ACTIONS Board of Supervisors Meeting of July 8, 2015		
		July 10, 2015
AGENDA ITEM/ACTION	**ASSIGNMENT**	**PODCAST**
1. Call to Order. • Meeting was called to order at 3:30 p.m., by the Chair, Ms. Dittmar. All BOS members were present. Also present were Tom Foley, Larry Davis, Ella Jordan and Travis Morris.		
2. **Joint Meeting with Planning Commission:** 2.1 Update: Development Review Task Force – Implementation of Recommendations • **Received.** 2.2 Discussion: Comprehensive Plan Implementation • **Discussed.** 2.3 Discussion: Board/Planning Commission Roles and Protocols • **Discussed.**		Listen
3. Matters Not Listed on Agenda. Diantha McKeel: • Asked the Planning Commission to think about the impacts of new developments as it relates to existing older neighborhoods. Karen Firehock: • Discussed a number of issues i.e., Dark Skies and forming committees to do the work before coming to staff.		
4. Closed Meeting • At 4:55 p.m., the Board went into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to Boards, Committees, and Commissions in which there are pending vacancies or requests for reappointments, to discuss the appointment of the Director of the Department of Social Services, and to discuss the annual performance evaluation of the County Executive; under subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice concerning agreements relating to the Ivy Landfill; and under subsection (7) to consult with and be briefed by legal counsel and staff regarding specific legal matters requiring legal advice concerning a Rivanna Water and Sewer Authority Agreement.		Listen
5. Reconvene and Call to Order. • At 6:02 p.m., the Board reconvened into open meeting.		
6. Certify Closed Meeting. • The Board immediately certified the closed meeting.		
Non Agenda. Boards and Commissions: Vacancies and Appointments.	Clerk: Prepare appointment/ reappointment letters, update	

	• **APPOINTED** Mr. Bernard Whitsett to the Citizens Resource Advisory Committee. • **REAPPOINTED** Ms. Mary W. Eubanks to the Jefferson Area Board for Aging Advisory Council with said term to expire May 31, 2018. • **APPOINTED** Ms. Debra Stone to the Jefferson Area Board for Aging Advisory Council with said term to expire May 31, 2018.	Boards and Commissions book, webpage, and notify appropriate persons.	
	Non Agenda. Appointment. • By a vote of 6:0, **APPOINTED** Ms. Phyllis Sevides as the Director of Social Services Department.		
9.	Adoption of Final Agenda. • By a vote of 6:0, **ADOPTED** final agenda.		
10.	Brief Announcements by Board Members. <u>Ken Boyd:</u> • Announced that he would be holding a town hall meeting at Grace Episcopal Church, located on Route 231/22, on July 9 starting at 6:30 p.m., in regards to VDOT's trimming of the tree along that route and the proposed development area expansion in the Comp Plan. <u>Ann Mallek:</u> • Reminded Board members of the Defense Enterprise roundtable monthly meetings. • Handed out VTrans Multimodal Transportation Plan (VMTP), draft needs assessment for the Charlottesville-Albemarle Region. <u>Brad Sheffield:</u> • Wanted to make sure time is allotted under Matters From the Board to talk about the drawings that were sent out that relates to the Rio GSI. <u>Liz Palmer:</u> • Announced that the Planning Commission will have a work session on July 21st on the Growth Area Boundary Adjustment of the Comp Plan and there will be another community meeting on July 30th. <u>Jane Dittmar:</u> • Announced that there will be a design contest for the holiday day ornament that will go on the State's Holiday tree in Washington D.C. • Increased enforcement at the James River in the southern portion of Albemarle County. • Noted that Virginia fell out of the top 10 places to do business this year.		Listen
11.	Proclamations and Recognitions: a. Proclamation in Honor of Virginia Organizing 20th Anniversary. • **ADOPTED** by a vote of 5:1 (Boyd), proclamation and presented to Susan Berry.	(Attachment 1)	Listen
12.	From the Public: Matters Not Listed for Public Hearing on the Agenda. • <u>Nancy Carpenter</u>, spoke and provided additional information on Ban the Box.		Listen

	• Chuck Boldt, resident of the White Hall District, reported on two projects that were previously approved by the Board of Supervisors. • Jeff Werner, Piedmont Environmental Council, thanked Mr. Boyd for holding a town hall meeting and reflected on VDOT's past compromises on tree trimming. • Gary Grant, resident of the Rio District, spoke on the Board's current proclamation policy procedures. • Bryan Johnson, resident of the Jack Jouett District, spoke on the County's Special Use Permit Policy.		
13.2	FY16 Budget Amendment and Appropriations. • **ADOPTED**, resolution to approve appropriation #20160008) to re-appropriate $773,096.55 to the Emergency Communications Center.	Clerk: Notify OMB, Finance and appropriate individuals. Forward copy of signed resolution to OMB and County Attorney's office. (Attachment 2)	
13.3	ZMA-2005-00007. Special Exception to Vary Haden Place Application Plan and Code of Development. • **ADOPTED** Resolution approving the special exception to vary the Application Plan and the Code of Development to permit decks and porches on Lots 29 through 34 in Block B of the development to encroach ten (10) feet into the rear setback.	Clerk: Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 3)	Listen
13.4	Old Trail Greenway Boundary Line Adjustment. • **SET,** Public hearing from August 5, 2015.	Clerk: Schedule on August 5 agenda.	
13.5	ZMA-2004-00024. Special Exception to Vary Old Trail Village Code of Development. **ADOPTED** Resolution approving the special exception to vary the Code of Development to permit architectural features on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip.	Clerk: Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 4)	
13.6	Enhanced Speeding Fines on Carrsbrook Drive. • **ADOPTED** Resolution requesting that VDOT install signs to establish an additional maximum $200 fine for exceeding the established speed limit on Carrsbrook Drive, pursuant to Virginia Code § 46.2-878.2.	Clerk: Forward copy of signed resolution to Community Development and County Attorney's office. (Attachment 5)	
13.7	Amendment of the 1973 Four Party Agreement Between the City of Charlottesville, Albemarle County, the Rivanna Water and Sewer Authority and Albemarle County Service Authority. • **Moved to regular agenda.**		
13.8	Resolution to accept road(s) in Proffit Ridge Subdivision into the State Secondary System of Highways (Rivanna District. • **ADOPTED** Resolution.	Clerk: Forward signed resolution and Am-4.3 Form to Mark Graham. (Attachment 6)	
	Consent Agenda item #13.7. • By a vote of 6:0, **DEFERRED** to August 5, 2015.	Clerk: Schedule on August 5, 2015 agenda.	Listen
14.	**Pb. Hrg: SP-2015-00009. Olivet Presbyterian Church Preschool (Signs #79& 80).**	Clerk: Forward copy of signed resolution to Community	

	• By a vote of 6:0, **ADOPTED** resolution to approve SP-2015-00009 subject to conditions.	Development and County Attorney's office. (Attachment 7)	Listen
15.	**Pb. Hrg: SP-2014-00019. Virginia Asphalt Services, Inc. (Sign #31)**. • By a vote of 6:0, **ADOPTED** resolution approving SP-2014-00019 Virginia Asphalt subject to conditions. • By a vote of 6:0, **ADOPTED** resolution approving the special exception to authorize the modification of County Code Section 18-5.1.52 subject to the condition as outlined in the resolution.	Clerk: Forward copy of signed resolutions to Community Development and County Attorney's office. (Attachment 8)	Listen
16.	**Pb. Hrg**: **ZTA-2015-00003 BZA/Variances**. • By a vote of 6:0, **ADOPTED** ordinance.	Clerk: Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 9)	Listen
17.1	**Pb. Hrg: ZTA-2015-00006. Wireless – Antenna size and mounting standards**. • By a vote of 6:0, **ADOPTED** Ordinance to approve ZTA-2015-00006.	Clerk: Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 10)	Listen
17.2	**Pb. Hrg: ZTA-2015-00007. Wireless – Public notice**. • By a vote of 6:0, **REFERRED** ZTA-2015-0007 back to the Planning Commission for redrafting and review.	Community Development: Schedule for reconsideration by the Planning Commission.	Listen
17.3	**Pb. Hrg: ZTA 2015-00008. Wireless.** • By a vote of 4:2(Boyd/Dittmar), **ADOPTED** Ordinance to approve ZTA-2015-00008.	Clerk: Forward copy of signed ordinance to Community Development and County Attorney's office. (Attachment 11)	Listen
18.	Policy Relating to Private Use of Public Signs. • By a vote of 6:0, **ACCEPTED** staff's recommendation and **DEFERRED** until a recommendation is received from the Planning Commission.	Community Development: Schedule for consideration by the Planning Commission.	Listen
19.	Piedmont Virginia Community College Annual Report. • **Received.**		Listen
20.	Charlottesville-Albemarle Technical Education Center, (CATEC). • **Received.**		Listen
21.	Charlottesville Works Initiative. • **Received.**		Listen
22.	From the Board: Matters Not Listed on the Agenda. • Discussed the current proclamation policy procedures. Brad Sheffield: • Requested that the landscape drawings that the SELC had drawn up for the Rio GSI be added to the August agenda for consideration and discussion. Ann Mallek: • Asked Board members to think about considering allowing tasting or serving events	Clerk: Schedule on agenda.	Listen

on County rentals, i.e., community centers or shelters without water.		
23. From the County Executive: Report on Matters Not Listed on the Agenda. • There were none.		
24 Adjourn. • With no further business to come before the Board, the meeting was adjourned at 10:24 p.m.		

ewj/tom

Attachment 1 – Proclamation in Honor of Virginia Organizing's 20th Anniversary
Attachment 2 – Resolution to Approve Additional FY 16 Appropriation
Attachment 3 – Resolution to Approve Special Exception for ZMA 2005-007, Haden Place
Attachment 4 – Resolution to Approve Special Exception for ZMA 2004-024, Old Trail Village
Attachment 5 – Resolution to Request Addition Maximum $200 Fine for Speeding on Carrsbrook Drive
Attachment 6 – Resolution to accept road(s) in Proffit Ridge Subdivision into the State Secondary System of Highways
Attachment 7 – Resolution to Approve SP 2015-09 Olivet Presbyterian Church – Preschool
Attachment 8 – Resolution to Approve SP 2014-19 Virginia Asphalt and Resolution to Approve Special Exception for SP 14-19 Virginia Asphalt
Attachment 9 – Ordinance No. 15-18(5)
Attachment 10 – Ordinance No. 15-18(6)
Attachment 11 – Ordinance No. 15-18(7)

ATTACHMENT 1

Proclamation in Honor of Virginia Organizing's 20th Anniversary

WHEREAS, Virginia Organizing is a non-partisan statewide grassroots organization that is dedicated to challenging injustice by empowering people in local communities to address issues that affect the quality of their lives, especially those who have traditionally had little or no voice in our society, and

WHEREAS, the organization encourages individuals and groups throughout the Commonwealth and in local communities to bring about change by working together and building relationships, and the organization also believes in the enhancement and celebration of diversity in our communities and in our state, and

WHEREAS, among Virginia Organizing's Statement of Beliefs is the belief that all people should be treated fairly and with dignity in all aspects of life, regardless of race, class, gender, religion, sexual orientation, age, ability or country of origin, and

WHEREAS, Virginia Organizing held its first meeting at the Northside Library in Albemarle County on August 19, 1995, and in August of 2015, Virginia Organizing is celebrating 20 years of grassroots organizing and bringing about real change for real people through countless campaigns to improve the quality of life for all Virginians,

WHEREAS, Virginia Organizing has worked with the Albemarle County Board of Supervisors and other officials in Albemarle County on a variety of community issues,

NOW, THEREFORE, BT IT RESOLVED, that we, the Albemarle County Board of Supervisors, PROCLAIM that the **19th day of August, 2015, is**

VIRGINIA ORGANIZING DAY

in the County of Albemarle and we encourage others to learn about and support this organization in its efforts.

ATTACHMENT 2

RESOLUTION TO APPROVE
ADDITIONAL FY 16 APPROPRIATION

BE IT RESOLVED by the Albemarle County Board of Supervisors:

1) That Appropriation #2016008 is approved; and

2) That the appropriation referenced in Paragraph #1, above, is subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2016.

