

**ACTIONS**  
**Board of Supervisors Meeting of December 5, 2012**

December 6, 2012

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> <li>• Meeting was called to order at 9:04 a.m. by the Chair, Ms. Mallek. All BOS members were present. (Mr. Snow arrived at 9:15 a.m.) Also present were Tom Foley, Larry Davis, Ella Jordan and Travis Morris.</li> </ul>	
<p>4. Adoption of Final Agenda.</p> <ul style="list-style-type: none"> <li>• <u>Ann Mallek</u> stated that she would like to add discussion of a proposed resolution in support of rural post offices.</li> <li>• <u>Chris Dumler</u> stated that he would like to add discussion of an outstanding proffer for Eagles Landing.</li> <li>• <b>ACCEPTED</b> the final agenda.</li> </ul>	
<p>5. Brief Announcements by Board Members.</p> <p><u>Rodney Thomas</u></p> <ul style="list-style-type: none"> <li>• Announced his intent to run for reelection as the Rio District Supervisor to the Board in 2013.</li> </ul> <p><u>Dennis Rooker</u></p> <ul style="list-style-type: none"> <li>• Passed around a handout of examples of the Insync installations of adaptive traffic control systems.</li> </ul>	
<p>6. Recognitions:</p> <p>a. Introduction of Deputy Police Chief, Ron Lantz.</p> <ul style="list-style-type: none"> <li>• Police Chief Sellers introduced the newly hired Deputy Police Chief, Ron Lantz.</li> </ul> <p>b. Muscular Dystrophy Association's Fill the Boot Drive, Liz Nixon.</p> <ul style="list-style-type: none"> <li>• Announced that \$11,872.00 was raised this year during the Fill the Boot Drive, for a total of \$52,000 and presented Seth Grubb, Robbie Gilmer and the Local Union with a plaque.</li> </ul> <p>c. Monticello Artisans Trail First Year.</p> <ul style="list-style-type: none"> <li>• Chair recognized the program and the individuals responsible for its success.</li> </ul>	
<p>7. From the Public: Matters Not Listed for Public Hearing on the Agenda.</p> <p><u>The following individuals spoke about the proposed firearms training facility:</u></p> <ul style="list-style-type: none"> <li>• Douglas McAdams</li> <li>• Laurel Davis</li> <li>• Sarah Donnelly</li> <li>• Jay Roston</li> <li>• Jerome Beazly</li> <li>• Leroy Thomas</li> <li>• D. G. VanClief</li> <li>• Lucian Jackson, Sr.</li> <li>• Michael Kadick</li> <li>• Jeff Werner</li> <li>• <u>Charles Battig</u> presented for the Board's consideration a resolution to protect citizen's property rights.</li> </ul>	

	<ul style="list-style-type: none"> <li>• <u>Michael Walker</u>, a senior at Monticello High School, spoke about his group's CAP project on the Route 29 bypass.</li> <li>• <u>Will Decker</u>, a senior at Monticello High School, spoke about his group's CAP project on funding sidewalks in the County.</li> </ul>	
8.2	<p>FY2013 Budget Amendment and Appropriations.</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> appropriations #2013054, #2013055, #2013056 and #2013057.</li> <li>• In terms of Appropriation #2013056, Board members asked for a copy of the RFP issued for the consultant services and a list of the ECC Management Board members.</li> </ul>	<p><u>Clerk</u>: Notify OMB, Finance and appropriate individuals.</p> <p><u>County Executive</u>: Provide information.</p>
8.3	<p>ZMA-2010-00013. Hollymead Town Center (A-2), Request to grant an additional extension of a request to amend the proffers.</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> the deferral extension request for ZMA-2010-00013 - Hollymead Town Center (A-2) until not later than April 15, 2013.</li> </ul>	<p><u>Wayne Cilimberg</u>: Proceed as approved and notify applicant.</p>
8.4	<p>WPO-2011-00066. Ragged Mountain Dam – Request to extend deadline for installing permanent vegetation.</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> extending the deadline to May 1, 2014 for permanent vegetation to be installed on all denuded areas.</li> </ul>	<p><u>Glenn Brooks</u>: Proceed as approved and notify applicant.</p>
8.5	<p>Turner Mountain Easement - Supplement to Deed of Easement for 3080 Turner Mountain Road.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution to approve, and <b>AUTHORIZED</b> the County Executive to sign in a form approved by the County Attorney, the supplement to Deed of Easement over parcel 05800-00-00-064A5 and any other necessary related documents.</li> </ul>	<p><u>Clerk</u>: Forward copy of signed resolution to County Attorney's office. (Attachment 1)</p> <p><u>County Attorney</u>: Provide Clerk with copy of fully executed documents. (Attachment 2)</p>
8.6	<p><b><u>SDP-2012-00053. Public Safety Training Facility (Albemarle County Firearms Range) (Phase I).</u></b></p> <ul style="list-style-type: none"> <li>• <b>Pulled</b> and discussed at end of meeting.</li> </ul>	
8.7	<p>Forest Lakes School Safety Improvements.</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> the installation of the flashing school zone speed limit and end school zone signs for increased safety in the community and <b>AUTHORIZED</b> the County Executive to sign the VDOT agreement for the installation and maintenance of the signs.</li> </ul>	<p><u>Jack Kelsey</u>: Proceed as authorized. Provide Clerk's office with fully executed copy of agreement. (Attachment 3)</p>
8.8	<p>SDP-2012-00054. Old Trail Blocks 1 &amp; 3C Preliminary Site Plan; SUB-2012 – Variations from Old Trail Village Code of Development (Variations #10 and #11).</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> variations #10 and #11, with conditions as recommended by staff.</li> </ul>	<p><u>Clerk</u>: Set out conditions. (Attachment 4)</p>
8.9	<p>SUB-2012-00103. Old Trail Block 14 – Preliminary Subdivision Plan-Variation from Old Trail Village Code of Development (Variation #12).</p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b> variation request #12 subject to one condition.</li> </ul>	<p><u>Clerk</u>: Set out conditions. (Attachment 5)</p>
8.10	<p>2010 State Homeland Security Program Grant; Citizen Preparedness (CFDA #97.073) Resolution.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution authorizing the County Executive, the ECC Management Coordinator or the ECC Executive Director to execute all VDEM Grant documents necessary to obtain</li> </ul>	<p><u>Clerk</u>: Forward copy of signed resolution to ECC. (Attachment 6)</p>

