational amenities and open space/ floodplains, steep slopes, wetlands, and other environmental features in Hollymead-Places 29 Masterplan. High school site and or public institution and road improvements: Rural Areas in Rural Area 1.

The Executive Summary forwarded to the Board states that the Albemarle County Board of Supervisors approved a zoning map amendment (ZMA), ZMA201500007, for the Brookhill project on November 9, 2016. This ZMA included a proffer statement with numerous proffers, including off-site transportation improvements (Attachment A).

In 2017, the Virginia Department of Transportation (VDOT) obtained funding to complete a road construction project, known as the Rio Mills Road Connector Road, that had been required of the developer by the original Brookhill ZMA proffers. VDOT is actively pursuing the design, construction, and completion of the Rio Mills Connector road as a public improvement project. The developer has submitted this ZMA application, ZMA201800011, to amend the original proffers and clearly define the developer's responsibilities now that VDOT is undertaking the Rio Mills Road project (Attachment B). A Resolution of Support for the Rio Mills Connector is included as Attachment F for the Board's consideration and action.

Pursuant to County Code § 18-33.15 (A)(1)(a), an applicant requesting approval of a zoning map amendment that only proposes to amend existing approved proffers may request the Board of Supervisors to waive the requirement for public hearings with the Planning Commission and/or Board. The applicant of ZMA201800011 filed such a request with the Clerk of the Board to waive public hearings with both the Planning Commission and the Board of Supervisors. This request was approved by the Board on November 14, 2018.

The proposed proffer amendment would revise four of the original proffers: Proffer #1D, Proffer #1H, Proffer #6, and Proffer #8, which are all tied to the Rio Mills Connector Road. See Attachment C for a summary of the proposed revisions. The proposed proffer amendment complies with County Code §§ 18-33.15 (A)(1) and 18-33.15 (A)(1)(a).

As part of this ZMA, VDOT has identified a finalized alignment for the Rio Mills Connector Road, as shown in Attachment D.

Staff recommends that the Board adopt: 1) the attached Ordinance (Attachment E) to approve ZMA201800011; and 2) the attached Resolution (Attachment F) to support the Rio Mills Connector Road alignment.

By the above-recorded vote, the Board adopted the proposed Ordinance to approve ZMA201800011 and adopted the proposed Resolution to support the Rio Mills Connector Road alignment:

ORDINANCE NO. 19-A(9)
ZMA 2018-00011 BROOKHILL PROFFER AMENDMENT

**AN ORDINANCE TO AMEND THE PROFFERS APPROVED WITH ZMA 2015-00007
FOR TAX PARCELS 04600-00-00-018A0, 04600-00-00-01800, 04600-00-00-019A1,
04600-00-00-019A2, 04600-00-00-019B1, 04600-00-00-019B3, AND 04600-00-00-019B4**

WHEREAS, the application to amend the proffers that were approved with ZMA 2015-00007 for Tax Parcels 04600-00-00-018A0, 04600-00-00-01800, 04600-00-00-019A1, 04600-00-00-019A2, 04600-00-00-019B1, 04600-00-00-019B3, and 04600-00-00-019B4 (collectively, the "Property") is identified as ZMA 2018-00011, Brookhill Proffer Amendment ("ZMA 2018-11"); and

WHEREAS, ZMA 2018-11 proposes to amend Proffer Numbers 1D, 1H, 6, and 8 of the Proffers that were approved in conjunction with ZMA 2015-07 due to VDOT's planned construction of the Rio Mills Road connector road, specifically, to reflect that the developer will be responsible for the construction of the Rio Mills Road Connection only if VDOT does not do so, to reduce the value of the credit for in-kind contributions that are available to the developer, and to reduce the acreage of the high school or institutional use site that the developer is required to dedicate in fee simple to the County from 60 acres to 50 acres; and

WHEREAS, on November 14, 2018, the Albemarle County Board of Supervisors waived the Planning Commission and Board of Supervisors public hearing requirements pursuant to the applicant's request and County Code § 18-33.15.A(1)(a); and

WHEREAS, staff recommends approval of ZMA 2018-11.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the staff report prepared for ZMA 2018-11 and its attachments, including the proposed amended proffers, the information presented at the public hearing, the material and relevant factors in Virginia Code § 15.2-2284, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2018-11 with the proffers dated April 18, 2019.

Original Proffers _____
Amendment _____ X _____

Brookhill

PROFFER STATEMENT

Date: April 18, 2019
ZMA No. 201800011 Brookhill

Tax Map and Parcel Number(s): **04600-00-00-018A0, 04600-00-00-01800, 04600-00-00-019A1, 04600-00-00-019A2, 04600-00-00-019B1, 04600-00-00-019B3, and 04600-00-00-019B4**

Tax Map and Parcel Number(s) High School Site: **04600-00-00-018B0 and 04600-00-00-018D0**

This proffer statement shall amend and supersede the original proffer statement for Brookhill, ZMA 201500007, approved on November 9, 2016.

Owner(s) of Record: CHARLES R. HAUGH & ELIZABETH ANN OGLESBY HAUGH; CHARLES R. HAUGH, & E. J. OGLESBY, JR., TRUSTEES; CROCKETT CORPORATION, a VIRGINIA CORPORATION; HORNE LAND CORPORATION, a VIRGINIA CORPORATION; CRAFTON CORPORATION, a VIRGINIA CORPORATION AND BROOKHILL APARTMENTS, LLC

Approximately 277.5 acres zoned NMD (Neighborhood Model District)

CHARLES R. HAUGH & ELIZABETH ANN OGLESBY HAUGH are the owners of Tax Map Parcel **04600-00-00-018A0**; CHARLES R. HAUGH & E. J. OGLESBY, JR. TRUSTEES are the owners of Tax Map Parcel **04600-00-00-01800**; BROOKHILL APARTMENTS, LLC is the owner of Tax Map Parcel **04600-00-00-019B1**; and CROCKETT CORPORATION is the owner of Tax Map Parcels **04600-00-00-019A1, 04600-00-00-019A2, 04600-00-00-019B3, and 04600-00-00-019B4**; all of the owners of such parcels are referred to herein, collectively as the “Owner” and the parcels are referred to herein as the “Property”. HORNE LAND CORPORATION is the owner of Tax Map Parcel **04600-00-00-018B0** and CRAFTON CORPORATION is the owner of Tax Map Parcel **04600-00-00-018D0**. The Property is the subject of the rezoning application identified by Albemarle County (the “County”) as “ZMA 2015-007” for a project known as “Brookhill”(the “Project”), which includes the application plan prepared by Collins Engineering entitled, “Brookhill Neighborhood Model District (NMD) Application Plan,” last revised September 16, 2016 (the “Application Plan”), and a Code of Development entitled the “Brookhill Neighborhood Model Code of Development,” approved on November 9, 2016 by the Albemarle County Board of Supervisors and revised for variations #1 and #2 on September 5, 2018 (the “Code of Development”). Capitalized terms, not otherwise defined in these Proffers, shall have the same definitions as set forth in either the Code of Development or the Application Plan.

Pursuant to Section 33 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the proposed rezoning, and the Owner acknowledges that the conditions are reasonable.

1. Transportation Improvements.

A. **Polo Grounds Road Improvements.** Pursuant to road plans approved by the Virginia Department of Transportation (“VDOT”), the Owner shall construct all intersection and turn lane improvements, including improvements to the horizontal alignment, vertical alignment and cross-section of Polo Grounds Road (“Polo Grounds Road Improvements”). The Polo Grounds Road Improvements shall be completed in two phases. Owner shall begin construction of Phase I, as

depicted on the Figure A, Brookhill Traffic Phasing Plan (“Traffic Phasing Plan”), prior to the issuance of a building permit (“Permit”) for the first (1st) dwelling within the Project, and the Phase I Polo Grounds Road Improvements shall be substantially completed prior to issuance of either i) a Permit for the fiftieth (50th) dwelling (other than an Assisted Living, nursing home, rest home or convalescent facility) within the Project, or ii) a certificate of occupancy for any units within a multi-family dwelling within the Project. Phase IV, as depicted on the Traffic Phasing Plan, shall be completed prior to issuance of any Permit for a dwelling (other than a multi-family dwelling, Assisted Living, nursing home, rest home or convalescent facility) within Blocks 14-18 of the Project. The Polo Grounds Road Improvements shall be designed and constructed to applicable VDOT standards, including, without limitation, VDOT’s Geometric Design. The Polo Grounds Road Improvements shall be determined to be substantially completed by: i) the Albemarle County Engineer, or its designee, or ii) when they are constructed, inspected and the VDOT construction bond is released, or iii) a VDOT official otherwise confirms that they are substantially complete.

Pursuant to approval by VDOT, Polo Grounds Road Improvements shall include salamander tunnels, shown conceptually in Figure B, (“Salamander Crossing Exhibit”). Maintenance of the salamander tunnels shall be the responsibility of the Owner, and a maintenance agreement shall be established and approved by VDOT during the VDOT review of the road plans for the Polo Grounds Road Improvements.

- B. Route 29 Intersection Improvements. Pursuant to road plans approved by VDOT, the Owner shall construct all intersection and turn lane improvements along Route 29, conceptually depicted on the Application Plan (“Route 29 Intersection Improvements”). The Route 29 Intersection Improvements shall be substantially completed prior to issuance of either i) a Permit for the fiftieth (50th) dwelling (other than an Assisted Living, nursing home, rest home or convalescent facility) within the Project or ii) a certificate of occupancy for any units within a multi-family dwelling within the Project, whichever occurs first. The Route 29 Intersection Improvements shall be designed and constructed to applicable VDOT standards, including, without limitation, VDOT’s Geometric Design. The Route 29 Intersection Improvements shall be determined to be substantially completed by: i) the Albemarle County Engineer, or its designee, or ii) when they are constructed, inspected and the VDOT construction bond is released, or iii) a VDOT official otherwise confirms that they are substantially complete.
- C. Ashwood Boulevard Connection. Pursuant to road plans approved by VDOT and a temporary construction easement and maintenance agreement approved by the County, the Owner shall construct the Ashwood Boulevard Connection, as conceptually depicted with improvements and landscaping shown on Exhibit C, Ashwood Boulevard Connection (“Ashwood Boulevard Connection”). The Ashwood Boulevard Connection, which includes a pedestrian connection, shall be bonded prior to road plan approval and substantially completed prior to: i) the issuance of the five hundredth (500th) Permit for a dwelling (other than a multi-family dwelling, Assisted Living, nursing home, rest home or convalescent facility) or ii) the issuance of the eight hundredth (800th) Permit for any dwelling type within the Project, whichever first occurs. In any event, Owner shall have completed the Ashwood Boulevard Connection prior to the completion of the western extension of Ashwood Boulevard to Berkmar Drive Extension.

Until such time as the County determines to submit the Ashwood Boulevard Connection for public dedication, the Owner shall be responsible for all maintenance, repairs, bonding and insurance of the Ashwood Boulevard Connection. The Owner shall submit a temporary construction easement and maintenance agreement that is acceptable to the County prior to approval of road plans for Phase I roadway improvements. The Owner’s improvements shall be dedicated, together with the County-owned right-of-way at such time as the County determines to submit the Ashwood

Boulevard Connection for public dedication. The Ashwood Boulevard Connection shall be determined to be substantially completed by: i) the Albemarle County Engineer, or its designee or ii) when it is constructed, inspected and VDOT has accepted the Ashwood Connection for dedication, or iii) a VDOT official otherwise confirms that they are substantially complete.

D. Rio Mills Road Connection. Within six (6) months after written request by the County, the Owner shall dedicate to the County, by General Warranty Deed and without consideration, fee simple title to a parcel of land for a public road connection, including right-of-way and granting of easements, from Rio Mills Road to the Berkmar Drive Extension in the approximate location shown on Exhibit D, Rio Mills Roadway Connection ("Rio Mills Road Connection").

Substantial completion of the Rio Mills Road Connection by VDOT is anticipated prior to December 31, 2023. If VDOT is unable to complete the Rio Mills Road Connection by December 31, 2023 and permission is granted to the Owner by VDOT and the County, the Owner shall be responsible for the construction the Rio Mills Road Connection pursuant to road plans approved by VDOT, in the approximate location shown on Exhibit D, Rio Mills Roadway Connection ("Rio Mills Road Connection"). The Rio Mills Road Connection, if constructed by the Owner, shall be substantially completed prior to December 31, 2027. The Rio Mills Road Connection shall be determined to be substantially completed by: i) the Albemarle County Engineer, or its designee or ii) when it is constructed, inspected and VDOT has accepted the Rio Mills Connection for dedication, or iii) a VDOT official otherwise confirms that they are substantially complete.

The Credit for In-Kind Contributions, as referenced in Proffer 6, shall be increased to \$31,086,662.86 if the Owner completes the construction of the Rio Mills Road Connection.

E. Transit Stop. The Owner shall construct a Transit Stop within the general location shown as a proposed Transit Stop on the Application Plan (the "Transit Stop"). The Transit Stop shall be designed and constructed in coordination with, and approval by the County Director of Community Development and Regional Transit Authority (if in place) and shall incorporate a shelter, including a rest bench, pedestrian access, and signage equal to or better than the current transit stops for Charlottesville Area Transit (CAT). The Transit Stop shall be installed and completed concurrently with the installation of surrounding roads and sidewalks within Block 1. The Transit Stop and above referenced features shall be dedicated to public use, or the Owner shall grant an easement as necessary to allow for the public access and usage of such facilities.

F. Public Transit Operating Expenses. Within sixty (60) days of transit services to the Property having commenced by CAT, a regional transit authority, or other provider of transit service selected by the County, the Owner shall contribute Fifty Thousand Dollars (\$50,000) to the County to be used for operating expenses relating to transit service to the Property; and Owner shall contribute Fifty Thousand Dollars (\$50,000) to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 1G, shall not exceed Five Hundred Thousand Dollars (\$500,000). The monetary contribution in years two (2) through ten (10) shall be paid by the anniversary date of the first contribution and each such contribution shall be conditioned upon transit service being provided to the Property during the twelve (12) month period prior to such contribution.

G. Construction Traffic Management. The Owner shall establish Construction Entrances to the Property in locations as approved by the County and VDOT as part of the Erosion and Sediment Control Plan and Site Plan process. During the period in which all roads will be constructed within the Property (and until completion), construction traffic shall be required to use the Construction

Entrances as designated in the approved Erosion and Sediment Control Plan. The Owner shall prohibit such construction traffic from entering the Project via Ashwood Boulevard and Montgomery Ridge Road. Once the roads are completed and dedicated for public use the Owner shall no longer have the authority or responsibility to regulate traffic thereon.

H. Road Improvements, Generally. The road improvements listed in paragraph 1C (the “Road Improvements”) above shall be constructed in accordance with road plans submitted by the Owner and approved by VDOT, and shall be dedicated to public use. All of the Road Improvements shall be designed and constructed to applicable VDOT standards, including, without limitation, VDOT’s Geometric Design.

I. Polo Grounds Road Railroad Overpass. Within ninety (90) days after the request by the County and the approval by VDOT, Owner shall cause to be installed, at Owners expense, a traffic signal at the Polo Grounds Road and Norfolk Southern Railroad Overpass. If, within ten (10) years after the date of issuance of the first (1st) CO for a single-family dwelling within the Project, the County has not so requested, (or VDOT has not approved the traffic signal within that time period) the Owner shall be relieved of any obligation to install a traffic signal.

2. Trails, Parks and Civic Spaces. The Owner shall provide the following improvements within the property:

A. Trail Network. A primitive trail network (the “Trail Network”), consistent with the County’s design standards for a Class B- type 1 primitive nature trail, shall be established within the Greenway as described within the Code of Development. The general location of the Trail Network is shown on the Application Plan; however exact trail locations shall be determined by the Owner based on site conditions and in coordination with the County. Installation of the Trail Network shall commence concurrently with the site work for the first Block developed within the Project and the entire trail network shall be substantially completed prior to issuance of the five hundredth (500th) Permit for a dwelling (other than a Multi-family dwelling, Assisted Living, nursing home, rest home or convalescent facility) within the Project. The Trail Network shall be determined to be substantially completed by the Albemarle County Engineer, or its designee.

Upon written request by the County, but not prior to the issuance of the five hundredth (500th) Permit for a dwelling within the Project, the Owner shall dedicate to the County an easement for public use over the Greenway area, as shown on the Application Plan. Prior to the County’s request to dedicate such easement, the Owner may dedicate portions of the Greenway by easement concurrently with one or more subdivision plats for areas lying adjacent to the Greenway; provided however, that Owner may reserve in such easements, rights of access for grading, utilities and maintenance. Each subdivision plat shall depict the Greenway area to be dedicated and shall bear a notation that the Greenway area is dedicated for public use. If, at the time the County requests dedication of the Greenway, any part of the Greenway that has not been dedicated by subdivision plat, shall be (within six (6) months of such request) at Owner’s cost, surveyed, platted and recorded with one or more deeds of easement dedication.

Pursuant to signage plan approval by the Rivanna Water and Sewer Authority (the “RWSA”), the Owner shall install signage along the Trail Network within the Dam Break Inundation Zone designating evacuation routes. Signage shall be installed as the Trail Network is established.

B. Parks and Civic Spaces. The Owner shall provide not less than 3.2 acres of land within the Project for Parks and Civic Spaces as described in the Code of Development and generally shown on the Application Plan. Each Park or Civic Space shall be substantially completed prior to the issuance

of the fortieth (40th) CO for a residential dwelling unit in the Block in which it is located. Parks and Civic Spaces shall be conveyed to and maintained by the Owner's Association.

3. Cash Proffer for Capital Improvements Projects.

A. The Owner shall contribute cash on a per "market-rate" dwelling unit basis in excess of the number of units that are allowed by right under the zoning in existence prior to the approval of this ZMA 2015-007 for the purposes of addressing the fiscal impacts of development on the County's public facilities and infrastructure, i.e., schools, public safety, libraries, parks and transportation. For the purposes of this Proffer 3, the number of units allowed by right under the R-1 Residential zoning is two hundred sixty-nine (269) single-family detached units. A "market rate" unit is any dwelling unit in the Project that is not either a For-Sale Affordable Housing Unit or For-Rent Affordable Unit as described in Proffer 4 ("Market Rate Unit"). The cash contributions shall be Seven Thousand Three Hundred and Thirty-three and 18/100 Dollars (\$7,333.18) for each single family detached Market Rate Unit, other than a constructed For-Sale Affordable Dwelling Unit within the Project qualifying as such under Proffer 4. In other words, the cash contribution for market rate single family units shall begin after the issuance of a CO for the 269th single family dwelling unit and prior to the issuance of a CO for the 270th single family dwelling unit. The cash contributions for each single family attached Market Rate Unit shall be Five Thousand Four Hundred and Forty-seven and 57/100 Dollars (\$5,447.57), other than a constructed For-Sale Affordable Housing Unit or a For Rent Affordable Housing Unit within the Project qualifying as such under Proffer 4. The cash contributions for each multifamily Market Rate Unit shall be Seven Thousand Four Hundred Nineteen and 91/100 Dollars (\$7,419.91), other than a constructed For Sale Affordable Housing Unit or For Rent Affordable Housing Unit within the Project qualifying as such under Proffer 4.

4. Affordable Housing.

The Owner shall provide affordable housing equal to fifteen percent (15%) of the total number of residential units constructed on the Property. For example, if one thousand (1000) total units are constructed in the Project, one hundred fifty (150) units, or their equivalent, are required to be provided to satisfy this Proffer 4, subject to paragraph 4C. The Owner or its successors in interest reserve the right to meet the affordable housing objective through a variety of housing types, including but not limited to for sale units, rental units, accessory units and Carriage Units, ("Affordable Units") or through cash contributions, as more particularly described in sections 4A, 4B and 4C below.

A. For-Sale Affordable Housing Units. All purchasers of the For-Sale Affordable Housing Units, (defined below) shall be approved by the Albemarle County Housing Office or its designee. "For-Sale Affordable Housing Units" shall be dwelling units offered for sale at prices for which households with incomes less than eighty percent (80%) of the area median income may qualify, and shall not exceed sixty-five percent (65%) of VHDA's Maximum Sales Price for first-time homebuyers. The Owner shall provide the County or its designee a period of one hundred twenty (120) days to identify and prequalify an eligible purchaser For-Sale Affordable Housing Units. The one hundred twenty (120) day period shall commence upon written notice from the Owner that the unit(s) shall be available for sale. This notice shall not be given more than ninety (90) days prior to receipt of the Certificate of Occupancy for the applicable For-Sale Affordable Housing Unit; the County or its designee may then have thirty (30) days within which to provide a qualified purchaser for such For-Sale Affordable Housing Unit. If the County or its designee does not provide a qualified purchaser during the one hundred twenty (120) day period, the Owner shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s). Carriage Units, as defined in the Code, shall not exceed twenty-five percent (25%) of the total Affordable Units.

B. For-Rent Affordable Housing Units.

- (1) Rental Rates. The initial net rent for each rental housing unit for which Owner seeks qualification for the purposes of this Proffer 4, ("For-Rent Affordable Housing Unit") shall not exceed the then-current and applicable maximum net rent rate approved by the Albemarle County Housing Office. In each subsequent calendar year, the monthly net rent for each For-Rent Affordable Housing Unit may be increased up to three percent (3%). For purpose of this Proffer 4B, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such For-Rent Affordable Housing Units may not exceed the maximum rents established in this paragraph 4B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each For-Rent Affordable Housing Unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term").
- (2) Conveyance of Interest. All deeds conveying any interest in the For-Rent Affordable Housing Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of paragraph 4B. In addition, all contracts pertaining to a conveyance of any For-Rent Affordable Housing Unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this paragraph 4B. At least thirty (30) days prior to the conveyance of any interest in any For-Rent Affordable Housing Unit during the Affordable Term, the then-current Owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this paragraph 4B(2) have been satisfied.
- (3) Reporting Rental Rates. During the Affordable Term, within thirty (30) days of each rental or lease term for each For-Rent Affordable Housing Unit, the then-current Owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current Owner shall provide to the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

C. Cash in lieu of Constructing Affordable Dwelling Units.

In lieu of constructing For-Sale, or For-Rent Affordable Dwelling Units for fifteen percent (15%) of the total number of Units, the Owner has the option to make a cash contribution to Albemarle County for the affordable housing program in the amount of Twenty-Four Thousand and Three Hundred Seventy Five Dollars (\$24,375.00) (the "Affordable Housing Cash Proffer") for each such unit as follows: the Owner shall exercise the option to make, and thereby shall pay the Affordable Housing Cash Proffer to the County, if the Affordable Housing requirement has not been proportionally met otherwise, in four (4) installments; after an inspection and prior to the issuance of approval of a CO for each of the two hundredth (200th), five hundredth (500th), eight hundredth (800th), and one thousandth (1000th) dwelling unit within the Project. The total Cash in lieu contribution due to Albemarle County at each of the four (4) payment periods as noted above shall be calculated based on the total number of Certificates of Occupancy issued for Market Rate and Affordable Housing Units.

5. Cost Index.

Beginning January 1 of each year following the approval of ZMA 2015-007, the amount of each cash contribution required by Proffers 3 and 4 (collectively, the “Cash Contributions” and individually “Cash Contribution”) shall be adjusted annually until paid, to reflect any increase or decrease for the proceeding calendar year in the Marshall and Swift Building Cost Index for masonry walls in the Mid-Atlantic (“MSI”). The annual adjustment shall be made by multiplying the proffered Cash Contributions amount due for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the preceding calendar year, the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended (the “Annual Percentage Change”). By way of example, the first annual adjustment shall be $\$7,333.18 \times 2017 \text{ MSI}/2016 \text{ MSI}$. Each annual adjustment shall be based on the amount of the proffered Cash Contribution due for the immediately preceding year based on the formula contained in this Proffer 5 (the amount derived from such formula shall be referred to hereinafter as the “Cash Contribution Due”), provided, however, in no event shall the Cash Contribution amount paid by the Owner be less than Seven Thousand Three Hundred Thirty-three and 18/100 Dollars $\$7,333.18$ per single family detached Market Rate Unit and Five Thousand Four Hundred Forty-seven and 57/100 Dollars $\$5,447.57$ per single family attached Market Rate Unit and Seven Thousand Four Hundred Nineteen and 91/100 Dollars $\$7,419.91$ per multifamily Market Rate Unit under Proffer 3 or Twenty-Four Thousand and Three Hundred Seventy Five Dollars $\$24,375.00$ per affordable dwelling unit under Proffer 4 (the “Minimum Cash Contribution”). The Annual Percentage Change shall be calculated each year using the Cash Contribution Due, even though it may be less than the Minimum Cash Contribution, HOWEVER, the amount paid by the Owner shall not be less than the Minimum Cash Contribution. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

6. Credit For In-Kind Contributions.

Notwithstanding the provisions of these Proffers to the contrary, the Owner’s obligation to pay Cash Contributions shall not commence until the number of units, to which such Cash Contributions apply have been completed that results in what would otherwise have been a total Cash Contribution equal to the total value of: i) the Elementary School Site, and related improvements to be completed by Owner, ii) the High School Site, iii) the Polo Grounds Road Improvements, iv) Route 29 Intersection Improvements, v) Ashwood Boulevard Connection, and vi) the Trail Network, (collectively referred to as the “In-kind Contribution”). The In-Kind Contribution amount shall be $\$28,336,662.00$. The In-kind Contribution reflects the value of the improvements that the Owner has committed to make in these proffers that are for the benefit of the public. In other words, the Owner shall not be required to pay any per unit Cash Contributions until the time of the issuance of the building permit for a new unit completed after applying a credit for the In-kind Contribution. In the event that the Project is completed prior to the balance of the In-kind Contribution being exhausted, any remaining balance of the In-kind Contribution may not be applied for any other project or development.

7. Elementary School Site.

Within one year after written request by the County, but in no event earlier than one year after the date of issuance of the first (1st) CO issued for a dwelling within the Project, the Owner shall dedicate to the County, by General Warranty Deed and without consideration, fee simple title to a parcel of land for a public elementary school of, as shown on Figure E: Brookhill School Sites Exhibit and labeled “Elementary School Site” (the “Elementary School Site”). The Elementary School site shall not be less than seven (7) acres, and shall abut a publicly-dedicated right of way. The Elementary School Site shall be a graded and compacted pad site with water, sewer and electricity utility connections constructed to the edge of the parcel to accommodate an elementary school according to standards of the County School Division’s Building

Services Department. At the option of the County, and in lieu of the construction of a school, a public park may be established by the County on the Elementary School Site.

8. Public High School or Institutional Use Site.

Within one year after written request by the County, the Owner shall dedicate to the County, by General Warranty Deed and without consideration, fee simple title to a parcel of land for a public high school, and/or such other use as the County may determine suitable, of not less than fifty (50) acres abutting a publicly-dedicated right of way, as shown on Figure E: Brookhill Schools Sites Exhibit and labeled “High School Site” (the “High School Site”). The High School Site shall be conveyed as-is, without any improvements or warranty as to suitability.

9. Historic Resources.

- A. National Register of Historic Places Eligibility. The existing Brookhill dwelling is eligible for the National Register of Historic Places. Owner shall address any adverse impact to this designation as part of the Section 106 Review under the National Historic Preservation Act of 1966 (NHPA), which is administered by the Virginia Department of Historic Resources (DHR).
- B. Cemetery Delineation. Owner shall i) delineate any cemeteries encountered within the Project on the site plan or subdivision plat for the area to be developed which contains such cemetery or cemeteries, and ii) submit a treatment plan for any such cemetery for approval by the County Director of Community Development, or its designee at the plan or plat review.
- C. Greenway Area Woodlands Camp. There shall be no land disturbance by Owner or by any of its licensees, or successors of the Woodlands Camp located in the Greenway Area and identified in the Phase I Historic Resources Study for the Project.