ATTACHMENT 3

RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR ZMA 2005-007, HADEN PLACE

WHEREAS, Haden Place, LLC (the "Owner") is the owner of Tax Map and Parcel Numbers 055F0-14-0B-02900, 055F0-14-0B-03000, 055F0-14-0B-03100, 055F0-14-0B-03200, 055F0-14-0B-03300, and 055F0-14-0B-03400; and

WHEREAS, the Owner filed a request for a special exception to vary the Application Plan and Code of Development approved in conjunction with ZMA 2005-007, Haden Place, to permit decks and porches on Lots 29 through 34 in Block B of the development to encroach ten (10) feet into the rear setback.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary prepared in conjunction with the special exception request, staff's supporting analysis included in the executive summary and the attachments thereto, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3(c) and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Application Plan and Code of Development approved in conjunction with ZMA 2005-007, Haden Place, as described hereinabove.

ATTACHMENT 4

RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR ZMA 2004-024, OLD TRAIL VILLAGE

WHEREAS, March Mountain Properties, LLC is the owner of Tax Map and Parcel Numbers 055E0-01-00-00C30, and 055E0-01-00-00C3B, and Ja-Zan, LLC is the owner of Tax Map and Parcel Numbers 055E0-01-3C-000E0 and 055E0-01-3C-000E1 (collectively, the "Owners"); and

WHEREAS, the Owners filed a request for a special exception to vary the Code of Development approved in conjunction with ZMA 2004-024, Old Trail Village, to permit architectural features such as front porches, stoops, and overhangs or eaves on Lots 5 through 11 in Block 3C and Lots 14 through 20 in Block 1B of the development to encroach one (1) foot into the required twelve (12) foot sidewalk and planting strip.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the executive summary prepared in conjunction with the special exception request, staff's supporting analysis included in the executive summary and the attachments thereto, and all of the factors relevant to the special exceptions in Albemarle County Code §§ 18-8.5.5.3(c) and 18-33.9, the Albemarle County Board of Supervisors hereby approves the special exception to vary the Code of Development approved in conjunction with ZMA 2004-024, Old Trail Village, as described hereinabove.

ATTACHMENT 5

RESOLUTION TO REQUEST ADDITIONAL MAXIMUM $200 FINE FOR SPEEDING ON CARRSBROOK DRIVE

WHEREAS, Carrsbrook Drive (Route 854), is a local residential street as defined by VDOT with a posted speed limit of 25 miles per hour; and

WHEREAS, the County of Albemarle has received a request from the residents of the Carrsbrook Subdivision to request that VDOT install signs on Carrsbrook Drive and to establish pursuant to Virginia Code § 46.2-878.2 an additional maximum fine of $200.00 for exceeding the speed limit, in addition to other penalties provided by law; and

WHEREAS, the Albemarle County Police Department collected speed data on Carrsbrook Drive, and has concluded that there is a speeding problem and acknowledges that it is impacting safety and quality of life for Carrsbrook Subdivision residents; and

WHEREAS, the Albemarle County Board of Supervisors finds that a speeding problem exists on Carrsbrook Drive, and that it creates a potential hazard for residents in the Carrsbrook Subdivision.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that the Virginia Department of Transportation install sign(s) to establish an additional maximum $200 fine for exceeding the speed limit on Carrsbrook Drive.

ATTACHMENT 6

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 6th day of May 2015, adopted the following resolution:

R E S O L U T I O N

WHEREAS, the street(s) in **Proffit Ridge Subdivision,** as described on the attached Additions Form AM-4.3 dated **July 8, 2015**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Proffit Ridge,** as described on the attached Additions Form AM-4.3 dated **July 8, 2015**, to the secondary system of state highways, pursuant to §33.2-705, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form AM-4.3 is:

1) **Proffit Ridge Lane (State Route 1318)** from Route 1317 (Proffit Crossing) to .118 miles east to Route 1319 (Daventry Lane) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.12 miles.

2) **Daventry Lane (State Route 1319)** from Route 1318 (Proffit Ridge Lane) to .072 miles south to the end of the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.07 miles.

3) **Proffit Crossing Route 1317)** from Route 649 (Proffit Road) to .103 miles south to Route 1318 (Proffit Ridge Lane) as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.10 miles.

4) **Proffit Crossing Route 1317)** from Route 1318 (Proffit Ridge Lane) to .09 miles south to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.09 miles.

5) **Daventry Lane (State Route 1319)** from Route 1318 (Proffit Ridge Lane) to .067 miles north, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3273, pages 237, 212-245 and Deed Book 3846, pages 599-608, for a length of 0.07 miles.

Total Mileage – 0.45

ATTACHMENT 7

RESOLUTION TO APPROVE
SP 2015-09 OLIVET PRESBYTERIAN CHURCH - PRESCHOOL

WHEREAS, Olivet Presbyterian Church is the owner of Tax Map and Parcel Number 04300-00-00-00800 (the "Property"); and

WHEREAS, Olivet Presbyterian Church filed an application for a special use permit to allow a preschool for up to 24 students within the existing church, and the application is identified as Special Use Permit 2015-00009 Olivet Presbyterian Church - Preschool ("SP 2015-09"); and

WHEREAS, the proposed use is allowed on the Property by special use permit under Albemarle County Code § 18-10.2.2(7); and

WHEREAS, on May 19, 2015, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2015-09 with two of the three conditions recommended by staff; and

WHEREAS, on July 8, 2015, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-09.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the staff report prepared for SP 2015-09 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2015-09, subject to the performance standards for this use in Albemarle County Code § 18-5.1.06 and the conditions attached hereto.

****

SP-2015-00009 Olivet Presbyterian Church - Preschool

1. The maximum number of children shall not exceed twenty-four (24) or the number of students as approved by the Virginia Department of Health or the Virginia Department of Social Services; whichever is less; and
2. The permittee shall obtain written approval of the entrance design from the Virginia Department of Transportation.

ATTACHMENT 8

RESOLUTION TO APPROVE
SP 2014-19 VIRGINIA ASPHALT

WHEREAS, Virginia Asphalt Services, Inc. (the "Owner") is the owner of Tax Map and Parcel Number 07700-00-00-00800 (the "Property"); and

WHEREAS, the Owner filed an application for a special use permit for outdoor storage, display and/or sales associated with a contractor's office for an asphalt paving company, and the application is identified as Special Use Permit 2014-00019 Virginia Asphalt ("SP 2014-19"); and

WHEREAS, the proposed use is allowed on the Property by special use permit under Albemarle County Code § 18-30.6.3(a)(2); and

WHEREAS, on May 19, 2015, after a duly noticed public hearing, the Albemarle County Planning Commission recommended approval of SP 2014-19 with the conditions recommended by staff; and

WHEREAS, on July 8, 2015, the Albemarle County Board of Supervisors held a duly noticed public hearing on SP 2015-09.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Executive Summary prepared for SP 2014-19 and all of its attachments, the information presented at the public hearing, and the factors relevant to a special use permit in Albemarle County Code § 18-33.8, the Albemarle County Board of Supervisors hereby approves SP 2014-19, subject to the applicable performance standards for this use in Albemarle County Code § 18-5.1.2 and the conditions attached hereto.

****

SP-2014-00019 Virginia Asphalt Conditions

1. The development of the site shall be in general accord with the plan entitled "Virginia Asphalt Services Landscape/Screening Plan" revised 2-17-2014 and prepared by Terra Concepts, PC/Alan Franklin PE, LLC, (hereafter referred to as the "Concept Plan") as determined by the Director of Planning and the Zoning Administrator, and subject to the following conditions. To be in general accord with the Concept Plan, development and use shall reflect the following major elements within the development essential to the use, as shown on the Concept Plan:
   a. Building location
   b. Sales, storage and display area size and location

   Minor modifications to the plan that do not conflict with the elements listed above may be made to ensure compliance with the Zoning Ordinance and ARB requirements.
2. Equipment shall be sold, stored, or displayed only in areas indicated for sales, storage, or display on the Concept Plan.
3. The site shall be landscaped in general accord with the Concept Plan, except that:
   a. Evergreen screening tree height shall be eight (8) to ten (10) feet minimum at planting.
   b. Shade trees along Avon Street Extended shall be three and one-half inches (3½") caliper minimum at planting.
   c. Shade trees along the entrance drive shall be two and one-half inches (2½") caliper minimum at planting.
   d. A staggered row of evergreens shall be provided along the south side of the sales/storage/ display area or the south side of the parcel.
   e. A staggered row of evergreens shall be provided along the north and west sides of the entrance drive and asphalt paved area.
   f. The ARB may require landscaping that is in excess of its design guidelines, Albemarle County Code § 18-32.7.9, or both, in order to mitigate the visual impacts of the proposed use on the Entrance Corridor.

4. Maximum height of equipment to be sold, stored or displayed shall not exceed twelve (12) feet. This height includes equipment sold, stored or displayed on parked vehicles. Other than equipment sold, stored or displayed on parked vehicles, equipment shall not be elevated.

RESOLUTION TO APPROVE SPECIAL EXCEPTION
FOR SP 14-19 VIRGINIA ASPHALT

WHEREAS, Virginia Asphalt Services, Inc. is the owner of Tax Map and Parcel Number 07700-00-00-00800 (the "Property"); and

WHEREAS, the Owner filed an application for a special use permit for outdoor storage, display, and/or sales associated with a contractor's office for an asphalt paving company, which application is identified as Special Use Permit SP 2014-19 Virginia Asphalt ("SP 2014-19"); and

WHEREAS, on May 19, 2015, the Planning Commission recommended approval of SP 2014-19 with conditions; and

WHEREAS, Albemarle County Code § 18-5.1.52(a) establishes that outdoor storage areas shall be screened by a solid wall or fence, including solid entrance and exit gages, not less than seven (7) feet nor more than ten (10) feet in height, which may be modified by special exception; and

WHEREAS,, the Owner has requested a modification to allow screening to be provided by landscaping.

NOW, THEREFORE, BE IT RESOLVED that, upon consideration of the foregoing, the Executive Summary, the Planning Commission staff report prepared in conjunction with the application, all of the factors relevant to the special exception in County Code § 18-33.9, and the information provided at the Board of Supervisors meeting, the Albemarle County Board of Supervisors hereby approves the special exception to authorize the modification of County Code § 18-5.1.52 to allow the use of landscape screening instead of screening in the form of a solid wall or fence, subject to the condition attached hereto.

****

SP 2014-19, Virginia Asphalt Special Exception Condition

1. In addition to the landscape screening required for SP201400019, a staggered row of evergreens, eight (8) to ten (10) feet minimum at planting, shall be provided along the west side of the equipment sales/storage/display area.

ATTACHMENT 9

ORDINANCE NO. 15-18(5)

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

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

By Amending:

Sec. 3.1	Definitions
Sec. 31.2	Building permit applications
Sec. 32.3.5	Variations and exceptions
Sec. 32.5.2	Contents of an initial site plan
Sec. 32.5.4	Groundwater assessment information
Sec. 32.6.4	Dam break inundation zones; engineering study and mapping information
Sec. 32.7.4.2	Easements for facilities for stormwater management facilities and drainage control
Sec. 34.2	Powers and duties of the board of zoning appeals
Sec. 34A.1	Architectural review board; appointment and organization
Sec. 34A.2	Powers and duties of the architectural review board
Sec. 36.1	Violations
Sec. 36.2	Enforcement
Sec. 36.3	Civil penalties
Sec. 36.5	Injunctive relief and other remedies

By Amending and Renaming:

Sec. 32.4.2.8	From: Effect of approval of initial site plan on other future and pending approvals	To: Effect an approved initial site plan has on certificates of appropriateness and early or mass grading
Sec. 32.7.4.1	From: Erosion and sediment control, stormwater management, and other water regulations; water pollution; soil characteristics	To: Stormwater management; water pollution; soil characteristics
Sec. 34.1	From: Board of zoning appeals; appointment and organization	To: Board of zoning appeals; establishment and organization
Sec. 34.3	From: Appeal to the board of zoning appeals	To: Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals
Sec 34.4	From: Appeal to the board of zoning appeals	To: Variances

By Adding:

Sec. 32.4.2.9	Approval of early or mass grading prior to initial site plan approval
Sec. 32.4.3.9	Duty to comply
Sec. 34.5	Special use permits
Sec. 34.6	Interpreting a district map
Sec. 34A.3	Design guidelines

By Repealing:

Sec. 31.7	Review of public features to determine substantial accord with the comprehensive plan
Sec. 34.5	Procedure
Sec. 34.6	Decision of board of zoning appeals

Article I. General Regulations

Section 3

Definitions

Sec. 3.1 Definitions

Variance: A reasonable deviation from those provisions regulating the shape, size, or area of a lot, or the size, height, area, bulk, or location of a structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the purpose of this chapter; provided that a variance shall not include a change in use. (Added 10-3-01)

(§ 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13; Ord. 13-18(5), 9-11-13; Ord. 13-18(6), 11-13-13, effective 1-1-14; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code § 15.2-2286(A)(4).