	the 2010 State Homeland Security Grant.	
9.	<p><b><u>Pb. Hrg: SP-2012-00026. Ntelos Wireless at CV829 Keene "Flatwood Land Trust" - Tier III (Signs # 2&amp;5).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED SP-2012-00026</b>, by a vote of 6:0, subject to the recommended conditions, and <b>APPROVED</b> the modification of Section 5.1.40 (d)(6) under the special exception criteria of Section 31.8 of the Zoning Ordinance to allow the facility to extend no more than 7 feet above the reference tree, to permit it to extend 30 feet above the reference tree..</li> </ul>	Clerk: Set out conditions of approval. (Attachment 7)
10	<p><b><u>Pb. Hrg: SP-2012-00027. Verizon Wireless-Old Lynchburg, Tier III (Sign #53).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED SP-2012-00027</b>, by a vote of 6:0, subject to the recommended condition, and <b>APPROVED</b> modifications for Sections 5.1.40(c)(3),(c)(4),(c)(5),(d)(5),(d)(6) and (d)(7) under the special exception criteria of Section 31.8.</li> <li>• It was suggested that the ARB hold a work session and review the modification issues, and provide comments on the direction staff is taking.</li> <li>• <b>CONSENSUS</b> that in the future applicants provide propagation maps of the areas to be served by the towers.</li> </ul>	Clerk: Set out conditions of approval. (Attachment 7)
11.	<p><b><u>Pb. Hrg: 11-03( ) – Agricultural and Forestal Districts:</u></b></p> <p>a. <b>AFD-2012-00006. Carter’s Bridge AFD – Addition.</b></p> <p>b. <b>AFD-2012-00007. Blue Run AFD – District Review.</b></p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b>, by a vote of 6:0, Ordinance No. 12-03(2).</li> </ul>	Clerk: Forward copy of signed ordinance to Community Development and County Attorney’s office. (Attachment 8) Prepare letters for Chairman’s signature.
12.	<p><b><u>Pb. Hrg: ZTA- 2012-00006. Legislative Review Process Improvements.</u></b></p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b>, by a vote of 6:0, Ordinance No. 12-18(7) to be effective April 1, 2013.</li> </ul>	Clerk: Forward copy of signed ordinance to Community Development and County Attorney’s office. (Attachment 9)
13.	<p><b><u>Pb. Hrg: Lease for Ivy Creek Natural Area.</u></b></p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>AUTHORIZED</b> the County Executive to sign the proposed lease agreement.</li> </ul>	<u>Parks and Rec/County Attorney:</u> Provide Clerk with fully executed copy of agreement. (Attachment 10)
	<b>Recessed</b> at 11:24 a.m. and <b>Reconvened</b> at 11:34 a.m.	
14.	Fire/Rescue Overtime. <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
15.	Strategic Prevention Fund – State Incentive Grant (SPF-SIG) Overview, Alexandra London-Gross. <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
16.	Update on Safe Schools Grant Program Progress, Gretchen Ellis. <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
17.	Charlottesville/Albemarle County Inter-City Leadership Visit (Austin Trip). <ul style="list-style-type: none"> <li>• <b>Motion</b> to rescind previous vote to send three people to inter-City leadership visit to Austin <b>failed</b> by a vote of 3:3(Thomas/Boyd/Dumler).</li> <li>• <b>CONSENSUS</b> that Ken Boyd, Lee Catlin and Susan Stimart would participate in the inter-</li> </ul>	