This Proffer Statement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

WITNESS the following signature:

OWNERS of Tax Map Parcel 04600-00-00-018A0:

By: Charles R. Haugh
CHARLES R. HAUGH

By: Elizabeth Ann Oglesby Haugh
ELIZABETH ANN OGLESBY HAUGH

Date: May 8, 2019

OWNERS of Tax Map Parcel 04600-00-00-01800:

By: Charles R. Haugh
CHARLES R. HAUGH, TRUSTEE

By: Douglas B. Oglesby
DOUGLAS B. OGLESBY, TRUSTEE

Date: 5-8-19

OWNER of Tax Map Parcel 04600-00-00-019B4, 04600-00-00-019B3,
04600-00-00-019A1, 04600-00-00-019A2:
CROCKETT CORPORATION, a Virginia corporation

By: Ann O. Haugh, President
Ann O. Haugh, Its President

Date: May 8, 2019

OWNER of Tax Map Parcel 04600-00-00-018B0:
HORNE LAND CORPORATION, a Virginia corporation

By: Ann O. Haugh, President
Ann O. Haugh, Its President

Date: May 8, 2019

OWNER of Tax Map Parcel 04600-00-00-018D0:
CRAFTON CORPORATION, a Virginia corporation

By: Ann O. Haugh, President
Ann O. Haugh, Its President

Date: May 8, 2019

OWNER of Tax Map Parcel 04600-00-00-019B1:
BROOKHILL APARTMENTS, LLC, a Virginia limited liability company

By: CDG Holdings, LLC, Managing Member
By: Haystack Corporation, Manager

By: Andrew E. McGinty, Its President

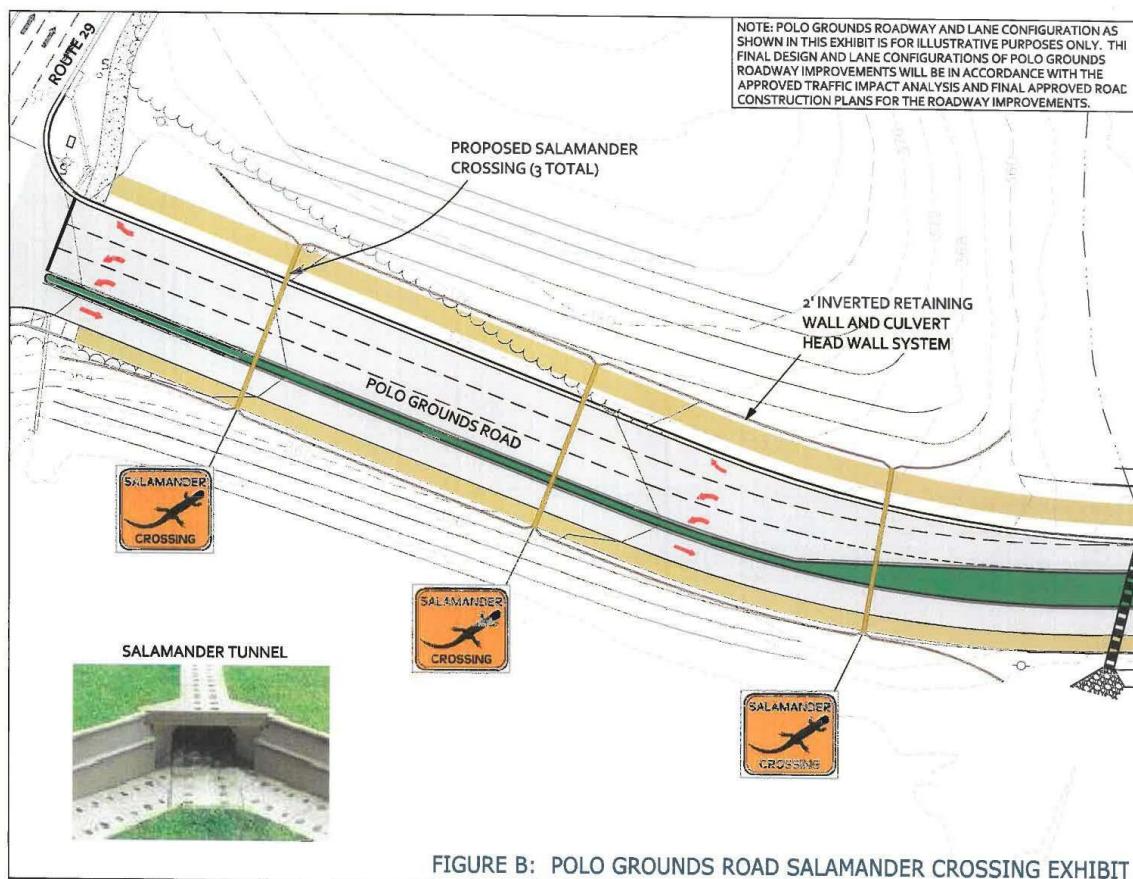
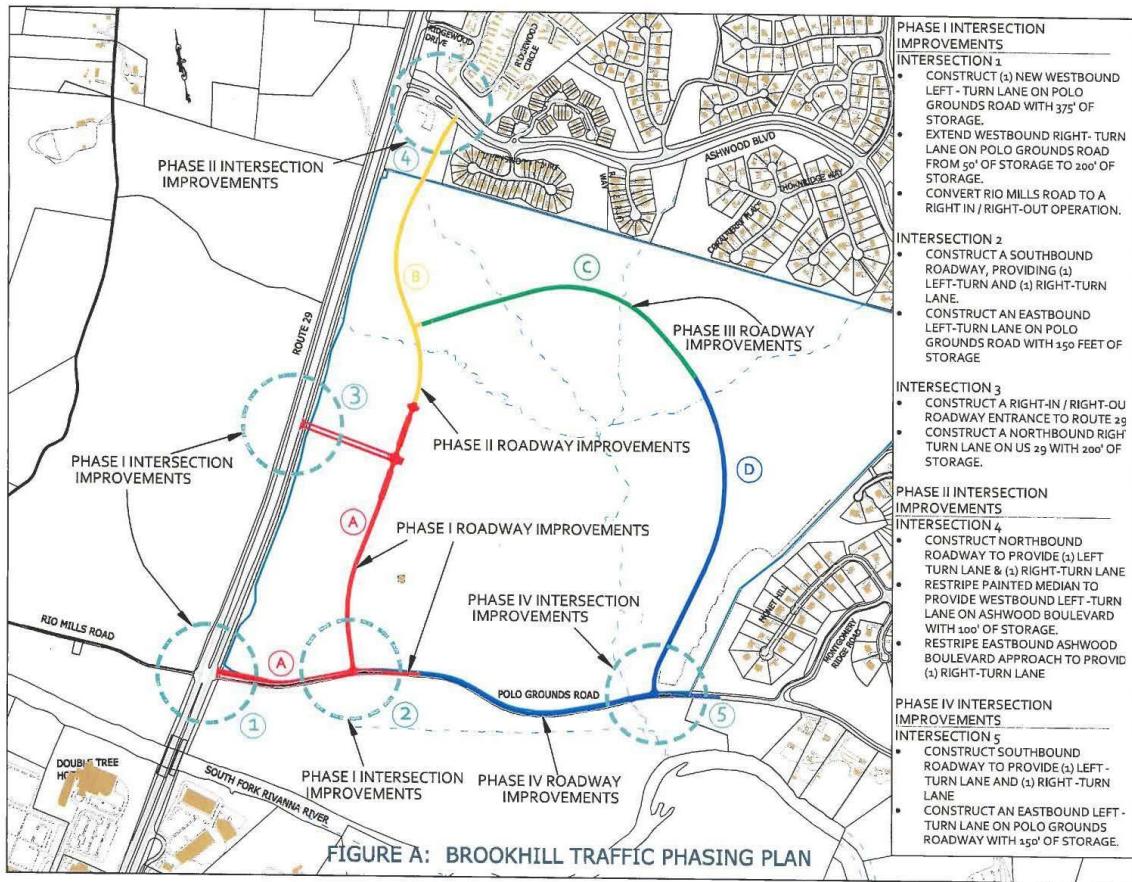
Date: 5/23/2019

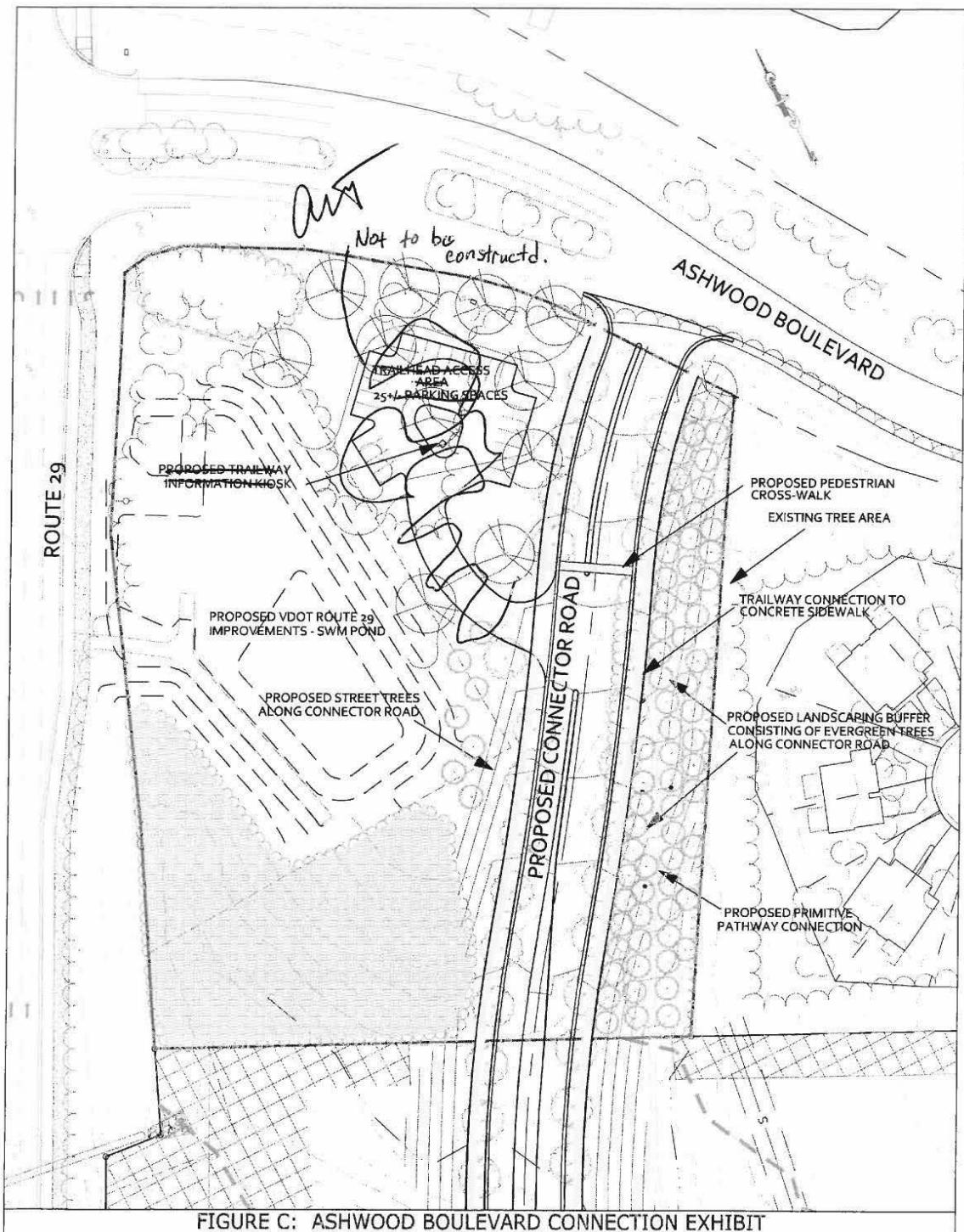
BROOKHILL INVESTMENTS, LLC, a Virginia limited liability company (Contract Purchaser)

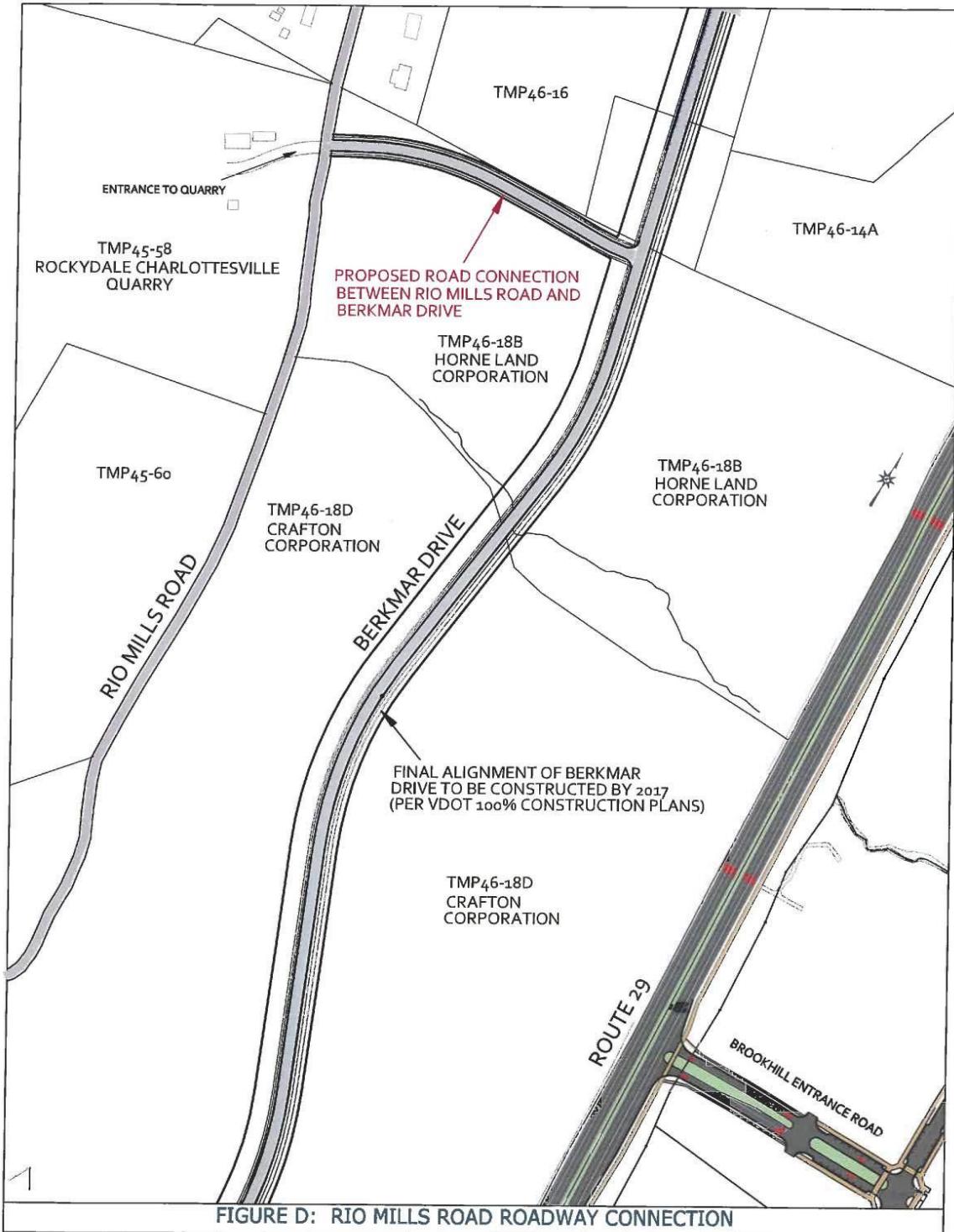
By: River Bend Management Inc., Manager

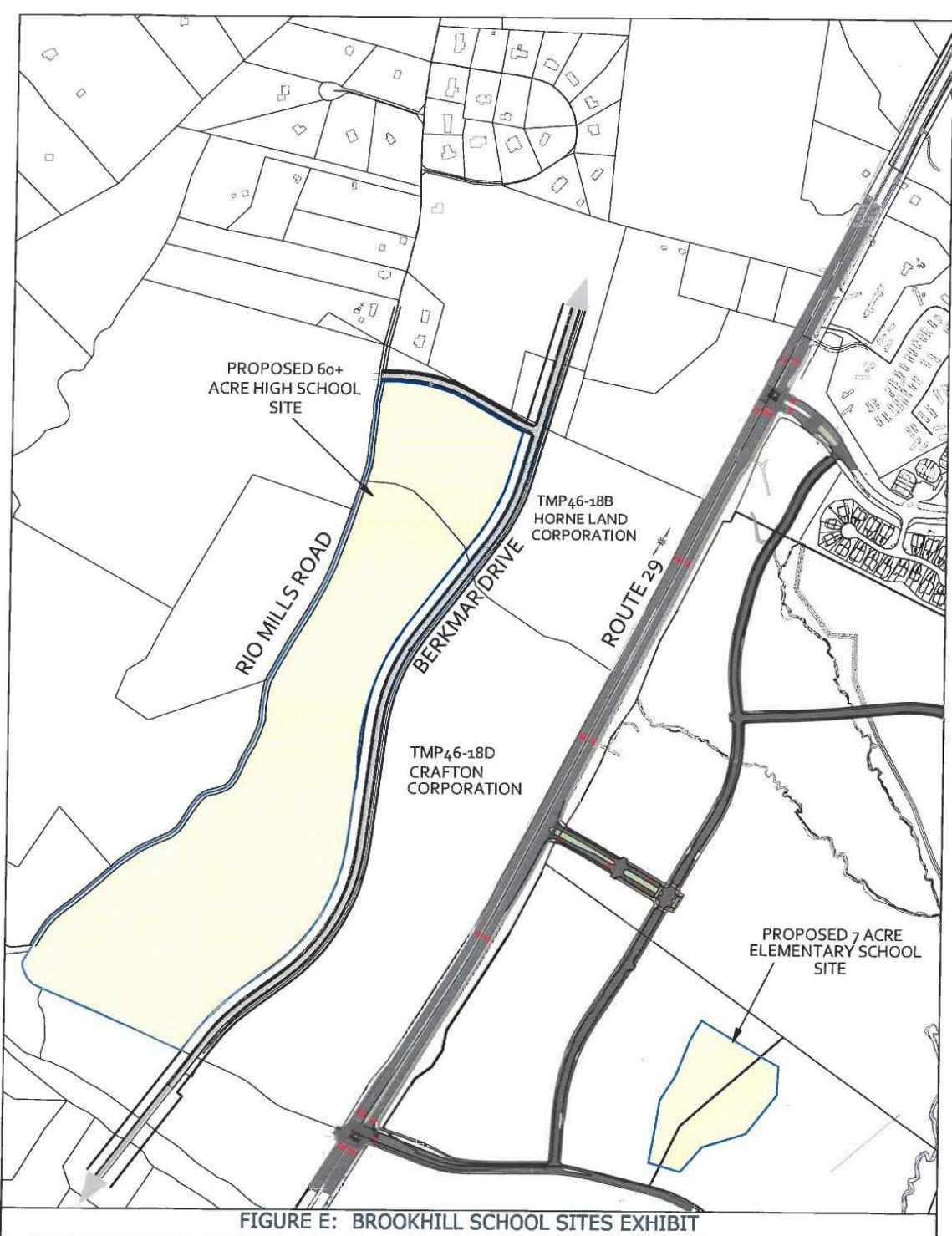
By: Alan R. Taylor, Its President

Date: 5/24/19









**RESOLUTION OF SUPPORT
FOR RIO MILLS CONNECTOR TO BERKMAR EXTENDED ALIGNMENT**

WHEREAS, Albemarle County included a connection from Rio Mills Road to the new Berkmar Drive Extended in the Places 29 Master Plan as a priority road improvement; and

WHEREAS, Albemarle County approved the accumulation of Telefee funds in the Secondary Six Year Plan to be designated to the construction of this Connector road; and

WHEREAS, the Commonwealth Transportation Board approved the remainder of funding necessary to complete the connector road to be awarded to Albemarle County through the Smart Scale program based on Albemarle County's 2016 Grant application; and

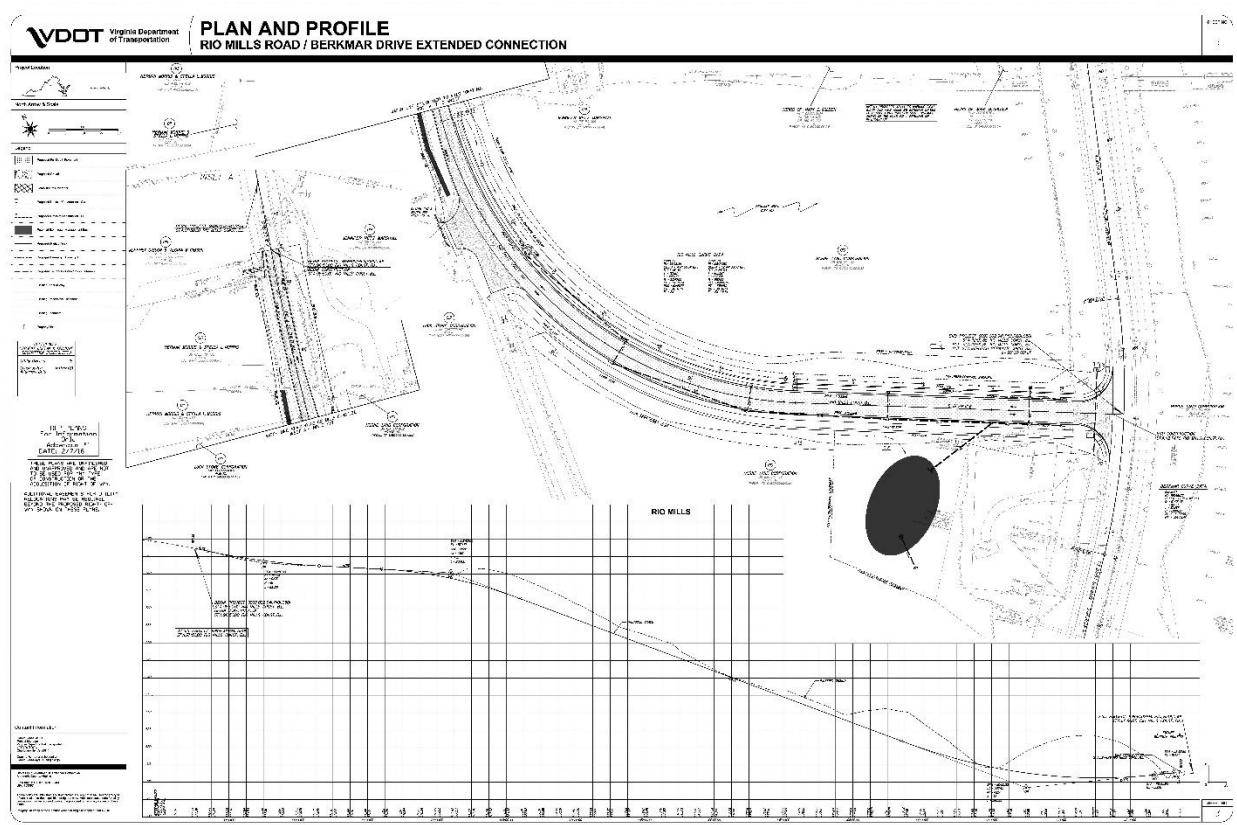
WHEREAS, the Virginia Department of Transportation worked extensively with Albemarle County staff, Albemarle County Schools Division, and the developer of Brookhill on the proposed alignment of the connector road; and

WHEREAS, the Virginia Department of Transportation received public comments on the preliminary design and alignment at advertised Public Hearings on October 9, 10, and 11, 2018; and

WHEREAS, the public comments received by the Virginia Department of Transportation supported the proposed alignment of the new connector road.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby fully endorses and supports the proposed alignment as presented by the Virginia Department of Transportation for the Rio Mills to Berkmar Drive Connector; and

BE IT FURTHER RESOLVED, that the Board of Supervisors hereby respectfully requests the Commonwealth Transportation Board to approve the proposed alignment for design and construction.



Item No. 8.9. Albemarle County Service Authority (ACSA) Fiscal Year (FY) 2020 Annual Operating and Capital Budget, **was received for information**.

Item No. 8.10. Copy of letter dated May 28, 2019 from Ms. Leah H. Brumfield, Designee of the Zoning Administrator, to Mr. Kurt Keeseker RE: OFFICIAL DETERMINATION OF USE – “maker space” and accessory dwelling unit uses at 2000 – 2010 Merchant Street, TMP 07800-00-00-021H0 (the “Property”), **was received for information**.

Discussion: Item No. 8.7. Special Exception to Vary Stonefield Code of Development ZMA2001-7 to allow for drive-thru per 18-8.5.5.3.

The Executive Summary forwarded to the Board states that the “Stonefield” development is zoned NMD (Neighborhood Model District), pursuant to approved ZMA200100007 and updated application plan ZMA201300009. Special exceptions to vary from the provisions contained in the approved Code of Development for properties in the NMD district may be granted by the Board of Supervisors, pursuant to County Code §18-8.5.5.3 and §18-33.49.

The applicant (Bob Pineo, Design Develop LLC) has requested the following special exception to vary the Code of Development that was approved in conjunction with ZMA200100007 (Stonefield, formerly Albemarle Place):

1. Special Exception request to modify the Code of Development to allow drive-through windows by-right in Block G pursuant to County Code §18-8.5.5.3(2).

Please see Attachment B for staff's full analysis.

Staff recommends that the Board adopt the attached Resolution (Attachment C) to approve the special exception request.

Ms. Palmer said she removed this from the consent agenda as she wants to hear from staff as to why they thought it was necessary to do the entire block and to address the Southern Environmental Law Center's concerns.

Mr. Bill Fritz, Chief of Special Projects, stated that while making the motion Mr. Randolph discussed having special exceptions that add drive-thrus to the list of permitted uses and planned developments, and be added to the previously adopted policy to have special exceptions recommended for denial go to the Planning Commission before they come to the Board. He acknowledged that his office

failed to bring back a revised policy, which was why this did not go to the Planning Commission. He said he discussed with Mr. Kamptner that it could be referred to the Planning Commission, which would have 90 days to return a recommendation to the Board and be placed on the consent agenda, should the Planning Commission recommend approval. He added that staff has a revised condition that would limit the expansion of the list of permitted uses to just the one block within the one area of Stonefield.

Ms. Mallek asked if the one particular area was just this one building. Mr. Fritz responded that it was one vacant space and the staff can identify the specific area and have a draft condition.

Ms. Mallek remarked that the new process worked well in Pantops with single lots but she gets nervous when there was a great unknown, especially in a long term planned development. Mr. Fritz noted that the initial plan provided by the applicant does not meet the criteria yet and it would take some revisions to the plan in order for it to meet all the ordinance requirements.

Ms. Palmer asked for clarification that it would just be the bank and asked if the bank developer has an issue with timing if it were to go to the Planning Commission. Mr. Fritz confirmed it was the bank and said he does not know if the developer has an issue with the timing.

Ms. Palmer asked if the specific piece of land could be divided into two buildings. Mr. Fritz responded that it could be divided but due to its size and the location it would only ever be one drive-thru.

Ms. Mallek asked for confirmation that he was referring to just the lot as opposed to Block G. Mr. Fritz confirmed this. He said the applicant has submitted a plan and the staff would have a condition that references the area shown on the site plan, though it would not reference the layout on the site plan but the area because the layout will need to be changed a bit. He said that staff can identify the specific geographic spot.

Ms. Palmer asked if this would affect precedent and box the Board into anything else. Mr. Fritz responded that it would not and that he would bring something back in the future with a revision to the 2012 special exception policy for re-adoption as well as amendments that were made in November 2018 to the special use permit rezoning and special exception process, with which they have had problems administering. He said staff are spending a lot more time on administrative tasks and it has created a problem. He said staff are going to be bringing back some solutions to that fairly quickly.

Ms. Palmer asked Mr. Fritz why he brought it as the whole area G in the first place. Mr. Fritz responded that he does not know as he did not work on the special exception.

Ms. Tori Kanelopoulos, Planner, said the special exception came to her as the staff reviewer but she had Mr. Fritz present first as he brought the zoning text amendment for drive-thrus and had more background on that. She explained that for this application the applicant had asked for it in Block G and this was the condition she went forward with since this block does not permit any residential uses, was next to COSTCO and Northrup Grumman, and was the last building site as shown. She said the applicant was fine with revising it to the specific proposal, for which staff would have to change the resolution and the condition.

Mr. Randolph remarked that as the author of the Randolph Rule, he would like to say that the hobgoblin of consistency that gets in the way of flexibility and adaptability does not work for him and that, under these circumstances, he was comfortable with the limitations that have now been imposed and with proceeding without the applicant having to wait for the Planning Commission. He said he thinks they have the issue contained and localized and the Board can codify the special exception condition with drive-thrus in the near future.

Ms. Palmer said she was okay as long as the Board limit it to the one use.

Ms. McKeel agreed with Ms. Palmer.

Mr. Galloway asked procedurally what does the Board need to do.

Mr. Fritz offered to prepare the condition of the motion and bring it back to the Board later this evening. Supervisors agreed with Mr. Fritz's suggestion.

Ms. Mallek asked the applicant if he was in agreement with the condition. She acknowledged that the applicant would accept the condition.

Agenda Item No. 9. Lewis and Clark Drive Utilities Maintenance Agreement.

The Executive Summary forwarded to the Board states that in June of 1996 the Board of Supervisors approved ZMA199500004 for the University Real Estate Foundation Research Park. As part of this rezoning, a proffer required the construction of "Road A", Lewis and Clark Drive, in the approximate location where it is now proposed to be constructed. A portion of this road was previously constructed to provide a connection from US Route 29 to Quail Run. The University of Virginia Foundation (the "Foundation") is now working to construct the extension of this road as called for in the development plan to make the connection to Innovation Drive and Airport Road. This connection is a high priority for the County to provide a continuous parallel route to US 29 through the Places 29 Development Area. A future proposed connection will connect this road to the recently extended Berkmar Drive.

The Lewis and Clark Drive connection through the Foundation's Research Park is the northern segment of the parallel route to US 29 beginning at Hydraulic Road, connecting to Berkmar Drive, and extending north to the Lewis and Clark Drive intersection with US 29. The County has been working with the Foundation for many years to complete this project, identified as a high priority transportation project and required by a proffer related to the development of the Research Park. It has received renewed effort with the completion of the Berkmar Drive Extension crossing the Rivanna River and connecting to the Hollymead area. Previously the County submitted the project for Revenue Sharing and SMART Scale grant applications, which had been rejected. The Foundation has now moved forward with making that connection through the Research Park property connecting Lewis and Clark Drive from Quail Run to Innovation Drive and Airport Road with private funding.

This project is important to the County for many reasons beyond the improved regional connectivity it provides. This connection also opens up a large tract of developable land that has been identified through the efforts of the Economic Development Office of Albemarle County for its potential to provide necessary land area to accommodate office, flex, and light-heavy industrial development.

The proposed road, which is expected to become a public road to be maintained by the Commonwealth of Virginia Department of Transportation (VDOT), would cross multiple unnamed streams or drainages requiring culverts to be placed beneath the roadbed. At these locations, it was determined during the engineering phase that, to reduce costs and environmental impacts, the best option was to run the necessary utilities parallel to the road, over the culverts, and beneath the surface. This decision was made primarily to prevent additional wetland impacts that would be incurred if a second drainage crossing was required outside of the road right-of-way.

The VDOT policy related to "longitudinal" utility installations along proposed roads functionally classified as collector (which this road is proposed as) to be accepted into the state system is that they should be placed outside of the right-of-way when practical. Longitudinal utility installations within the right of way may be permitted under certain circumstances due to unavailable right of way, environmental impacts, or other issues.