Article IV. Procedure

Section 31

Administration and Enforcement

Sec. 31.2 Building permit applications

The zoning administrator shall review building permit applications submitted to the building official as follows:

a. *Review*. The zoning administrator shall review each building permit application to ensure that the proposed building or structure complies with this chapter. Within each neighborhood model district, the director of planning shall also review each building permit application to determine whether the proposed structure conforms to the architectural and landscape standards in the approved code of development.

b. *Information to be submitted; number of copies*. Each applicant shall provide two (2) copies of the building plans, two (2) copies of the approved site plan if applicable, and a copy of the most recent plat of record of the site to be built upon unless no such plat exists, in which case the applicant shall provide a copy of the most recent deed description of the land. Each applicant shall also provide any other information the zoning administrator deems necessary to review the application.

c. *Approval*. If the proposed building or structure and stated use comply with this chapter, the zoning administrator shall approve the building permit application as to its compliance with this chapter. Upon approval of the building permit, one (1) copy of the building plan shall be returned to the applicant with the permit.

d. *Circumstances when building permit shall not be approved*. The zoning administrator shall not approve a building permit in the following circumstances:

    1. No building permit shall be issued for any building or structure for which a site plan is required unless and until the site plan has been approved.

2. No building permit shall be issued for any structure to be served by an individual well subject to a Tier 1 groundwater assessment under Albemarle County Code section 17-1000 until the applicant complies with Albemarle County Code section 17-1001.

3. No building permit shall be approved in violation of any provision of this chapter.

e. *Other information for building official*. The zoning administrator shall inform the building official of any other applicable laws or any other provision of the Code to which the building or structure would not comply and, therefore, a building permit application should not be approved by the building official.

(§ 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01 (part); § 31.2.2, 12-10-80; Ord. 04-18(4), adopted 12-8-04, effective 2-8-05 (part); Ord. 09-18(3), 7-1-09)

State law reference – Va. Code § 15.2-2286(A)(4).

Section 32

Site Plans

Sec. 32.3.5 Variations and exceptions

The requirements of section 32 may be varied or excepted as follows:

a. *Exception from requirement to provide certain details in site plan*. The agent may except certain details of a site plan and any amendment to a site plan otherwise required by sections 32.5 and 32.6 as provided herein:

1. *Request for exception*. A developer requesting an exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable finding in subsection (a)(2).

2. *Finding.* An exception may be approved if the agent finds that unusual situations exist or that strict adherence to requiring the details in sections 32.5 or 32.6 would result in substantial injustice or hardship. This finding shall be supported by information from the site review committee that all of the details required by sections 32.5 and 32.6 are not necessary for its review of the proposed development, and from the zoning administrator, in consultation with the county engineer, that the details waived are not necessary to determine that the site is developed in compliance with this chapter and all other applicable laws.

3. *Action by the agent on a request.* The agent may approve or deny the request. In approving an exception, the agent shall identify the details otherwise required by sections 32.5 and 32.6 that are excepted.

b. *Variation or exception from any requirement of section 32.7*. Any requirement of section 32.7, including any requirement incorporated by reference in section 32.7 except for those requirements applicable to signs under section 32.7.8(A), may be varied or excepted in an individual case as provided herein:

1. *Request for a variation or exception*. A developer requesting a variation or exception shall submit to the agent a written request stating the reasons for the request and addressing the applicable findings in subsections (b)(2) and (b)(3). When a variation is requested, the developer also shall describe the proposed substituted technique, design or materials composing the substituted improvement. The request should be submitted before the site review committee considers the initial site plan. The agent may request that the site review committee provide information and a recommendation on any request for a variation or exception.

2. *Findings required for a variation*. The agent may approve a request for a variation to substitute a required improvement upon finding that because of an unusual situation, the developer's substitution of a technique, design or materials of comparable quality from that required by section 32.7 results in an improvement that substantially satisfies the overall purposes of this chapter in a manner equal to or exceeding the desired effects of the requirement in section 32.7.

3. *Findings required for an exception*. The agent may approve a request for an exception from any requirement of section 32.7 upon finding that: (i) because of an unusual situation, including but not limited to the unusual size, topography, shape of the site or the location of the site; or (ii) when strict adherence to the requirements would result in substantial injustice or hardship by, including but not limited to, resulting in the significant degradation of the site or to adjacent properties, causing a detriment to the public health, safety, or welfare, or by inhibiting the orderly development of the area or the application of sound engineering practices.

4. *Findings required for a variation or exception of any requirement of section 32.7.5.2*. If the developer requests a variation or exception of any requirement of section 32.7.5.2, the agent shall consider whether the requirement would unreasonably impact the existing above-ground electrical network so that extensive off-site improvements are necessary. In approving a variation or exception, the agent shall find, in addition to the required findings under subsection (b)(2) or (b)(3), that requiring undergrounding would not forward the purposes of this chapter or otherwise serve the public interest and that granting the variation or exception would not be detrimental to the public health, safety, or welfare, to the orderly development of the area, and to the land adjacent thereto.

5. *Action by the agent on a request; conditions*. The agent may approve, approve with conditions, or deny the request. If a request is approved, the agent shall prepare a written statement regarding the findings made. If a request is denied, the agent shall inform the developer in writing within five (5) days after the denial, and include a statement explaining why the request was denied. In approving a request, the agent may impose reasonable conditions deemed necessary to protect the public health, safety, or welfare.

c. *Appeals*. The decision of the agent may be appealed as provided in section 32.3.6.

(§ 32.3.5, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.2 (part), 5-1-87; § 32.2.2, 12-10-80) (§ 32.3.5; § 32.5.1, 12-10-80) (§ 32.3.10, Ord. 01-18(4), 5-9-01; § 32.3.11.4, 5-1-87) (§ 32.7.9.3, 5-1-87))

State law reference – Va. Code §§ 15.2-2241(9), 15.2-2242(1).

Sec. 32.4.2.8 Effect an approved initial site plan has on certificates of appropriateness and early or mass grading

An approved initial site plan affects the following pending and future approvals:

a. *Issues pertaining to a certificate of appropriateness*. An approved initial site plan that has complied with the architectural review board's requirements identified under section 32.4.2.2(b) shall be deemed to be consistent with the applicable design guidelines pertaining to the elements of sections 30.6.4(c)(2), (3) and (5) delineated in section 32.4.2.2(b)(1).

b. *Early or mass grading*. On any site within a conventional or planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17, subject to the following: (i) no grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; (ii) the developer has satisfied the conditions of approval identified by the agent in the letter required by section 32.4.2.5(d); and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

(§ 32.4.2.8, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference – Va. Code §§ 10.1-563, 15.2-2241, 15.2-2286(A)(4), 15.2-2306.

Sec. 32.4.2.9 Approval of early or mass grading prior to initial site plan approval

On any site within a planned development district, regardless of whether the site is also within an entrance corridor overlay district, early or mass grading may be approved under chapter 17 prior to initial site plan approval, subject to the following:

a. The erosion and sediment control plan measures, disturbed area, and grading are in conformity with the conceptual grading plan and measures shown on the application plan as determined by the county engineer, after consultation with the director of planning; provided that if, after consultation with the director of planning, the county engineer finds that there is not enough detail on the application plan to ensure that the proposed grading and other measures are consistent with the application plan, the early or mass grading shall not be approved until the final site plan is approved

b. No grading permit, building permit, or other permit shall be issued and no land disturbing activity may begin until the developer satisfies the requirements of sections 17-414 through 17-717; provided that land disturbing activity may occur prior to approval of a stormwater management plan if the activity was previously covered under the general permit, as that term is defined in chapter 17, issued by the Commonwealth on July 1, 2009; and (iii) any site within a dam break inundation zone is subject to section 32.8.7.

State law reference – Va. Code §§ 15.2-2241, 15.2-2286(A)(4), 15.2-2306, 62.1-44.15:55.

Sec. 32.4.3.9 Duty to comply

Each site, if it is developed, shall be developed and maintained in compliance with the approved final site plan.

State law reference – Va. Code §§ 15.2-2240, 15.2-2246, 15.2-2286(A)(8).

Sec. 32.5.2 Contents of an initial site plan

Each initial site plan shall contain the following information:

a. *General information*. The name of the development; names of the owner, developer and individual who prepared the plan; tax map and parcel number; boundary dimensions; zoning district; descriptions of all proffers, special use permits and conditions thereof, special exceptions and conditions thereof, variances and conditions thereof, application plans, codes of development and bonus factors applicable to the site; magisterial district; county and state; north point; scale; one datum reference for elevation (if section 30.3, flood hazard overlay district, applies to any portion of the site, United States Geological Survey vertical datum shall be shown and/or correlated to plan topography and show existing and proposed ground elevations); the source of the topography; departing lot lines; minimum setback lines, yard and building separation requirements; the source of the survey; sheet number and total number of sheets; and the names of the owners, zoning district, tax map and parcel numbers and present uses of abutting parcels.

b. *Information regarding the proposed use*. Written schedules or data as necessary to demonstrate that the site can accommodate the proposed uses, including proposed uses and maximum acreage occupied by each use; maximum number of dwelling units by type including the number of bedrooms for multi-family dwellings; gross residential density; square footage of recreational areas; the percentage and acreage of open space; maximum square footage for commercial and industrial uses; maximum floor area ratio and lot coverage for industrial use; maximum height of all structures; schedule of parking including the maximum amount required and the amount provided; the maximum amount of impervious cover on the site; and if a landscape plan is required, the maximum amount of paved parking and other vehicular circulation areas.

c. *Phase lines*. If phasing is planned, phase lines and the proposed timing of development.

d. *Topography and proposed grading*. Existing topography (up to twenty [20] percent slope, maximum five [5] foot contours, over twenty [20] percent slope, maximum ten [10] foot contours) for the entire site with sufficient offsite topography to describe prominent and pertinent offsite features and physical characteristics, but in no case less than fifty (50) feet outside of the site unless otherwise approved by the agent; proposed grading (maximum five [5] foot contours) supplemented where necessary by spot elevations; areas of the site where existing slopes are steep slopes.

e. *Landscape features*. The existing landscape features as described in section 32.7.9.4(c).

f. *Watercourses and other bodies of water*. The name and location of all watercourses and other bodies of water adjacent to or on the site; indicate whether the site is located within the watershed of a public water supply reservoir.

g. *Onsite sewage system setback lines*. The location of onsite sewage system setback lines from watercourses including intermittent streams and other bodies of water.

h. *Floodplain and related information*. The boundaries of the flood hazard overlay district, the base flood elevation on the site, the elevation of the lowest floor, including any basement, and for any structures to be flood-proofed as required by section 30.3, the elevation to which the structures will be flood-proofed.

i. *Streets, easements and travelways*. The existing and proposed streets, including proposed bike lanes, access easements, alley easements and rights-of-way, and travelways, together with street names, state route numbers, right-of-way lines and widths, centerline radii and pavement widths.

j. *Existing sewer and drainage facilities*. The location and size of existing water and sewer facilities and easements, the storm drainage system, drainage channels, and drainage easements.