City leadership visit to Austin.		
18.	<p>Closed Meeting. Personnel and Legal Matters.</p> <ul style="list-style-type: none"> <li>At 12:54 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; and under subsection (7) to consult with and be briefed by legal counsel and staff regarding the Redfields litigation because a public discussion would adversely affect the litigating posture of the County.</li> </ul>	
19.	<p>Certified Closed Meeting.</p> <ul style="list-style-type: none"> <li>At 2:49 p.m., the Board reconvened into open meeting and certified the closed meeting.</li> </ul>	
20.	<p>Boards and Commissions: Appointments.</p> <ul style="list-style-type: none"> <li><b>REAPPOINTED</b> Mr. Jean Lorber to the ACE Appraisal Review Committee, with said term to expire December 31, 2013.</li> <li><b>REAPPOINTED</b> Mr. Bruce Wardell to the Architectural Review Board, with said term to expire November 14, 2016.</li> <li><b>REAPPOINTED</b> Mr. Kevin Quick as Scottsville District representative, Mr. William Rich as Rio District representative, Mr. John Lowry as Samuel Miller District representative and Ms. Virginia Gardner as White Hall District representative to the Equalization Board, with said terms to expire December 31, 2013.</li> <li><b>REAPPOINTED</b> Mr. William Kehoe as joint City/County member to the Joint Airport Commission and Airport Authority, with said term to expire December 1, 2015.</li> <li><b>APPOINTED</b> Mr. John Post to the Joint Airport Commission, with said term to expire December 1, 2015.</li> <li><b>REAPPOINTED</b> Ms. Julia Monteith as the UVA representative to the Planning Commission, with said term to expire December 31, 2013.</li> <li><b>REAPPOINTED</b> Mr. Hamilton Moses, Mr. G. David Emmitt and Mr. William Lassetter to the Public Recreational Facilities Authority, with said terms to expire December 13, 2015.</li> </ul> <p><b><u>Appointed Board members to serve on the following committees:</u></b></p> <p><u>Ken Boyd:</u></p> <ul style="list-style-type: none"> <li>Jail Authority to fill an unexpired term to expire on December 31, 2015.</li> </ul> <p><u>Dennis Rooker:</u></p> <ul style="list-style-type: none"> <li>Police Department Citizens Advisory Committee</li> </ul> <p><u>Christopher Dumler:</u></p> <ul style="list-style-type: none"> <li>Fiscal Advisory Committee</li> <li>Rivanna River Basin Commission</li> </ul>	<p><u>Clerk:</u> Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.</p>
21.	<p>PVCC Annual Report, Frank Friedman</p> <ul style="list-style-type: none"> <li><b>RECEIVED.</b></li> </ul>	
22.	<p>Proposed School Fund Balance Policy.</p> <ul style="list-style-type: none"> <li><b>CONSENSUS</b> to support a two percent maximum for the School Fund Balance and to</li> </ul>	

	support the proposed policy.	
23.	<p><b>Work Session:</b> ZTA-2010-0004. Phase III – Industrial Uses.</p> <ul style="list-style-type: none"> <li>• <b>CONSENSUS</b> to set public hearing for February 13, 2013.</li> </ul>	<u>Clerk:</u> Advertise and schedule on agenda.
24.	<p><b>Work Session:</b> Five Year Financial Plan.</p> <ul style="list-style-type: none"> <li>• By a vote of 4:2 (Boyd/Thomas), <b>APPROVED</b> the Five Year Financial Plan as presented.</li> </ul>	<u>OMB:</u> Proceed as approved.
25.	<p>From the Board: Committee Reports and Matters Not Listed on the Agenda.</p> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> <li>• By a vote of 6:0, <b>ADOPTED</b> resolution in support of Rural Post Offices.</li> </ul> <p><u>Christopher Dumler:</u></p> <ul style="list-style-type: none"> <li>• <b>DIRECETED</b> staff to obtain the voluntary easement for a greenway from Eagles Landing.</li> <li>• Consent Agenda Item 8.6, by a vote of 6:0 <b>APPROVED</b> the special exceptions to waive minimum design standards of Section 4.12.15(a)(surface material) and 4.12.15(g) (curb and gutter) for the parking lot and two way access aisles based upon the analysis provided in the report and <b>APPROVED</b> the special exceptions to waive parking lot requirements of Section 32.7.9.7(b) (Interior Parking Lot Landscaping) and 32.7.9.8(c)(2)(Screening of Parking Lot) based upon the analysis provided in the report.</li> <li>• <b>CONSENSUS</b> to add public information session on Public Safety Training Facility to February 13, 2013 night meeting agenda.</li> </ul>	<p><u>Clerk:</u> (Attachment 11)</p> <p><u>Bill Fritz:</u> Proceed as directed.</p> <p><u>Clerk:</u> Schedule on agenda.</p>
26.	<p>From the County Executive: Report on Matters Not Listed on the Agenda.</p> <p><u>David Benish:</u></p> <ul style="list-style-type: none"> <li>• Provided the Board with a status update announcing that the City is undertaking a study of CAT services, and will hold a public meeting on December 17, 2012 and will receive public comment until January 17, 2013, after the meeting.</li> </ul>	
27.	<p>Adjourn to December 12, 2012, 4:00 p.m., Lane Auditorium.</p> <ul style="list-style-type: none"> <li>• At 5:25 p.m., the Board adjourned until December 12, 2012, Lane Auditorium.</li> </ul>	