If VDOT permits longitudinal utility installations, the locality must guarantee to VDOT by resolution and Memorandum of Agreement (MOA) that all costs associated with utility relocation for maintenance of structures, such as culverts, will be paid. VDOT has reviewed the proposed Lewis and Clark Drive designs and, to minimize environmental impacts to wetlands and streams, will permit longitudinal utility installations with the County guarantee by resolution and MOA that all costs associated with utility relocation for repair or replacement of box culverts will be paid.

Albemarle County and the Foundation have agreed in principle that the County could sign a MOA if it were a three-party agreement (or separate agreement) between the County, the Foundation, and VDOT, in which the Foundation is responsible for those costs and payment is guaranteed by the County. VDOT is unable to enter into an agreement of this type directly with a private party, which is why the County would need to participate in the agreement to guarantee payment of these potential costs. In the proposed situation, all costs would be borne by the Foundation, and the County would act as the guarantor to ensure payment.

A Memorandum of Agreement is currently being drafted and reviewed by the County Attorney's office, the Foundation, and the State. The attached Resolution (Attachment A) authorizes the County Executive to sign the three-party agreement after its approval as to form and substance by the County Attorney, as well as any additional agreements that may be necessary to protect the County's interests and ensure that all responsibility for potential costs is borne by the Foundation.

There is no direct budget impact to the County from this agreement. All responsibility for costs is to be borne by the Foundation.

Staff recommends that the Board adopt the attached Resolution (Attachment A) authorizing the County Executive to sign a three-party Memorandum of Agreement and any additional agreements that may be necessary to insure that all responsibility for potential costs are borne by the Foundation once the final Agreement(s) have been approved as to form and substance by the County Attorney.

Mr. Kevin McDermott, Transportation Planner, presented. He said he would review a Memorandum of Agreement staff would like to put forth a resolution to the Board to authorize the County Executive to sign between Albemarle County, University of Virginia Foundation, and Virginia Department of Transportation, related to the construction of Lewis and Clark Drive. He noted that Lewis and Clark Drive was located within the Places 29 North area on the University of Virginia Foundation Research Park property where it starts at US 29 and curves around to Quail Run where it ends. He said the County has been working with the Foundation to extend construction through the remainder of the Research Park down to connect to Innovation Drive by the Hollymead Fire Department.

Mr. McDermott stated that the northern portion was complete and they are trying to move forward with the southern portion. He said the Foundation decided to construct part of this segment privately working with the County, whereas previously, they had looked at two state grant applications, which were unsuccessful. He said the Foundation wants to move forward, has completed the design, and was ready to move towards construction advertisement. He said the project was important for the County because it would be an extension of Berkmar Drive to bring it up through the Research Park to connect back with 29

and it has been recognized as an economic development area. He said that Roger Johnson, our Economic Development Director, would have loved to have been here to talk more about some of the advantages of this site, but he could not make it back from a previous engagement in time. He pointed out that Doug Walker was available if the Board would like to hear any more about the economic development aspects of this project. He said he would go ahead and keep moving with what they are looking at today. He said the proposed public road was approved in its general location as a proffer during rezoning for the research park and the proposed road would cross a number of streams and drainages that require culverting beneath the roadbed as well as underground utility lines that would move along that right of way to provide services throughout the park.

Mr. McDermott said during the design phase the designer looked to reduce costs and environmental impacts and they decided to place utilities within the right of way beneath the surface. He said they would go over the culverts but beneath the surface of the road. He noted that VDOT typically requires that utilities be placed outside of the right of way in these cases since they often have culvert repairs and dealing with the utilities would increase the cost. He said that VDOT in this case has agreed to permit these longitudinal utility installations because of the positive environmental impacts to wetlands and streams, with VDOT to require a guarantee that costs associated with any utility relocation that would occur if they have to repair or replace those box culverts would be paid by the County.

Mr. McDermott noted that the County has agreed in principal to enter into a Memorandum of Agreement with UVA Foundation if the Foundation were to agree to these costs, similar to an agreement between VDOT and the developer of a pedestrian path under the road in the Foothills development in Crozet to accept any additional costs for road repairs, since VDOT did not consider this to be an essential part of the road. He explained that the intent was for the County to pass on any costs to the developer, the Foundation. He said the Memorandum of Agreement (MOA) between the County, the Foundation and the Department of Transportation was being drafted to define roles and responsibilities relative to the agreement with the prime consideration of the County being to pass those costs off to the developer in this case. He noted that the road was a priority project for the County and they have a high level of confidence that an organization like the UVA Foundation would exist for a long time and be able to take care of any costs. Mr. McDermott then recommended that the Board adopt the proposed resolution to authorize the County Executive to sign a three-party Memorandum of Agreement and any additional agreements that may be necessary to ensure that all responsibility for potential costs are borne by the Foundation once the final Agreement(s) have been approved by the County Attorney. He said the County Attorney, VDOT and the Foundation will be working through the details of the agreement over the next few months.

Mr. Gallaway **moved** that the Board adopt the proposed Resolution, as recommended. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

RESOLUTION TO AUTHORIZE THE COUNTY EXECUTIVE TO SIGN A MEMORANDUM OF AGREEMENT WITH THE UNIVERSITY OF VIRGINIA FOUNDATION AND THE COMMONWEALTH OF VIRGINIA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF CULVERTS AND UTILITIES ON ROUTE 1571 (LEWIS AND CLARK DRIVE)

WHEREAS, the University of Virginia Foundation (the "Foundation") is the owner of the UVA Research Park site in Albemarle County and is constructing an extension of State Route 1571 (Lewis and Clark Drive) to connect the current termini of Lewis and Clark Drive at State Route 1666 (Quail Run) and State Route 1654 (Innovation Drive), which includes the placement of culverts to facilitate the crossing of drainage areas; and

WHEREAS, the design of roadway requires that certain utilities be placed longitudinally with the roadway between the surface and the culverts to reduce environmental impacts, excessive costs, and access and maintenance issues; and

WHEREAS, the Commonwealth of Virginia Department of Transportation ("VDOT") typically expects all longitudinal utility installations to be placed outside of the right-of-way when practical along proposed roads functionally classified as collector and above that are to be accepted into the state system of highways; and

WHEREAS, VDOT has reviewed the proposed Lewis and Clark Drive designs and determined that they will permit longitudinal utility installations within the right-of way of Lewis and Clark Drive to minimize environmental impacts to wetlands and streams under specific conditions; and

WHEREAS, those conditions include that the utilities will be located in the graded and unpaved portion of the typical section of the road and that Albemarle County will guarantee, through a three-party or other agreement, that all costs associated with utility relocation for repair or replacement of box culverts will be paid; and

WHEREAS, Albemarle County concurs with VDOT that the Foundation should be responsible for all costs due to the location of the longitudinal utilities on the VDOT maintained highway systems serving the event site.

IT IS HEREBY RESOLVED, that the Albemarle County Board of Supervisors authorizes the County Executive to sign a Memorandum of Agreement(s) with the University of Virginia Foundation and/or the Commonwealth of Virginia Department of Transportation for maintenance of Route 1571, (Lewis and Clark Drive) related to the drainage structures carrying longitudinal utilities within the right-of-way, as well as any additional agreements that may be necessary to protect the County's interests and ensure that all responsibility for potential costs is borne by the Foundation.

Agenda Item No. 10. Discussion Item: Development Area Drainage Infrastructure Program Discussion.

The Executive Summary forwarded to the Board states that the Board has affirmed support for the development of a County program to adopt and proactively maintain portions of drainage infrastructure in the Development Areas that lie on private property. At its April 11, 2018 meeting, the Board directed staff to "continue work to determine, through camera imaging, where grey infrastructure issues exist within the County and attempt to set aside an adequate reserve fund to be used to address maintenance and ongoing repair needs of grey infrastructure issues where such issues are identified". At its December 5, 2018 meeting, the Board supported the continuation of video-assessments and authorized staff to develop a draft extent-of-service policy for subsequent Board consideration.

Staff have substantially completed the process of mapping drainage infrastructure in portions of Development Areas. Video assessments - totaling approximately 23,000 linear feet of infrastructure, or approximately 10% of the total estimated grey infrastructure in the Development Areas - have been completed throughout a pilot area in late 2018.

The purpose for today's discussion is for staff to update the BOS on the progress of condition assessments of drainage infrastructure in the Development Areas. Staff will describe how the resulting data has been extrapolated to provide a rough estimate of long-term potential program costs.

Staff continues to lay the groundwork for a drainage infrastructure management program by evaluating the condition of the existing infrastructure. Staff are working with a new video-assessment contractor - procured through a competitive bidding process - to assess an additional 50,000 feet of infrastructure in July and August 2019. Assessments are planned to continue over the next two years to assess the remaining infrastructure in the Development Areas - approximately 200,000 feet.

Upon completion of the pilot video assessment, an engineering consultant was engaged to assess findings. A comprehensive list of potential repairs was developed. Each identified problem was prioritized based on the severity. A brief scope of work for each potential repair was provided, as well as estimated repair costs. Attachment A provides summary level findings of the engineering effort, as well as staff's extrapolation of that data to produce an estimate of potential future program costs. The analysis includes varying program costs models based on assumptions of differing extents and levels of service (EOS and LOS). At this time, all models do not account for any drainage infrastructure located outside the Development Areas.

EOS can be described by criteria that must be met for a section of infrastructure to be included in the program. Staff have grouped criteria into four increasingly inclusive EOS scenarios:

1. **County properties and public easements** - this scenario includes only infrastructure located on County-owned properties (including schools) and within easements dedicated to public use
2. **downstream of County properties and public easements** - this scenario includes infrastructure downstream of County properties and public easements to where the infrastructure meets a natural stream
3. **downstream of VDOT roadways** - in addition to infrastructure described in scenario 2, this scenario includes infrastructure located downstream of roadways maintained by the Virginia Department of Transportation (VDOT)
4. **concentrated discharges from multiple private properties** - in addition to infrastructure described in scenarios 2 and 3, this scenario includes infrastructure receiving runoff from three or more private properties

Note that none of these EOS scenarios include infrastructure located *within* VDOT right-of-way or that serves only one or two properties. As such, even the most inclusive scenario (#4) includes only approximately one-quarter of all known infrastructure.

LOS can be described by the frequency of continued assessments and by the period of time in which issues would be addressed. Staff have defined three LOS scenarios:

- A. **high** - Priority 1 issues are addressed within 5 years and Priority 2 issues within the following 15 years; assessments are completed every 10 years
- B. **medium** - Priority 1 issues are addressed within 10 years and Priority 2 issues within the following 20 years; assessments are completed every 20 years
- C. **low** - Priority 1 issues are addressed within 20 years; assessments are completed every 20 years

The consultant identified 13% of drainage pipe sections in the pilot area as having at least one issue significant enough that is recommended to be addressed within the next five years (labeled Priority 1). The consultant also categorized moderate (Priority 2) and minor (Priority 3) issues.

The Board will also be presented with a summary of key factors and decision points that staff will need to consider when developing a recommended policy. These matters include: refinement of both EOS and LOS criteria; methods to prioritize competing Priority 1 projects; and consideration of programmatic impacts of the limitations on local government's authority to perform work on private properties.

The estimated annual program costs for combinations of the above EOS and LOS scenarios are included as Attachment A for discussion and feedback. Note that these costs are based on early estimates, that both EOS and LOS criteria need to be further refined, and that the estimates do not include program management overhead.

Staff seeks input from the Board on program extent of service and level of service following the findings and analysis of infrastructure assessment pilot.

Mr. Greg Harper, Chief of Environmental Services, presented. He said that staff was back before the Board to talk about the Drainage Infrastructure Management Program that we have been planning for a while. He said today's meeting objective was for staff to speak, but the main objective of this discussion was to obtain Board feedback on the elements of the program that would be presented today. He said staff would provide background, update the mapping and assessment work, and most importantly review some extent of service (EOS) and level of service (LOS) scenarios and explain more about those that basically gets to the program scope or how big do you want this program to be. He said staff would also review a few other key policy factors and of course there will be time for the Board to ask questions and give us your feedback.

Mr. Harper said this is a process where we identified a need years ago. He reminded the Board that several years ago, it identified a water resources program gap of a need to maintain infrastructure that lies on private property but that was part of the bigger system, as a single failure on a portion that lies on a single property could cause problems on other properties or roadways. He said they had some failures and this was identified as a program gap while we were discussing alternative funding mechanism for water resource programs and so we started work years ago on this. He said more recently they have conducted a cost analysis for different program scenarios, which he would review. He said he would review policy factors and the implications of implementation of a program. He said today they would be focused on these two parts of that process seen in front of you. He said that this was Strategy 5 and reminded the Board that it appropriated funds a couple of years ago, which are still being utilized to carry on the work. He said there was no appropriation for FY20 but we are using carry over money to continue our work and are in pretty good standing regarding the amount of money as seen in the summary.

Mr. Harper said they were going to talk for about five minutes on our data gathering exercise basically, and that was the mapping, the assessment work and engineering evaluation of that video assessment. He reported that they have mapped 242 miles of infrastructure to date, using past plan sets, in order to locate things and to get some associated attributes. He said that field work and video assessments continue to provide new information with which they would continue to update the map. He said they are working with contractors to obtain more information about the condition of infrastructure, for which they require permission from property owners, which takes time as they mail postcards and sometimes have to knock on doors. He said if a response was not received, there are easements that allow them to do the work anyway. He said they began the assessment with a pilot watershed just north of Charlottesville working with Tristate last fall, which conducted a video assessment, and are now working on blue watersheds, which are scattered about the development areas of the County.

Mr. Harper stated that both assessment projects cost \$230,000 combined and about 75% of the development area remains to be video assessed, which would cost around \$500,000 and be conducted within the next couple of years. He explained that in addition to the video assessments and call outs when problems occur, they had an engineering firm review the videos and recommend repair projects by priority ranking order of 1 to 3 as well as provide cost estimates. He said the assessment found that 13% of pipes were ranked as Priority 1, 21% were ranked Priority 2, 30% as Priority 3, and 37% of the pipes were found to not have any issue. He presented slides with photos of examples of the pipe conditions for each priority. He said that most of the pipes scored as Priority 1 are rusted corrugated metal, most Priority 2 pipes have a gap at the joint where soil can creep through and form a sinkhole above it, and those scored Priority 3 have cracks in the pipe that are not a concern now but should be monitored and carefully reviewed again in 10 years to see if it has advanced.

Ms. McKeel noted that the percentages represent a small sample size. Mr. Harper agreed.

Ms. Mallek asked for the percentage of total pipe that the data presented on priority ranking of conditions represents. Mr. Lance Stewart, Director of Facilities and Environmental Services, responded that this represents around 10% of the piping in the development area, with the next two phases to double that. He said in a few months they would be at about 30%.

Mr. Dill asked if these are typical samples and the 10% representative of the whole system. Mr. Harper responded that they picked the pilot area to be representative as it has pipes of various ages and materials, though he cannot say for sure that it was representative. He remarked that he would later ask the Board for feedback as to whether they should look beyond the development area for any program elements. He said that it was 10% or 8% of the entire development area. He said they have restricted this preliminary work of doing the assessments to the development areas thinking that is a pretty solid start.

Ms. Mallek remarked that the soil infiltration problems identified as Priority 2 can become a real problem and asked how quickly they would return to look at things. Mr. Harper responded that it depends on the level of service. Ms. Mallek remarked that 10 years was a very long time. Mr. Harper responded that it was the gap size that matters more so than the length of the crack, in terms of soil coming through. He added that the engineering contractor has done this work for a long time and he would defer to their

expertise as to the levels of priority in that instance. Ms. Mallek added that is the problem that occurred in Carrsbrook which cost the County \$500,000.

Mr. Randolph asked if the replacement infrastructure was corrugated steel, concrete, or a mixture of synthetic. Mr. Harper responded that much of the repair work uses cast-in-place pipe, for which they inflate a fiberglass sock that lines the inside of the pipe, and much of the proposed work assumes this method would be used. He added that if a pipe was shallow enough to dig up then he thinks they would use concrete or high-density polyethylene pipe, due to their longevity.

Mr. Randolph asked for confirmation that they would not have to tear up the road for most of the installation as the pipe could be inserted through an install location and connected to another pipe. Mr. Harper confirmed this and that he would show a picture later in his presentation. He pointed out that projects identified as Priority 1 have a total cost estimate of \$450,000 for the area within the pilot watershed, though the rest of the development area could cost 10 times this number for Priority 1 projects.

Ms. McKeel noted that she did not want people think we were going to solve the problem for that amount of money.

Mr. Harper next reviewed program scope in terms of extent and level of service, and said that he would ask for feedback from the Board as to the size and scope program it would like to implement. He explained that the extent of service can be expressed in terms of miles of infrastructure while levels of service was dollars per mile per year. He presented a slide with a map of red-colored infrastructure, which he explained was that having a broad public benefit and which they assessed using video. He said he would present the Board with scenarios for three different levels of service and four different extents of service, with annual estimated costs for the development area.

Mr. Harper said the minimum of the four extent of service levels would involve taking care of drainage infrastructure on local government, public school, and public easement properties, which was essentially what was being done now, though not in a super proactive way, and represents 15.5 miles of pipe within the development area. He said that about 8 miles lies on public schools, 4 miles on other County properties, and 3.3 miles in public easements, though these are the known public easements and there are other easements for which it would take a year to conduct a review to determine where all the public easements are.

Ms. Mallek asked for confirmation that an example of a public easement would be when a developer dedicates the drain swales and greenway that collects stormwater to the County. Mr. Harper confirmed this and that it was part of a deed.

Ms. Palmer asked if public easements would include water, sewer, and other agencies. Mr. Harper responded that it was just drainage easements and not water or sewer.

Ms. Palmer asked if this would include a drainage area affected by an easement that happens to be a water or sewer line. Mr. Harper clarified that they are talking about areas where there was a pipe carrying stormwater and not lands with a water or sanitary easement drain somewhere as these may be vegetative or part of a commercial shopping center and not be part of this program.

Mr. Harper continued that the next extent of service would involve pipe on lands downstream of public lands, such as pipe that carries discharge from school property to a stream, which equals about 5 miles of pipe. He presented a photo of an area just outside and downstream from the property of the Northside Library and posed the question of who would fix this.

Ms. Mallek remarked that residents of the Berkeley neighborhood have reported experiencing water runoff.

Mr. Harper presented a photo of a sinkhole that formed at the Campbell family residence at Commonwealth Drive and Commonwealth Circle and noted that the County obtained an easement and made the repair with the idea that there was a lot of street runoff that goes through this residential property and the question was whether or not the property owners should deal with this themselves. He said that if the County were to take on responsibility for this infrastructure it would involve another 16 miles of infrastructure. He continued with the next extent level, under which the County would assume responsibility for infrastructure that involves three or more properties, which could be residential or commercial, and which would involve only 2.2 miles, as most of the infrastructure that was not conveying runoff from multiple properties was already captured. Mr. Harper pointed out that all of the infrastructure he just identified represents only 25% of development area infrastructure, as they are not considering infrastructure within VDOT right of ways or infrastructure that serves a single or two properties, which in many cases are shopping centers and commercial property.

Mr. Dill asked if easements on VDOT property are maintained by VDOT. Mr. Harper confirmed this and stated that the County as part of this program would have to coordinate closely with them and potentially have a Memorandum of Understanding to dictate where their responsibility stops and ours starts.

Mr. Dill asked if there would be some synergy to try to work on them at the same time. Mr. Harper responded that he thinks so, especially if part of a pipe that needs replacing or lining lies in the right of way and part lies downstream, where coordination would be key.

Ms. Mallek remarked that VDOT has an exemption for stormwater stuff and the County would need to be careful about what it takes on when the State government has given them a bye, as the County cannot afford to do their job for them. She said the more pressure we can make them do their own stuff, that would be good. Mr. Harper responded, "yes".

Ms. Palmer asked where the Carrsbrook sinkhole fits into this. Mr. Harper responded that it meets the downstream of VDOT roadways as it had a 300-acre watershed, which also includes schools.

Ms. Palmer said she thinks there was a lot of overlap. She recalled a recent complaint about a rip rap that was coming off a RWSA easement and going into a stormwater pipe and there was a question as to whose responsibility it was to clean the stormwater pipe of all the rock, sand, and debris. She expects that anywhere there was an easement would involve multiple properties because they are in the development area. Mr. Harper noted that the categories are cumulative and overlap.

Mr. Harper next presented on the three potential levels of service: High, Medium, and Low. He explained that High means they would assess the infrastructure every 10 years.

Mr. Randolph commented that he wants everyone to be clear that Mr. Harper was not talking about tax assessment but a physical assessment of the piping conditions, structural integrity and operational ability. Mr. Harper agreed that he was referring to a video assessment done every 10 years.

Mr. Harper explained that they would address Priority 1 issues within five years and Priority 2 issues within the following 15 years. He explained that under the Medium level they would conduct assessments every 20 years, address Priority 1 issues within 10 years, and then lengthen the time to address Priority 2 issues. Under the Low level of service, he said they would conduct assessments every 20 years and address Priority 1 issues within 20 years, and not address Priority 2 issues.

Mr. Stewart clarified that they are not making recommendations but providing these for modeling purposes to help give a sense of scale to the Board.

Ms. Palmer asked how long the cast-in-place process last. Mr. Harper responded that he does not know. Ms. Palmer observed that as they replace things, they would probably re-evaluate this as time goes on depending on how long things are lasting and when they get through to consider a different level of service. Mr. Harper remarked that he thinks they would last for decades and not fail before the next assessment, for all levels of service.

Mr. Randolph remarked that he hopes fiberglass would be replaced by carbon fiber, perhaps with recycled plastic.

Mr. Harper next presented annual estimates of cost-per-mile/foot of infrastructure for each level and extent of service for program combinations. He said they were able to populate the table as we saw earlier to come up with estimated annual program costs for these different combinations, which was what was seen here. He pointed out, as an example, the highest level of service with video assessments every ten years, Priority 1 issues resolved within 5 years, etc. done for the third extent of service category, which includes drainages downstream of public roads, public properties and including public properties as well. He said that is an example. He paused and welcomed feedback and questions.

Mr. Randolph commented that the Board should not tie the County's hands going forward and expressed support for a medium level with flexibility to be adapted, as necessary. He explained that his initial thought was the County should look after its own properties first and foremost; however, the prospect that multiple private properties could have problems because of connectivity that may be greater than the County properties has led him to settle on the fourth extent of service as the preferred place to start, with a medium level of service (LOSs) and on a level 4 for the extent of service (EOS) as a way to proceed.

Ms. Palmer referred to the first paragraph of Attachment A (copy on file), where it says there are 200,000 feet of infrastructure in the development areas. She said she was assuming this refers to the pilot area, as it indicates that the total estimated length of mapped infrastructure in the development area was approximately 852,000 feet, and asked for clarification on the length and extent of service. She said she recognized that there was a lot of overlap, but if they do not include the extent of service as Mr. Randolph just said in properties that are multiple private properties, she thinks they would get into trouble with trying to make decisions when there was a big sinkhole. Mr. Harper responded that 852,000 feet represents all infrastructure within the development area, including the VDOT maintained infrastructure and the private infrastructure that we have probably no intention of dealing with. He explained that it was put in there to provide context for the numbers right above it and even at the highest extent of service it would represent only 25% of all the pipes out there.

Ms. Palmer reiterated that she thinks they have to go with the whole extent, though she was concerned about the cost. She said it was going to take a long time just to get more than 10% of this looked at and sort of wants to have a better idea of the higher level of service when we do this faster. She asked if they have a contractor.

Mr. Harper responded "yes" the contractors are video assessing. He mentioned that we are well underway with the next phase of that video assessment so we are knocking out the addition 2,000 feet more and should be done within the next couple of weeks.

Ms. Palmer noted that the attachment indicates 50,000 feet of infrastructure would be assessed in July and August of 2019. Mr. Harper replied that was what they had done last year and now they are currently working with another contractor to do an addition 50,000 feet.

Mr. Stewart responded that is correct and is the work that is underway now. He said the video assessment in the field would wrap up in the very near future and then they would have the engineering phase again where they review the findings and develop the scope for repairs and cost estimates for repairs and likely will be ready by mid-fall, at which point they would have assessed 25% to 30% of our estimated pipe that we will be assessing within the development areas.

Ms. Mallek said she started out at the medium level of service, assuming they would immediately begin targeting areas of high-priority damage areas while collecting additional video data. She said all those various things will go in parallel. She said for the EOS she would like to include the local government and public schools, downstream of public lands and the combined properties, as she was concerned about taking on the monster of the VDOT problem and somehow assigning that to the County. She said they would have to have some partnerships along the way and she would like to be very deliberative about how we go, which they have been for the last couple of years. She said it has been very carefully done and she thinks very successful that way because you have not done a sweeping thing, but a cooperative thing.

Mr. Harper remarked that he does not think the multiple properties category can be taken without including most of the downstream of VDOT's system, because if you have several properties contributing to something it is likely going to have a road contributing to it as well.

Ms. Mallek added that the road may be the major contributor to the three property problems. She noted that was what she wanted to avoid taking the bill for. She expressed support for going with the two blue ones until they figure out more.

Mr. Dill asked about the process since we are doing the videos now and that is a company that you are hiring. He asked who would actually do the work once they make these commitments and wondered if they could do the obvious high priorities and just have a budget for the next three years and decide how much we are going to pay, if they can work faster or slower, then they can adjust the budget to have some kind of consistency. He said he thinks they all agree on the priorities so then it would be who is going to do the work and how do we structure our contract so that they keep their staff busy and we get it done in a regular clip and kind of are catching up a little bit like Ms. Mallek said let's get started with small things and do the most important things first and then whatever we all agree on. He said within ten years we will have done a lot of the key things, and it seems important to get the process in place rather than the priorities, as technology and costs would change over the years.

Ms. McKeel expressed agreement with the positions of Ms. Palmer and Mr. Randolph.

Ms. Palmer agreed with Mr. Dill that there are many unknowns. She said we all think it is very important and have to extent the level of service, how fast you get it done and the Board would be looking at the budget and she would like to see the budget impacts of high versus medium. She observed that the estimates provided on the screen only represent 10%, which was a very small sample. Mr. Harper clarified that the numbers do not just reflect the pilot but the whole development area, based on the information we gathered in the pilot.

In response to Mr. Dill's question Mr. Harper said he thinks they would bundle a bid for the highest priority projects to contractors to get the best costs for them and probably once or twice a year just bid out a big bundle of projects and would have projects ready to be bid on once the next phase of video assessments have been completed. He said that would be a quarter of the development area and so will have lots to choose from.

Ms. Mallek asked if older school properties with a history of runoff issues are filtered towards the higher priority that perhaps would have alternative ways such as a rain garden and things like that to improve. She observed that Broadus Woods has dramatically reduced the roof runoff with rain gardens and much better piping. Mr. Harper pointed out that the cost estimates only reflect maintaining existing pipes and manholes, and does not include the maintenance of stormwater facilities or address bad drainage situations.

Mr. Stewart remarked that they would present a more detailed and refined cost comparison by the time they are further along in the CIP budget development process, based on the Board's input.

Mr. Dill asked if the work requires specialists or if a potential public works department could conduct the maintenance and analysis. Mr. Stewart responded that most of the work was very specialized and requires expensive equipment. He said that Charlottesville Public Works does small spot repairs, conducts their own video assessment, and flushes and cleans their own pipes, but outsources anything other than a very small repair.

Mr. Randolph stated that they must recognize this would be an ongoing commitment since infrastructure deteriorates with time. He said the temptation could arise during a weaker economy to delay commitments to this program, which would end up causing more problems when they need to get addressed. He expressed support for an approach that finds something that was financially feasible and sustainable through both foul and good weather. He said it would be important for the Board to embrace and approach which is financially feasible, durable, and sustainable for the County as we go forward. He

said that is where your advice was going to be critical for us so that we can proceed in a way that the public understands we are moving prudently from both a financial and engineering standpoint of trying to address.

Ms. McKeel commented that they did not spend more on infrastructure during the economic downturn when costs would have been 20% to 30% less for the community. She noted that some communities in Virginia took advantage of the lower costs and are in a better position than the County.

Mr. Stewart presented a list of considerations that would need to be taken into account or alternatives to consider. He said they have talked about the development areas but not talked about whether the assessment program would be proactive or reactive to areas not defined as development areas. He said that is something we will need to continue to consider. He said they have talked about pipes and manholes, but natural channels that connect those can often be damaged, and they would need to consider this for future development. He said there are variations on the levels and extents of service based on the potential characteristics of the development use and they would have to consider if there was a differentiation of commercial properties vs. residential properties vs. mixed-use properties as well as HOA managed properties where there may be covenants that require them to set aside funds. He suggested we might consider moving to the right column perhaps a program for those properties where our program includes proactive video assessments but may or may not include repairs or flushing and cleaning or simply advise them of an issue. He suggested the program might have some flexibility in it to provide assistance in similar situations that we are defining of what we think we would be responsible for in the development area. He said at the bottom there are other legalistics and they have already talked about prioritization among high priority projects that exceed our available funding.

Mr. Stewart stated that there are multiple combinations of levels and extents of service as well as what would be covered under them and which areas would be covered. He said that it can be difficult and time consuming to obtain easements when working with private property and there was a question as to whether they should be permanent easements with a built in right to return and fix them or whether they would simplify and speed the process with a right of entry agreement that does not commit the County to continued maintenance or future repairs. He said they might have a problem with uncooperative or uninterested owners, which might not be an issue if the pipe only affects one property, though a situation where upstream properties are affected would be a challenge and, though they have spoken with attorneys, they are still not sure how they would address such a situation.