k. *Proposed sewer and drainage facilities*. The proposed conceptual layout for water and sewer facilities and the storm drainage system, indicating the direction of flow in all pipes and watercourses with arrows.

l. *Existing and proposed utilities*. The location of other existing and proposed utilities and utility easements, including existing telephone, cable, electric and gas easements.

m. *Ingress and egress*. The location of existing and proposed ingress to and egress from the property, showing the distance to the centerline of the nearest existing street intersection.

n. *Existing and proposed improvements*. The location and dimensions of all existing and proposed improvements including buildings (maximum footprint and height) and other structures; walkways; fences; walls; trash containers; outdoor lighting; landscaped areas and open space; recreational areas and facilities; parking lots and other paved areas; loading and service areas; signs; and the proposed paving material types for all walks, parking lots and driveways.

o. *Areas to be dedicated or reserved*. All areas intended to be dedicated or reserved for public use under sections 32.7.1.1, 32.7.1.2 and 32.7.1.3, and shall include a note on the plan stating that the land is to be dedicated or reserved for public use.

p. *Landscape plan*. A landscape plan that complies with section 32.7.9, if it is required to be submitted with the initial site plan.

q. *Traffic generation figures*. If deemed appropriate by the agent due to the intensity of the development, estimated traffic generation figures for the site based on current Virginia Department of Transportation rates; indicate the estimated number of vehicles per day and the direction of travel for all connections from the site to a public street.

r. *Symbols and abbreviations*. A legend showing all symbols and abbreviations used on the plan.

s. *Additional information*. The agent may require additional information to be shown on the initial site plan as deemed necessary to provide sufficient information for the agent and the site review committee to adequately review the plan.

t. *Dam break inundation zones.* The limits of a dam break inundation zone.

u. *Additional information for site plans within the neighborhood model district*. Each site plan for a planned development within the neighborhood model district shall contain the following additional information: (i) the site plan pertains to at least one block; (ii) a phasing plan; and (iii) building elevations for all new or modified structures.

((§ 32.5.6, 5-1-87, 2-6-02) (§ 32.4.5, 12-10-80); § 32.5.2, Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(1), 3-5-14; Ord. 14-18(2), 3-5-14)

State law reference – Va. Code §§ 15.2-2241(1), 15.2-2258, 15.2-2286(A)(8).

Federal law reference – 44 CFR § 60.3(b)(3)

Sec. 32.5.4 Groundwater assessment information

The application for an initial site plan shall include draft groundwater management plans and aquifer testing workplans required by sections 17-1003 and 17-1004, if applicable. The requirements of sections 17-1003 and 17-1004 shall be satisfied prior to final site plan approval.

(§ 32.5.4, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.5.7, Ord. 04-18(4), 12-8-04, effective 2-8-05))

State law reference – Va. Code § 15.2-2121.

Sec. 32.6.4 Dam break inundation zones; engineering study and mapping information

If the proposed development is located wholly or partially within a dam break inundation zone, the developer shall submit with the final site plan the following:

a. *Engineering study*. If the Virginia Department of Conservation and Recreation determines that a plan of development proposed by a developer would change the spillway design flood standards of an impounding structure pursuant to Virginia Code § 10.1-606.3, the developer shall submit an engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act in Virginia Code § 10.1-604 *et seq*. and the Virginia Impounding Structure regulations in 4VAC50-20-10 *et seq*. The engineering study shall be reviewed and acted upon by the Virginia Department of Conservation and Recreation as provided in Virginia Code § 15.2-2243.1.

b. *Mapping information*. The developer shall provide the dam owner, the county, and any other affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.

(Ord. 13-18(7), 12-4-13, effective 1-1-14)

State law reference--Va. Code §§ 10.1-606.3, 15.2-2243.1.

Sec.32.7.4.1 Stormwater management; water pollution; soil characteristics

Each site plan shall comply with the following:

~~a~~. *Stormwater management*. Each site plan shall comply with all applicable requirements of chapter 17.

b. *Water pollution*. In addition to the provisions of section 4.14 and other applicable laws, each site plan shall provide for minimizing the pollution of downstream watercourses and groundwater where on-site measures are deemed warranted by the county engineer. In determining whether and what measures, if any, are warranted, the county engineer shall consider the character of the proposed use including, but not limited to, whether petroleum products, pesticides, poisons, synthetic organic compounds, or other substances would be stored or used on the site which, if improperly stored or inadvertently discharged, may reasonably be anticipated to pollute surface water or groundwater.

c. *Soil characteristics*. In reviewing site plans, the site review committee shall refer to the U. S. Department of Natural Resource Conservation Service, Soil Survey of Albemarle County, Virginia, August, 1985 in commenting on soil suitability for the intended development and, in particular, Table 10 Building Site Development, Table 12 Construction Materials, and Table 16 Soil and Water Features. If soils are rated as "poor" or "severely limited" for a proposed use, or where high seasonal water table and/or hydrologic group D soils are encountered, the site review committee shall notify the agent of these conditions and provide recommendations for special design measures.

(§ 32.7.4.1, Ord. 12-18(6), 10-3-12, effective 1-1-13 (§ 32.7.4, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.1, 5-1-87; § 32.5.13, 12-10-80) (§ 32.7.4.2, 5-1-87) (§ 32.7.4.3; § 32.5.14, 12-10-80) (§ 32.7.4.4, 5-1-87))

State law reference – Va. Code §§ 10.1-2108, 15.2-2241(3), 15.2-2283, 62.1-44.15:24 *et seq*.

Sec. 32.7.4.2 Easements for facilities for stormwater management facilities and drainage control

The agent shall require each developer to dedicate easements to the county for facilities for stormwater management and drainage control as follows:

a. *Easements required*. The following easements shall be required:

1. An easement for all stormwater management facilities and drainage control improvements located on the site shall be established whenever the improvement is designed, constructed, or both, beyond a street right-of-way or access easement, and shall extend from all drainage outfalls to an adequate channel as defined in 9VAC25-840-10 that satisfies the minimum standards in 9VAC25-840-40(19) to the boundary of the site.

2. An easement along any natural stream or man-made waterway located on the site that will be used for drainage purposes.

b. *Area of easement*. The area of each easement shall be sufficient, as determined by the county engineer, to: (i) accommodate the facilities and the drainage characteristics from each drainage outfall from a drainage control facility; and (ii) allow access to a natural stream or man-made waterway to allow widening, deepening, relocating, improving, or protecting the natural stream or man-made waterway for drainage purposes.

c. *Right of ingress and egress*. Each easement shall include the right of ingress and egress for installation, maintenance, operation, repair, and reconstruction of any improvement within the easement. The agent also may require that an easement be provided through abutting land under the same ownership as the site.

d. *Compensation not required*. The board of supervisors shall not be required to compensate the developer for any easement or any improvements thereon.

e. *Not considered part of street width*. No easement shall be considered part of any required street width.

(§ 32.7.4.2, Ord. 12-18(6), 10-3-12, effective 1-1-13)

State law reference – Va. Code § 15.2-2241(3).

Section 34

Board of Zoning Appeals

Sec. 34.1 Board of zoning appeals; establishment and organization

A board of zoning appeals (the “board”) is hereby established, subject to the following:

a. *Members and their appointment*. The board shall have five (5) members. Each member shall be appointed by the Albemarle County Circuit Court.

b. *Eligibility*. Each member shall be a qualified resident of Albemarle County.

c. *Term; vacancies; serving beyond expiration of term*. Members shall be appointed for terms of five (5) years and any member may be reappointed for successive terms. The original appointments were made in staggered terms so that the term of one member expires each year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

d. *Holding other public office prohibited*. A member may not hold any other public office within the county except that one member may be a member of the commission.

e. *Organization*. The board shall elect at its annual meeting a chairman, who shall preside over all meetings, a vice-chairman, who shall act in the absence of the chairman, and a secretary. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not vote on any matter. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.

f. *Quorum*. A quorum shall be a majority of all the members of the board.

g. *Resources; obtaining services*. Within the limits of funds appropriated by the board of supervisors,

the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary for transaction of its business. The board may request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.

h. *Compensation*. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

i. *Removal from office*. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Albemarle County Circuit Court, after hearing held after at least fifteen (15) days' notice.

State law reference – Va. Code §§ 15.2-2308, 15.2-2309.

Sec. 34.2 Powers and duties of the board of zoning appeals

The board of zoning appeals (the "board") shall have the following powers and duties:

a. *Meet and conduct business; continued meetings due to inclement weather*. To regularly meet to conduct its business as provided in section 34.1 and this section. The board also may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. The finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for the meeting shall be conducted at the continued meeting and no further advertisement is required.

b. *Appeals*. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer, and to hear and decide appeals from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter, exclusive of section 32, as provided in section 34.3.

c. *Variances*. To consider and approve variances as provided in section 34.4.

d. *Special use permits*. To consider and approve special use permits for certain signs under sections 4.15.5 and 4.15.5A, and to revoke a special use permit previously approved, as provided in section 34.5.

e. *Interpret a district map* To hear and decide applications to interpret a district map where there is any uncertainty as to the location of a district boundary, as provided in section 34.6.

f *Power to administer oaths and compel attendance of witnesses*. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses for any hearing on an appeal under section 34.3 or any application for a variance under section 34.4.

State law reference – Va. Code § 15.2-2309.

Sec. 34.3 Appeals of orders, requirements, decisions, and determinations to the board of zoning appeals

An appeal from any order, requirement, decision or determination made by an administrative officer, and an appeal from any decision of the zoning administrator, in the administration or enforcement of Virginia Code §§ 15.2-2280 through 15.2-2316.2 and this chapter (collectively, a "decision"), exclusive of any decision made under section 32, shall be considered by the board of zoning appeals (the "board") as follows:

a. *Standing to appeal*. An appeal to the board may be taken by any person aggrieved or by any county officer, department, board or bureau affected by any decision of the zoning administrator or an administrative officer.

b. *Time in which to appeal decision*. Any appeal shall be received by the zoning administrator and the board within thirty (30) days after the date of the decision; provided that any appeal of a notice of violation involving temporary or seasonal commercial uses, parking commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations, shall be received by the zoning administrator and the board within ten (10) days

after the date of the decision.. The date of the decision shall be the date of the letter or written notice, provided that the time in which to appeal an order or a notice of violation shall not commence unless and until the recipient is provided the notice required by section 36.2(d).

c. *Form of the appeal*. Any appeal shall be in writing and shall state the grounds for the appeal.

d. *Where appeal must be submitted*. An appeal must be submitted to the zoning administrator and to the board. An appeal received by the county's department of community development shall be deemed to have been received by both the zoning administrator and the board.

e. *Payment of fees*. The submitted appeal shall be accompanied by the applicable fee required by section 35.1. An appeal shall not be deemed to have been received until the required fee is paid.

f. *Effect of filing appeal*. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that, by reason of the facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. If the zoning administrator makes such a certification, the proceedings shall not be stayed unless either the board or the Albemarle County Circuit Court grants a restraining order on application and on notice to the zoning administrator and for good cause shown.

g. *Transmittal of information*. The zoning administrator shall promptly transmit to the board all the papers constituting the record upon which the action appealed from was taken.

h. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the appeal:

1. *Scheduling the hearing on the appeal*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (j).

2. *Notice of the hearing.* The board shall give notice of the hearing as well as written notice to the parties to the appeal. The notice shall be given as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the appeal, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the appellant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the appeal. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the appellant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an appeal, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

i. *Procedural requirements at the hearing*. The following procedures apply at the board's hearing on the appeal:

1. *The right to equal time for a party to present its side of the case*. The board shall offer an equal amount of time in a hearing on the case to the appellant or other person aggrieved and the county staff.

2. *The administrative officer's required explanation*. The administrative officer whose decision is being appealed shall explain the basis for his decision.

3. *The presumption of correctness*. At the hearing, the administrative officer's decision is

presumed to be correct.