ewj/tom

- Attachment 1 – Resolution - Turner Mountain Easement
- Attachment 2 – Supplement to Deed of Easement for 3080 Turner Mountain Road
- Attachment 3 – Agreement - Forest Lakes School Safety Improvements
- Attachment 4 – Conditions - SDP-2012-00054. Old Trail Blocks 1 & 3C Preliminary Site Plan; SUB-2012 – Variations from Old Trail Village Code of Development (Variations #10 and #11)
- Attachment 5 – Condition - SUB-2012-00103. Old Trail Block 14 – Preliminary Subdivision Plan-Variation from Old Trail Village Code of Development (Variation #12)
- Attachment 6 – Resolution - 2010 State Homeland Security Program Grant; Citizen Preparedness (CFDA #97.073)
- Attachment 7 – Conditions of Approval on Planning items
- Attachment 8 – Ordinance No. 12-03(2)
- Attachment 9 – Ordinance No. 12-18(7)

Attachment 10 – Lease for Ivy Creek Natural Area  
Attachment 11 – Resolution in Support of Rural Post Offices

**RESOLUTION APPROVING AND ACCEPTING SUPPLEMENT TO DEED OF EASEMENT  
ON PARCEL 05800-00-00-064A5**

**WHEREAS**, Parcel 05800-00-00-064A5 (the "Property"), a 47.235-acre parcel located at 3080 Turner Mountain Road, is subject to the terms of a 1992 Rural Preservation Development Deed, co-held by the County and the Albemarle County Public Recreational Facilities Authority (PRFA), which limits the Property to a single dwelling; and

**WHEREAS**, John F. Harris and Amy B. Harris acquired the Property by deed dated October 12, 2006; and

**WHEREAS**, at the time of the Harris' purchase, the Property already housed a single dwelling; and

**WHEREAS**, shortly after their purchase of the Property, the Harris' began construction of a new dwelling, and

**WHEREAS**, though the Harris' did not demolish the then-existing dwelling, they removed its cooking facilities, making it no longer a "dwelling" under the County's Zoning Ordinance; and

**WHEREAS**, notwithstanding the removal of cooking facilities from the former dwelling, the PRFA remained concerned over the continued presence of this second structure on the Property; and

**WHEREAS**, to avert possible litigation by the PRFA, the County and the PRFA, as co-holders of the Rural Preservation Development Deed over the Property, engaged in discussions with the Harris' about how best to preserve the rural character of the Property, consistent with the terms of said Rural Preservation Development Deed; and

**WHEREAS**, the parties have voluntarily and tentatively agreed, subject to Board's approval, to subject the Property to certain additional covenants and restrictions, as outlined in that certain Supplement to Deed of Easement over Parcel 05800-00-00-064A5.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves and authorizes the County Executive to sign, in a form approved by the County Attorney, the Supplement to Deed of Easement over Parcel 05800-00-00-064A5 and any other necessary documents related thereto.

This document was prepared by:  
 Albemarle County Attorney  
 County of Albemarle  
 401 McIntire Road  
 Charlottesville, Virginia 22902

Tax Map and Parcel Number 05800-00-00-064A5

This deed is exempt from taxation under *Virginia Code* § 58.1-811(A)(3) and Clerk's fees under *Virginia Code* §17.1-266.

### **SUPPLEMENT TO DEED OF EASEMENT**

**THIS SUPPLEMENT TO DEED OF EASEMENT**, made this \_\_\_th day of \_\_\_\_\_, 2012 (the "Effective Date"), between **JOHN F. HARRIS** and **AMY B. HARRIS**, husband and wife, Grantors, hereinafter collectively referred to as the "Grantors" and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter sometimes referred to as the "County," whose address is 401 McIntire Road, Charlottesville, Virginia, 22902, and the **ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY**, a political subdivision of the Commonwealth of Virginia established pursuant to *Virginia Code* § 15.2-5600 *et seq.*, hereinafter sometimes referred to as the "PRFA," whose address is 401 McIntire Road, Charlottesville, Virginia, 22902; the County and the Albemarle County Public Recreational Facilities Authority are hereinafter collectively referred to as the "Grantees."

### **WITNESSETH**

**WHEREAS**, the Grantors are the owners in fee simple of the real property located in Albemarle County described as follows (the "Property"):

All that certain lot or parcel of land, together with improvements thereon and rights, privileges and appurtenances thereto belonging, situated in the Samuel Miller Magisterial District, Albemarle County, Virginia, containing 47.325 acres, more or less, designated as Lot 5, Turner Mountain Wood II Subdivision, as shown and described on a plat by Gloeckner Engineering\Surveying Inc., dated October 21, 1999, and recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 1871, page 453.