Mr. Dill asked if the legal issues for this are vaguer than for other building or road types of issues. Mr. Kamptner responded that they are complicated because drainage channels are sometimes just drawn on a plat, there was no easement holder, and different language has been used over the years in documents that requires individual interpretation or lacks clarity. He said it was not an easy process. He added that by taking the leap to bring these systems into ongoing public maintenance would mean that sovereign immunity does not apply. He said they need to be sure that if a channel or pipe was brought into the control of the County in terms of taking on the obligation of maintaining it, the County would do this permanently because it could be liable for a failure to maintain if there was damage to the property.

Ms. Mallek asked if landowners are accountable for runoff that damages a neighboring property, in which case they would be better off cooperating. Mr. Kamptner explained that it depends on if the upstream owner was channelizing the water to any significant degree, in which case they are responsible for any damage caused to the downstream property, while if it was a natural sheet flow or there was minimum channelization, then each landowner was responsible for protecting their own property from water, which was considered to be a common enemy.

Ms. Mallek remarked that an impervious surface next door is, in effect, channelizing the water.

Ms. McKeel said they have people who take water off their roofs and sending it to neighbors. She said she lost a dining room floor to this and was told it was her problem. Mr. Kamptner responded that the law was developed over hundreds of years and may not be keeping up with current development. He said it was sheet flow versus concentrating the flow.

Mr. Stewart offered to frame the conversation with some alternatives at a future date and said they put this in front of the Board members now to get them to think about it.

Ms. Palmer said she was a bit concerned about going outside the development area until they know more about what was happening inside the development area, as it gets them into a place where she would have no idea where it would stop.

Ms. McKeel agreed with Ms. Palmer. She stated that if they really want people to live in the development area, then they need to support the infrastructure in the development and she thinks that is where we start.

Ms. Palmer added that if someday they did expand out of the development area, they need to first look at residential neighborhoods and determine how to define them.

Ms. Mallek said she was happy to include only the development area right now.

Mr. Richardson remarked that this was very helpful and staff has taken a position with its piloting of the data and video assessments in the development area. He said it continues to be a significant scope of work in the department.

Ms. Palmer asked if there would be an overlap with HOA managed property if they include three or more residential properties in the development area in extent of service. She said she would not want to take something over that was already managed by an HOA. Ms. Mallek remarked that HOAs cannot keep dumping their liability and risk on everybody else and the Board needs to put a stop to it somehow.

NonAgenda. Mr. Gallaway said they have a little time before they go into Closed Meeting and invited Supervisors to bring up any items, they would like the Board to be aware of for future agenda planning or topics for future discussion.

Ms. Palmer said she would like to talk about borrow pits. She said that she knows staff has been working on this and Frank Pohl, County Engineer, informed her that staff would come up with some ideas.

Mr. Gallaway remarked that he has been keeping a list of items to discuss and would add this item to that list. He added that staff has to have time to get to the items.

Ms. McKeel said in addition to scooters, she would like to review the County's regulations of cell towers, which was created 20 years ago and does not match current technology.

Mr. Gallaway offered to get together with the County Executive to review progress of the items on the list and would send the results of his discussion to Supervisors.

Ms. Mallek asked that they add small intersection improvements in coordination with VDOT to the list. She said they have had discussion and complaints about a dangerous intersection (Earlysville Road and Reas Ford) for nine years where there have been seven accidents and one permanently disabled victim.

At this time, the Board returned to Consent Agenda Item No. 8.7.

Mr. Fritz presented a revised resolution for Item 8.7. He said they have changed the language to specify a specific area as shown on a plan.

Ms. McKeel **moved** that the Board approve a special exception to vary the Code of Development for ZMA2001-7, Stonefield, as presented today, subject to the attached condition. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

**RESOLUTION TO APPROVE A SPECIAL EXCEPTION
TO VARY THE CODE OF DEVELOPMENT FOR
ZMA2001-7 STONEFIELD (FORMERLY ALBEMARLE PLACE)**

WHEREAS, the Owner of Tax Parcel 061W0-03-00-019A0 filed a request for a special exception to vary the Code of Development approved in conjunction with ZMA2001-7 Stonefield (formerly Albemarle Place) to modify the Code of Development to allow drive-through windows by-right in Block G.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Memorandum prepared in conjunction with the special exception request and the attachments thereto, including staff's supporting analysis, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3 and 18-33.49, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Code of Development approved in conjunction with ZMA2001-7 Stonefield (formerly Albemarle Place) as described above, subject to the condition attached hereto.

ZMA2001-7 Stonefield (formerly Albemarle Place) – Special Exception Condition

1. The special exception must apply to the area shown on the application plan for this Variation Request entitled "C&F Bank at Stonefield: Special Exception for Drive-Through", prepared by Design Develop, dated April 29, 2019.

**C & F BANK
AT STONEFIELD**
SPECIAL EXCEPTION FOR DRIVE-THROUGH

PRESENTED BY



04 | 29 | 2019

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4 | VICINITY MAP

5 | CODE OF DEVELOPMENT APPENDIX A

6 | EXISTING SITE PLAN

7 | PROPOSED SITE PLAN

A. Introduction We are seeking a Special Exception to the Stonefield Code of Development to allow for a drive-through at a bank being designed in Stonefield Block G. Currently, the Code allows financial institutions by right, however associated drive-through windows require a Special Use Permit. We would like to amend Stonefield's Code of Development to allow drive-through windows to be allowed by right in Block G in accordance with the Neighborhood Model District (NMD), which has allowed drive-through windows by right since 2016.

B. Consistency with the Goals and Objectives of the Comprehensive Plan Allowing a Drive-Through window by right in the Stonefield Code of Development is consistent with the Neighborhood Model District's goal of providing "compact, mixed-use development with ... an infrastructure configuration that integrates diversified uses within close proximity to each other," by allowing the bank to develop a financial center that can satisfy customer needs through multiple means of service. This drive-through would also be in accordance with providing NMD characteristics including "interconnected streets and transportation networks," and "relegated parking" by creating a means of service that does not rely on additional parking but integrates into the existing street system in the area of development. It also meets the characteristics of contributing to "neighborhood centers," and a "mixture of uses and use types" by developing the first financial center in the Stonefield Development area.

C. Does not increase the Approved Development Density or Intensity of Development The addition of a Drive-Through Window will not increase the intensity of development, but decrease the amount of parking congestion by providing customers with multiple means of utilizing the bank's services.

D. Does not Adversely affect the Timing and Phasing of Development of any other Development in the Zoning District As the last plot of land to be developed in Block G of Stonefield, the request will not adversely affect any additional development in the zoning district.

E. Does not Require a Special Use Permit Per a Zoning Text Amendment approved 03-02-2016, Drive-Through Windows are permitted by Right in Neighborhood Model Districts (18-20A.6 section a.12). This Special Exception requests that Stonefield's Code of Development, which currently only allows drive-through windows through a Special Use Permit, be amended to meet NMD's by right uses for drive-thru's, specifically within Block G of Stonefield.

F. Is in General Accord with the Purpose and Intent of the Approved Application The proposed modification to Stonefield's Code of Development is consistent with the purpose and intent of by right uses in Neighborhood Model Districts to create a diverse mixture of uses and use types and create consistency between the NMD comprehensive plan and Stonefield's Code of Development.



STONEFIELD CODE OF DEVELOPMENT

NEIGHBORHOOD MODEL DISTRICT ZONING SUPPLEMENT

CODE OF DEVELOPMENT APPENDIX A – Permitted/Prohibited Uses by Block*									
October 15, 2003 (as revised on July 8, 2010 and approved by Board of Supervisors on August 4, 2010, and as further revised on June 3, 2013)									
*P=Permitted uses by Right; SP=Uses that may be applied for via Special Use Permit; B=Uses prohibited within block. The square footages for all uses listed in this table shall count towards the retail portion of the non-residential square footage maximum established in the Code of Development in Table I: "Uses Table".									
Block Group	A	B	C	D	E	2	3		
Block	A	B	C	D	E	F	G		
Detached single family	P	P	P	P	P				
Semi-detached and attached single-family dwellings such as duplexes, triplexes, quadruplexes, town-houses, atrium houses and patio houses, and accessory apartments.	P	P	P	P	P				
Multiple-family dwellings	P	P	P	P	P				
Retail of permitted residential uses	P	P	P	P	P				
Tier I personal disabled persons (reference 5.1.07)	P	P	P	P	P				
Boarding houses	P	P	P	P	P				
Tourist lodgings (reference 5.1.17)	P	P	P	P	P				
Home occupation, Class A (reference 5.2)	P	P	P	P	P				
Home occupation, Class B (reference 5.2)	SP	SP	SP	SP	SP				
Accessory uses and buildings, including storage buildings	P	P	P	P	P				
Assisted living	P	P	P	P	P				
Rest houses, nursing homes, or convalescent homes	P	P	P	P	P				
Administrative, business and professional offices	P	P	P	P	P				
Antique, gift, jewelry, notion and craft shops	P	P	P	P	P				
Auction houses	P	P	P	P	P				
Automobile laundries	P	P	P	P	P				
Automobile, truck repair shop (excluding body shop)	P	P	P	P	P				
Automobile service stations (reference 5.1.20)	P	P	P	P	P				
Barber beauty shops	P	P	P	P	P				
Body Shop	SP	SP	SP	SP	SP				
Building materials sales	P	P	P	P	P				
Tier I personal wireless service facilities (reference 5.1.40)	P	P	P	P	P				
Tier II personal wireless service facilities (reference 5.1.40)	P	P	P	P	P				
Tier III personal wireless service facilities (reference 5.1.40)	SP	SP	SP	SP	SP				
Cemeteries	P	P	P	P	P				
Clothing, apparel and shoe shops	P	P	P	P	P				
Clocks, ledges, civic, fraternal, patriotic (reference 5.1.2)	P	P	P	P	P				
Commercial leases, indoor only (reference 5.1.11)	P	P	P	P	P				
Commercial recreation establishments including but not limited to amusement centers, bowling alleys, pool halls and dance halls	P	P	P	P	P				
Day care, child care, or nursery facility (reference 5.1.06)	P	P	P	P	P				
Department store	P	P	P	P	P				
Drive-in theaters	P	P	P	P	P				
Drive-in window's serving or associated with permitted uses	SP	SP	SP	SP	SP				
Drug store, pharmacy	P	P	P	P	P				
Eating establishment (not including fast food restaurant)	P	P	P	P	P				

C&F BANK AT STONEFIELD
ALBEMARLE COUNTY, VA

CODE OF DEVELOPMENT

SPECIAL EXCEPTION APPLICATION
APRIL 29, 2019

20A.6 PERMITTED USES

The following uses shall be permitted in an NMD, subject to the regulations in this section and section 8, the approved application plan and code of development, and the accepted profiles:

a. *By right use.* The following uses are permitted by right if the use is expressly identified as a by right use in the code of development or if the use is permitted in a determination by the zoning administrator pursuant to subsection 8.5.5.2(c)(1):

1. Each use allowed by right or by special use permit in any other zoning district, except for those uses allowed only by special use permit delineated in subsections 20A.6(b)(2) and (b)(3); provided that the use is identified in the approved code of development.

2. Water, sewer, energy and communications distribution facilities.

3. Accessory uses and buildings including storage buildings.

18-20A-3

Zoning Supplement #104, 10-11-17

4. Home occupation, Class A, where the district includes residential uses.

5. Temporary construction headquarters and temporary construction storage yards (reference 5.1.18).

6. Public uses (reference 5.1.12).

7. Tourist lodgings, where the district includes residential uses.

8. Group homes, where the district includes residential uses.

9. Tier I and Tier II personal wireless service facilities (reference 5.1.40).

10. Farmers' markets (reference 5.1.47).

11. Family day homes (reference 5.1.56). (Added 9-11-13)

12. Drive-through windows (reference 5.1.60). (Added 3-2-16)

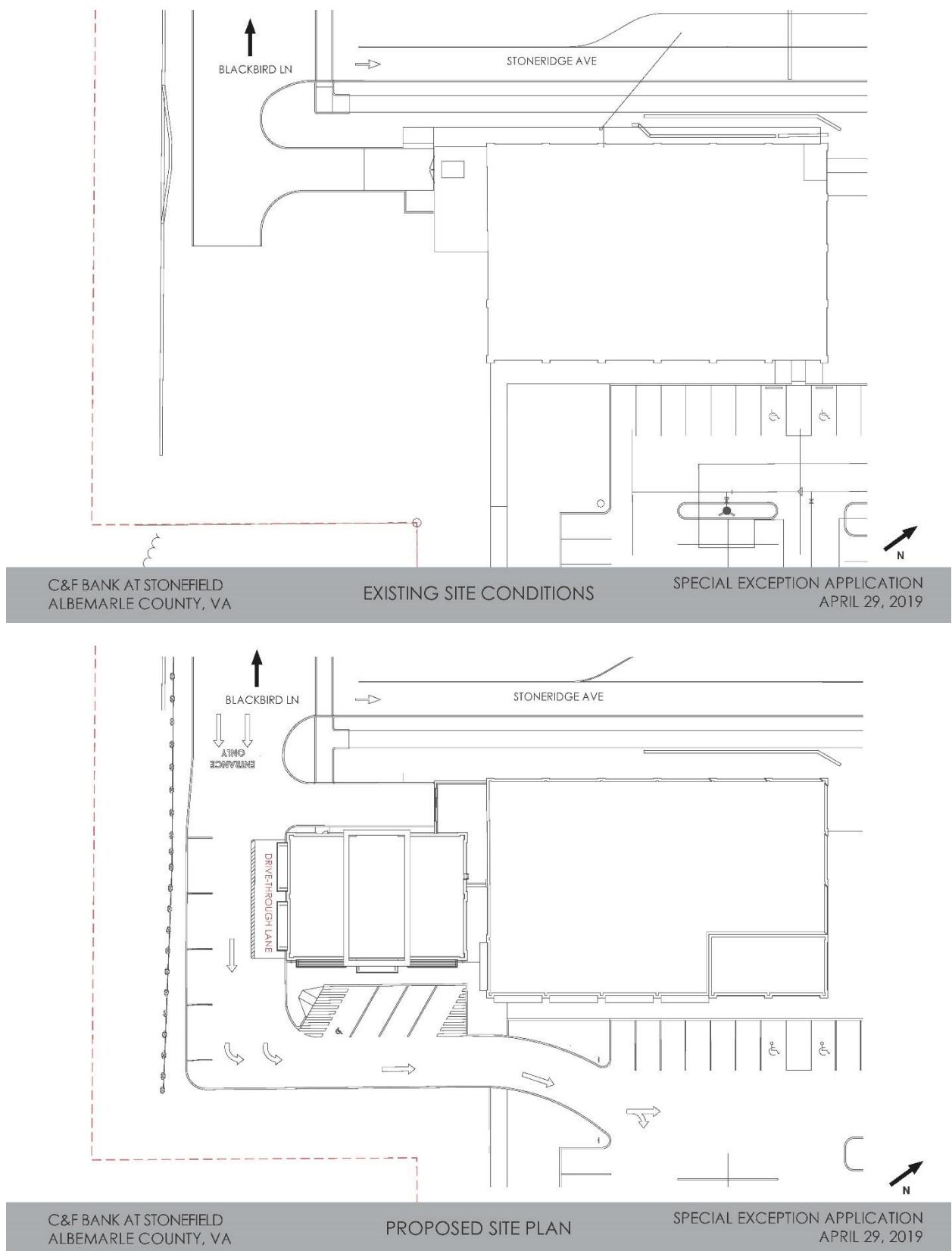
b. *By special use permit.* The following uses are permitted by special use permit if the use is expressly identified as use permitted by special use permit in the code of development:

1. Each use allowed by right or by special use permit in any other zoning district.

2. (Repealed 3-2-16)

3. Outdoor storage, display and/or sales serving or associated with a by right permitted use, if any portion of the use would be visible from a travelway.

(Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; Ord. 09-18(9), 10-14-09; Ord. 10-18(4), 5-5-10; Ord. 13-18(2), 4-3-13; Ord. 13-18(5), 9-11-13; Ord. 16-18(2), 3-2-16)



Agenda Item No. 11. Closed Meeting.

At 3:14 p.m., Mr. Dill **moved** that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- under Subsection (1), to discuss and consider the annual performance of the Clerk to the Board and the County Attorney;
- under Subsection (8), to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to the public's access to and use of the County Office Buildings and their grounds located on McIntire Road and 5th Street.

The motion was **seconded** by Ms. McKeel. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

Agenda Item No. 12. Certify Closed Meeting.

At 5:21 p.m., Mr. Dill **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

At 5:22 p.m., Mr. Dill **moved** that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- under Subsection (8), to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice relating to an existing zoning violation and an identified possible zoning violation.

The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

At 6:02 p.m., Mr. Dill **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting.

The motion was **seconded** by Ms. Mallek. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

Agenda Item No. 13. From the Public: Matters Not Listed for Public Hearing on the Agenda.

Mr. Ed F. Guida, resident of Dunlora Subdivision, addressed the Board. He expressed concern with traffic infrastructure as well as other infrastructure issues connected with 999 Rio Road East and the Wetzel property. He commented that there are survey markers on the road, though he has not been able to find anything on the website or anyone who can tell him what this was about.

Ms. Judy Schlussel, resident of Dunlora Subdivision, and a member of the Rio/29 Community Advisory Council, addressed the Board. She noted that she spoke at the July 3 meeting and read her letter to the Board as follows:

"I was curious as to whether or not the concerns have been evaluated to reestablish the bolsters on Loring Run leading towards Belvedere to cut down on the thru traffic, hopefully, making Dunlora Drive less of a thoroughfare, dangerous to walk, drive, etc., and more of a rural community road as it had been originally intended. To evaluate and deny the rezoning request for 999 Rio Road for several reasons: the three-story proposed building to have commercial and residential occupants was out of character for the environment; from Pen Park Road to the railroad tracks there are no three-story buildings, nor commercial entities; this section of Rio Road was comprised of single family homes, duplex and triplex; even the newly renovated Covenant Church was still only two stories; does this proposed three-story building meet Albemarle County setback requirements; will the proposed landscaping create a line of sight issue; and the additional impact on the traffic on Belvedere Boulevard and the Rio Road intersection.

It was questioned previously whether or not developer Nicole Scro should be on the Rio29 CAC since she does not live in Albemarle County nor was her business located in Albemarle County. The Albemarle County website clearly states the requirements to be a member of the Rio/29 CAC and it appears ethically she does not meet those requirements. I have attached a copy of the requirements. Has this issue been evaluated?

Previously you were each sent traffic data and there was an update which includes: Villas at Belvedere has a total of 26 duplex & triplex, 52 cars (2 cars/residential unit) x 4 trips = 208 trips (minimum), Fairview Swim Club has swim team practice, swim meets, general swim and this specific data was being confirmed. Sometimes the best laid plans, i.e. Master Plan and Comprehensive Plan, should be reevaluated and adjusted to what was happening with regards to the surrounding environment as well as economic indicators within Albemarle County. Albemarle County has put in place a moratorium for Rivanna Village but has not even considered, although requested, to do the same for Neighborhood 2. It

appears that the County wants to squeeze all the development into the small Rio Corridor while keeping the greenspace towards the western part of the County. Why are there so many empty buildings? Is a proposed three-story building with commercial space the right fit for that particular parcel? Maybe the Neighborhood Model in this particular area was being idealistic.

I do believe the sentiment of those of us in Neighborhood 2 could be classified as being realist. Growth was happening all around us and the roads around the John Warner Parkway and Rio are starting to have more and more of a Northern Virginia feel where there was no specific 'rush hour' but instead the rush hour was whenever you get into your vehicle to go to work, run an errand, etc. When the big picture was evaluated taking into consideration traffic and safety as well as the environment, you will realize that rezoning of this parcel of 999 Rio Rd was not in the best interest of this particular corridor. Thank you for the opportunity to speak."

Ms. Carol Carter, resident of Scottsville District, addressed the Board on the topic of climate change and the need for bold climate action and read her remarks as follows:

"As the goals are set and the action plans are being formulated, I urge you to go bold. I come to this with the lens of a long time gardener and observer of nature as well as that of a nurse. I am a member of the Albemarle Garden Club, The Garden Club of Virginia and The Garden Club of America. While I am not speaking on behalf of any of these organizations, I have recently served on all of their conservation committees. I share the growing concern of all gardeners as we watch the growing season change, leading to changes in the time that plants emerge, changes in emergence of insects that feed on these plants, and changes in migration patterns of birds which depend on these insects. As a small farmer, I am concerned with the growing unpredictability and the violence of storms, which wreak havoc on the small margin business that farming can be. As a nurse, I am very concerned about respiratory ailments, increasing 'heat days' and the health implications for our most vulnerable citizens. I am also concerned about the geographical spread of ticks and mosquitos and the diseases they carry. All of these are exacerbated by our warming climate. While I personally would be pushing up daisies before we can turn this climate Titanic around, I urge the County to go bold with robust greenhouse gas reduction targets. I am also a mother and perhaps this was my biggest motivator.

Green jobs are the fastest growing sector in the job market in America. Energy efficiency saves money for all of us, particularly as a proportion of expenses for lower income families in the County with older housing stock. While sea level rise and catastrophic forest fires are not affecting us here, flooding and stream degradation are and we need to do our part to slow this hellish problem of climate change. Energy efficiency was the lowest hanging fruit. It is a great economic opportunity as well with solid, well-paying jobs and benefits of saving not only carbon, but money each month for offices and resident citizens. Money that residents would have to make other choices that would go back into the local economy versus going straight to a monopoly utility. The transportation sector was also a critical and outsized contributor. County vehicle fleets should become electric, where possible, especially buses. Albemarle County businesses should be encouraged through incentives to install more EV charging stations not only to encourage EV adoption but for the tourist industry. We are already a tourist destination, but more and more people are planning trips around the convenience of charging their vehicles.

We are fortunate to live in a place with an extraordinary knowledge base in science and technology to help us meet stretch targets. We also live in a place that was hungry and motivated for ambitious positive goals that we can pursue together. What we need are big, well-articulated targets that we can all work on together. I feel certain that Albemarle citizens would deliver."

Ms. Denise Kilmer, an owner of Photo Works Group, said she was located directly next door to the property that is up for consideration for being rezoned, and had a number of concerns. She said to begin with we have a shared entrance.

Mr. Gallaway noted that we are having a public hearing on that application later this evening.

Mr. Randolph pointed out this was for matters not listed on the agenda.

Mr. Tom Olivier, resident of the Samuel Miller District, addressed the Board on behalf of ASAP. He read his remarks as follows: "First, thank you for accepting the biodiversity protection action plan into the Comprehensive Plan. This was timely. As you probably are aware, a recent UN IPBES report pointed out that we are in the midst of a biodiversity extinction crisis, a crisis whose solution would require 'transformative changes across economic, social, political, and technological factors'.

Similarly, the 2018 IPCC 1.5 degree report pointed out that rapidly worsening climate change now was a global threat to human societies. The report says unprecedented actions are required soon if we are to avert disastrous additional climate shifts. We recognize and commend the County's awareness in identifying climate action as its number one strategy priority.

At your July 3rd meeting, you approved a Chamber of Commerce request for \$100,000 for a Chamber staff position supporting its Defense Affairs Committee. Given the existential threat posed by environmental disruptions, given that climate change was your designated number one priority, and given

that economic activities often drive environmental destruction, ASAP proposes that in the coming budget, the County commit to similar financial love for our environmental community.

We propose that in the next budget you create a \$100,000 grant fund for research by local environmental non-profits into the transformative actions that would help us transit to environmental and economic sustainability. If you support this in concept, I'm sure details for operation of such a County environmental grant fund can be worked out. Thank you for your consideration."

Agenda Item No. 14. **Public Hearing: SP201500028 and SP201500029 Blue Ridge Swim Club.**

PROJECT: SP201500028 Blue Ridge Swim Club – Day Camp, Boarding Camp and SP201500029 Blue Ridge Swim Club.

MAGISTERIAL DISTRICT: Samuel Miller.

TAX MAP/PARCEL: 05800-00-00-075A0.

LOCATION: 1275 Owensville Road.

PROPOSAL: SP201500028: Request to amend SP201000035 (day camp) to change the boundaries of the use to permit creation of a separate residential lot, and to remove the existing expiration date for the special use permit; and SP201500029: Request to amend SP 201000041 (swim club) to permit creation of a separate residential lot.

PETITION: SP201500028: 10.2.2.20 Day camp, boarding camp (reference 5.1.05); and SP201500029: 10.2.2.4 Swim, golf, tennis or similar athletic facilities (reference 5.1.16)

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

ENTRANCE CORRIDOR: No

COMPREHENSIVE PLAN: Rural Areas – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (0.5 unit/ acre in development lots).

(Advertised in the Daily Progress on July 1 and July 8, 2019.)

The Executive Summary forwarded to the Board states that at its meeting on May 21, 2019, the Planning Commission voted 7:0 to approve SP 2015- 00028 with conditions, and also voted 7:0 to approve SP 2015-00029 with conditions. In both cases, the Planning Commission voted to approve the special use permits with the conditions recommended by staff, provided that sheet C-3 of the conceptual plan was revised to show tree species similar to those already existing on the site, rather than the White Pines shown on the existing sheet.

Since the Planning Commission hearing, staff has worked with the applicants to obtain a revised conceptual plan as directed by the Planning Commission.

The applicants have submitted a revised plan (Attachment D) that replaces the White Pines with a mix of Tulip Poplars, Black Walnuts, Pawpaws, and Sassafrases. Staff believes that these are appropriate species for the site.

Staff recommends that the Board adopt the attached Resolutions (Attachments E and F) to approve SP201800028 and SP201500029 subject to the conditions contained therein.

Mr. Scott Clark, Senior Planner, presented. He said these are two special use permit amendment requests. He said the site has been operating as a swimming club since 1905, predates the Zoning Ordinance, and has continued as a non-conforming use since the adoption of the Zoning Ordinance up to 2011, when the Board approved two special-use permits; one for the swim club and one for a day camp both on the same site. He said the day camp permit had an additional condition with an expiration date, due to concerns about noise or other impacts on adjacent properties. He said the current proposals are to amend both special use permits to change the boundaries of the permits in order to create an area of the lot that was not under the permit and can be used for a residential lot and also to remove the existing expiration date for the camp permit. He presented an aerial photograph of the site and pointed out the road access from Owensville Road, the old historic stream fed swimming pool, and the area that would be used under the proposal for the residential site. He explained that this would reduce the area where the special use permit applies and allow the creation of a two-acre lot. He pointed out the area in red that would no longer be subject to the two permits so that it could be used for the residential purpose and noted that the remainder of the site would remain subject to both permits.

Mr. Clark reviewed the standards for a special use permit. He said staff did not find a substantial detriment and there was not a significant change to the local context, which was already heavily suburbanized in this portion of the rural area, by adding one more dwelling. He noted that the addition of one more dwelling to this site would allow onsite monitoring and increase safety and reduce the odds of unauthorized activity on the site. He said they have not received any complaints regarding the removal of the camp expiration date nor any zoning complaints about this use since the permit went into effect and so they felt it was appropriate to remove that expiration. He noted that there was a concern that since the pool area was a registered historic place and the proposed house site was above the pool area that it would have visual impacts on the character of the historic site. He said staff worked with the applicant and this would be addressed with vegetative buffering to decrease the visibility of the new construction from that historic area. He said that originally white pine trees were proposed for the area between the proposed house site and the pool until the Planning Commission in May directed staff to work with the applicants to change the landscaping to four native species that are more appropriate to the site. He noted the applicant's revised plan that changed the landscaping to four native species.

Mr. Clark reviewed favorable factors, which include the vegetative buffer for protection of the historic site, the addition of a dwelling would allow for site monitoring, and removal of the expiration date seems appropriate as no complaints have been received. He said the unfavorable factor was that it would add a dwelling in the rural area where residential uses are not favored, though this portion of the rural area was already heavily developed and staff felt that the other factors offset that. He noted that the Planning Commission approved both permits unanimously at its May meeting, with the landscaping changes. He said staff recommends adoption of the resolutions to approve both the special permits, SP-2015-28 and SP-2015-29 subject to the conditions. He concluded and invited questions.

Mr. Gallaway invited the applicant to address the Board.

Mr. Justin Shimp, of Shimp Engineering, came forward and said he was accompanied by Ms. Kelsey Schein, Planner with his firm and Mr. Todd Barnett, the owner of the camp. He recognized staff for being very accommodating with the landscaping changes and said they are happy to have the option for the house in order to have eyes on the ground during off peak times of the year, which they think would be a positive for the camp and swim club.

Mr. Randolph noted that the owner of the property operates a school and asked if there may be students staying in the building during the summer. Mr. Shimp responded, "no".

Mr. Gallaway opened the public hearing. As no one came forward to address the matter, Mr. Gallaway closed the public hearing.

Ms. Palmer recalled that this item was before the Planning Commission in 2015 and she had Mr. Clark send her notes from that time for her to review. She said a concern of hers has been that the house could be sold separately from the rest of the property and she noted that there are two theoretical lots, though this does not mean that staff would agree to a second lot division. She asked Mr. Clark if two lots result in an increase in traffic, which was a concern expressed by VDOT in 2014. Mr. Clark recalled that originally there were concerns and the applicant and VDOT worked to make sure the driveway was okay. He said that VDOT was involved with the amendment review and did not have concerns about additional traffic, though he double checked to make sure they did not want to recommend a condition for a sight distance easement.

Ms. Palmer remarked that the spacing distance at the entrance seemed like a very specific thing last time. Mr. Clark reiterated that VDOT does not have any concerns, though he does not know if they were working from a different standard. Ms. Palmer added that her concerns have been addressed and she is supportive of the request.

Mr. Dill commented that he used to live next to the property and his children worked as lifeguards at the pool. He said it was a wonderful spot and recalled when it was a camp for boys. He added that he has no problems with the request.