4. *Burden of proof.* After the administrative officer explains the basis for his decision, the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.

j. *Time for decision*. The board shall schedule a reasonable time for the hearing on an appeal so that it may make its decision within ninety (90) days after the date the appeal was filed. This ninety (90) day period is directory, not mandatory.

k. *Factors to consider when acting*. The board's decision shall be based on its judgment of whether the administrative officer's decision was correct. The board also shall consider any applicable ordinances, laws, and regulations in making its decision. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

l. *Action by the board; vote required*. The board may reverse or affirm, wholly or partly, or may modify, the decision appealed from. The concurring vote of three (3) members of the board is required to reverse any decision. if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

m. *Effect of decision on owner; appeals from notices of violation or written orders*. A decision by the board on an appeal from a notice of violation or a written order of the zoning administrator shall be binding upon the owner of the lot that is the subject of the appeal only if the owner was provided written notice of the zoning violation or written order. The owner's actual notice of the notice of zoning violation or written order, or active participation in the appeal hearing, shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

n. *Judicial review*. Any action contesting a decision of the board shall be as provided in Virginia Code § 15.2-2314.

o. *Appeals of decisions made under section 32*. Any appeal of a decision made under section 32 shall be brought only as provided in section 32.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2311, 15.2-2312, 15.2-2314.

Sec. 34.4 Variances

An application for a variance shall be considered by the board of zoning appeals (the "board") as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the "applicant"). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Criteria to establish right to a variance*. Information pertaining to the criteria to establish the right to a variance in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete

and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the variance, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The following procedures apply at the board's hearing on the application:

1. *The right to equal time for a party to present its side of the case*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

2. *Burden of proof.* The applicant has the burden to prove by a preponderance of the evidence that his application meets the definition of a variance in Virginia Code § 15.2-2201 and the criteria in subsection (i).

i. *Criteria to establish basis to grant a variance*. The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:

1. *Good faith acquisition and hardship not self-inflicted*. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

2. *No substantial detriment*. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

3. *Condition of situation not general or recurring*. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

4. *Use variance prohibited*. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.

5. *Special use permit or special exception not available*. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant variance*. The concurring vote of three (3) members of the board is required to grant a variance.

m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:

1. *Nature of conditions*. The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.

2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.

n. *Effect of granting variance; expansion of structure*. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion

is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

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

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

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

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

q. *Judicial review*. Any action contesting a decision of the Board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Sec. 34.5 Special use permits.

An application for a special use permit authorized by sections 4.15.5 and 4.15.5A shall be considered by the board of zoning appeals (the “board”) as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the “applicant”). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Factors to be considered for acting on the application*. Information pertaining to the factors to be considered for a special use permit in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed, emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board. The zoning administrator shall also transmit a copy of the application to the commission, which may send a recommendation to the board or appear as a party at the hearing.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

i. *Factors to consider when acting*. The board shall reasonably consider the following factors when it is reviewing and acting on a special use permit:

1. *No substantial detriment*. The proposed special use will not be a substantial detriment to adjacent lots.

2. *Character of district unchanged*. The character of the district will not be changed by the proposed special use.

3. *Harmony*. The proposed special use will be in harmony with the purpose and intent of this chapter, with the uses permitted by right in the district, with the regulations provided in sections 4 and 5, as applicable, and with the public health, safety, and welfare.

4. *Consistency with comprehensive plan*. The proposed special use will be consistent with the comprehensive plan.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant special use permit*. The concurring vote of three (3) members of the board is required to grant a special use permit.

m. *Conditions*. In granting a special use permit, the board may impose conditions, as follows:

1. *Nature of conditions*. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit.

2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a special use permit shall be deemed to be essential and nonseverable from the permit itself and any condition determined to be invalid, void or unlawful shall invalidate the permit.

n. *Revocation of permit*. The board may revoke a special use permit that it previously granted if it determines, after a hearing, that there has not been compliance with the terms or conditions of the permit. The board shall give notice of the hearing as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail.

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

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

2. *When application deemed withdrawn*. An application shall be deemed to have been voluntarily withdrawn if the applicant requested that further processing or formal action on the application be indefinitely deferred and the board is not requested by the applicant to take action on the application within one (1) year after the date the deferral was requested. Upon written request received by the zoning administrator before the one (1) year period expires, the zoning administrator may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the nature of the application, the

complexity of the review, and the laws in effect at the time the request for extension is made. Upon written request received by the secretary of the board before the extension of the deferral period granted by the zoning administrator expires, the board may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the application, the complexity of the review, and the laws in effect at the time the request for extension is made. The timely receipt by the clerk of the extension request shall toll the expiration of the extended deferral period until the board acts on the request.

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

q. *Judicial review*. Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Sec. 34.6 Interpreting a district map

An application to interpret a district map shall be considered by the board of zoning appeals (the "board) as follows:

a. *Who may file an application*. An application may be filed by any owner, tenant, government official, department, board or bureau. (the "applicant"). The application shall pertain to one or more lots owned or occupied by the owner, occupant, or governmental entity.

b. *Application*. Each application shall be composed of a completed county-provided application form required to review and act on the application. The zoning administrator is authorized to establish an appropriate application form. The application form shall require the applicant to provide the following:

1. *Factors to be considered for an application*. Information pertaining to the factors to be considered for interpreting a district map in subsection (i).

2. *Payment of delinquent taxes*. Satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the county and have been properly assessed against the subject property, have been paid.

c. *Filing the application; number of copies*. The applicant shall file the application with the department of community development. The zoning administrator is authorized to establish for each class of application the number of collated copies of the application required to be filed.

d. *Determining completeness of the application; rejecting incomplete applications*. An application that provides all of the required information on the application form shall be determined to be complete and be accepted for review and decision. An application omitting any required information shall be deemed to be incomplete and shall not be accepted.

1. *Timing of determination of completeness*. The zoning administrator shall determine whether an application is complete within ten (10) days after the application was received.

2. *Procedure if application is incomplete*. If the application is incomplete, the zoning administrator shall inform the applicant by letter explaining the reasons why the application was rejected as being incomplete. The letter shall be sent by first class mail, be personally delivered or, if consented to by the applicant in writing, by fax or email.

3. *Effect if timely determination not made*. If the zoning administrator does not send or deliver the notice as provided in subsection (d)(2) within the ten (10) day period, the application shall be deemed to be complete, provided that the director may require the applicant to later provide the omitted information within a period specified by the director, and further provided that the zoning administrator may reject the application as provided herein if the applicant fails to timely provide the omitted information.

4. *Resubmittal of application originally determined to be incomplete*. Within six (6) months after the date the letter that an application was rejected as being incomplete was mailed, faxed,

emailed or delivered by the zoning administrator as provided in subsection (d)(2), the applicant may resubmit the application with all of the information required by this section for a new determination of completeness under this subsection.

e. *Payment of fees*. When an application is determined to be complete, the applicant shall pay the fee required by section 35.1 before the application is further processed.

f. *Transmittal of information*. The zoning administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board.

g. *Procedural requirements prior to the hearing*. The following procedures apply prior to the board's hearing on the application:

1. *Scheduling the hearing on the application*. The board shall schedule a reasonable time for the hearing that will allow it to make a timely decision as provided in subsection (k).

2. *Notice of the hearing.* The board shall give notice of the hearing to the owners of the lots that are affected by the question and as required by Virginia Code § 15.2-2204, provided that when giving any required notice to the owners, their agents or the occupants of abutting lots and lots immediately across the street or road from the lot that is the subject of the special use permit, the board may give such notice by first-class mail rather than by registered or certified mail. Notice of the hearing also shall be posted as provided in section 33.4(m)(2).

3. *Contact by parties with board members*. The non-legal staff of the board of supervisors, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the board prior to the hearing but may not discuss the facts or law relative to the application. If an *ex parte* discussion of facts or law in fact occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions prior to a public meeting to which the applicant, landowner, or his agent or attorney are all invited. For the purposes of this section, the "non-legal staff of the board of supervisors" is any staff who is neither an attorney in the county attorney's office nor appointed by special law.

4. *Sharing information produced by county staff*. Any materials relating to an application, including a staff recommendation or report furnished to a board member, shall be available without cost to the appellant or any person aggrieved as soon as practicable thereafter, but in no event more than three (3) business days after the materials are provided to one or more board members.

h. *Procedural requirements at the hearing*. The board shall offer an equal amount of time in a hearing on the case to the applicant and the county staff.

i. *Factors to consider when acting*. The board shall reasonably consider the following factors when it is reviewing and acting on an application to interpret at district map:

1. *Uncertainty in district boundary*. Whether there is any uncertainty as to the location of a district boundary, provided that the board shall not have the power to change substantially the locations of district boundaries that are established by ordinance.

2. *Intent and purpose of section or district*. The board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within ninety (90) days after the date the application was deemed to be complete. This ninety (90) day period is directory, not mandatory.

l. *Action by the board; vote required to grant special use permit*. The concurring vote of three (3) members of the board is required to change a district boundary.

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

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

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

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

o. *Judicial review*. Any action contesting a decision of the board under this section shall be as provided in Virginia Code § 15.2-2314.

State law reference – Va. Code §§ 15.2-2204, 15.2-2286(A)(4) and (B), 15.2-2308, 15.2-2308.1, 15.2-2309, 15.2-2310, 15.2-2312, 15.2-2314.

Section 34A

Architectural Review Board (Added 10-3-90)

Sec. 34A.1 Architectural review board; appointment and organization

An architectural review board (the "board") is hereby established, subject to the following:

a. *Members and their appointment*. The board shall have five (5) members. Each member shall be appointed by the board of supervisors.

b. *Eligibility*. Each member shall be a qualified residents of Albemarle County and shall have a demonstrated interest, competence or knowledge in architecture, site design, or both.

c. *Term*. Members shall be appointed for terms of four (4) years and shall serve at the pleasure of the board of supervisors. Initial appointments shall be for two (2) members for four (4) years and three (3) members for two (2) years.

d. *Organization*. The board shall elect at its annual meeting a chairman, who shall preside over all meetings, and a vice-chairman, who shall act in the absence of the chairman. The board may adopt rules of procedure to facilitate the conduct of its business at its meetings.

e. *Quorum*. A quorum shall be a majority of all the members of the board.

f. *Resources; obtaining services*. Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as it may deem necessary to transact its business. The board may

request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the county.

g. *Compensation*. Members of the board shall receive such compensation as may be authorized by the board of supervisors, from time to time, by ordinance or resolution.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.2 Powers and duties of the architectural review board

The architectural review board (the "board") shall have the following powers and duties:

a. *Meet and conduct business*. Regularly meet to conduct its business as provided in section 34A.1 and this section.

b. *Review initial site plans*. Review initial site plans and provide requirements and recommendations as provided in section 32.4.2.2(b).

c. *Review and act on certificates of appropriateness*. Review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the entrance corridor street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.

d. *Promulgate design guidelines*. Promulgate design guidelines as provided in section 34A.3.

e. *Provide recommendations and act as advisor.* Recommend areas to be included in the entrance corridor overlay districts and streets to be designated as entrance corridor streets, and act as an advisor to the commission, the board of supervisors and the board of zoning appeals on any applications for approval under this chapter or chapter 14.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Sec. 34A.3 Design guidelines

The architectural review board (the "board") shall promulgate design guidelines it determines to be appropriate for one or more entrance corridors:

a. *Review and act on certificates of appropriateness*. The board shall review and act on applications for certificates of appropriateness for any structure, and associated improvements, or any portion thereof, that are visible from the entrance corridor street to which the parcel is contiguous, as provided in sections 30.6.4, 30.6.6 and 30.6.7.

b. *Promulgation*. The board shall promulgate design guidelines by an affirmative vote to approve the guidelines.

c. *Notice of promulgation*. Before the board acts on any design guidelines, notice that design guidelines are being considered for approval shall be advertised as provided in Virginia Code § 15.2-2204.

d. *Ratification*. After the board has promulgated the design guidelines, it shall forward them to the board of supervisors for ratification. The board of supervisors may ratify the design guidelines in whole or in part. If the board of supervisors decides to ratify the design guidelines, it shall do so by an affirmative vote to confirm the architectural review board's approval. Any design guidelines not ratified by the board of supervisors shall be returned to the architectural review board for reconsideration, modification or other action.

e. *Effect of ratification*. Any design guideline shall become effective only after it has been ratified by the board of supervisors.