The Property is also identified in the County's tax maps as Tax Map and Parcel Number 05800-00-00-064A5, and is the same land acquired by the Grantors by a deed recorded in the land records of the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 3306, pages 170-172.

**WHEREAS**, by Deed of Easement dated June 30, 1992, and recorded in Albemarle County Deed Book 1283, at page 62, Richard T. Selden, individually, and Richard T. Selden, Administrator C.T.A. of the Estate of Martha Mathiasen Selden, Deceased, predecessors in interest to the Grantors herein, conveyed to the Grantors herein a Rural Preservation Development Easement over real estate consisting of 82.299 acres (hereinafter, the "Easement");

**WHEREAS**, the Grantors are the owners of a parcel of land described in the Easement as "Lot 5 containing 47.325 acres" and shown as "Lot 5" on the subdivision plat attached to and recorded with the Easement, as described in more detail herein (the "Property");

**WHEREAS**, the parties hereto mutually desire to reaffirm the Easement as it relates to the Property, and to add thereto certain supplemental terms and conditions contained herein which shall apply only to the Property; and



**NOW, THEREFORE**, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors hereby grant and convey to the Grantees, their successors and assigns, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, an open space easement in gross over the Property described above, restricting in perpetuity the use of the Property in the manner set forth herein:

1. The original dwelling house constructed in on the Property in 1999 (hereafter the “Original Dwelling”) has been converted into “an accessory non-residential structure” and shall remain as an accessory non-residential structure. The use of the Original Dwelling shall be limited to use by the occupants of the new primary single family dwelling permitted by the County for occupancy in 2009 (hereafter the “New Dwelling”) and to uses that are customary and accessory to the New Dwelling. Such customary and accessory uses may include such uses as a home office, art studio, music studio, sewing room, crafts room, play room, storage area, and other similar uses. The Original Dwelling may be used as a place for accessory sleeping accommodations for guests of the occupants of the New Dwelling. The Original Dwelling shall not be rented to third parties for any purpose or use at any time.

2. The Original Dwelling shall not be equipped with a stove, range, or conventional oven. The following items are permitted consistent with Albemarle County regulations for accessory non-residential structures: coffee pot, toaster oven, refrigerator and microwave oven or similar “quick heating” device similar to a microwave oven.

3. The Original Dwelling shall not be extended or enlarged.

4. No additional structures other than small (no more than 400 square feet) outbuildings or farm structures shall be built on the Property unless expressly provided for in this Deed or approved by the PRFA and County, and subject always to the provisions of Section 2(F) herein. Notwithstanding the terms of this paragraph, the parties agree that the Owners shall have the right to maintain and replace an existing barn containing approximately One Thousand Four Hundred Sixty-Four (1,464) square feet on the Property, provided that any replacement barn shall not exceed One Thousand Four Hundred Sixty-Four (1,464) square feet.

5. If the Original Dwelling is replaced or reconstructed, the replacement structure shall not exceed two thousand five hundred (2,500) square feet of floor space. The Original Dwelling shall be deemed to be replaced or reconstructed if the cost of the proposed replacement or reconstruction of the Original Dwelling exceeds fifty percent (50%) of the assessed value of the Original Dwelling at the time of the proposed replacement or reconstruction. In the event that such replacement or reconstruction is due to damage or destruction to the Original Dwelling, the assessed value used for such determination shall be the assessed value of the Original Dwelling immediately prior to such damage or destruction.

6. This Deed shall not impose any restrictions on the New Dwelling beyond those included in the Easement, including any restrictions regarding the future replacement of or modifications to the New Dwelling.

7. All other terms and restrictions of the Easement shall remain enforceable and in full force and effect.

AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF  
TIME ACTUATED FLASHING SCHOOL SPEED LIMIT SIGNS  
COUNTY OF **ALBEMARLE**  
**HOLLYMEAD ELEMENTARY SCHOOL**  
ROUTE **1670** LOCATION **Ashwood Boulevard**

WHEREAS, it is the desire of the **Board of Supervisors of the County of Albemarle, Virginia**, hereinafter referred to as BOARD, to enter into an agreement with the Virginia Department of Transportation, hereinafter referred to as DEPARTMENT, to install and maintain four (4) time actuated flashing school speed limit signs, hereinafter referred to as SIGNS, DEPARTMENT standard VR-6 lens size **30 X 72** inches, bearing the message **School Crossing Speed Limit 25 When Flashing** and indicating **25** MPH speed limit, at the following locations:

1. One each, flashing School Zone Speed Limit sign and End School Zone sign located 300 feet west of intersection of Ashwood Boulevard, Powell Creek Drive and Thornbridge Way.
2. One each, flashing School Zone Speed Limit sign and End School Zone sign located 300 feet east of intersection of Ashwood Boulevard, Powell Creek Drive and Thornbridge Way.