Ms. Mallek recognized that this driveway was there first and said that if someone has a problem with sight distance it should have been Holcomb's problem and not these people's problem because they beat them out by 75 years and she was glad this would be continued and that someone was doing the extra work to keep it going.

Ms. Palmer **moved** that the Board adopt the proposed Resolution approving SP201500029 Blue Ridge Swim Club, subject to the conditions contained therein.

The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

RESOLUTION TO APPROVE SP 2015-29 BLUE RIDGE SWIM CLUB

WHEREAS, the applicant submitted an application for a special use permit to amend a previously approved special use permit (SP 2010-41) to change the current boundaries of the use by allowing a portion of Tax Parcel 05800-00-00-075A0 to be divided off and used as a residential lot, and the application is identified as SP201500029 Blue Ridge Swim Club ("SP 2015-29"); and

WHEREAS, on May 21, 2019, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-29 with staff-recommended conditions, provided that the Concept Plan was revised to show the replacement of the White Pines with tree species similar to those already existing on the site; and

WHEREAS, the applicant has since submitted a revised Concept Plan that includes what staff believes to be appropriate tree species for the site; and

WHEREAS, on July 17, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-29.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2015-29 and all of its attachments, the information presented at the public hearing, any written comments received, and the factors relevant to a special use permit in Albemarle County Code §§ 18-10.2.2(4) and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 2015-29, subject to the applicable performance standards for swimming facilities in Albemarle County Code § 18-5.1.16, and the conditions attached hereto.

**SP-2015-29 Blue Ridge Swim Club
Special Use Permit Conditions**

1. Development of the swim club use must be in general accord with the conceptual plan titled "SUP Concept Plan For: Blue Ridge Swim Club," prepared by Shimp Engineering, and dated 6/21/2019, (hereafter "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development must reflect the following major elements within the development essential to the design of the development:

- Limits of disturbance
- Location and size of pavilion building
- Location of parking areas
- Minimum clearing possible may be allowed to locate well, septic line and drainfields, parking and pavilion as shown on the Blue Ridge Swim Club concept plan.

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The hours of operation for SP201500028 Blue Ridge Swim Club must not begin earlier than 12:00 PM (noon) and must end not later than 8: 00 P. M., each day, seven days per week, Memorial Day weekend through Labor Day weekend.
3. All outdoor lighting must be only full cut -off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles must be submitted to the Zoning Administrator or their designee for approval.
4. Food prepared off -site may be sold from a concession stand that is depicted on the Conceptual Plan.
5. Approval of the Health Department for the well, septic and food concession will be required prior to approval of a site plan.
6. Approval by the Virginia Department of Transportation for the entrance will be required prior to approval of site plan.
7. Prior approval by the Fire Department will be required prior to all outdoor cooking and /or campfires.
8. No amplification of sound will be permitted, with the exception of a megaphone used on Fridays during each season (Memorial Day through Labor Day) during field games, radios and electronic sound producing or reproducing devices, provided that any such amplified sound must comply with the applicable noise regulations.
9. Parking on Owensville Road by attendees or staff of the Blue Ridge Swim Club or the Camp will not be permitted.
10. No more than two hundred (200) people will be permitted on the property for any purpose at any time.
11. Planting or bonding of the new trees shown on sheet C3 of the Conceptual Plan will be required prior to the approval of a final plat subdividing the property as shown on the conceptual plan.

Ms. Palmer **moved** that the Board adopt the proposed Resolution approving SP201500028 Blue Ridge Swim Club – Day Camp, Boarding Camp, subject to the conditions therein.

The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.
NAYS: None.

**RESOLUTION TO APPROVE
SP 2015-28 BLUE RIDGE SWIM CLUB
– DAY CAMP, BOARDING CAMP**

WHEREAS, the applicant submitted an application for a special use permit to amend a previously approved special use permit (SP 2010-35) to change the current boundaries of the use by allowing a portion of Tax Parcel 05800-00-00-075A0 to be divided off and used as a residential lot and to remove the expiration date of the day camp and boarding camp use, and the application is identified as SP201500028 Blue Ridge Swim Club – Day Camp, Boarding Camp ("SP 2015-28"); and

WHEREAS, on May 21, 2019, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-28 with staff-recommended conditions, provided that the Concept Plan was revised to show the replacement of the White Pines with tree species similar to those already existing on the site; and

WHEREAS, the applicant has since submitted a revised Concept Plan that includes what staff believes to be appropriate tree species for the site; and

WHEREAS, on July 17, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-28.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2015-28 and all of its attachments, the information presented at the public hearing, any written comments received, and the factors relevant to a special use permit in Albemarle County Code §§ 18-10.2.2(20) and 18-33.40, the Albemarle County Board of Supervisors hereby approves SP 2015-28, subject to the applicable performance standards for day camps and boarding camps in Albemarle County Code § 18-5.1.05, and the conditions attached hereto.

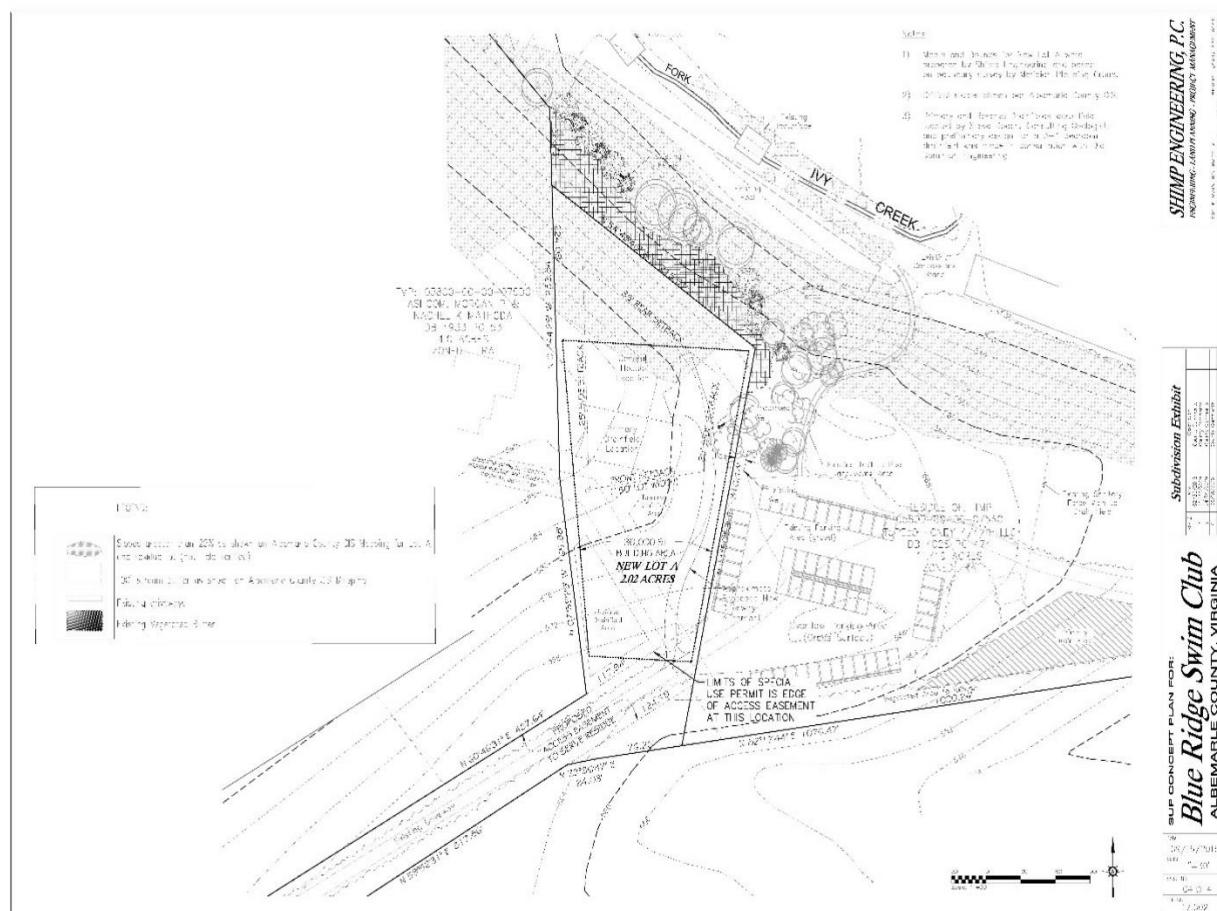
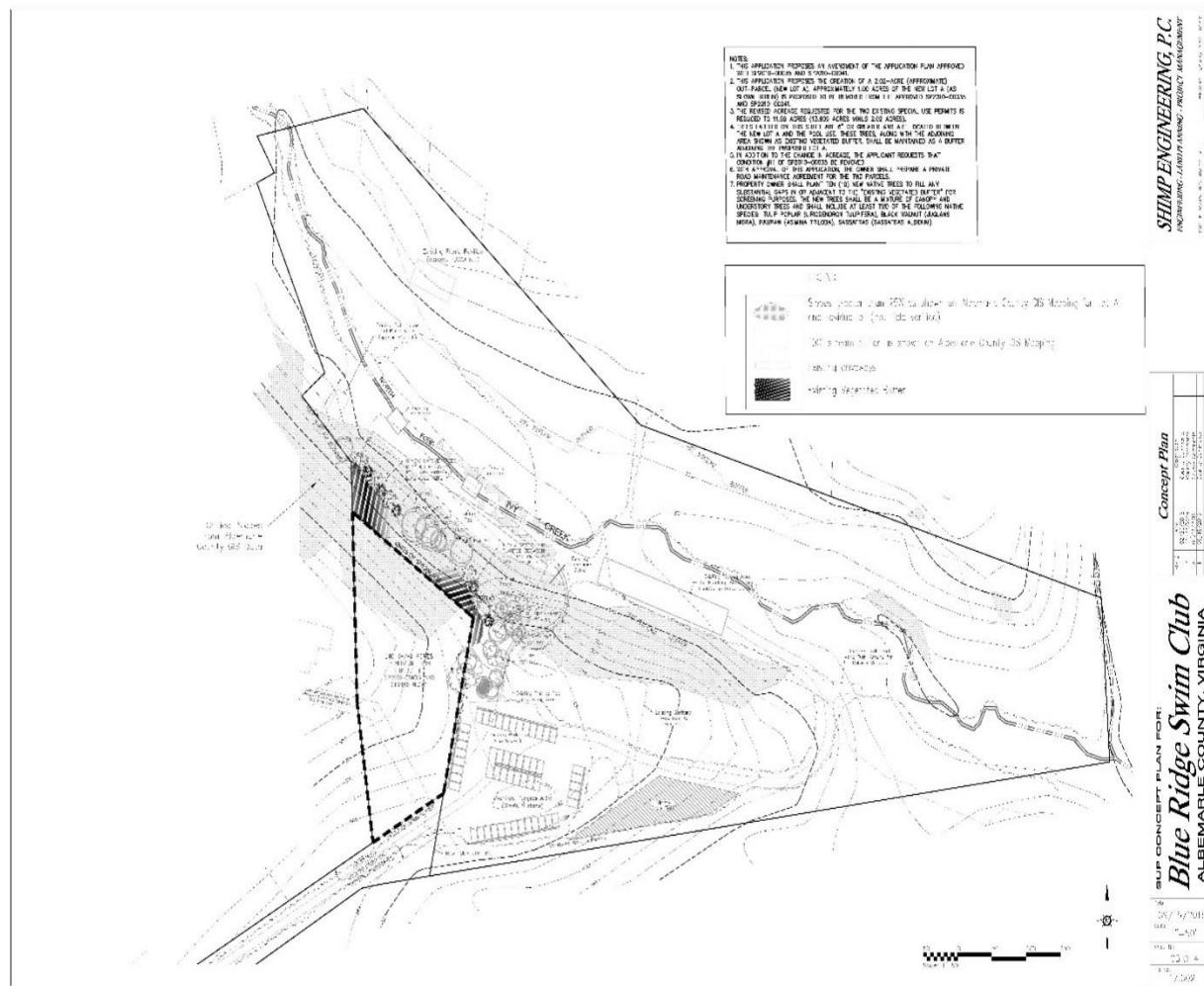
**SP-2015-28 Blue Ridge Swim Club – Day Camp, Boarding Camp
Special Use Permit Conditions**

1. Development of the camp use must be in general accord with the conceptual plan titled "SUP Concept Plan For: Blue Ridge Swim Club," prepared by Shimp Engineering, and dated 6/21/2019, (hereafter "Conceptual Plan "), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, development must reflect the following major elements within the development essential to the design of the development:

- Limits of disturbance
- Location of pavilion building; Pavilion footprint may be no larger than one thousand three hundred (1300) square feet.
- Location of parking areas
- Minimum clearing possible may be allowed to locate well, septic line and drainfields, parking and pavilion as shown on the Blue Ridge Swim Club concept plan.

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The hours of operation for SP201500028 Blue Ridge Swim Club – Day Camp, Boarding Camp: five (5) days per week, Memorial Day weekend through Labor Day weekend and must not begin earlier than 8: 30 AM and must not end later than 5: 00 PM Monday, Tuesday, Wednesday, and Friday. On Thursdays, 8: 30 AM through overnight stays will be permitted. The nighttime maximum sound level of 55 decibels shall be imposed from 9: 30 PM to 8: 30 AM.
3. All outdoor lighting must be only full cut -off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles must be submitted to the Zoning Administrator or their designee for approval.
4. Food prepared off -site may be sold from a concession stand that is depicted on the Conceptual Plan.
5. Approval of the Health Department for the well, septic and food concession will be required prior to approval of a site plan.
6. Approval by the Virginia Department of Transportation for the entrance will be required prior to approval of site plan.
7. Prior approval by the Fire Department will be required prior to all outdoor cooking and /or campfires.
8. No amplification of sound will be permitted, with the exception of a megaphone used on Fridays during each season (Memorial Day through Labor Day) during field games, radios and electronic sound producing or reproducing devices, provided that any such amplified sound must comply with the applicable noise regulations.
9. Parking on Owensville Road by attendees or staff of the Blue Ridge Swim Club or the Camp will not be permitted.
10. No more than two hundred (200) people will be permitted on the property for any purpose at any time.
11. No more than one hundred (100) overnight campers will be permitted at any one time.
12. Planting or bonding of the new trees shown on sheet C3 of the Conceptual Plan will be required prior to the approval of a final plat subdividing the property as shown on the conceptual plan.



Agenda Item No. 15. **Public Hearing: ZMA201800013 Rio West.**

Agenda Item No. 15. Public Hearing: ZMA
PROJECT: ZMA201800013 Rio Road W.

PROJECT: ZMA201800013 RIO
MAGISTERIAL DISTRICT: Rio,

MAGISTERIAL DISTRICT: RIO.
TAX MAP/PARCEL: 04500000010000, 045000000100A0, 04500000010100, 045000000101B0,
LOCATION: 664 Rio Road West, Charlottesville, VA 22911.

LOCATION: 304 Rio Road WCV, Charlottesville, VA 22911.
PROPOSAL: Request to rezone the property from C1 Commercial to NMD Neighborhood Model District to allow a mixed-use development with up to 112 residential units along Rio Road and storage/warehousing on the back of the site.

PETITION: Rezone 3.3 acres from C1 Commercial – retail sales and service; residential by special use permit (15 units/ acre) to NMD Neighborhood Model District - residential (3 – 34

units/acre) mixed with commercial, service and industrial uses. A max of 112 units is proposed for a density of approximately 34 units/acre.

PROFFERS: Yes.

COMPREHENSIVE PLAN: Core Area within Rio 29 Small Area Plan- area intended to have the highest intensity of development with a mix of uses including residential, commercial, retail, office, institutional and employment uses. Buildings with heights of 3-6 stories, built close to the street, with pedestrian access and relegated parking & Flex Area within Rio29 Small Area Plan – area intended to allow a flexibility of uses including residential, commercial, retail, office, institutional and employment uses. Buildings with heights of 2-5 stories, built close to the street, with pedestrian access and relegated parking.

(Advertised in the Daily Progress on July 1 and July 8, 2019.)

The Executive Summary forwarded to the Board states that at its meeting on June 19, 2019, the Planning Commission voted 6:0 (Dotson absent) to recommend approval of ZMA201800013 Rio West with the revisions in attachment 6 of the staff report, including a requirement that landscaping be completed in Block 1 within one year of when the Certificate of Occupancy for Block 2 is issued (Attachment B).

In the Planning Commission Staff Report, staff identified several recommended revisions to the proffers, code of development, and application plan to be completed prior to the Board of Supervisors public hearing. One of staff's recommended revisions was the inclusion of a timing commitment for the construction of the proposed residential block 1 building relative to the timing of the proposed interior storage building in block 2. At its public hearing, the Planning Commission recommended requiring the applicant to provide landscaping and screening of block 2 and construction of the sidewalk and street trees along Rio Road within 1 year of issuance of a certificate of occupancy for the block 2 building in lieu of a timing commitment. With this change, the Planning Commission recommended approval of ZMA2018-13 pending completion of the revisions recommended by staff prior to the Board public hearing.

The applicant submitted revised materials on June 26. Most of staff's recommended revisions were incorporated into the revised materials, except two recommendations regarding building height and stepbacks. Staff recommended clarifying language about required stepbacks to indicate whether the stepback applies to the lesser or greater of 4 floors or 50 feet. Staff also recommended that the rear stepback adjacent to the green space be revised to be above the 3rd floor or 40 feet, whichever is less, or alternatively, the applicant could commit to additional architecture standards to achieve a human scale environment adjacent to the future linear park. Neither comment has been addressed in the revised materials.

The applicant also included a special exception request with this application to waive the requirement for a mix of housing types within the Neighborhood Model District zoning district. County Code § 18-20A.8(a) requires NMD zoning to have two or more housing types, however, the requirement may be waived by the Board if the district is an infill project, or at least two housing types are already present within one- quarter mile of the proposed district. This application meets both criteria for waiving the requirement of a mix of housing and the applicant is also providing 15% affordable housing through the code of development. For these reasons, staff is supportive of the special exception request.

Staff recommends that the Board adopt the attached Resolution (Attachment G) to disapprove ZMA201800013 until the applicant addresses staff's comments regarding building height and stepbacks and/or architecture. Staff recommends the Board delay approval of the special exception to waive the requirement for a mix of housing types until all of staff's recommended revisions are addressed for this ZMA. However, if the Board approves the ZMA and wishes to approve the special exception, staff recommends that the Board adopt the attached Resolution (Attachment H) to approve the special exception.

(Note: Ms. Palmer left the meeting at 6:30 p.m.)

Ms. Rachel Falkenstein, Principal Planner, presented. She explained that the request for ZMA-2018-13 Rio West was to rezone 3.3 acres from C1 Commercial to NMD (Neighborhood Model District) consisting of four parcels. She presented a zoning map and pointed out that adjacent properties are zoned C1 or HC (Highway Commercial), noted that the Comprehensive Plan designates this as Core Area and Flex Area, as part of the Rio/29 Small Area Plan. She said it was a request to rezone property to NMD, Neighborhood Model District. She said the property was being divided into three blocks with the first being Active Urban, which allows for multi-family residential of up to 112 units and commercial, retail, and office space and up to 290 square feet of building. She said the second block was called Local Manufacturing and Neighborhood Service and would allow up to 310 square feet of Office R&D Flex, Light Industrial, Self-Storage, Distribution, Commercial Auto Sales and Service, and Multi-Family. She said the third block was dedicated neighborhood greenspace where no buildings are anticipated, other than small accessory picnic shelters and a shared use path will be constructed in that space.

Ms. Falkenstein reviewed the summary of uses, which was mostly commercial and retail; multi-family in Block 1; Block 2 allows additional uses such as Light Industrial, Self-Storage and Auto Commercial Sales and she would point out that outdoor display is special use permit in this block. She reviewed a site section viewing the site facing west. She noted that the applicant would provide improvements on Rio Road street frontage with this rezoning, including an eight-foot sidewalk, street trees, and a future 11-foot right-of-way dedication, which was consistent with the street section called for in the Small Area Plan.

Ms. Falkenstein said that Block 1 would allow buildings of 3–6 stories, with the building to be stepped back above the fourth story, and noted that there are form standards in the Code of Development to achieve an active street frontage along Rio Road, including 4-foot ceilings on the first story to enable a future commercial retail use, as well as transparency and pedestrian entrances along Rio Road. She said there would be surface parking between Blocks 1 and 2 and that Block 2 buildings would be 2–6 stories with setbacks above the fourth story. She said the Code of Development provides some form standards specifically for the back of the Block 2 building as it would face a future linear park that was called for in and applicant would create a shared use path and provide landscaping for Block 3.

Ms. Falkenstein reviewed five proffers offered by the applicant. She said the first one was for future interparcel connection, should adjacent properties develop in the future or redevelop to create a local street network connecting to those properties. She said the second was landscape improvements in Block 1. She said the third was construction and dedication of a shared use path through the greenspace and dedication for a future linear park, upon demand of the County. She said the fourth was 25% stormwater management onsite rather than purchasing off-site credits. She said the fifth was a right-of-way dedication along Rio Road.

Ms. Falkenstein said the Planning Commission had a public hearing on June 18th. She noted the applicant intends to first build a storage building in Block 2 internal conditioned storage and they plan to build this and the surface parking first on the site. She said sometime after construction of this Block 2 building they plan to complete the Block 1 multi-family residential building. She said staff recommended a timing commitment for construction of the Block 1 building at the meeting of the Planning Commission and a compromise was agreed to whereby the applicant could provide screening of the Block 2 parking and then landscaping along Rio Road street frontage in lieu of a timing commitment. She said that was the Planning Commission's recommendation and staff also had some other changes we were looking for prior to Board public hearing. She said the applicant had met all but two of staff's recommended revisions when she sent a memo to the Board, since then have submitted revisions that meet the final two recommendations, and now all of the recommendations of the Planning Commission have been met. She pointed out that was a little different than what the Board saw on the transmittal summary.

Ms. Falkenstein said also tonight there was a special exception request to waive the requirement for a mix of housing types, as called for in the NMD zoning district, and staff supports this request since it was an infill project and there are at least two housing types already present within one-half mile of the project and also because the applicant was providing 15% affordable housing within the Code of Development of this rezoning. She noted there would be two motions tonight, one for the rezoning and one for the special exception and provided to Board members the draft ordinance that has been approved by the Office of the County Attorney. She added that staff's recommendation was different than in the original transmittal summary because during its priority review, staff accepted the changes. Ms. Falkenstein then invited questions.

Mr. Gallaway asked for a comparison of what was in the Board's packet and what has been agreed to. Ms. Falkenstein explained that staff was concerned about a large blank wall looming over architecture along the back of the Block 2 building and asked for some commitment for either architecture on the back of the building or that the building's height be reduced. She presented a summary of what the applicant was committing to along with a rendering of the storage building. She added that the fronts of both the storage building and the building fronting on Rio Road lie within the Entrance Corridor Overlay and would be subject to review by the ARB.

Mr. Randolph asked what the front would look like. Ms. Falkenstein responded that this would have to go before ARB, she does not know exactly what it would look like, and they have some commitments in their Code of Development to first floor transparency and also upper story transparency, pedestrian entrances, façade breaks, the location with the build to line being right there along the street frontage. She said those commitments are made in the Code and then things like materials and roof line to be worked out and reviewed by the ARB.

Mr. Dill observed that the building would be heated and cooled 24 hours/day and 7/days per week. He asked if there are any requirements for energy efficiency. Ms. Falkenstein responded that the applicant has not committed to anything in their Code of Development and the County does not have requirements for energy efficiency.

Mr. Dill asked Mr. Kamptner if this was something the County could require. Mr. Kamptner responded that in the context of a rezoning he would need to get back to the Board on this. He said the applicant can certainly proffer these kinds of enhancements and the staff would have to identify an impact from the rezoning that would justify asking for this kind of provision. He said we would need to have that information first. He said as Ms. Falkenstein said the County does not have standards requiring that for our buildings at this point.

Ms. Mallek observed that the storage building does not appear to have windows. Ms. Falkenstein pointed out the windows and noted that the ARB would determine whether there should be more. She said the applicant is stating that they will turn the corner 5' along the side façade so it does not look like a false façade so this will turn the corner 5' just so it does not look like a false façade from the back. She said the side will be visible from the Entrance Corridor that will go through the ARB review process, but they have not gotten to that step yet.

Ms. Mallek recalled discussions about the minimum size of parcels that could be used with the NMD because if there are so few acres it is impossible to have a real mixed-use that is not contrived. She recalled that Ms. Falkenstein mentioned the first floor would be 14 feet in height for commercial and when the demand comes and asked if it would sit empty until that time or have another use. Ms. Falkenstein responded that it was her understanding the interim use would be residential, though the Code of Development allows a mix of uses, it could be anything permitted in the Code of Development which includes office, commercial, retail, or residential. She said the form will be built such that it can accommodate commercial retail uses.

Ms. Mallek remarked that once it has been turned into apartments, it would be very difficult to convert it to retail space and the Board should face the fact that it was likely to be a four or six-story residential building. Ms. Falkenstein responded that perhaps the applicant can better speak to that, but she understood it was more expensive to construct a higher ceiling, commercial rents are higher, and she would think it may be cost effective to do so if the owner were to find a tenant willing to pay the higher rent.

Ms. Mallek pointed out that the linear park design was at the bottom of the swale and recalled that the notes indicate the park would not be provided, but just the trail, and the cost of the development of this linear park would be assumed by taxpayers at a future time. Ms. Falkenstein responded that the applicant would build the shared-use path, dedicate the land, and that it was not a wide space and there may not be improvement beyond the trail.

Ms. Mallek remarked that the applicant would be taking credit for having a pavilion but not willing to build it. She expressed concern that the applicant did not plan to build the whole project and supports having a time frame so they would not be stuck with an empty parking lot, a storage unit in the back, and a building in the front that may never come. She recalled that between 2000 to 2007 the County over approved things and now there are five or six projects that lack demand to get finished and she did not want it to happen again.

Ms. McKeel agreed with Ms. Mallek, observing that there was nothing to assure that anything other than the storage units would be built.

Ms. Mallek asked if they can impose time limits. Mr. Kamptner responded that because this was a rezoning, conditions in the form of proffers can be offered by the applicant.

Mr. Randolph suggested the apartment building be constructed first, the section that overlooks Rio Road can be finished and people can move in, then the applicant can begin construction on the second building and, once this has been completed, finish the back side of the front building. He added that residents would be able to see what it looks like before they buy it, which was very important. He expressed concern that the cost of daylighting the creek gets tossed to the County, rather than it being a proffer. He also expressed concern that bikeways can go in but can be eliminated by VDOT in the future, which means the project was not really committed to a multi-modal transportation model operating on Rio Road West. He said primarily he has problems about this construction phase and finishing the front side before the back.

Ms. Mallek agreed that daylighting of the stream was essential.

Mr. Gallaway invited the applicant to address the Board.

Mr. Justin Shimp, of Shimp Engineering, came forward and said he was accompanied by Ms. Kelsey Schein, Planner with his firm. He stated that they are trying to create a form-based code and in the future the Board would see mixed-use developments on one-quarter and one-half acre parcels like in the city. He said in the context of the 29 area in these high density areas this is the tool we have now. He said in the future we would expect there to be some sort of by-right zoning or zoning district that sets up similar to this, but that is the wise Neighborhood Model. He explained that originally the applicant planned for a storage building on the commercial zoning piece and the Director of Planning encouraged them to bring in a mix of uses, to which they agreed. He acknowledged that there currently was not a demand for a four-story mixed-use building with first floor restaurants on Rio Road, though he said staff has the foresight to realize that at some point in time the price per square foot for commercial space would become more valuable than residential and somebody would gut it and install commercial there. He said the building's design provisions enable the front panel to be pulled out in 20-foot sections and replaced with a commercial storefront and emphasized that the process was about creating a form that follows the vision of structures laid out in the Master Plan, though it would take time to get there.

Mr. Shimp said that regarding the park, they have understood that the greenway in the back was a path, not a park, and the idea was to have another way to connect from Berkmar to Route 29 for bicyclists and pedestrians, and that space is actually amenities for our residents and he does not believe the Master Plan calls for a County park in that location. He said that they will build a mixed use path and the infrastructure that is envisioned to be built, but he does not believe there is anything further envisioned for that. Regarding daylighting of streams, he said they discussed this with staff, are not necessarily opposed to it, but if it was done in pieces it may not have the right look in the end. He said we don't know what that full design is going to be and it needs to be designed from Berkmar to 29. He said he thinks the thought was that the applicant would dedicate the land and the County would come up with the appropriate solution once the connection has been made and all the properties have been redeveloped. Regarding the blank wall on the one side, he said it was under ARB review and they would follow its guidelines and if they proffered some condition blessed by the Board it would undercut the

ARB's ability to enforce its criteria. He noted that the back was the one piece not under ARB review, was 40 to 50 feet back from the path, and they have proffered landscaping in between the building and the path. He said that there was not only the architecture of the building but landscaping buffering in there to address that concern as well.

Regarding the timing of construction, Mr. Shimp explained that it was important for the applicant to construct the back building first so they would not have people living in a construction zone. He said in response to Mr. Randolph's suggestion, he agreed that in some instances, buildings can be created in halves, however, this building was of a scale where they would construct both floors at one time. He said that if they were to only have half the building occupied it would be impossible to pull off from a financing standpoint. He emphasized that they intend to build the residential building, are hesitant to commit to set timelines, and would have to install the sidewalk, landscaping, street and the screening for the parking, even if the residential construction was not done right away. He said they have worked with staff, done everything practical to make this work, and would set the precedent for future developers that come along. He said they are committed to the street section that makes that multi-modal design possible. He said in the context of what zoning we have and how this project can be built he thinks we have addressed many of those designs and if moved forward would create the start of the kind of streetscape you are looking for instead of positive precedent for future developers who come along in this corridor.