State law reference – Va. Code §§ 15.2-2286(A)(4), 15.2-2306.

Section 36

Violations

Sec. 36.1 Violations

The following are violations of this chapter and are declared to be unlawful:

a. *Uses*. Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

b. *Structures or improvements*. Any structure or improvement and, within the flood hazard overlay district, any development as that term is defined in section 30.3.5, that is established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

c. *Structures without building permits*. Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

d. *Use of structure or site without certificate of occupancy*. Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

e. *Requirements and standards*. The failure to comply with any other requirement or standard of this chapter.

(§ 36.1, 12-10-80, 12-20-80; Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09; Ord. 14-18(1), 3-5-14)

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

Sec. 36.2 Enforcement

The zoning administrator is authorized to enforce this chapter as follows:

a. *Investigation*. Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.

b. *Inspection warrants and search warrants*. The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.

c. *Subpoenas duces tecum (court order to produce records)*. Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).

d. *Notice of violation; exception*. If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing, permitting the violation, or both, if the ~~z~~oning ~~a~~dministrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(~~a~~).

   1. *Contents of notice*. The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within the applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely

appealed; (iv) the applicable appeal fee; (v) a reference to where additional information may be obtained regarding filing an appeal; and (vi) the time within which the violation shall be abated.

2. *Delivery of notice*. The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.

e. *Remedies*. In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

(§36.2, 12-10-80; §36.3, 12-10-80; § 36.4, 12-10-80; Ord. 09-18(3), 7-1-09)

State law reference – Va. Code § 15.2-2204, 15.2-2286(A)(4), 15.2-2311.

Sec. 36.3 Civil penalties

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

a. *Procedure*. Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.

b. *Minimum elements of a civil summons or ticket*. A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.

c. *Amount of civil penalty*. Any violation of this chapter shall be subject to a civil penalty of two hundred dollars ($200.00) for the initial summons, and a civil penalty of five hundred dollars ($500.00) for each additional summons arising from the same set of operative facts.

d. *Maximum aggregate civil penalty*. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars ($5,000.00). After the civil penalties reach the five thousand dollar ($5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 36.4.

e. *Each day a separate offense; single offense in 10-day period; stay*. Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.

f. *Option to prepay civil penalty and waive trial*. Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

g. *Civil penalties are in lieu of criminal penalties*. A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any

violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.

h. *Violations excluded*. Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term "land development" means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project's compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

i. *Assessment of civil penalties during appeal period*. No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided under section 34.3(b).

(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06)

State law reference – Va. Code §§ 15.2-2209, 15.2-2311.

Sec. 36.5 Injunctive relief and other remedies

Any violation of this chapter may be restrained, corrected, or abated as the case may be in an action by the board of supervisors seeking injunctive or other appropriate relief.

(§ 37.3; Ord. 00-18(5), 6-14-00)

State law reference – Va. Code § 15.2-2208.

ATTACHMENT 10

ORDINANCE NO. 15-18(6)

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, is hereby amended and reordained as follows:

By Amending:
Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities; collocation, replacement, and removal of transmission equipment

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan, in a manner that complies with Section 704 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)) for new personal wireless service facilities and collocations and replacements that result in a substantial change in the physical dimensions of an eligible support structure; and to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455) and 47 CFR § 1.40001 for collocations and replacements that do not result in a substantial change in the physical dimensions of an eligible support structure. Each personal wireless service facility and the transmission equipment of any other wireless service shall be subject to the following, as applicable:

a. *Application for approval*: An application providing the following information shall be required for each personal wireless service facility (hereinafter, "facility") and transmission equipment that will be collocated or replace existing equipment on an eligible support structure:

Application Requirements	Type of Application			
	I	II	III	C/R
1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.	X	X	X	X
2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.	X	X	X	X
3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.	X	X	X	X
4. *Plans and supporting drawings, calculations, and documentation.* Except where the facility will be located entirely within an eligible support structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations, and documentation shall show:	X	X	X	X
(a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).	X	X	X	X

(b) *Elevation and coordinates.* The benchmarks and datum used for elevations shall coincide with the State Plane VA South US Survey Feet based on the North American Datum of 1983 (NAD 83), and the benchmarks shall be acceptable to the county engineer.	X	X	X	X
(c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other equipment.	X	X	X	X
(d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.	X	X	X	X
(e) *Topography.* Except where the facility would be attached to an eligible support structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.		X	X	
(f) *Trees*. The caliper and species of all trees where the dripline is located within fifty (50) feet of the facility. The height, caliper, and species of any tree that the applicant is relying on to provide screening of the monopole or tower. The height, caliper and species of the reference tree. The caliper and species of all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.	X	X	X	
(g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing, and landscaping.	X	X	X	X
(h) *Location of accessways.* The location of all existing vehicular accessways and the location and design of all proposed vehicular accessways.	X	X	X	X
(i) *Location of certain structures and district boundaries.* Except where the facility would be attached to an eligible support structure or an existing building, residential and commercial structures~~,~~ and residential and rural areas district boundaries.	X	X	X	
(j) *Proximity to airports.* If the proposed monopole or tower will be taller than one hundred fifty (150) feet, the proximity of the facility to commercial and private airports.		X	X	
5. *Photographs.* Photographs of the location of the proposed monopole or tower shall be provided that include, for applications for Tier II facilities, the reference tree, and for applications for Tier III facilities, the area within fifty (50) feet of the proposed monopole or tower. These photographs shall include reference points to enable the lease area, the vehicular access, the trees that will remain, and the trees that will be removed, to be identified. In addition, photographs, where possible, or perspective drawings of the facility site and all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.		X	X	
6. *Balloon tests.* For any proposed monopole or tower, photographs taken of a balloon test, which shall be conducted, if requested by the agent, as follows: (a) *Scheduling.* The applicant shall contact the agent within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the agent with at least seven (7) days prior notice; provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent.		X	X	

(b) *Marking key boundaries and locations.* Prior to the balloon test, the locations of the access road, the lease area, the tower site, the reference tree, and the tallest tree within twenty five (25) feet of the proposed monopole shall be surveyed and staked or flagged in the field.		X	X	
(c) *Balloon height.* The test shall consist of raising one or more balloons from the facility site to a height equal to the proposed facility.		X	X	
(d) *Balloon color or material.* The balloons shall be of a color or material that provides maximum visibility.		X	X	
(e) *Photographing balloon test.* The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as deemed appropriate by the agent. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph.		X	X	
7. *Additions of antennas.* If antennas are proposed to be added to an eligible support structure or an existing building, all existing antennas and other equipment on the structure, building, or facility, as well as all ground equipment, shall be identified by owner, type, and size. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.	X	X	X	X
8. *Site under conservation or open space easement.* If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.		X	X	
9. *Photographic simulations*. At the request of the agent, photographic simulations of the proposed facility.		X	X	
10. *Statement of justification for exempt collocation*. If the application is for an exempt collocation, a statement of the justification for the application qualifying as an exempt collocation.				X
11. *Evidence of prior approval*. Approval letters or actions from the County authorizing the initial construction of the facility and any approval letters or actions for modifications of the facility after initial construction. If no approvals were granted by the County for the facility the applicant shall provide evidence that the facility was constructed lawfully.				X
12. *Special exception*. If the proposed facility does not comply with any provision of section 5.1.40, the applicant shall request a special exception in writing as part of the application. The request shall identify which regulation in section 5.1.40 for the special exception is requested and a justification for the special exception.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

b. *Development requirements*. Each facility or transmission equipment may be established upon approval as provided in subsection (c) provided that the application satisfies the applicable requirements of subsection (a) and demonstrates that the facility or transmission equipment will be installed and operated in compliance with all applicable provisions of this chapter, and the following:

Development Requirements	**Type of Application**			
	I	**II**	**III**	**C/R**
1. *General design.* The facility shall be designed, installed, and maintained as follows:				
(a) *Guy wires*. Guy wires are prohibited.	X	X	X	
	X	X	X	

Development Requirements	Type of Application			
	I	II	III	C/R
(b) *Outdoor lighting*. Outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law.	X	X	X	
(c) *Ground equipment*. Any ground equipment shelter not located within an eligible support structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent.	X	X	X	
(d) *Whip antenna*. A whip antenna less than six (6) inches in diameter may exceed the height of the facility, the eligible support structure, or the existing building.	X	X	X	
(e) *Grounding rod*. A grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the eligible support structure, or the existing building.	X	X	X	
2. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an eligible support structure, or an existing building shall be subject to the following:	X	X	X	
(a) *Number of arrays*. The total number of arrays of antennas shall not exceed three (3). All types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.	X	X	X	
(b) *Size*. Each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand four hundred (1400) square inches.	X	X	X	
(c) *Projection*. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall the closest point of the back of the antenna be more than twelve (12) inches from the facility, structure, or building, and in no case shall the farthest point of the back of the antenna be more than eighteen (18) inches from the facility, structure, or building; and	X	X	X	
(d) *Color*. Each antenna and associated equipment shall be a color that matches the facility, structure or building.	X	X	X	
3. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.	X	X	X	
4. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.	X	X	X	
5. *Ground equipment shelter; fencing.* Any ground equipment shelter not located within an existing building shall be fenced only with the approval of the agent upon finding that the fence: (i) would protect the facility from trespass in areas of high volumes of vehicular or pedestrian traffic or, in the rural areas, to protect the facility from livestock or wildlife; (ii) would not be detrimental to the	X	X	X	

Development Requirements	Type of Application			
	I	II	III	C/R
character of the area; and (iii) would not be detrimental to the public health, safety or general welfare.				
6. *Screening and siting to minimize visibility.* The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility also shall be sited to minimize its visibility from any entrance corridor overlay district, state scenic river, national park or national forest, regardless of whether the site is adjacent to the district, river, park or forest. If the facility would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.		X	X	
7. *Open space plan resources.* The facility shall not adversely impact resources identified in the natural resources chapter of the county's comprehensive plan and the parks and green systems chapters in any county master plan.		X	X	
8. *Horizontal separation of multiple facilities.* The facility shall not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.		X		
9. *Diameter of monopole.* The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.		X		
10. *Height of monopole.* The top of the monopole, measured in elevation above mean sea level, shall not be more than ten (10) feet taller than the tallest tree within twenty-five (25) feet of the monopole, and shall include any base, foundation or grading that raises the monopole above the pre-existing natural ground elevation.		X		
11. *Color of monopole, antennas, and equipment.* Each monopole shall be a dark brown natural or painted wood color that blends into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment shelter, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not closely match the color of the monopole if they are enclosed within a ground equipment shelter or within or behind an approved structure, façade or fencing that: (i) is a color that closely matches that of the monopole; (ii) is consistent with the character of the area; and (iii) makes the ground equipment, ground equipment shelter, and the concrete pad invisible at any time of year from any other parcel or a public or private street.		X	X	
12. *Placement of cables, wiring, and similar attachments.* Each wood or concrete monopole shall be constructed so that all cables, wiring, and similar attachments that run vertically from the ground equipment to the antennas are placed on the monopole to face the interior of the site and away from public view, as determined by the agent. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.		X		
13. *Special use permit conditions*. All conditions of approval of a special use permit.			X	
14. *No substantial change*. The collocation or replacement shall not result in a substantial change to the physical dimensions of an eligible support structure.				X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

c. *Applicability of other regulations in this chapter.* Except as otherwise provided in this subsection, each facility or transmission equipment shall be subject to all applicable regulations in this chapter:

Applicability of other Development Requirements in this Chapter	Type of Application			
	I	II	III	C/R
1. *Building site.* Notwithstanding section 4.2.3(a), a facility is not required to be located within a building site.	X	X	X	X
2. *Vehicular access*. Vehicular access to the facility site or tower site shall be subject to the requirements of section 4.2 and shall not be exempt under section 4.2.6(c).	X	X	X	X
3. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney as to addressing development on the part of the abutting parcel sharing the common lot line that is within the monopole or tower's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.	X	X	X	X
4. *Area, bulk, and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.	X	X	X	X
5. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.	X	X	X	X
6. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32, and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

d. *Performance standards and requirements for approved applications*. In addition to the applicable development requirements in subsections (b) and (c), the following performance standards and requirements shall apply to facilities, as applicable:

Performance Standards and Requirements	Type of Application			
	I	II	III	C/R
1. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.		X		
2. *Tree conservation plan; compliance; amendment.* The installation, operation, and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation, and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and	X	X	X	

Performance Standards and Requirements	Type of Application			
	I	II	III	C/R
obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.				
3. *Completion of installation; submitting certifications of compliance*. Within thirty (30) days after completion of the installation of the facility, the applicant shall provide to the agent prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the tower or monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the tower or monopole and its width does not exceed a diameter of one (1) inch.	X	X	X	
4. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a tower or monopole's use for personal wireless service or any service facilitated by transmission equipment is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility and any transmission equipment shall be disassembled and removed from the facility site within ninety (90) days after the date its use for personal wireless service or any service facilitated by transmission equipment is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

e. *Application review and action*. Each application shall be reviewed and acted on as follows:

Application Review and Action	Type of Application			
	I	II	III	C/R
1. *Nature of review and action.* The nature of the review and action on submitted applications are as follows:				
(a) Ministerial review and approval by the department of community development to determine compliance with applicable requirements of this section.	X	X		X[1]
(b) Legislative review and approval of a special use permit by the board of supervisors, subject to the applicable requirements of this section and of sections 33.4 and 33.8; to the extent there is any conflict between the time for action in this subsection and in section 33.4, this section shall prevail.			X	
[1]Notwithstanding any other provision of this chapter, an application for an exempt collocation shall not be subject to review by the architectural review board and a certificate of appropriateness shall not be required therefor.				