THEREFORE, it is mutually agreed between the BOARD and the DEPARTMENT that (1) all SIGNS shall conform to Section 46.2-873 of the Code of Virginia, as amended, in design, placement, and operation, (2) the BOARD will bear all costs in connection with the purchase, installation and maintenance of the signals, poles, conduits, cables, motors, relays, bulbs, and other parts and accessories necessary for proper and efficient operation of the SIGNS, plus the cost of electric current, (3) the DEPARTMENT will furnish to the BOARD, without cost, four (4) sign panels bearing the standard message and drilled to fit the signals installed, and (4) in the event the BOARD should fail to operate the signs in accordance with Section 46.2-873 of the Code of Virginia or maintain the signs to the satisfaction of the DEPARTMENT, the SIGNS will be removed by the DEPARTMENT at the expense of the BOARD.

**CONDITIONS**

**SDP-2012-00054. Old Trail Blocks 1 & 3C Preliminary Site Plan; SUB-2012 –  
Variations from Old Trail Village Code of Development (Variations #10 and #11)**

**VARIATION #10:**

- Provide an updated Density and Floor Area Range Table on page 26 of the Code of Development that states a minimum of 7,000sf for Block 3.

**VARIATION #11:**

- Provide an updated Street Specifications Table on page 23 of the Code of Development indicating the change in planting strip width and sidewalk width adjacent to Blocks 1 and 3.

**CONDITON**  
**SUB-2012-00103. Old Trail Block 14 – Preliminary Subdivision Plan**  
**Variation from Old Trail Village Code of Development (Variation #12)**

**VARIATION #12:**

- Provide an updated page 31, Table 7 that includes the revised setbacks for Block 14.

Governing Body Resolution  
State Homeland Security Program  
Community Emergency Response Team  
Emergency Equipment and Training Project  
\$4,800.00

BE IT RESOLVED BY THE Board of Supervisors OF THE County of Albemarle, Virginia  
(Governing Body) (Name of Applicant)

THAT the ECC Emergency Management Coordinator , OR the ECC Executive Director  
(Name or Title of Authorized Agent) (Name or Title of Authorized Agent)

the County Executive ,  
(Name or Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the named applicant, a public entity established under the laws of the State of Virginia, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and sub-granted through the State of Virginia.

### CONDITIONS OF APPROVAL ON PLANNING ITEMS

#### **SP-2012-00026. Ntelos Wireless at CV829 Keene “Flatwood Land Trust” - Tier III (Signs # 2&5).**

1. Development and use shall be in general accord with the conceptual plan titled “Keene (Flatwoods Land Trust) CV829” prepared by Brian V. Crutchfield., and dated 11-8-12 (hereafter “Conceptual Plan”), as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Conceptual Plan:
  - Height
  - Mounting type
  - Antenna type
  - Number of antennae
  - Distance above reference tree
  - Color
  - Location of ground equipment

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
  
2. Entrance design and location must be approved by the Virginia Department of Transportation before construction of the access road for this use may commence.

#### **SP-2012-00027. Verizon Wireless-Old Lynchburg, Tier III (Sign #53).**

1. Development and use shall be in general accord with what is described in the applicant's request and site plans, entitled “Old Lynchburg Road LTE (4G) Upgrade,” with a final submittal date of 9/10/12 (hereafter “Enlarged Site Plan”), as determined by the Director of Planning and Zoning Administrator. To be in general accord with the Enlarged Site Plan, development and use shall reflect the following major elements within the development essential to the design of the development, as shown on the Enlarged Site Plan:
  - Height
  - Mounting height
  - Antenna type
  - Number of antenna
  - Color
  - Location of ground equipment

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

#### **Special exception for the modifications:**

1. Section 5.1.40(c)(3)-no antenna to project more than 12 inches from a structure.
2. Section 5.1.40(c)(4)-tree conservation plan to be submitted prior to building permit.
3. Section 5.1.40(c)(5)-installation, operation and maintenance, to be in accordance with tree conservation plan.
4. Section 5.1.40(d)(5)-maximum size of base and diameter of tower.
5. Section 5.1.40(d)(6)-height of the structure in relation to the reference tree.
6. Section 5.1.40(d)(7)-color of pole with all attached equipment.

**ORDINANCE NO. 12-03(2)**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, 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 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

**By Amending:**

3-208 Blue Run Agricultural and Forestal District  
3-210 Carter's Bridge Agricultural and Forestal District

**CHAPTER 3. AGRICULTURAL AND FORESTAL DISTRICTS  
DIVISION 2. DISTRICTS**

**Sec. 3-208 Blue Run Agricultural and Forestal District.**

The district known as the "Blue Run Agricultural and Forestal District" consists of the following described properties: Tax map 22, parcel 10; tax map 35, parcels 22, 23, 24A, 26, 26B, 26B1, 26C, 26D, 28A, 29, 31, 32A, 41A, 41E, 43; tax map 36, parcels 6A, 9, 20; tax map 49, parcels 4A1, 4A5, 24, 24A, 24B; tax map 50, parcels 5, 5B, 32A, 41A, 41Q, 42A, 42A1, 43, 45B, 47, 47A, 47B; tax map 51, parcels 13, 14. This district, created on June 18, 1986 for not more than 8 years, since amended at its last review on December 5, 2012 to continue for not more than 10 years, shall next be reviewed prior to December 5, 2022.