Mr. J. Garlick, of GDP, the developer, addressed Mr. Dill's question about energy efficiency. He said that climate controlled facilities are very modern, have motion-sensor LED lighting, and this building would be maintained at a temperature of a range 70 degrees, which would require far less energy.

Mr. Dill remarked that the glass windows must not be clear glass because they would let in sun. Mr. Garlick responded that they do consist of clear glass, as required. He explained that the windows light the hallway and not the storage rooms.

Mr. Dill wondered why this would be required. Ms. Falkenstein responded that the County requested this in order to have some transparency on the back of the building.

Mr. Shimp remarked that the Planning Commission asked a lot of the same questions during the work session and unanimously recommended the project more forward, with conditions.

Ms. Mallek observed that the notes indicate the number of parking spaces was not yet determined because they do not know how many units there would be and how much parking would be needed. Ms. Falkenstein responded that parking would have to comply with the Ordinance and, should they wish to do something lesser, they would have to submit a parking study and have it approved by the Zoning Administrator.

Ms. Mallek remarked that in Downtown Crozet they went too far in cutting parking and now it was a scramble for people to find parking. Ms. Falkenstein responded that staff had the same concern and the developer would go with the minimum requirements for now, unless they can provide evidence that less was needed.

Ms. Mallek asked how the County would keep track of parking. Ms. Falkenstein responded that if the developer comes in for a new use on the site, they would have to get a business license, which requires a zoning clearance, at which time it would be reviewed.

Ms. Mallek asked if the developer would keep any of the existing big Oak trees. Ms. Falkenstein responded that the application plan does not require them to keep the trees.

Mr. Gallaway opened the public hearing.

Ms. Denise Kilmer, of Photoworks Group, addressed the Board. She said she was located next door to the property under consideration and has a shared entrance with the property. She said because of the concerns expressed here she would like to know what the timeline would be for the construction and said there was not sufficient parking in her lot as it was filled by her employees that was a business concern. She said that if the front building were to change use from residential to commercial retail, there might not be sufficient parking since 1.5 spaces would have been designated for the residential. She pointed out that parking was designated for the area between the two buildings but the description indicates they can put in streets in the future, which would replace the parking. She asked where the parking would go and wondered about the 8' sidewalk. She asked how they would transition from a wider sidewalk with the trees and a bike path to connect under Places29. She expressed concern that the value of her property might decline.

There being no other comments from the public, Mr. Gallaway closed the public hearing.

Mr. Shimp again addressed the Board and responded that he thinks that what the County has done with the Rio/29 Master Plan would increase property values through more intensity of development than what was permitted there now. Regarding the street in question, he said this is another thing we worked with staff on, and that a lot of this plan imagines a day in the future people would have fewer cars. He said all of the plans for the multi-modal transit, bus station and the paths and the fact that the idea of converting that to commercial really makes sense when there are people walking around that neighborhood. He said that was not today, but the principle behind all of this is to plan that it happens and that is what is setting this building up like this that this project pushes forward. He said for example in the middle travel way we have put the condition around proffers essentially if the future parcel is redeveloped

there could be a connecting street through sort of interparcel connectivity and that would require the other parcels to redevelop. He said no one can force them to redevelop their property if they don't want to do; they don't have to and it will stay just like it is. He said that is a condition that the staff wanted us to have and as noted earlier for the time must comply with the County's parking ordinances. He noted that part of this plan's vision is imagine the day we don't need two cars for every unit in this neighborhood, and when that happens then some of these other things will take place. He said this is the first step in that direction basically.

Mr. Gallaway said the matter was back before the Board and invited further comments.

Ms. Mallek asked if there has been due diligence of the grade for the possible east-west connecting street, as there was a steep grade in the middle of the property. Ms. Falkenstein responded that the County has not conducted due diligence and she was not aware if the applicant has. She said the exact location of the street was not known and the area presented was a general location. She said the staff would look at this during site plan analysis. Mr. David Benish, Chief of Planning/Interim Director, added that as subsequent adjacent sites come in, they would take the grading into consideration to match up connections to already approved adjacent properties.

Mr. Gallaway reminded the Board that it decided to provide expedited review for projects that try to achieve the Small Area Plan, encouraged people to bring this forward, and this was the first application that tries to meet that challenge. He said this does not mean he was satisfied with every item of it and his concern was heightened because it was the first project coming forward and would be precedent setting for other projects that could come. He acknowledged as the Supervisor of the District that this is in, that the Board did public outreach for the Small Area Plan, has been talking about where the streets would go, and now that an actual street has been proposed they would have to wrestle with applications that come forward, which was what they asked for in terms of a different form for the four quadrants.

Mr. Gallaway said that what he has heard aligns with what was theorized in the Small Area Plan in terms of greenspace, stream daylighting, and a connector path from Berkmar to Route 29. He pointed out that Volvo has completed its section of a proposed shared-use path that would run from Rio to Hollymead and the path proposed for this project could connect to that. He expressed concern with the appearance and scale of the side of the building that faces the trail and that was not under ARB review, though it looks like it was to staff's satisfaction. He said in terms of the frontage, the height of the buildings and things like that we just had a meeting a few weeks ago where we are starting to get into when we define the form based code what will the heights be, where will the setbacks be and what floor/what story. He said we talked about the uses that we wanted to see in these buildings and all of this is theorized and what is being brought forward here. He expressed concern that the first floor residential would not convert back to the other use, though the idea that the building could be mixed-use was what the County called for. He said it was the same with the treatment on the front of the building to Rio.

Mr. Gallaway recognized that the project may look a little bit out of sorts because it was the first one and this cannot be avoided unless they were able to get all the property owners to redevelop at the same time. He acknowledged his understanding as to why the applicant does not want to commit to a timeline to complete the project and expressed his concern that the front building would not get built, while it was critical under the Small Area Plan that this type of mixed-use and residential building happens. He said it was a risk not to put a timing piece in for that first building to eventually happen, and he would hope that the demand is there and that it makes sense from the private entity's viewpoint that the faster they can get that in place with the mixed uses the better. He recognized the concern over parking by surrounding property owners and hopes something can be worked out, though he reminded all that there was public outreach during the development of the Small Area Plan when these concerns could have been brought forward. He said he was glad that the things got worked out to staff's satisfaction because this evening if they had not been worked out that would have been a real problem. He said the timing was his biggest risk factor for this. He reiterated his concern about Building 1.

Ms. McKeel said she would like to have more discussion about Building 1.

Ms. Mallek said the alternative offered by staff to the Planning Commission was that the front building would have to be under construction before the Certificate of Occupancy would be given to the north one. Ms. Falkenstein said the Planning Commission held a work session prior to the public hearing and debated this topic for quite a while and recognized it would be difficult to enforce a time commitment, though it decided not to go with staff's suggestion. Ms. Mallek remarked that the Board can if it wants to.

Mr. Gallaway asked if construction of a storage facility on the site was by right or if a special use permit would be required. Ms. Falkenstein responded that storage was not by right here and would require a special use permit.

Mr. Gallaway said the alternative would be if the applicant pulled back at a by right, the County would get a special use permit for a storage building and nothing else. He said he was thinking of applications that are coming through by right that need special exceptions and do not do anything to try to achieve the Small Area Plan, of which one was on this evening's agenda.

Mr. Randolph remembered when the Planning Commission weighed on the issue of conversion of commercial property while working on the Comprehensive Plan update as there was the perception of a lack of industrial commercial property in the County outside of Highway Commercial. He said he was struggling with fundamentally changing the land use designation from Commercial to Neighborhood Model density. He said he would be much more responsive if the project had more of a mixed-use

dimension, a flex utilization, and industrial along with commercial, with residential taken out of the equation, as this was a good location for all of those uses given the road and would ensure that adequate parking would be provided. He characterized the project as form-based code light as it uses the form-based code schema to permit an intensification of the overall usage on the site.

Mr. Randolph noted that greenspace was an integral part of form-based code and what the overall project imparts to the community while in this case the greenspace was an afterthought. He said the project has the opportunity to lead the daylighting of a waterway in the back but the Board heard back that the developer would not do it because the other parties are not going to do it, and it was communicated to the Planning Commission and in the report to the Board that it was the responsibility of the County, though responsibility really lies with the developer, especially if they are flying the flag of form-based code here. He continued that the project tries to be something it is not and he has a problem with permitting something that was kind of slippery in its commitment and value system to being deeply entranced in a form-based code ethos and overall was really a form of infill development that really does not fit in terms of what it thinks it expires to be, what it wants to be and what it actually is. He said he does not think he can support it as it was not authentic and what they should be looking at for form-based code, especially in this location.

Mr. Gallaway pointed out that the property lies within the urban core density area of highest heights and density of what the Small Area Plan aspires to be, which should theoretically be mixed residential and other uses such as office space, retail, etc., so in theory the Small Area Plan says that what has been proposed for Building 1 is exactly what we are looking for here. Ms. Falkenstein agreed with this assessment.

Ms. Mallek commented that they would not have a problem if Building 1 were coming on first and that much of the concern was with having a storage building and a big parking deck.

Mr. Gallaway said he understands Ms. Mallek's argument and was not countering it, but countering the point of whether or not this was trying to be what the Small Area Plan says it is.

Mr. Randolph said he would have a different feeling if the Building 1 were to be the first commitment and the sequencing was very important to him.

Mr. Gallaway asked the applicant to address the timing of the two buildings because it seems to be critical.

Mr. Shimp responded that there are financing issues that would probably make this impossible, though perhaps there was some middle ground to talk about. He stated that they would be happy to take the pipe out, though it was not emphasized to them that this was a critical path because there was not a cohesive plan and the stream affects more than just this property. He said they have zero objection in adding that to our plan. He added that the by right allows every commercial use except storage and this may not be the perfect vision of what the plan imagines for 30 years down the road, though it was a step and far better than car sales, a gas station, or other things that could be there. He noted the details of this are difficult. He asked Mr. Garlick to comment on the timing of the CO.

Mr. Garlick said he can appreciate where the Board members are coming from. He added that he has a long history of development with municipalities and with some of the difficulties that are there. He said their concern was that there would inevitably be a recession and, should it occur during the middle of the project with time constraints, they would be in trouble. He noted that preferably they would build sequentially and they have the intention to construct both buildings. He said the lot has a topography that makes construction difficult and if they can move back to front, it would be much better for the project all the way through. He continued that if a Certificate of Occupancy was required it would be a non-starter for a bank conducting due diligence as they would be tying two projects financed by two separate banks together and one bank would not take the risk since there was no assurance the second building would happen. He said that it would be impossible.

Mr. Shimp remarked that Mr. Garlick was trying to be very honest about the circumstances and could have accepted a two-year time commitment that has no teeth, though this is the only way a project like this would get built right now, and there has to be a bit of flexibility. He expressed a willingness to have the decision deferred to work things out with the County.

Ms. Mallek asked Mr. Kamptner if a bond would be appropriate for this kind of scenario to be in place until the construction of the front building could be done as it would not interfere with financing. Mr. Kamptner said he assumes the bond would be to ensure completion of the project and in an amount equal to the cost of the multi-family or the residential units. Ms. Mallek responded that it should be some percentage that makes it useful. Mr. Kamptner said he would like some time to think this through and think of all the scenarios they have had over the years with phased development as well as how this would get worked into the proffers and the Code of Development to ensure that it meets the Neighborhood Model principle of having a mixed use. He said that this would be at the expense at the developer and he does not know how that might affect financing. He said it might have no effect. He said the next thing is how that gets worked into either the proffers and the Code of Development and he would like some time to work through that.

Ms. Mallek recalled that at Old Trail they had a relationship of 50,000 square feet of commercial per 500 units and were not allowed to do one without the other. Mr. Kamptner responded that Old Trail

was a very large phased project for which financing might be different compared to this one, which was 3.3 acres.

Ms. Mallek remarked that her first question was whether or not the acreage was too small to do what they are asking it to do.

Mr. Dill said he was leaning towards approving the project as it lies within the area they have said should have the most intense development, the highest real estate prices, and the highest function, and, if they do not have the confidence in a building there, it does not show much confidence in the County's plan to have infill and commercial development in that area. He continued that he was bullish on economic development for Rio/29, this was a prime spot, and he cannot imagine it being abandoned.

Mr. Randolph remarked that the Landmark Hotel in Charlottesville was on a prime piece of real estate and pointed out that markets can reverse, which can affect construction funding capabilities, in which case there would be a building in the back but not in the front, which could be a potential eyesore.

Mr. Dill said he does not think it would be an eyesore and he acknowledged there was a risk, but the County hired Stantec as a consultant and Stantec indicated this was a great place to develop.

Ms. McKeel said her concerns lie with the factors identified by staff as unfavorable. She agrees with Ms. Mallek's suggestion.

Mr. Gallaway asked if that would require a deferral and give us time to think that through. He said obviously the applicant would have to be agreeable to that.

Mr. Kamptner remarked that they cannot resolve this tonight as documents have to be modified once staff and the applicant figure out what might work and the Code of Development, proffers and application plan might have to be amended. He said we would need to bring closure to these issues and Mr. Shimp has already said that the applicant is willing to daylight the streams, which was a change in what was presented when we started this public hearing.

Mr. Randolph asked if this can be brought back on the consent agenda in August, assuming everything has been worked out, or if another public hearing would be needed. Mr. Kamptner responded that it would depend on whether or not the advertisement continues to correctly reflect the scope of the project and whether or not proffers are amended or the Code of Development was adjusted, which would simplify the process moving forward. He said it was possible that it could come back on the consent agenda.

Mr. Gallaway asked the applicant if he was agreeable. Mr. Shimp responded that they are agreeable and would like to work with staff to resolve these issues as quickly as they can though the bonding issue may be difficult. He offered to provide some comparison illustrations of what the property would look like if the second building were not constructed right away in order to assuage Board concerns with the appearance.

Mr. Randolph invited Mr. Shimp to work out a reasonable figure for the potential bond the County may require in order to guarantee the project would be completed.

Ms. Mallek said that she would prefer the Board hold a discussion once the changes have been made rather than place the item on the consent agenda.

Mr. Kamptner said the two remaining issues was the assurance that the residential will get built and the daylighting of the stream.

Ms. Falkenstein asked for the Board's input as to what they believe would be an appropriate timeline commitment for construction. Ms. Mallek asked for the time commitment suggested by staff. Ms. Falkenstein responded that it was two years from the date of the issuance of the Certificate of Occupancy (CO). Ms. Mallek remarked that she would prefer one year.

Mr. Gallaway suggested they be open, hear the reaction, and see how it plays out. He said he appreciates everyone's efforts to try to make this happen.

Ms. Mallek commented that she appreciates the applicant's willingness to work with the County.

Mr. Gallaway **moved** that the Board defer ZMA201800013, Rio West, until August 21, 2019.

The motion was **seconded** by Mr. Randolph.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Gallaway, Ms. Mallek, Ms. McKeel and Mr. Randolph.

NAYS: Mr. Dill.

ABSENT: Ms. Palmer.

MAGISTERIAL DISTRICT: Samuel Miller.

TAX MAP/PARCEL(S): 07500000006300.

LOCATION: 500 Birdwood Drive, Charlottesville, VA 22903.

PROPOSAL: Rezone a portion of the property from Residential R-1 to Highway Commercial (HC).

PETITION: Rezone an approximately 15.2-acre portion of the 544-acre property from Residential R-1 which allows residential uses (1 dwelling unit/acre) to Highway Commercial (HC), with proffers, to allow for the renovation of the Birdwood Mansion, dependencies, and grounds for use as a special events venue that includes overnight lodging.

OVERLAY DISTRICT(S): ENTRANCE CORRIDOR, AIRPORT IMPACT AREA, and STEEP SLOPES – MANAGED and – PRESERVED.

ENTRANCE CORRIDOR (EC): Yes.

PROFFERS: Yes.

COMPREHENSIVE PLAN: "Institutional" which allows for schools, libraries, parks, major utilities, hospitals, universities, colleges, ancillary facilities, and undeveloped publicly owned property; and "Parks and Green Systems" which allows for parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, and preservation of stream buffers, floodplains, and steep slopes adjacent to rivers and streams. In Neighborhood 6 of the Southern and Western Urban Neighborhoods.

(Advertised in the Daily Progress on July 1 and July 8, 2019.)

The Executive Summary forwarded to the Board states that at its regular meeting on June 4, 2019 the Planning Commission (PC) conducted a public hearing and voted 7:0 to recommend approval of ZMA201800014 as presented and as proffered, for the reasons stated in the staff report. The PC also voted 7:0 to recommend approval of Special Exceptions #1 through #4 for the reasons stated in the staff report. Attachments A, B, and C are the staff report, action memo, and meeting minutes from the June 4 PC meeting.

The applicant has submitted a signed final proffer statement (Attachment D) after the PC public hearing.

The Planning Commission and staff recommend that the Board adopt: 1) the attached Ordinance (Attachment E) to approve ZMA201800014; and 2) the attached Resolution (Attachment F) to approve the special exceptions.

Mr. Tim Padalino, Senior Planner, presented. He said he would provide a summary of the staff report for the ZMA application. He said the owner and applicant was the University of Virginia Foundation and the request was to rezone 15 acres to allow for the reuse of the Birdwood Mansion historic site as a special events venue with overnight lodging. He said the proposal includes proffers and four special exception requests related to minimum yard setbacks, grade, buffers and screening. He noted that the ZMA ordinance and special exceptions resolution are separate action items for your consideration tonight. He described the location as Tax Map/Parcel 75-63, it is a 544 acre property in the development area of the Samuel Miller Magisterial District, zoned R1, lies adjacent to other residential districts, and adjoins the Boar's Head property to the west, which was currently a Highway Commercial zoning district.

Mr. Padalino explained that the proposed Highway Commercial district on the Birdwood property would be located near Route 250 Ivy Road, surrounded by the Birdwood Golf Course on three sides, with the proposed uses to be accessed from Boar's Head Drive and not from Route 250. He said that Brian Ray of Roger Ray & Associates conducted a survey of the proposed district and excluded portions of the golf course which would not be permissible in the Highway Commercial zoning district. He presented the conceptual plan and noted that the proposal includes the rehabilitation and reuse of the historic mansion and existing historic accessory structures as well as reuse of much of the existing infrastructure on site and the use of new, temporary tents for additional event spaces, listed as sites A, B, and C on the concept plan for use at different times as events may necessitate.

Mr. Padalino said the proposal in the application also includes potential future construction of a permanent accessory structure for additional event space, which was not shown on the concept plan but would be permissible according to the terms of what has been applied for. He remarked that staff initially had some concern with an additional permanent structure on the historic site without being able to review its location and design, but this review would be captured during review of the site plan if this rezoning were to be approved and if the Foundation wanted to actually go ahead and construct a permanent secondary event space. He said the applicant explained that siting, planning, and design of a structure would require additional careful analysis in design, which is something that has not been done to date as part of this ZMA application. He said this is an approach where the structure would be permissible but would still be subject to site plan review and other multi agencies review processes. He said the applicant has proposed standards, known as treatment guidelines, which is explained in a note on the concept plan that includes different expressions of sensitivity to historic resources and a commitment to coordinate with the Virginia Department of Historic Resources to make sure that any changes on the site would not jeopardize its listing on the Virginia Register of Historic Places or National Register. He noted that they have assembled a team of cultural and historical landscape experts in historic rehabilitation.

Mr. Padalino reviewed the six proffers. He said the first was that the development would be in general accord with the concept plan. He said the second would substantially restrict permissible uses and result in a proffered Highway Commercial district very similar to the existing one at the Boar's Head. He said the third commitment was to update the existing event management plan for approval by the

Zoning Administrator prior to issuance of a Certificate of Occupancy for the Birdwood Mansion and Grounds project. He said the fourth commitment was to conduct transportation analyses, which was a carryover of a previously approved special use permit and ZMA approval from last year. He said they would meet with the applicants a week from tomorrow to discuss the mechanics of how the first transportation analysis project would happen this fall once students and staff have returned and traffic levels are at normal levels. He said the fifth commitment was a shared parking agreement to be approved by the Zoning Administrator and that includes parking outside of the district and off site at the Boar's Head. He said the sixth commitment was to install a house sound system and to use this for all events that involve amplified music, with a maximum sound output of 85 decibels, as measured at a distance of 50 feet from the speaker. He noted that a sound engineering study using digital monitoring practices was attached.

Mr. Padalino reviewed the special exception requests. He stated that they come into play when a commercial district adjoins a residential district, which would be the case if the ZMA was approved. He noted that staff agrees with the applicant's narrative and justification that applicable yard and screen regulations are not essential in this particular scenario for a couple of reasons. He said the first reason was that both the existing residential district, off site, and the proposed Highway Commercial District would be owned by the Foundation and the second was that the existing R1 Residential District was not comprised of dwelling units, which lowers the level of concern about improvements close to the district boundary. Thirdly, he said he agrees that the strict application of the setback, buffer zone, and screening requirements would limit the ability of the property owner to plan, design, and construct the proposed uses and improvements in ways that would maximize the historic preservation and context sensitive design. He said the flexibility that the special exceptions afford would directly contribute to making sure that historic resources remain intact with any changes that occur. He said that Community Development staff and the Planning Commission recommend approval of the application, as submitted and as proffered, as well as of the corresponding special exceptions. He invited questions.

Ms. Mallek asked if the property can be spun off and sold to someone else or if there was a commitment to keep. She remarked that this would be a great place for there to not be any outdoor amplified music, as there have been many problems with this at outdoor wineries, and recognized that the applicant may have discussed this with Planning.

Mr. Randolph asked if the pillars on the driveway entrance at Birdwood Drive and Route 250, as well as at the creek that runs across the property, are historic and would remain. He asked if the plan was to keep the pillars in place; they will not be removed. Mr. Padalino responded that he believes this was correct, though he would defer to the applicant and property owner. He noted that the gateway and historic driveway were identified as important resources in some of the applicant's reports as well as important to the Planning Commission. He said this concept would keep the portion of Birdwood Drive that connects with Route 250 and leave it unused but intact as a landscape feature, with the new access road to come down through Boar's Head Drive with a left turn into the Birdwood mansion site. He said the idea as expressed to us is to keep both the historic access driveway and presumably the structures at the end.

Mr. Randolph observed that the historic site plan shows the caretaker's house, which was now gone, and recalled that architecture students working on the site found a disturbance to the west of the stone and block slave quarters house, which suggests that there were other buildings. He asked if there would be an effort to try to preserve and do archaeological research on these slave quarters. Mr. Padalino responded that he does not know the answer. Mr. Randolph said he would ask the question of the applicant.

Mr. Gallaway asked the applicant for comments.

Ms. Valerie Long, of the Williams Mullen Law Firm and representing the University of Virginia Foundation, addressed the Board. She said she was joined by Tim Rose, President of the Foundation, and Elise Cruz, Project Manager. She thanked Tim Padalino who has been working with us not only on this project over the past year but several others in the Boar's Head area. She said she would present a few slides and then respond to questions that have been asked. She said the Foundation has been holding monthly meetings with neighborhood residents in the area to keep them updated with the planned projects and has a distinguished panel of experts in historic preservation, landscape architecture, and historic landscape resource expertise as the property was on the National Register and they want to preserve this listing while also renovating and reusing the property. She presented several photos and noted that several outbuildings are proposed to be reused as small guest rooms and storage rooms. She pointed out that the concept plan includes a binding plan with treatment guidelines written by the project's historic preservation consultants. She said there was a desire in the future to have a permanent structure for outdoor events, though this has not yet been designed and, should they decide to construct such a building, they would follow the treatment guidelines in order to preserve the property's listing on the National Register.

Mr. Randolph asked where this structure would be. Ms. Long presented a slide with the binding plan and read the following note on the plan that was written by the consultant: "Permanent accessory structures are permitted in a location to be determined during the site design process following treatment guidelines for the overall property, including the retention of key historic spaces, qualities, and features, including views, vegetation, garden areas, and other historic landscape resources and, in consultation with the Virginia Department of Historic Resources, to ensure that the property's listing on the National Register of Historic Places is maintained."

Addressing Ms. Mallek's earlier comments about noise, Ms. Long said they had a noise consultant carry out extensive noise testing through the use of sound measuring tools and found that, even at the maximum sound levels, the music would not exceed the County's Noise Ordinance at the property lines. She added that if, in the future, a permanent structure was built it would help to minimize any noise issues.

Mr. Randolph asked Ms. Long if she would feel comfortable if the Board were to cap the number of people that could be on site for events. Ms. Long responded that they have not discussed this, though the size of the space limits the number of guests that could be inside the structure. She requested that the proffer regarding noise regulation govern the number of guests. She said the noise testing they carried out was for a large group of people, and what they would ask in lieu of that is that the proffer that they have made with regard to noise regulation be what governs that. She said they have worked closely with our sound consultant, the County zoning staff and the County Attorney's Office to craft that in a way that will minimize if not avoid any noise issues. She noted there is a requirement for the use of only a so called house sound system that the Foundation would own and control that would have a sound limiter on it, which would limit the maximum output of music to 85 decibels measured at 50 feet from the speaker.

Mr. Randolph reiterated his earlier question as to whether Ms. Long would be comfortable should the Board choose to limit the number of guests on weekends. He proposed 200 as the limit. Ms. Long said that unfortunately our sound expert was not able to be here tonight, but a similar question was raised at the Planning Commission about the noise from human voices at a party and she could read from those sections of the minutes where our consultant explained it. She said his response was that it was accounted for with the testing that they did and there was not a precise way to measure human voices and how they will sound as a group. She noted that you could have a group of 50 being far noisier than a group of 200 for example. She said the Foundation is extraordinarily concerned and focused on the relationship that they have with all of their neighbors and continually cultivate open and frequent communication with their neighbors regarding any problems. She said we are not aware of any concerns that any of the neighbors have. She said at the most recent community meeting in June they relayed to the neighbors the outcome of the June 6th noise testing, explained what they found, asked if anyone had any concerns and there were no objections to it. She said they were running the music at the loudest level and they did not have 200 guests, but as our sound expert explained that does not necessarily mean that having neighbors with music was not like it doubles the sound or anything like that, but it was accounted for with their study. She said that plus the proffer we have made to require use a so called house sound system that is important because you avoid the situation of a DJ or a band showing up with their own amplification system and they crank it up and you can't control it. She said this sound system would be under the Foundation's control and they would have to perhaps rent their own equipment or bring their own it has to be preapproved to interact with their house sound system and would be limited to 85 decibels measured at the property line.

Mr. Randolph said coming back to his original question about size, not decibels, would you be comfortable if this Board wanted to limit the 24 weekend events to 200 people. Ms. Long responded that she would have to speak with the representatives of the Foundation, including the Executive Director and the Manager of Events, though they would certainly want the ability to have an event larger than 200 as they have been hosting and managing events at this property for decades without issue. She also pointed out that this property is located in the development area, not the rural area, as most wineries.

Mr. Tim Rose, CEO, University of Virginia Foundation, addressed Mr. Randolph's question. He pointed out that they hold events much larger than 200 at the Board's Head, which was much closer to the adjacent neighborhood, and right now they could not agree to this, as they would have to determine how such a cap would affect the project's business plan.

Mr. Randolph asked Mr. Rose if there was any acceptable maximum number of guests and gave a hypothetical example of an event with 800 attendees to ask if such a large number would pose a threat to public health and safety. Ms. Long responded that there are a number of self-limiting factors, including the size of the structure, appropriate outside gathering space, and parking.

Mr. Randolph pointed out that the plan shows areas A, B, and C as potential special event locations, which could hold events at the same time, and that the plan indicates the possibility that they could add significant capacity to the site in the future. He asked what is the limit. Ms. Long responded that they have not identified a specific one, but they do have limitations on the amount of parking they have. She said they have a lot of parking, the entire site that they utilize regularly for their events, and the golf course parking lot, which obviously in the evening is not being used for golf, that was part of the main plan and they have the new golf parking lot for the indoor golf practice facility and shuttle systems. She pointed out that they have a team that manages that. Ms. Long responded that holding large events with 800 people was an event management challenge and they would have to be able to manage an event like that. She pointed out that the annual Thanksgiving Turkey Trot has over 1,000 participants and it works and they do not have any issues with it. She said they have massive swim meets at the Boar's Head on Wednesday nights, tennis tournaments, and cocktail receptions and do not receive complaints from neighbors as they know how to plan events to avoid issues. She asked for the flexibility to be able to manage that coordination and that process internally. She pointed out that they would proffer an updated event management plan and they are professionals that do this all the time, but they cannot agree to an event size limit.

Ms. Long continued her presentation. She presented the results of the sound study and stated that, with the exception of an area shaded in purple that was well away from residents, the noise levels would be similar to the ambient noise of the neighborhood. She said that neighbors who sat in their

backyards during the sound test reported that they could not hear the bass or the downbeat and could barely hear the music. Ms. Long asked that the proffers control the sound and the number of attendees not be limited.

Mr. Randolph asked what the plans for redevelopment are for the south house slave quarters. Ms. Elise Cruz, University of Virginia Foundation Real Estate Coordinator, said the south house was identified as a possible area for a guest quarters, which they have identified as groom's quarters. She said that all of the outbuildings would be preserved, protected, and reused in some way. She added that they are currently doing extensive research on the history of Birdwood, and how to best interpret that on the site. She said they have an Archaeological Study Phase 1 done by the Rivanna Archaeological Services and they catalogued over 2,000 pieces of artifacts in its archaeological study of the site, which they could potentially display and they may place a memorial to those who worked on the site.

Mr. Randolph asked for confirmation that there are no plans to disturb any of the property immediately to the west of the slave quarters. Ms. Cruz confirmed this. She noted that an archaeological expert would be on site during Phase II site work to make sure that they would document what has been found and determine if work could move forward.