Application Review and Action	Type of Application			
	I	II	III	C/R
2. *Time for action*. The application shall be acted upon within:				
(a) 60 days.	X	X		X
(b) 90 days.	S[2]			
(c) 150 days.		S[2]	X	
[2]If the application requires a special exception, the time for acting on the special exception applies to the entire application.				
3. *Calculating the time for action*. The time for action on an application shall be calculated as follows:				
(a) *Commencement*. The time for action on an application shall begin on:				
(i) The date the application is received in the department of community development.	X			X
(ii) The submittal date established for this type of application by the director of planning.		X	X	
(b) *Determination of completeness*. Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required by this section. If any required information is not provided, the department shall inform the applicant within the thirty (30) day period of the information must be submitted in order for the application to be determined to be complete.	X	X	X	X
(c) *Resubmittal*. Within ten (10) days after a resubmittal is received, the department of community development shall determine whether the application includes all of the applicable information required by the initial notice of incompleteness. If any required information was not provided, the department shall inform the applicant within the ten (10) day period of the information must be submitted in order for the application to be determined to be complete. Second or subsequent notices that information is missing may not include information that was not identified in the original notice of incompleteness.	X	X	X	X
(d) *Tolling*. The running of the time for action shall be tolled between the date the department informs the applicant that its application is incomplete and the date on which the department receives all of the required information from the applicant.	X	X	X	X
(e) *Extending time for action*. The time by which action must be taken may be extended upon request by, or with the consent of, the applicant.	X	X	X	X
4. *Notice.* Notice to third parties shall be provided as follows:				
(a) Notice of the agent's consideration of an application for a Tier I facility with a special exception or a Tier II facility shall be sent by the agent to the owner of each parcel abutting the parcel on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, and the appropriate county office where the complete application may be viewed. The notice shall be mailed by first class mail or hand delivered at least ten (10) days before the agent acts on the application. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an owner to	S	X		

Application Review and Action	Type of Application			
	I	II	III	C/R
receive the notice as provided herein shall not affect the validity of an approved facility and shall not be the basis for an appeal. (b) Notice of public hearings shall be provided as required by section 33.4(m).			X	
5. *Action*. An application shall be acted on as follows: (a) The application shall be approved if it satisfies all of the applicable requirements of this section. (b) The application shall be acted on as provided in sections 33.4 and 33.8.	X	X	X	X
6. *Disapproval of application; appeal.* If an application is disapproved: (a) If the agent disapproves an application, he shall identify which requirements were not satisfied and inform the applicant what needs to be done to satisfy each requirement. The applicant may appeal the disapproval of an application to the board of supervisors. An appeal shall be in writing and be received in the office of the clerk of the board of supervisors within ten (10) calendar days after the date of the disapproval by the agent. In considering an appeal, the board may affirm, reverse, or modify in whole or in part, the decision of the agent, and its decision shall be based upon the applicable requirements of this section. (b) In lieu of the appeal provided in subsection (a), the applicant at its sole option may appeal the disapproval of the application related to an alleged violation of 47 USC § 332(c)(7) or 47 CFR § 1.40001, as applicable, in any court of competent jurisdiction. (c) The applicant may appeal the decision of the board of supervisors as provided in Virginia Code § 15.2-2285 and section 33.4.	X X	X 	 X X	X X
7. *Effect of failure to act within time for action*. The failure to act on an application within the time for action shall: (a) Be deemed to be approval of the application; provided that the deemed grant does not become effective until the applicant notifies the department of community development in writing after the review period has expired that the application has been deemed approved. (b) Create a rebuttable presumption that the failure to timely act was not reasonable under 47 U.S.C. § 332(c)(7)(B)(ii).	 X	 X	 X	 X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to an alternative review period that applies when an application for a special exception accompanies the application.

f. *Collocation or replacement that would result in a substantial change to an eligible support structure*. Any collocation or replacement of transmission equipment that would result in a substantial change in the physical dimensions of an eligible support structure shall be subject to the procedures and standards for a Tier I facility. A special exception shall be required for any substantial change that does not satisfy the standards for a Tier I facility. Any collocation or replacement approved for an eligible support structure by special use permit prior to October 13, 2004 shall not reclassify the eligible support structure as a Tier I, II, or III facility.

g. *Removal of transmission equipment on any eligible support structure*. Any transmission equipment on any eligible support structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.

h. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.

i. *Administration of special use permits for facilities approved prior to October 13, 2004; conditions*. If any condition of a special use permit for an eligible support structure approved prior to October 13, 2004 is more restrictive than a corresponding standard in this section, the corresponding standard in this section shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in this section and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.

j. *Mobile personal wireless service facilities*. Mobile personal wireless service facilities ("MPWSF") shall not be subject to any requirements of section 5.1.40, and are otherwise permitted by right in any zoning district, subject to the following:

1. *Zoning clearance required; temporary non-emergency event*. The owner shall obtain a zoning clearance under section 31.5 prior to placing a MPWSF on any site for a temporary non-emergency event. The MPWSF may be placed on the site for a maximum of seven (7) consecutive days, and shall not be placed on any site for any temporary non-emergency event more than twice in a calendar year.

2. *Zoning clearance required; declared state of emergency*. If a state of emergency is declared by the President of the United States, the Governor of the Commonwealth of Virginia, or the board of supervisors, the owner shall obtain a zoning clearance under section 31.5 within forty-five (45) days after placing a MPWSF on any site. The MPWSF may be placed on the site for the duration of the state of emergency.

(§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04; Ord. 13-18(3), 5-8-13; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15)

ATTACHMENT 11

ORDINANCE NO. 15-18(7)

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, is hereby amended and reordained as follows:

By Amending:
Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities; collocation, replacement, and removal of transmission equipment

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan, in a manner that complies with Section 704 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)) for new personal wireless service facilities and collocations and replacements that result in a substantial change in the physical dimensions of an eligible support structure; and to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1455) and 47 CFR § 1.40001 for collocations and replacements that do not result in a substantial change in the physical dimensions of an eligible support structure. Each personal wireless service facility and the transmission equipment of any other wireless service shall be subject to the following, as applicable:

a. *Application for approval*: An application providing the following information shall be required for each personal wireless service facility (hereinafter, "facility") and transmission equipment that will be collocated or replace existing equipment on an eligible support structure:

Application Requirements	Type of Application			
	I	II	III	C/R
1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.	X	X	X	X
2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.	X	X	X	X
3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.	X	X	X	X
4. *Plans and supporting drawings, calculations, and documentation.* Except where the facility will be located entirely within an eligible support structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations, and documentation shall show:	X	X	X	X
(a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).	X	X	X	X

Application Requirements	Type of Application			
	I	II	III	C/R
(b) *Elevation and coordinates.* The benchmarks and datum used for elevations shall coincide with the State Plane VA South US Survey Feet based on the North American Datum of 1983 (NAD 83), and the benchmarks shall be acceptable to the county engineer.	X	X	X	X
(c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other equipment.	X	X	X	X
(d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.	X	X	X	X
(e) *Topography.* Except where the facility would be attached to an eligible support structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.		X	X	
(f) *Trees*. The caliper and species of all trees where the dripline is located within fifty (50) feet of the facility. The height, caliper, and species of any tree that the applicant is relying on to provide screening of the monopole or tower. The height, caliper and species of the reference tree. The caliper and species of all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.	X	X	X	
(g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing, and landscaping.	X	X	X	X
(h) *Location of accessways.* The location of all existing vehicular accessways and the location and design of all proposed vehicular accessways.	X	X	X	X
(i) *Location of certain structures and district boundaries.* Except where the facility would be attached to an eligible support structure or an existing building, residential and commercial structures~~,~~ and residential and rural areas district boundaries.	X	X	X	
(j) *Proximity to airports.* If the proposed monopole or tower will be taller than one hundred fifty (150) feet, the proximity of the facility to commercial and private airports.		X	X	
5. *Photographs.* Photographs of the location of the proposed monopole or tower shall be provided that include, for applications for Tier II facilities, the reference tree, and for applications for Tier III facilities, the area within fifty (50) feet of the proposed monopole or tower. These photographs shall include reference points to enable the lease area, the vehicular access, the trees that will remain, and the trees that will be removed, to be identified. In addition, photographs, where possible, or perspective drawings of the facility site and all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.		X	X	
6. *Balloon tests.* For any proposed monopole or tower, photographs taken of a balloon test, which shall be conducted, if requested by the agent, as follows:				
(a) *Scheduling.* The applicant shall contact the agent within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the agent with at least seven (7) days prior notice; provided		X	X	

Application Requirements	Type of Application			
	I	II	III	C/R
that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent.				
(b) *Marking key boundaries and locations.* Prior to the balloon test, the locations of the access road, the lease area, the tower site, the reference tree, and the tallest tree within twenty five (25) feet of the proposed monopole shall be surveyed and staked or flagged in the field.		X	X	
(c) *Balloon height.* The test shall consist of raising one or more balloons from the facility site to a height equal to the proposed facility.		X	X	
(d) *Balloon color or material.* The balloons shall be of a color or material that provides maximum visibility.		X	X	
(e) *Photographing balloon test.* The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as deemed appropriate by the agent. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph.		X	X	
7. *Additions of antennas.* If antennas are proposed to be added to an eligible support structure or an existing building, all existing antennas and other equipment on the structure, building, or facility, as well as all ground equipment, shall be identified by owner, type, and size. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.	X	X	X	X
8. *Site under conservation or open space easement.* If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.		X	X	
9. *Photographic simulations*. At the request of the agent, photographic simulations of the proposed facility.		X	X	
10. *Statement of justification for exempt collocation*. If the application is for an exempt collocation, a statement of the justification for the application qualifying as an exempt collocation.				X
11. *Evidence of prior approval*. Approval letters or actions from the County authorizing the initial construction of the facility and any approval letters or actions for modifications of the facility after initial construction. If no approvals were granted by the County for the facility the applicant shall provide evidence that the facility was constructed lawfully.				X
12. *Special exception*. If the proposed facility does not comply with any provision of section 5.1.40, the applicant shall request a special exception in writing as part of the application. The request shall identify which regulation in section 5.1.40 for the special exception is requested and a justification for the special exception.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

b. *Development requirements*. Each facility or transmission equipment may be established upon approval as provided in subsection (c) provided that the application satisfies the applicable requirements of subsection (a) and demonstrates that the facility or transmission equipment will be installed and operated in compliance with all applicable provisions of this chapter, and the following:

Development Requirements	Type of Application			
	I	II	III	C/R
1. *General design.* The facility shall be designed, installed, and maintained as follows:				
(a) *Guy wires*. Guy wires are prohibited.	X	X	X	
(b) *Outdoor lighting*. Outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law.	X	X	X	
(c) *Ground equipment*. Any ground equipment shelter not located within an eligible support structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent.	X	X	X	
(d) *Whip antenna*. A whip antenna less than six (6) inches in diameter may exceed the height of the facility, the eligible support structure, or the existing building.	X	X	X	
(e) *Grounding rod*. A grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the eligible support structure, or the existing building.	X	X	X	
2. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an eligible support structure, or an existing building shall be subject to the following:	X	X	X	
(a) *Number of arrays*. The total number of arrays of antennas shall not exceed three (3). All types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.	X	X	X	
(b) *Size*. Each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty two (1152) square inches.	X	X	X	
(c) *Projection*. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) from the facility, structure or building; and	X	X	X	
(d) *Color*. Each antenna and associated equipment shall be a color that matches the facility, structure or building.	X	X	X	
3. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.	X	X	X	
4. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.	X	X	X	
5. *Ground equipment shelter; fencing.* Any ground equipment shelter not located within an existing building shall be fenced only with the approval of the agent upon finding that the fence: (i) would protect the facility from trespass in areas	X	X	X	

Development Requirements	Type of Application			
	I	II	III	C/R
of high volumes of vehicular or pedestrian traffic or, in the rural areas, to protect the facility from livestock or wildlife; (ii) would not be detrimental to the character of the area; and (iii) would not be detrimental to the public health, safety or general welfare.				
6. *Screening and siting to minimize visibility.* The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility also shall be sited to minimize its visibility from any entrance corridor overlay district, state scenic river, national park or national forest, regardless of whether the site is adjacent to the district, river, park or forest. If the facility would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.		X	X	
7. *Open space plan resources.* The facility shall not adversely impact resources identified in the natural resources chapter of the county's comprehensive plan and the parks and green systems chapters in any county master plan.		X	X	
8. *Horizontal separation of multiple facilities.* The facility shall not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.		X		
9. *Diameter of monopole.* The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.		X		
10. *Height of monopole.* The top of the monopole, measured in elevation above mean sea level, shall not be more than ten (10) feet taller than the tallest tree within twenty-five (25) feet of the monopole, and shall include any base, foundation or grading that raises the monopole above the pre-existing natural ground elevation.		X		
11. *Color of monopole, antennas, and equipment.* Each monopole shall be a dark brown natural or painted wood color that blends into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment shelter, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not closely match the color of the monopole if they are enclosed within a ground equipment shelter or within or behind an approved structure, façade or fencing that: (i) is a color that closely matches that of the monopole; (ii) is consistent with the character of the area; and (iii) makes the ground equipment, ground equipment shelter, and the concrete pad invisible at any time of year from any other parcel or a public or private street.		X	X	
12. *Placement of cables, wiring, and similar attachments.* Each wood or concrete monopole shall be constructed so that all cables, wiring, and similar attachments that run vertically from the ground equipment to the antennas are placed on the monopole to face the interior of the site and away from public view, as determined by the agent. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.		X		
13. *Special use permit conditions*. All conditions of approval of a special use permit.			X	
14. *No substantial change*. The collocation or replacement shall not result in a substantial change to the physical dimensions of an eligible support structure.				X
15. *Replacement of wooden monopole with metal monopole*. The replacement of a wooden monopole with a metal monopole: (a) The monopole is setback farther in distance than its height to any lot line, or is located closer in distance than its height to any lot line and the document authorized by section 5.1.40(c)(3) exists.	X			

Development Requirements	Type of Application			
	I	II	III	C/R
(b) The monopole is located closer in distance than its height to any lot line and the document authorized by section 5.1.40(c)(3) does not exist and, for the purposes of this subsection, the monopole shall be classified as a Tier II facility.		S		

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to a special exception.

c. *Applicability of other regulations in this chapter.* Except as otherwise provided in this subsection, each facility or transmission equipment shall be subject to all applicable regulations in this chapter:

Applicability of other Development Requirements in this Chapter	Type of Application			
	I	II	III	C/R
1. *Building site.* Notwithstanding section 4.2.3(a), a facility is not required to be located within a building site.	X	X	X	X
2. *Vehicular access*. Vehicular access to the facility site or tower site shall be subject to the requirements of section 4.2 and shall not be exempt under section 4.2.6(c).	X	X	X	X
3. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney as to addressing development on the part of the abutting parcel sharing the common lot line that is within the monopole or tower's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.	X	X	X	X
4. *Area, bulk, and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.	X	X	X	X
5. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.	X	X	X	X
6. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32, and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.	X	X	X	X

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

d. *Performance standards and requirements for approved applications*. In addition to the applicable development requirements in subsections (b) and (c), the following performance standards and requirements shall apply to facilities, as applicable:

Performance Standards and Requirements	Type of Application			
	I	II	III	C/R
1. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.		X		
2. *Tree conservation plan; compliance; amendment.* The installation, operation, and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation, and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.	X	X	X	
3. *Completion of installation; submitting certifications of compliance*. Within thirty (30) days after completion of the installation of the facility, the applicant shall provide to the agent prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the tower or monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the tower or monopole and its width does not exceed a diameter of one (1) inch.	X	X	X	
4. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a tower or monopole's use for personal wireless service or any service facilitated by transmission equipment is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility and any transmission equipment shall be disassembled and removed from the facility site within ninety (90) days after the date its use for personal wireless service or any service facilitated by transmission equipment is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.

e. *Application review and action*. Each application shall be reviewed and acted on as follows:

Application Review and Action	Type of Application			
	I	II	III	C/R
1. *Nature of review and action.* The nature of the review and action on submitted applications are as follows:				
(a) Ministerial review and approval by the department of community development to determine compliance with applicable requirements of this section.	X	X		X[1]
(b) Legislative review and approval of a special use permit by the board of supervisors, subject to the applicable requirements of this section and of sections 33.4 and 33.8; to the extent there is any conflict between the time for action in this subsection and in section 33.4, this section shall prevail.			X	
[1]Notwithstanding any other provision of this chapter, an application for an exempt collocation shall not be subject to review by the architectural review board and a certificate of appropriateness shall not be required therefor.				
2. *Time for action*. The application shall be acted upon within:				
(a) 60 days.	X	X		X
(b) 90 days.	S[2]			
(c) 150 days.		S[2]	X	
[2]If the application requires a special exception, the time for acting on the special exception applies to the entire application.				
3. *Calculating the time for action*. The time for action on an application shall be calculated as follows:				
(a) *Commencement*. The time for action on an application shall begin on:				
(i) The date the application is received in the department of community development.	X			X
(ii) The submittal date established for this type of application by the director of planning.		X	X	
(b) *Determination of completeness*. Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required by this section. If any required information is not provided, the department shall inform the applicant within the thirty (30) day period of the information must be submitted in order for the application to be determined to be complete.	X	X	X	X
(c) *Resubmittal*. Within ten (10) days after a resubmittal is received, the department of community development shall determine whether the application includes all of the applicable information required by the initial notice of incompleteness. If any required information was not provided, the department shall inform the applicant within the ten (10) day period of the information must be submitted in order for the application to be determined to be complete. Second or subsequent notices that information is missing may not include information that was not identified in the original notice of incompleteness.	X	X	X	X
(d) *Tolling*. The running of the time for action shall be tolled between the date the department informs the applicant that its application is incomplete and the date on which the department receives all of the required information from the applicant.	X	X	X	X

Application Review and Action	Type of Application			
	I	II	III	C/R
(e) *Extending time for action*. The time by which action must be taken may be extended upon request by, or with the consent of, the applicant.	X	X	X	X
4. *Notice.* Notice to third parties shall be provided as follows:				
(a) Notice of the agent's consideration of an application for a Tier I facility with a special exception or a Tier II facility shall be sent by the agent to the owner of each parcel abutting the parcel on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, and the appropriate county office where the complete application may be viewed. The notice shall be mailed by first class mail or hand delivered at least ten (10) days before the agent acts on the application. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved facility and shall not be the basis for an appeal.	S	X		
(b) Notice of public hearings shall be provided as required by section 33.4(m).			X	
5. *Action*. An application shall be acted on as follows:				
(a) The application shall be approved if it satisfies all of the applicable requirements of this section.	X	X		X
(b) The application shall be acted on as provided in sections 33.4 and 33.8.			X	
6. *Disapproval of application; appeal.* If an application is disapproved:				
(a) If the agent disapproves an application, he shall identify which requirements were not satisfied and inform the applicant what needs to be done to satisfy each requirement. The applicant may appeal the disapproval of an application to the board of supervisors. An appeal shall be in writing and be received in the office of the clerk of the board of supervisors within ten (10) calendar days after the date of the disapproval by the agent. In considering an appeal, the board may affirm, reverse, or modify in whole or in part, the decision of the agent, and its decision shall be based upon the applicable requirements of this section.	X	X		X
(b) In lieu of the appeal provided in subsection (a), the applicant at its sole option may appeal the disapproval of the application related to an alleged violation of 47 USC § 332(c)(7) or 47 CFR § 1.40001, as applicable, in any court of competent jurisdiction.	X		X	X
(c) The applicant may appeal the decision of the board of supervisors as provided in Virginia Code § 15.2-2285 and section 33.4.			X	
7. *Effect of failure to act within time for action*. The failure to act on an application within the time for action shall:				
(a) Be deemed to be approval of the application; provided that the deemed grant does not become effective until the applicant notifies the department of community development in writing after the review period has expired that the application has been deemed approved.				X
(b) Create a rebuttable presumption that the failure to timely act was not reasonable under 47 U.S.C. § 332(c)(7)(B)(ii).	X	X	X	

The following abbreviations are used in this table:

I, II, and III: Refer to Tier I, Tier II, and Tier III facilities, respectively.
C/R: Refers to exempt collocations and exempt replacements of transmission equipment.
X: Refers to a requirement that applies to the corresponding facility or transmission equipment.
S: Refers to an alternative review period that applies when an application for a special exception accompanies the application.

f. *Collocation or replacement that would result in a substantial change to an eligible support structure*. Any collocation or replacement of transmission equipment that would result in a substantial change in the physical dimensions of an eligible support structure shall be subject to the procedures and standards for a Tier I facility. A special exception shall be required for any substantial change that does not satisfy the standards for a Tier I facility. Any collocation or replacement approved for an eligible support structure by special use permit prior to October 13, 2004 shall not reclassify the eligible support structure as a Tier I, II, or III facility.

g. *Removal of transmission equipment on any eligible support structure*. Any transmission equipment on any eligible support structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.

h. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.

i. *Administration of special use permits for facilities approved prior to October 13, 2004; conditions*. If any condition of a special use permit for an eligible support structure approved prior to October 13, 2004 is more restrictive than a corresponding standard in this section, the corresponding standard in this section shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in this section and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.

j. *Mobile personal wireless service facilities*. Mobile personal wireless service facilities ("MPWSF") shall not be subject to any requirements of section 5.1.40, and are otherwise permitted by right in any zoning district, subject to the following:

    1. *Zoning clearance required; temporary non-emergency event*. The owner shall obtain a zoning clearance under section 31.5 prior to placing a MPWSF on any site for a temporary non-emergency event. The MPWSF may be placed on the site for a maximum of seven (7) consecutive days, and shall not be placed on any site for any temporary non-emergency event more than twice in a calendar year.

    2. *Zoning clearance required; declared state of emergency*. If a state of emergency is declared by the President of the United States, the Governor of the Commonwealth of Virginia, or the board of supervisors, the owner shall obtain a zoning clearance under section 31.5 within forty-five (45) days after placing a MPWSF on any site. The MPWSF may be placed on the site for the duration of the state of emergency.

    (§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04; Ord. 13-18(3), 5-8-13; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15)