(5-11-94; 7-13-94; 4-12-95; Code 1988, § 2.1-4(d); Ord. 98-A(1), 8-5-98; Ord. 01-3(3), 8-8-01; Ord. 02-3(3), 7-10-02; Ord. 09-3(4), 12-2-09; Ord. 10-3(3), 12-1-10; Ord. 11-3(2), 7-6-11; Ord. 11-3(4), 12-7-11)

**Sec. 3-210 Carter's Bridge Agricultural and Forestal District.**

The district known as the "Carter's Bridge Agricultural and Forestal District" consists of the following described properties: Tax map 101, parcels 55A, 60; tax map 102, parcels 17A, 17B, 17B1, 17C, 17D, 18, 19, 19A, 19C, 20B; tax map 111, parcel 48; tax map 112, parcels 1, 3, 15, 15A, 16E, 16E1, 16E2, 16F2, 16J, 16K, 18H, 19E, 19F, 20, 21, 33A, 37D; tax map 113, parcels 1, 1A, 6A, 11A, 11F, 11F1, 11F2, 11F3, 11G, 11G1, 11G2, 11G3, 11H, 11I, 11J, 11K; tax map 114, parcels 2, 25A, 30, 31B, 31C, 31D, 51, 55, 56, 57, 57C, 57D, 67C, 67D, 67E, 67F, 67G, 67H, 67H1, 67I(part), 68, 69, 70; tax map 115, parcel 10; tax map 122, parcels 4, 4A, 6, 7, 8, 9, 10, 12, 12D, 12E, 12N, 33, 33A, 36; tax map 123, parcel 13B; tax map 124, parcel 11; tax map 130, parcel 19B. This district, created on April 20, 1988 for not more than 10 years and last reviewed on July 9, 2008, shall next be reviewed prior to July 9, 2018.

(Code 1988, § 2.1-4(j); Ord. 98-A(1), 8-5-98; Ord. 98-3(1), 9-9-98; Ord. 99-3(2), 2-10-99; Ord. 99-3(4), 5-12-99; Ord. 08-3(1), 7-9-08; Ord. 09-3(4), 12-2-09)

**ORDINANCE NO. 12-18(7)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, ARTICLE III, DISTRICT 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 Provisions, Article II, Basic Regulations, Article III, District Regulations, and Article IV, Procedure, are hereby amended and reordained as follows:

**By Amending:**

Sec. 3.1	Definitions
Sec. 4.8.1	Determinations concerning unspecified uses
Sec. 4.15.5	Signs authorized by special use permit
Sec. 10.5.2	Where permitted by special use permit
Sec. 20.1	Intent, where permitted
Sec. 20.2	Application
Sec. 30.1.2	Application
Sec. 31.1	Designation of zoning administrator, authority
Sec. 34.4	Application for variances
Sec. 35.1	Fees

**By Amending and Renaming:**

	<b>Old</b>	<b>New</b>
Sec. 1.7	Official zoning map	Zoning map
Sec. 30.5.5	Permitted uses by right and special permit	Permitted uses by right and by special use permit

**By Repealing:**

Sec. 1.9	Application for land use permit; payment of delinquent taxes
Sec. 8.5.1	Applications and documents to be submitted
Sec. 8.5.2	Preapplication conferences
Sec. 8.5.3	Review and recommendation by the planning commission
Sec. 8.5.4	Review and action by the board of supervisors; effect of approval
Sec. 8.6	Amendments to planned development districts
Sec. 20A.3	Application requirements; required documents and information
Sec. 20A.4	Application plans
Sec. 31.6	Special use permits
Sec. 31.6.1	Reserved to board of supervisors
Sec. 31.6.2	Application
Sec. 31.6.3	Conditions
Sec. 31.6.4	Revocation
Sec. 31.8	Special exceptions
Sec. 33.0	Amendments
Sec. 33.1	Statement of purpose and intent
Sec. 33.2	Initiation of amendments
Sec. 33.2.1	Property owner petition
Sec. 33.2.2	Untitled
Sec. 33.2.3	Untitled
Sec. 33.3	Proffer of conditions
Sec. 33.3.1	Effect of conditions
Sec. 33.3.2	Zoning map notation
Sec. 33.3.3	Authority of zoning administrator
Sec. 33.4	Public hearing -- notice
Sec. 33.5	Report by planning commission to board of supervisors after hearing
Sec. 33.6	Limitation on filing new petition after original denial
Sec. 33.7	Withdrawal of petitions
Sec. 33.8	Posting of property