Mr. Randolph added that Justin Reid from Virginia Humanities would be interested in working with them. Ms. Cruz said she would reach out to him.

Ms. Mallek suggested the Foundation consult with Amelia McCulley for event planning assistance with things such as directional speakers, which makes all the sound go to the dance floor and people around at the table can actually have a conversation. She stressed the importance of having an onsite manager to make sure people behave. She added that she was not concerned with their ability to manage larger events.

Ms. McKeel remarked that this was a great project and she was excited.

Mr. Gallaway opened the public hearing. There being no comments from the public, Mr. Gallaway closed the public hearing.

Ms. Mallek commented that the Bellair and Gables neighborhoods are the ones that would have a problem, if noise was an issue.

Mr. Randolph **moved** that the Board adopt the proposed Ordinance to approve ZMA201800014 Birdwood Mansion and Grounds, with the proffers included in the agreement with the Planning Commission. The motion was **seconded** by Ms. Mallek.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Mr. Randolph.
NAYS: None.

ABSENT: Ms. Palmer.

ORDINANCE NO. 19-A(10)
ZMA 2018-00014

**AN ORDINANCE TO AMEND THE ZONING MAP
FOR TAX MAP PARCEL 07500-00-00-06300**

WHEREAS, the application to rezone a 15.2-acre portion of the 544-acre property from R1 Residential to HC Highway Commercial for Tax Map Parcel 07500-00-00-06300 is identified as ZMA 2018-00014 Birdwood Mansion and Grounds ("ZMA 2018-00014"); and

WHEREAS, on June 4, 2019, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2018-00014; and

WHEREAS, on July 17, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on ZMA 2018-00014.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2018-00014 and their attachments, the information presented at the public hearing, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code §§ 18-24.1 and 1-33.27, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2018-00014 with the Concept Plan entitled "Birdwood Mansion and Grounds, Charlottesville, VA, ZMA 2018-00014," prepared by Elise Cruz, UVA Foundation, with page 1 of 3 dated May 10, 2019, and pages 2 and 3 of 3 dated March 28, 2019, and Proffers dated May 10, 2019.

Mr. Randolph **moved** that the Board adopt the proposed Resolution to approve the special exceptions for ZMA201800014 Birdwood Mansion and Grounds, as conditioned.

The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel, and Mr. Randolph.

NAYS: None.

ABSENT: Ms. Palmer.

**RESOLUTION TO APPROVE SPECIAL EXCEPTIONS
FOR ZMA 2018-14 BIRDWOOD MANSION AND GROUNDS**

WHEREAS, the owner of Tax Parcel 07500-00-00-06300 filed a request for special exceptions to modify or waive requirements of the following Zoning Ordinance requirements in conjunction with ZMA 2018-14 Birdwood Mansion and Grounds as depicted on the pending plans under review by the County's Department of Community Development:

General regulations:

- § 18-4.20(a) – Setbacks and stepbacks in conventional commercial and industrial districts

Commercial District – Generally:

- § 18-21.7 – Minimum yard requirements

Site plans:

- § 18-32.7.9 – Landscaping and screening; and

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Transmittal Summary and Staff Analysis prepared in conjunction with the application, all of the factors relevant to the special exceptions in County Code §§ 18-4.20(a), 18-21.7, 18-32.7.9, 18-33.47.B, 18-33.48.B, and 18-33.49, and the information provided at the Board of Supervisors' meeting, the Albemarle County Board of Supervisors hereby approves the special exceptions to authorize the modification and waiver of the County Code sections set forth above, subject to the conditions attached hereto.

ZMA 2018-14 Birdwood Mansion and Grounds Special Exception Conditions

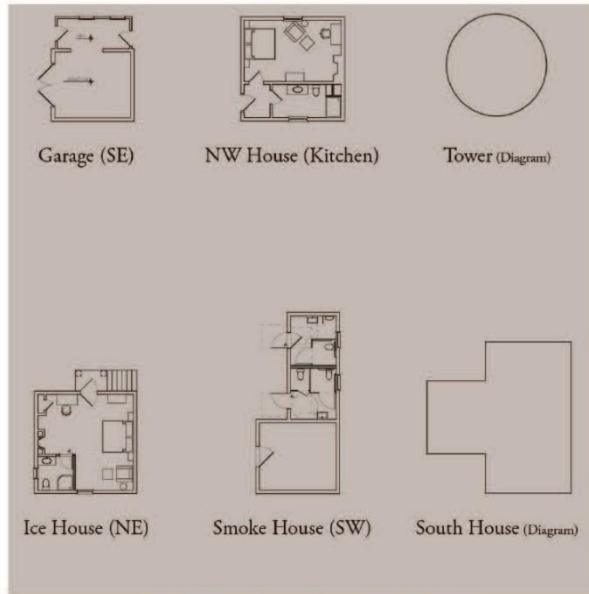
1. The modification and waivers of the above-referenced County Code sections must be in general accordance with the Concept Plan entitled "Birdwood Mansion and Grounds, Charlottesville, VA, ZMA 2018-00014," prepared by Elise Cruz, UVA Foundation, with page 1 of 3 dated May 10, 2019, and pages 2 and 3 of 3 dated March 28, 2019, and Proffers dated May 10, 2019.

Existing Conditions



Elise Cruz, UVA Foundation
3/28/2019
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Outbuildings Detail



Existing floor plans with potential uses for outbuildings. All buildings will be preserved; some may be renovated and reused.



Current site layout

This plan is for illustrative purposes only and is subject to change.

Prepared By:
Elise Cruz
UVA Foundation
3/28/2019
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BIRDWOOD MANSION AND GROUNDS

ZMA 2018-00014

PROFFER STATEMENT

Date: May 10, 2019
ZMA#: ZMA 2018-00014
Tax Map Parcel #: 07500-00-00-06300 (portion of)
Owner of Record: University of Virginia Foundation

15.21 acres to be rezoned from R-1 Residential ("R-1") to Highway Commercial ("HC").

The following property is subject to rezoning application ZMA 2018-00014 (the "Application") and thus to this proffer statement: a portion of Tax Map Parcel 07500-00-00-06300 shown as "Proposed Area of Rezoning 15.21 acres" on the Rezoning Boundary Exhibit, prepared by Roger W. Ray & Assoc., Inc, dated October 18, 2018, last revised March 21, 2019, and attached hereto as Exhibit A (the "Property"). The Applicant and owner of the Property is University of Virginia Foundation (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to approve the Application, as requested, the Owner and its successors and assigns shall develop the Property in accord with the following proffers pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.22 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the Application, and the Owner acknowledges that (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning requested.

In the event the Application is denied the proffers shall immediately be null and void and of no further force or effect.

1. Development of the Property shall be in general accord with the plan entitled "Rezoning Conceptual Plan" prepared by Elise Cruz and dated May 10, 2019, and attached hereto as Exhibit B (the "Conceptual Plan"). The Owner reserves the right to develop the Property in phases.

2. Within the Property, only the following uses shall be permitted by right, subject always to the express terms of this proffer statement:

- a. Pursuant to subsection 24.2.1 of Section 24, HC Highway Commercial zoning district, of the Albemarle County Zoning Ordinance, as those regulations exist on the date of approval of ZMA 2018-00014, as set forth below: Section 24.2.1 numbers 20, 35, 36, 37, 41, 44, and 45.
- b. Pursuant to subsection 22.2.1 of Section 22, C-1 Commercial zoning district, of the Albemarle County Zoning Ordinance, as those regulations

exist on the date of approval of ZMA 2018-00014, as set forth below:
Section 22.2.1 numbers b.17, b.18, b.19, b.26, and b.27.

The by-right uses of the Property that are permitted pursuant to sections 24.2.1 and 22.2.1 and pursuant to this Proffer Statement are shown below without strikethrough. Uses which will not be permitted on the Property (subject always to the express terms of this proffer statement) have been indicated by strikethrough.

24.2.1 BY RIGHT

The following uses shall be permitted in any HC district, subject to the applicable requirements of this chapter. The zoning administrator, after consultation with the director of planning and other appropriate officials, may permit, as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character, and more specifically, similar in terms of locational requirements, operational characteristics, visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.

1. Automobile laundries.
2. Automobile, truck repair shops.
3. Automobile service stations (reference 5.1.20).
4. Building materials sales.
5. Churches, cemeteries.
6. Clubs, lodges (reference 5.1.02).
7. Convenience stores.
8. Educational, technical and trade schools.
9. Factory outlet sales—clothing and fabric.
10. Feed and seed stores (reference 5.1.22).
11. Financial Institutions.
12. Fire extinguisher and security products, sales and service.
13. Fire and rescue squad stations (reference 5.1.09).
14. Funeral homes.
15. Furniture stores.
16. Food and grocery stores including such specialty shops as bakery, candy, milk dispensary and wine and cheese shops.
17. Home and business services such as grounds care, cleaning, exterminators, landscaping and other repair and maintenance services.
18. Hardware.
19. (Repealed 6-3-81).
20. Hotels, motels and inns.
21. Light warehousing.
22. Machinery and equipment sales, service and rental.
23. Mobile home and trailer sales and service.
24. Modular building sales.
25. Motor vehicle sales, service and rental.
26. New automotive parts sales.

27. ~~Newspaper publishing.~~
28. ~~Administrative, business and professional offices.~~
29. ~~Office and business machine sales and service.~~
30. ~~Eating establishment; fast food restaurants.~~
31. ~~Retail nurseries and greenhouses.~~
32. ~~Sale of major recreational equipment and vehicles.~~
33. ~~Wayside stands—vegetable and agricultural produce (reference 5.1.19).~~
34. ~~Wholesale distribution.~~
35. ~~Water, sewer, energy and communications distribution facilities.~~
36. ~~Public uses (reference 5.1.12).~~
37. ~~Temporary construction headquarters and temporary construction storage yards (reference 5.1.18).~~
38. ~~Indoor theaters.~~
39. ~~Heating oil sales and distribution (reference 5.1.20).~~
40. ~~Temporary industrialized buildings (reference 5.8.)~~
41. ~~Uses permitted by right pursuant to subsection 22.2.1 of section 22.1, commercial, C-1.~~
42. ~~Indoor athletic facilities. (Added 9-15-93).~~
43. ~~Farmer's market (reference 5.1.47). (Added 10-11-95).~~
44. ~~Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)~~
45. ~~Tier I and Tier II personal wireless services facilities (reference 5.1.40). (Added 10-13-04)~~
46. ~~Storage yards.~~
47. ~~Laboratories/Research and Development/Experimental Testing; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.~~
48. ~~Manufacturing/Processing/Assembly/Fabrication and Recycling; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.~~
49. ~~Storage/Warehousing/Distribution/Transportation; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.~~
50. ~~Drive-through windows (reference 5.1.60). (Added 3-2-16).~~

22.2.1 BY RIGHT

The following uses shall be permitted in any C-1 district, subject to the applicable requirements of this chapter. The zoning administrator, after consultation with the director of planning and other appropriate officials, may permit, as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character, and more specifically, similar in terms of locational requirements, operational characteristics,

visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.

- a. The following retail sales and service establishments:
 1. Antique, gift, jewelry, notion and craft shops.
 2. Clothing, apparel and shoe shops.
 3. Department store.
 4. Drug store, pharmacy.
 5. Florist.
 6. Food and grocery stores including such specialty shops as bakery, candy, milk dispensary and wine and cheese shops.
 7. Furniture and home appliances (sales and service).
 8. Hardware store.
 9. Musical instruments.
 10. Newsstands, magazines, pipe and tobacco shops.
 11. Optical goods.
 12. Photographic goods.
 13. Visual and audio appliances.
 14. Sporting goods.
 15. Retail nurseries and greenhouses.
 16. Farmers' markets (reference 5.1.47). 17.
 17. Laboratories/Research and Development/Experimental Testing; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.
 18. Manufacturing/Processing/Assembly/Fabrication and Recycling; gross floor area of the establishment does not exceed 4,000 square feet per site; provided that the gross floor area of the establishment may exceed 4,000 square feet per site by special exception approved by the board of supervisors.
 19. Drive-through windows (reference 5.1.60). (Added 3-2-16)
- b. The following services and public establishments:
 1. Administrative, professional offices.
 2. Barber, beauty shops.
 3. Religious assembly use, cemeteries.
 4. Clubs, lodges (reference 5.1.02).
 5. Financial institutions.
 6. Fire and rescue squad stations (reference 5.1.09).
 7. Funeral homes.
 8. Health spas.
 9. Indoor theaters.
 10. Laundries, dry cleaners.
 11. Laundromat (provided that an attendant shall be on duty at all hours during operation).
 12. Libraries, museums.
 13. Nurseries, day care centers (reference 5.1.06).

14. Eating establishments.
15. Tailor, seamstress.
16. Automobile service stations (reference 5.1.20).
17. Water, sewer, energy and communications distribution facilities.
18. Public uses (reference 5.1.12).
19. Temporary construction headquarters and temporary construction storage yards (reference 5.1.2).
20. Dwellings (reference 5.1.21).
21. (Repealed 4-3-13).
22. Automobile, truck repair shop excluding body shop.
23. Temporary industrialized buildings (reference 5.8).
24. Indoor athletic facilities. (added 9-15-95)
25. (Repealed 5-5-10).
26. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)
27. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)

Notwithstanding that the above-referenced uses will not be permitted on the Property, this proffer statement shall not be interpreted to prohibit uses accessory to a hotel, motel or inn, or any other uses permitted as by-right per this proffer statement.

3. Prior to issuance of a certificate of occupancy for the Birdwood Mansion and Grounds, the Owner shall submit for approval by the Zoning Administrator a current Event Management Plan to provide adequate parking for the public during events at the Property, and further designed to avoid or minimize public parking in adjacent and nearby residential areas during such public events. Such a plan shall include a commitment by the Owner to provide adequate event parking on the Property or the adjacent Boar's Head property with additional access to the Property either by shuttle service or on foot, at the discretion of the Owner. Parking may also be provided in other parking areas controlled by the Owner or its affiliated entities, each in the discretion of the Owner given the expected attendance at each particular event. Such a plan will also provide for the use of shuttle services as necessary given the size and nature of a particular event, for the use of adequate signage directing the public to permitted parking areas, and the use of appropriate personnel to direct the public to such permitted parking areas and to discourage or prohibit public parking in adjacent and nearby residential areas.

4. The Owner agrees to conduct warrant analyses, and to provide a pro rata financial contribution to future transportation improvements (as may be warranted), as established in conditions of approval #8 and #9 in special use permit amendment SP201700032.

5. Prior to final site plan approval, the Owner shall obtain the approval from the Zoning Administrator of a shared parking agreement with the owner of the adjacent Boar's Head Resort parcels.

6. For all events at the Property involving amplified music, the Owner shall utilize a house sound system that has a maximum sound level output of 85 dBA, measured at a distance of fifty (50) feet from the speaker.

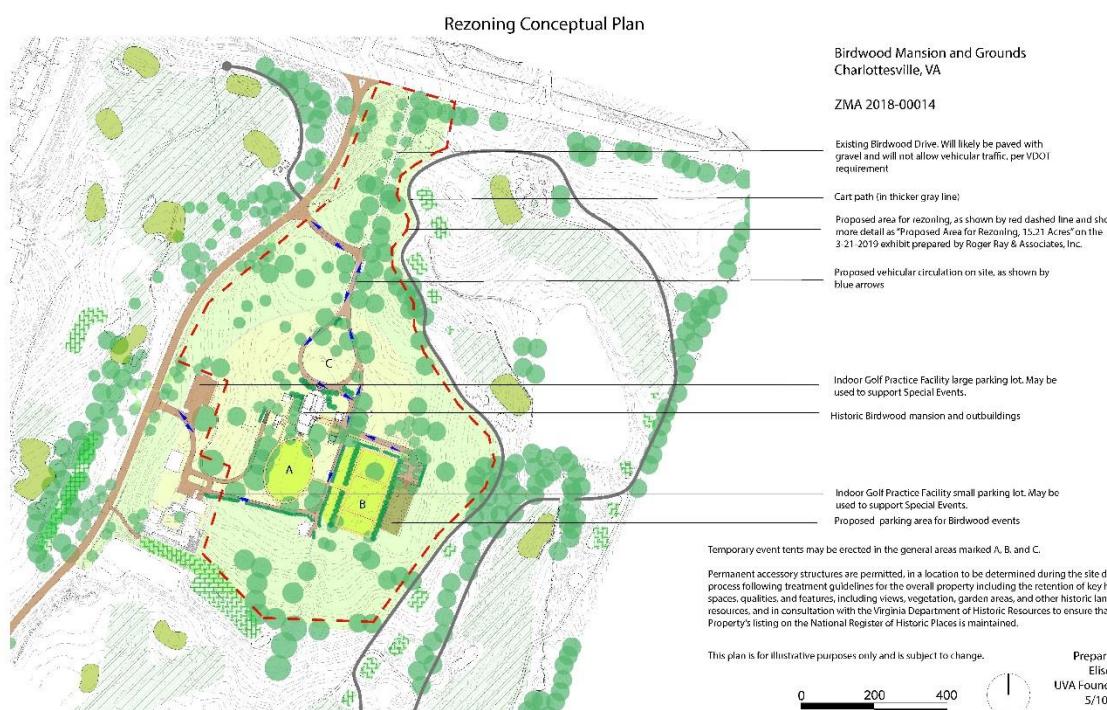
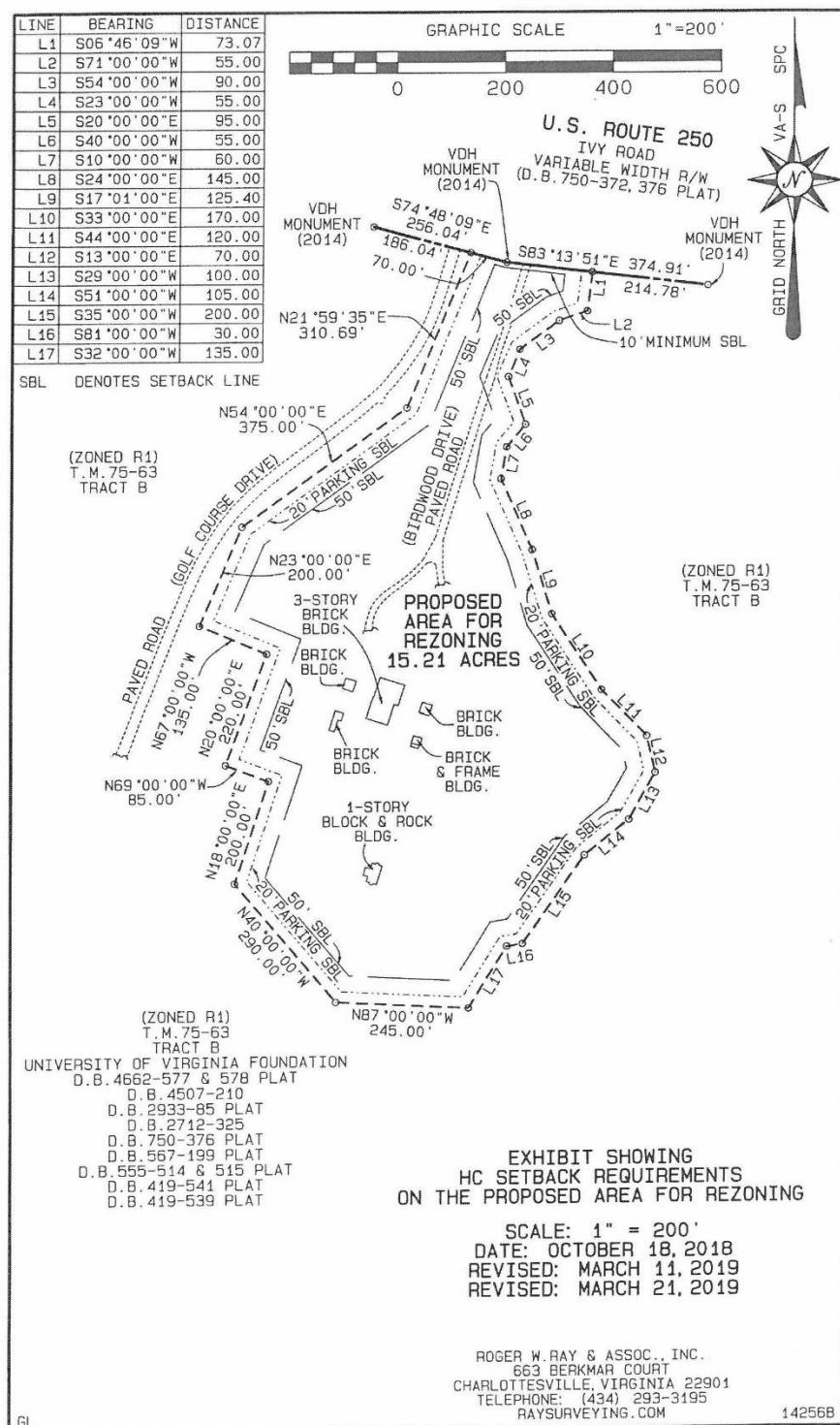
WITNESS the following duly authorized signature:

UNIVERSITY OF VIRGINIA FOUNDATION

By: Tim Rose
Printed Name: Tim Rose
Title: Chief Executive Officer
Date: 7/1/2019

Exhibit "A"
Rezoning Boundary
(attached)

Exhibit "B"
Rezoning Conceptual Plan
(attached)

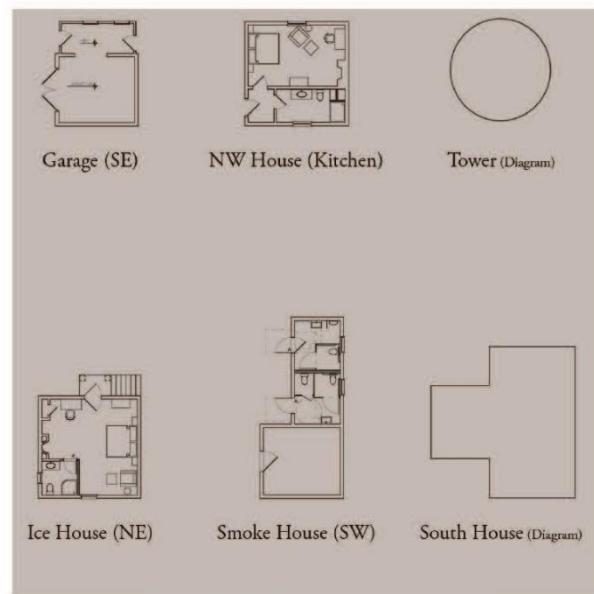


Existing Conditions



Elise Cruz, UVA Foundation
3/28/2019
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Outbuildings Detail



Existing floor plans with potential uses for outbuildings. All buildings will be preserved; some may be renovated and reused.



Current site layout

Prepared By:
Elise Cruz
UVA Foundation
3/28/2019
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This plan is for illustrative purposes only and is subject to change.

Agenda Item No. 17. Public Hearing: ZMA201800017, Woolen Mills Light Industrial Park Steep Slope Modification.

PROJECT: ZMA201800017 Woolen Mills Light Industrial Park.

MAGISTERIAL DISTRICT: Scottsville.

TAX MAP/PARCEL: 077000000040B0.

LOCATION: Property is located in the southeast corner of the intersection of Franklin Street and Broadway Street.

PROPOSAL: Request to change the zoning designation of square feet from preserved slopes to managed slopes which would allow the slopes to be disturbed.

PETITION: Rezone approximately 0.50 acres from Steep Slopes Overlay District (preserved) which allows uses under Section 30.7.4(b) to Steep Slopes Overlay District (managed) which allows uses under Section 30.7.4(a). No dwellings proposed.

OVERLAY DISTRICT: Steep Slopes (SS); Flood Hazard (FH).

PROFFERS: No.

COMPREHENSIVE PLAN: Parks and Green Systems – parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams.

(Advertised in the Daily Progress on July 1 and July 8, 2019.)

The Executive Summary forwarded to the Board states that at its meeting on April 9, 2019, the Planning Commission (PC) conducted a public hearing and voted to recommend approval of ZMA201800017. The Commission's staff report, action memo, and minutes are attached (Attachments A, B, and C).

At the Planning Commission meeting, staff recommended approval the proposed Zoning Map Amendment application. The Planning Commission voted 5:2 (More, Spain opposed) to recommended approval of ZMA2019000017.

Staff recommends that the Board adopt the attached Ordinance (Attachment D) to approve ZMA201800017 Woolen Mills Light Industrial Park, Steep Slope Amendment.

Mr. David Benish, Interim Planning Director, presented. He said this proposal, ZMA-2018-00017, would amend the Steep Slope Overlay District to change the designation of an area of 25% or greater slope from preserved to managed, for an area of 19,660 square feet. He said there was not a request to change any of the other areas in the property, which he noted was located at the corner of Broadway and Franklin Streets near the Woolen Mills area. He reminded the Board that a similar request for this parcel was reviewed by them in 2015 for three different areas and at that time the Board voted to uphold preserved slope designations for all three areas, A, B, and C. He said that areas A and B are not part of this request. He explained that Area C in 2015 was a very small area at that time and on an adjacent parcel and, since this was a very small area and no analysis was provided for this other area, the staff and the Board ultimately agreed to keep these areas as preserved slopes. He said the Comprehensive Plan designates the entire property for Parks and Greenspace; and one-half of the property's 36 acres was in the Moores Creek floodplain. He presented a slide and pointed out the area in question and the floodplain, and said the area has been zoned LI (Light Industry) since the 1970s.

Mr. Benish said the staff found that the property has both managed and preserved slopes characteristics, and noted that this information was in the report. He said that he, along with staff, visited the site and generally determined that some of the areas designated on the map are probably not critical slopes and staff made a best guess that there was 5,000 to 6,500 less area of critical slopes than what was designated on the map. He said they have determined that most of the slopes are man-made fill from a railroad that was constructed many years ago and are likely composed of both native and imported fill, unstable, and of a mixed quality of vegetation and ground cover. He presented photos and noted it did not sustain good tree coverage or shrub coverage so that man-made characteristic just does not support vegetation very well. He said they concluded the band was wide in some places but fairly narrow and located between 130 to 240 feet away from the floodplain of Moores Creek. He pointed out features of the slopes and distances from the floodplain on a map. He next presented factors in the Ordinance that establish the characteristics for managed and preserved slopes and reiterated that staff found characteristics of both and that they are better served if treated as managed slopes. He presented photos of the railroad bed and noted that not all of the area was subject to the preserved slopes regulations and can be redeveloped under the Ordinance, and preserved slopes provisions apply as it goes down the hill.

Ms. Mallek asked if the steep slopes in the photos would be removed and leveled to the height of Franklin Street. Mr. Benish responded that staff does not have a plan for how they propose to redevelop, though they have an approved site plan. He said they are early on in determining how to deal with proposed changes from managed to preserve slopes, though the focus today was less on what the proposed development of the site was and the first step was to determine if an accurate read was made as to whether they should be preserved. He explained that the Ordinance was created based on aerials and topographic information and, when on the ground information was evaluated, some adjustments to the map may have to be made. He noted in photos some of the areas where good vegetation has never been stabilized. He said that Mr. Dotson summarized it well that when the ordinance was created it was done based on aerials and topographic information and when you start to see on the ground information you may have to make some adjustments to the map, and that is the approach we have taken. He noted that staff does not know how the applicant propose to redevelop this. He said that should the site be redeveloped, the managed slope provisions have design requirements for regrading, retaining walls, landscaping, and spacing and separation so that there is a terracing that takes place.

Mr. Randolph said he attended the Planning Commission meeting where this plan was reviewed and what was persuasive to the Commission was Commissioner Firehock's onsite visit where she verified that the nature of the material was associated with a railroad, the bank itself was falling apart, and that from a water management and quality standpoint, it was better to have the developer alter the slopes than to continue to have very unstable slope material. Mr. Randolph said that he also found this to be very persuasive.

Ms. McKeel said she attended the meeting of the Planning Commission and she found Ms. Firehock's presentation and thoughts to be persuasive.

Mr. Gallaway invited the applicant to address the Board.

Mr. Kevin O'Brien addressed the Board. He noted that they have a site plan to develop this by right. He acknowledged that the slope was man-made, unstable, largely made of imported fill, and has invasive vegetation. He said if this rezoning request was approved, it would meet everything the County wants from the property. He added that none of the naturally occurring stable steep slopes would be disturbed. He invited questions.

Mr. Randolph asked for confirmation that they would preserve the historic wall along Franklin Street. Mr. O'Brien confirmed this.

Mr. Benish presented the site plan grading plan page, pointed out the preserved areas and the wall, and explained that the shaded area represents preserved slopes to be retained and the areas to be changed.

Mr. Gallaway opened the public hearing. As no one came forward to address the matter, Mr. Gallaway closed the public hearing.

Mr. Randolph **moved** that the Board adopt the proposed Ordinance to approve ZMA201800017, Woolen Mills Light Industrial Park Steep Slope Amendment. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Mr. Randolph.
NAYS: None.
ABSENT: Ms. Palmer.

ORDINANCE NO. 19-A(11)
ZMA 2018-00017

AN ORDINANCE TO AMEND THE ZONING MAP
FOR TAX MAP PARCEL 07700-00-00-040B0

WHEREAS, the application to rezone .45 acres (19,660 square feet) of preserved slopes to managed slopes within the Steep Slopes Overlay District on Tax Parcel 07700-00-00-040B0 is identified as ZMA 2018-00017 Woolen Mills light Industrial Park, Steep Slope Amendment ("ZMA 2018-00017"); and

WHEREAS, on April 9, 2019, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2018-00017; and

WHEREAS, on July 17, 2019, the Albemarle County Board of Supervisors held a duly noticed public hearing on ZMA 2018-00017.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2018-00017 and their attachments, including the revised Application Plan, the information presented at the public hearing, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code § 18-30.7, and for the purposes of public necessity, convenience, general welfare and good zoning practices, the Board hereby approves ZMA 2018-00017 with the Application Plan entitled "ZMA 201800017, Zoning Map Amendment for Woolen Mills Light Industrial Park, TMP 07700-00-00-040B0," prepared by Meridian Planning Group, LLC, 440 Premier Circle, Ste 200, Charlottesville, VA 22901," dated December 17, 2018.

December 28, 2018

Lea Brumfield
Zoning Senior Planner
Albemarle County
210 McIntire Road
Charlottesville, VA 22901

**RE: ZONING MAP AMENDMENT APPLICATION FOR
TMP 07700-00-00-040B0
WOOLEN MILLS LIGHT INDUSTRIAL PARK**

The applicant is requesting the rezoning of a strip of land that is the site of an abandoned railroad track. Much of the land in this section is less than a 25% slope, and that portion that is steeper than 25% can be readily seen to be manmade – an embankment created by the railroad in order to build a siding to serve the now defunct woolen mill. We are not requesting any change of the zoning for the preserved slopes along Broadway, Franklin, or Moore's Creek lane, thereby preserving the buffer for the neighbors (including the old stone wall). Once the by-right (already approved and permitted) development is built, the strip of land in question will be an island surrounded by buildings, pavement, and storm water management systems. The fact that it is man-made, coupled with the fact that its disturbance would not be detrimental to the public health safety or welfare, and its preservation will not forward the purposes of the critical slopes ordinance, make it a suitable candidate for re-zoning. Therefore, this Zoning Map Amendment (ZMA) will be limited only to the preserved slopes that are on TMP 07700-00-00-040B0 and parallel the northern curved property line between TMP 07700-00-00-040B0 and TMP 07700-00-00-040M0. Refer to the Rezoning Application Plan for the Preserved Slopes to be rezoned to Managed Slopes.

A. PROJECT PROPOSAL

The purpose of this ZMA is to rezone a 19,635 SF (0.45 acre) area of Preserved Slope Zoning to Managed Slope Zoning. The Rezoning Application Plan shows the limits of the area to be rezoned. Although the total area marked preserved and which is requested to be rezoned is 19,635 s.f., field observations and the county gis confirm that much of this strip is in fact at a less than 25% grade, and that furthermore the sections that do exceed 25% are manmade.

The Preserved Slopes are located within the properties, consequently this rezoning would not have any affect on the public need or benefit.

B. CONSISTENCY WITH THE COMPREHENSIVE PLAN

TMP 77-40B is located in Neighborhood 4 of the Southern and Western Urban Neighborhoods development area.

The Comprehensive Plan designates the future land use Classification of TMP 77-40B as Parks and Green Systems. Chapter 11 of the Comprehensive Plan calls for a new pedestrian or multi-purpose path through this parcel but does not designate this parcel as a location for a public park or greenway trail. The proposed rezoning will allow for a new pedestrian or multi-use path through the parcel.

ZMA 201800017

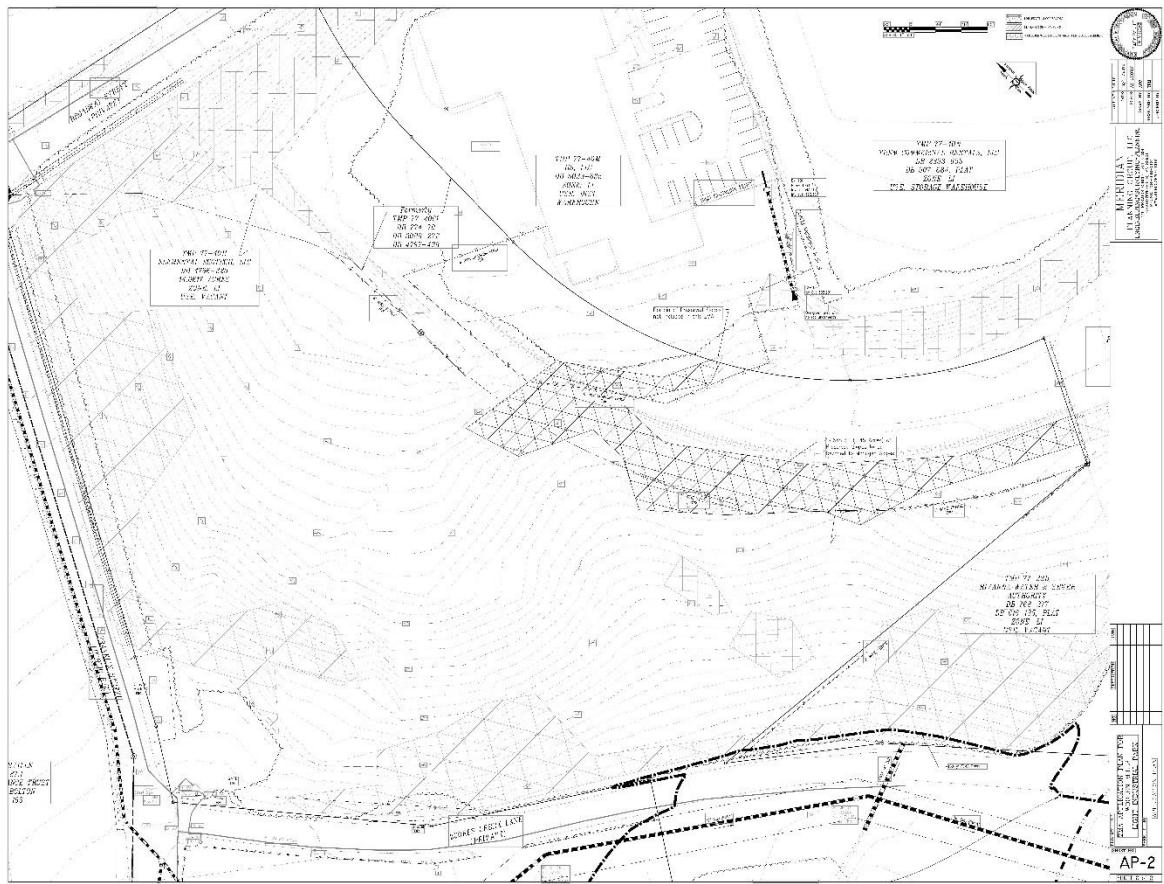
**ZONING MAP AMENDMENT
FOR
WOOLEN MILLS
LIGHT INDUSTRIAL PARK**

TMP 07700-00-00-040B0
ELEMENTAL ECOTECH, LLC
809 BOWLING AVE, UNIT C
CHARLOTTESVILLE, VA 22902

ENGINEER
MERIDIAN PLANNING GROUP, LLC
440 PREMIER CIRCLE, STE 200
CHARLOTTESVILLE, VA 22901

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TAB	DESCRIPTION
1	NARRATIVE
2	PLAT FOR TMP 77-40B
3	PLAT FOR TMP 77-40M
4	DEEDS FOR TMP 77-40C1



Agenda Item No. 18. **Public Hearing: ZTA201900001 Zero Lot Line.** To receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code: Amend Section 18-4.19 to replace a side setback of "None" with a side setback of 5 feet in Non-Infill Residential Districts; Amend Section 18-4.11.3 to consolidate and update side yard reductions for non-zero lot line and zero lot line development; Amend Section 18-4.11.1 to allow covered porches, balconies, chimneys, eaves and like architectural features to project no closer than 5 feet to any side lot line in Non-Infill Residential Districts; and Amend Section 18-4.11.2 to allow accessory structures no closer than 5 feet to any side lot line in Non-Infill Residential Districts.

(Advertised in the Daily Progress on July 1 and July 8, 2019.)

The Executive Summary forwarded to the Board states that a resolution of intent to amend the Zoning Ordinance was adopted by the Board on January 9, 2019. That resolution directed consideration of an amendment to Albemarle County Code § 18-4.19 and any related provisions to establish a minimum side setback to a distance greater than 0 feet for non-infill residential districts.

In a collaborative effort, staff worked with several local builders and stakeholders in an effort to establish the most appropriate minimum side setback for non-infill residential development. At a work session on April 9, 2019, the Planning Commission consensus supported a 5 feet side setback with language that allows for reductions to a 0 feet side setback if an easement is established that maintains the minimum building separation of 10 feet.

At its meeting on May 7, 2019, the Planning Commission recommended approval of the attached proposed ordinance (Attachment D) by a vote of 7:0. See Attachments A-C for the related Planning Commission materials.

The proposed ordinance includes an amendment to County Code § 18-4.19 to replace a side setback of "None" with a side setback of 5 feet in Non-Infill Residential Districts. The current regulations for "Non-Infill" side setbacks of "None" with a required building separation of at least 10 feet are problematic because they fail to address how the 10 feet minimum building separation will be maintained or ensured if the adjacent lot builds at less than 10 feet from the property line. The proposed ordinance establishes a minimum side setback of 5 feet that will not only ensure the minimum building separation but will provide enough space for normal building maintenance.

Additionally, the proposed ordinance includes an amendment to County Code § 18-4.11.3 to provide that any non-infill residential side setback can be reduced to 0 feet as long as 10 feet is available through an easement to ensure building separation and an adequate area for building maintenance. These proposed changes will provide homeowners and builders the opportunity for variability in setbacks while still ensuring a minimum 10 foot building separation.

Lastly, the proposed ordinance includes amendments to County Code §§ 18-4.11.1 and 18-4.11.2 to allow covered porches, balconies, chimneys, eaves, like architectural features, and accessory

structures to project or be located no closer than 5 feet to any side lot line in Non-Infill Residential Districts. These changes align and simplify the regulations for these features with the proposed 5 feet side setback.

Staff recommends that the Board adopt the attached Proposed Ordinance (Attachment D).

Mr. Kevin McCollum, Planner, presented information on ZTA-2019-1, Zero Lot Line. He explained that the amendment focuses on updating side setbacks for non-infill residential districts. He described infill development as development in areas that are already largely developed, such as the construction of a new house in an existing neighborhood, which fills in a gap in the development. He described non-infill development as greenfield development where houses are built on new lots in a new neighborhood. He said this ZTA focuses on non-infill residential development for which they have proposed changes to side setbacks. He explained that a setback represents the distance separating a building from any property line. He said Section 18-4.19 of the Zoning Ordinance provides specific setback distances for residential districts and, for non-infill development, the side setback minimum was none with a minimum building separation of 10 feet. He said the reason staff are proposing this ZTA is that a building setback of none with a minimum building separation of 10 feet, the current ordinance standard, causes problems. He pointed out an example of Lots A and C being developed before Lot B and choosing not to build a side setback. He said that Lot B could potentially be limited in house size because of the minimum 10 foot building separation and essentially by building at zero Lots A and C would be preventing Lot B from building within the first 10 feet of either side of their property. He reviewed a second example of two houses for which the owners wish to put on additions with existing setbacks of seven and five feet. He said that when Lot B proposes a two foot addition on their house then Lot A can no longer put on an addition because they are now 10 feet apart. He pointed out that because Lot B did their addition first Lot A cannot put on an addition even though they are further from that property line. He said there are no existing regulations that prevent either one of these examples from happening and staff proposes to establish a five foot minimum side setback to apply to houses, architectural features, and accessory structures like sheds. He said discussion and feedback from local builders, stakeholders, staff, and research of other localities have shown that the 5 foot setback was the easiest and best solution to solve these existing problems. He continued that a five foot setback not only ensures a 10 foot minimum building separation but also provides space for normal property maintenance and establishes a much simpler regulation for homeowners, builders, staff, and the community.

Mr. McCollum said staff also propose changes to allow buildings to be constructed closer than five feet as long as they ensure the 10 feet of building separation. He said that with a zero lot line development, which was a type that exists in the County, houses can be built at a zero foot side setback because there was a 10 foot maintenance easement, which allows setbacks to be reduced to zero since the 10 feet of separation was ensured through the easement. He said they propose changes to allow these regulations to apply to all types of residential development so that if you want to build closer than 5 feet you can as long as you obtain that easement. He said the easement not only ensures the minimum building separation but allows for property owners to perform normal maintenance on their houses. He said these regulation changes are important because they clarify how the proposed setback can be reduced, which gives the builders and homeowners flexibility in their setbacks and forms. He said in summary, staff proposes to amend Sections 18-4.19 and 18-4.11 to establish a five foot setback for primary and accessory structures, and are amending Section 18-4.11.3 to allow the five foot setback to be reduced as long as the building separation was maintained through an easement. He said that concludes staff's presentation. She asked for the flexibility to be able to manage that coordination and that process internally.

Mr. Randolph remarked that a zero foot standard assumes the survey was accurate. He recalled a case in Glenmore where a driveway was put in with an inaccurate survey and went across the neighbor's property. He expressed concern that there was no margin for error with a zero standard. Mr. McCollum responded that with a five foot setback the only way one can get to zero was with a 10 foot maintenance easement, which must be recorded in a plat by a licensed surveyor.

Ms. Mallek pointed out that the owner next door has to give up the easement or be paid for it. She asked if there was a performance standard to go along with the easement provision to make sure the information was accurate. Mr. McCollum responded that the language was that a plat must be submitted.

Mr. Kamptner remarked that it has been possible since the zero lot line regulations were adopted, though he was not aware of any circumstances of builders who were able to correct this problem before it was found. He added that the boundary line was critical to establishing setbacks and, if a house was built in the setback because the boundary line was off, it may have to be torn down or moved or shaved.

Mr. Randolph reiterated his concern that with zero lot line, there is no margin of error.

Ms. Lea Brumfield, Senior Planner, remarked that this definitely was a concern they have for zero lot line in general. She pointed out that the zero lot line includes footers and she learned that one cannot actually build to zero as it always has to be a little bit back, 6 to 2 inches at least, because there has to be something underground and to put in a hole one must be on one's property. She added that, in this situation, they are at the mercy of the surveyor.

Mr. Randolph commented that he was comfortable with the distance from the beginning but just wanted to raise this issue.

Ms. Mallek said she was excited that they have gotten here. She explained that a family in Crozet in a new, zero lot line enabled subdivision began this process and it was several years until the neighbor behind them built and so they had footers and construction on their property and they could do nothing to stop it. She noted that this building went up right on the line, and they felt unfairly treated. She thanked staff for bringing this forward, as it is a great step forward.

Mr. Gallaway opened the public hearing. As no one came forward to address the matter, Mr. Gallaway closed the public hearing.

Ms. Mallek **moved** that the Board adopt the proposed Ordinance to approve ZTA201900001, Zero Lot Line. The motion was **seconded** by Ms. McKeel.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Dill, Mr. Gallaway, Ms. Mallek, Ms. McKeel and Mr. Randolph.
NAYS: None.

ABSENT: Ms. Palmer.

ORDINANCE NO. 18-18(5)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE II, BASIC REGULATIONS, 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 II, Basic Regulations, are hereby amended and reordained as follows:

By Amending:

- Sec. 4.11.1 Covered Porches, Balconies, Chimneys, and Like Features
- Sec. 4.11.2 Accessory Structures in Required Yards
- Sec. 4.11.3 Reduction of Building Separation and Side Yard
- Sec. 4.19 Setbacks and Stepbacks in Residential Districts

CHAPTER 18. ZONING

ARTICLE II. BASIC REGULATIONS

...

4.11.1 COVERED PORCHES, BALCONIES, CHIMNEYS AND LIKE FEATURES

Covered porches, balconies, chimneys, eaves and like architectural features may project not more than four (4) feet into any required yard; provided that no such feature shall be located closer than five (5) feet from any side lot line in a non-infill development within the R-1, R-2, R-4, R-6, R-10, R-15, PRD, or PUD districts, and no closer than six (6) feet from any other lot line. (Amended 9-9-92)

4.11.2 ACCESSORY STRUCTURES IN REQUIRED YARDS

Accessory structures are authorized in required yards as follows:

- a. *Front yards.* Accessory structures, including detached garages, are prohibited within the minimum front yard required by the applicable district regulations except as otherwise provided in subsection (c).
- b. *Side and rear yards.* Accessory structures are permitted in side and rear yards, provided that they are erected no closer than five (5) feet from any side lot line in a non-infill development within the R-1, R-2, R-4, R-6, R-10, R-15, PRD, or PUD districts, and no closer than six (6) feet from any other side or rear property lines or, in the case of an alley or a shared driveway, no closer than three (3) feet to the edge of the easement or right-of-way of the alley or shared driveway except as otherwise provided in subsection (c). The zoning administrator may authorize an accessory structure to be located closer to the edge of an alley easement or right-of-way if the county engineer determines that the proposed design incorporates features that assure public safety and welfare. In making the determination, the county engineer shall consider the provision of adequate access to required onsite parking and/or garages, unimpeded vehicular circulation along the alley, an adequate clear zone along the alley, and other safety issues deemed appropriate for the conditions.
- c. *Accessory structures permitted in required yards.* The following accessory structures are permitted in required yards provided that they comply with the visibility clearance requirements of section 4.4:
 - 1. Fences, including free-standing walls enclosing yards and other uncovered areas.
 - 2. Freestanding mail and newspaper boxes.
 - 3. Retaining walls.
 - 4. Shelters for school children traveling to and from school.

5. Public telephone booths, provided that: (i) the telephones are equipped for emergency service to the public without prior payment; (ii) the zoning administrator determines that the location of the booth will not adversely affect the safety of the adjacent street; and (iii) the booth shall be subject to relocation at the expense of the owner, whenever relocation is determined by the zoning administrator to be reasonably necessary to protect the public health, safety and welfare or whenever relocation is necessary to accommodate the widening of the adjacent street.
6. Automated teller machines.

d. *Accessory structures located closer than three (3) feet to primary structure.* Accessory structures for which any part is located closer than three (3) feet to any part of a primary structure shall comply with the minimum applicable yard requirements for a primary structure.

(§ 4.11.2, 12-10-80, 3-18-81; § 4.11.2.1, 12-10-80, 1-1-83, Ord. 02-18(2), 2-6-02; § 4.11.2.2, 12-10-80, 3-18-81, § 4.11.2.3, 3-18-81; Ord. 09-18(4), 7-1-09)

4.11.3 REDUCTION OF BUILDING SEPARATION AND SIDE YARDS (Added 1-1-83, Amended 6-11-08)

The minimum building separation or side yards for primary structures may be reduced or eliminated if the structure is located in an area where available fire flows are adequate under Insurance Service Offices standards to allow the reduction. Each primary structure for which the minimum building separation or side yard has been reduced or eliminated as provided in this section shall be subject to the following:

- A. In the case of a side yard reduction or elimination, the Albemarle County fire official may require a guarantee as deemed necessary to insure compliance with the provisions of this section, and this guarantee may include, but not be limited to, appropriate deed restrictions, disclosure, and other such instruments, which shall be of a substance and be in a form approved by the fire official and the county attorney, and shall be recorded in the records of the circuit court of the county;
- B. No structure may encroach within any emergency accessway required by the Albemarle County fire official;
- C. No structure may encroach on any utility, drainage or other easement, or on any feature required by this chapter or other applicable law.
- D. The subdivider shall submit with the final subdivision plat a lot development plan showing all the lots with reduced or zero setbacks and delineating the location of each affected dwelling unit;
- E. The subdivider shall establish perpetual building maintenance easement(s) adjacent to each reduced or zero setback so that, with the exception of fences, a minimum width of ten (10) feet between dwelling units shall be kept clear of structures in perpetuity. This easement shall be shown on the final plat, shall be of a substance and be in a form approved by the director of community development and the county attorney, shall be recorded in the records of the circuit court of the county with the approved final subdivision plat, and shall be incorporated by reference in each deed transferring title to each lot that is a dominant and servient estate; and
- F. Building footings may penetrate the easement on the adjacent lot to a maximum distance of eight (8) inches.
- G. No portion of the building, including overhangs and footings, may cross the property line.

(1-1-83; 10-15-86; Ord. 08-18(4), 6-11-08)

4.19 SETBACKS AND STEPBACKS IN RESIDENTIAL DISTRICTS

The following shall apply within the R-1, R-2, R-4, R-6, R-10, R-15, PRD, and PUD districts:

Infill: Setbacks	
Front-Minimum	Closest setback of an existing main building within 500 feet in each direction along the same side of the street fronted
Front-Maximum	None
Garage-Minimum	Front loading attached or detached garage: Whichever is greater between the closest setback of an existing main building within 500 feet in each direction along the same side of the street fronted or 18 feet from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way Side loading garage: Closest setback of an existing structure within 500 feet in each direction along street fronted
Garage-Maximum	None

Side-Minimum	10 feet, unless the building shares a common wall; provided that <ol style="list-style-type: none"> in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas, or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back 10 feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3.
Side-Maximum	None
Rear-Minimum	20 feet
Rear- Maximum	None
Infill: Stepbacks	
Front	For each story that begins above 40 feet in height or for each story above the third story, whichever is less, the minimum stepback shall be a minimum of 15 feet
Side and Rear	None
Non-Infill: Setbacks	
Front-Minimum	5 feet from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way
Front-Maximum	In the R-1 and R-2 districts: None In the R-4, R-6, R-10, and R-15 districts: 25 feet from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way; none, on any lot, including a corner lot, abutting a principal arterial highway or interstate
Garage-Minimum	Front loading garage: 18 feet from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way Side loading garage: 5 feet from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way
Garage-Maximum	None
Side-Minimum	5 feet, unless the building shares a common wall; provided that <ol style="list-style-type: none"> in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, Rural Areas, or the Monticello Historic district, any dwelling unit that exceeds 35 feet in height shall be set back 5 feet plus one foot for each foot the dwelling unit exceeds 35 feet in height; and any minimum side setback otherwise required by this section may be reduced in accordance with section 4.11.3.
Side-Maximum	None
Rear-Minimum	20 feet
Rear- Maximum	None
Non-Infill:Building Separation	
Minimum	10 feet, unless the building shares a common wall; provided that in the R-10 and R-15 districts if the abutting lot is zoned residential other than R-10 and R-15, rural areas, or the Monticello Historic district, any building that exceeds 35 feet in height shall be separated from any other building by 10 feet plus one foot for each foot the building exceeds 35 feet in height
Side-Maximum	None
Non-Infill: Stepbacks	
Front	For each story that begins above 40 feet in height or for each story above the third story, whichever is less, the minimum stepback shall be 15 feet
Side and Rear	None

- Whether a site is an infill or non-infill development, and the minimum and maximum setback, shall be determined by the zoning administrator as an official determination provided to the owner.
- Any minimum setback and any minimum building separation for a side yard, may be reduced by

special exception.

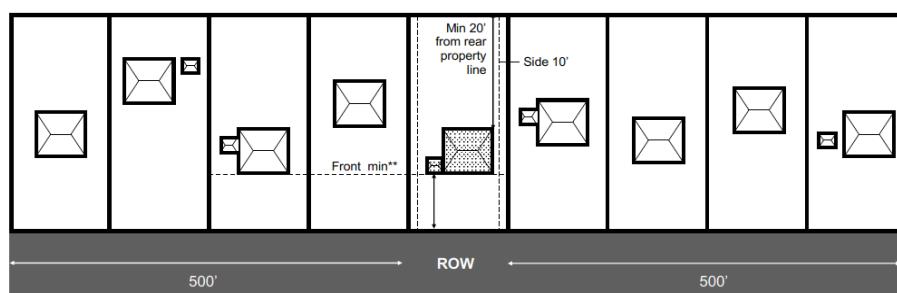
3. The maximum front setback for a non-infill development shall be increased to the depth necessary to avoid existing utilities, significant existing vegetation, steep slopes, perennial and intermittent streams, stream buffers, public spaces and public plazas shown as such on an approved site plan or subdivision plat, to satisfy a condition of a certificate of appropriateness, and in circumstances where there are multiple buildings on the same lot and prevailing development patterns. On any parcel with multiple main buildings, at least one main building shall meet the maximum setback.
4. The maximum front setback for a non-infill development may be increased by special exception to accommodate low impact design, unique parking or circulation plans, or a unique target market design.
5. The minimum 15 foot stepback applies to all buildings on the property and may be reduced by special exception.
6. Notwithstanding section 4.6.3, the front setbacks in the districts subject to this section shall be measured from the right-of-way or the exterior edge of the sidewalk if the sidewalk is outside of the right-of-way.
7. On any site subject to proffered conditions accepted in conjunction with a zoning map amendment establishing minimum or maximum setbacks or stepbacks, the proffered setbacks or stepbacks shall apply.

Figures

Figures 1 through 4 are for illustration purposes only. If there is a conflict or inconsistency between a regulation in section 4.19 to which a Figure pertains and the Figure itself, the regulation is controlling. In addition, Figures 1 through 4 merely illustrate specific requirements and do not show all applicable requirements of the applicable district regulations.

Figure 1

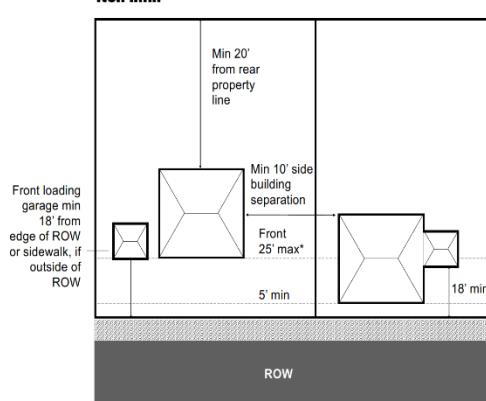
Conventional Residential Districts, Infill* Example



* Infill $\geq 40\%$ of residentially zoned frontage developed within 500' of subject lot (frontage $\leq 120'$)

** Front loading garage min 18' from edge of ROW or sidewalk, if outside of ROW

Figure 2
Conventional Residential Districts (except R-1 and R-2),
Non-infill



* No maximum front setback in R1 & R2 districts & along principal arterials

Figure 3

Conventional Residential Districts
Front Stepback (side view)

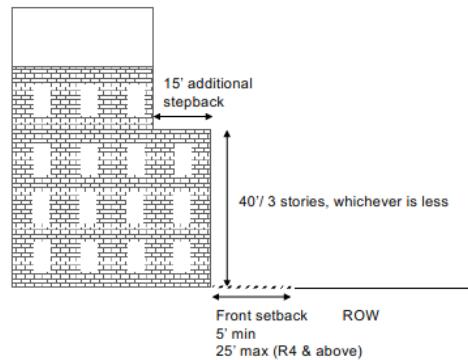
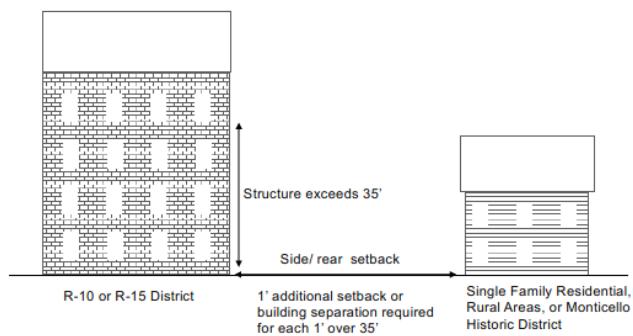


Figure 4

Conventional Residential Districts (R-10 or R-15 only)
Abutting Single Family Residential, Rural Areas, or
Monticello Historic Districts, Side & Rear Setback



State law reference – Va. Code § 15.2-2280

(Ord. 15-18(4), 6-3-15; Ord. 16-18(1), 3-2-16; Ord. 17-18(4), 8-9-17)

Agenda Item No. 19. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek announced that the VACO steering committee meetings would be held August 16 and encouraged Supervisors to sign up for a steering committee and attend as it would help the County to be better positioned to be involved with things.

Ms. Mallek informed the Board that she attended the first of six or seven Chesapeake Bay meetings the previous Thursday, which was attended by a wide array of stakeholders representing agriculture, forestry, homebuilders, and environmental groups. She said a question as to why they are doing this arose to which Matt Strickler, Secretary of Natural Resources, responded that they have had complaints from communities east of I-95 about having regulations while in other locations they do not have these. She said she would keep the Board updated about what she learns in future meetings.

Ms. Mallek recognized that Albemarle County was well off for having staff doing stormwater and evaluations as the smaller communities rely on the Department of Environmental Quality (DEQ), which was backlogged and puts them at a great disadvantage and they are very disgruntled about the whole situation. She said that agricultural and industrial projects on a big, flat field are still required to use expensive engineered concrete under the ground systems instead of bio-filters and things, which would be less expensive to put in and equally or more effective in those kinds of environments. She continued that many expressed concerns that the failures of septic systems throughout the State are contributing to problems in the Bay. She said water quality has been improving each year, fisheries have taken off and economic benefits have resulted from regulation.

Mr. Dill asked if there are species of fish that have made a comeback. Ms. Mallek responded that Blue Crabs were in the most danger and are now wildly successful and now a fishery has been developed around them.

Agenda Item No. 20. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Richardson reported that they had a minor fire event this morning on the roof of the County Office Building as a result of overheating of an air handler junction box. He praised the staff of Facilities and Environmental Services for working diligently throughout the day and who would continue to evaluate. He said some areas of the building would not have air conditioning tomorrow, though staff

would bring in fans and would work hard to obtain replacement parts in order to return to normal operations as quickly as possible. He praised staff for evacuating the building quickly and the Charlottesville Fire Department for arriving within one minute of alarm activation. He said there were no reported injuries.

Ms. McKeel said she was impressed with how quickly everyone got out of the building.

Mr. Richardson announced that Aleese Eatmon was a new addition to the Office of the County Executive and they are excited to fill this key spot that serves internal customers.

Agenda Item No. 21. Adjourn to August 7, 2019, 1:00 p.m., Lane Auditorium.

At 9:13 p.m., Mr. Gallaway adjourned the Board to August 7, 2019 at 1:00 p.m. in Lane Auditorium.

Chairman

Approved by Board
Date 02/05/2020
Initials CKB