Sec. 33.8.1	Posting of property – planning commission hearing
Sec. 33.8.2	Validation of prior notice requirement (Amended 6- 19-96)
Sec. 33.8.3	Maintenance and removal of signs
Sec. 33.9	Matters to be considered in reviewing proposed amendments
Sec. 33.10	Schedule of review

Sec. 33.10.1	Untitled
Sec. 33.10.2	Untitled

**By Adding:**

Sec. 33.1	Purpose and intent
Sec. 33.2	Uniform requirements for the initiation of zoning text amendments and zoning map amendments
Sec. 33.3	Uniform procedures for zoning text amendments and county-initiated zoning map amendments
Sec. 33.4	Uniform procedures for owner-initiated zoning map amendments and special use permits
Sec. 33.5	Uniform procedures for special exceptions
Sec. 33.6	Zoning text amendments and zoning map amendments; relevant factors to be considered; effect of approval
Sec. 33.7	Owner-initiated zoning map amendments; authority to accept proffers
Sec. 33.8	Special use permits; relevant factors to be considered; conditions; revocation
Sec. 33.9	Special exceptions; relevant factors to be considered; conditions

**Chapter 18. Zoning**

**Article I. General Provisions**

**Sec. 1.7 Zoning map**

The zoning map is identified, and shall be interpreted, as follows:

- a. *Zoning map identified.* The zoning map is composed of the several maps and digital source files, and all dimensions, symbols, notations, and designations shown on the maps and in the digital source files, is maintained by the department of community development, and is incorporated by reference as part of this chapter. The zoning map is the digital form of the zoning map adopted on December 10, 1980, as amended by all zoning map amendments after that date. The zoning map also may exist in an analog zoning map book.
- b. *Zoning map establishes the location and boundaries of districts.* The location and boundaries of the districts created by this chapter are hereby established as shown on the zoning map. The zoning map also includes symbols that represent the existence of conditions, including proffers, attaching to the zoning of a parcel on the zoning map.
- c. *Interpretation.* The zoning map shall be interpreted as follows:
  1. *District lines follow lot lines and center lines; boundary designated.* The district boundaries shown on the zoning map are intended to follow the lot lines and the center lines of streets or alleys as they existed on December 10, 1980 and as hereafter amended; provided that where a district boundary obviously does not follow any such line, and is not depicted on an approved subdivision plat or site plan or described by dimensions or other means, the district boundary shall be determined by measurement using a scale.
  2. *Waterways, roads, streets, highways, railroads, and other rights-of-way; boundary not designated.* All waterways, alleys, roads, streets, highways, railroads, and other rights-of-way (collectively, “features”), if not otherwise specifically designated and if not part of a parcel abutting the feature, shall be deemed to be in the same district as the immediately abutting parcels, and the departing boundary lines from those abutting parcels shall be deemed to extend to the centerline of the feature. If the center line of a feature serves as a parcel boundary, the zoning of the feature, if not otherwise specifically designated, shall be deemed to be the same as that of the parcel to which it is a part.
  3. *Areas not otherwise designated.* The intent of this chapter is to have the entire unincorporated territory of the county within a district. Except for those features identified in subsection (c)(2), any

area shown on the zoning map having a white background shall be deemed to be in the rural areas (RA) district.

4. *Inconsistencies.* If there is an inconsistency between any information shown on the zoning map and any decision made by the board of supervisors or an interpretation of the zoning map made by the board of zoning appeals after December 10, 1980, then the decision of the board of supervisors or the interpretation of the board of zoning appeals shall govern.

d. *Alterations and amendments.* The zoning map shall not be altered or amended in any way except in compliance with the procedures and standards established by this chapter for a zoning map amendment.

**State law reference** – Va. Code §§ 15.2-2285(A), 15.2-2286(A)(7), 15.2-2300.

### **Sec. 3.1 Definitions**

...

*Digital source file:* The media type and format to which an analog or digital source material is encoded, and the file is used to produce a digital derivative.

...

*Owner:* The owner or owners of the fee simple interest of real property.

...

*Special exception:* An exception to the general regulations in any particular district pertaining to the size, height, area, bulk or location of structures or the areas and dimensions of land, water, and air space to be occupied by buildings, structures, and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, that is not permitted in any particular district except by a special exception granted under this chapter.

...

*Special use permit:* A permit for a special use that is not permitted in a particular district except by a special use permit granted under this chapter.

...

*Zoning map amendment:* An amendment to the zoning map, which may include changing the boundaries of one or more districts or the district classification of one or more parcels; also sometimes referred to as a “rezoning.”

...

*Zoning text amendment:* An amendment to the regulations of this chapter, which may include amending, changing or supplementing the regulations.

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

## **Article II. Basic Regulations**

### **Sec. 4.8.1 Determinations concerning unspecified uses**

Uses other than those specified in district regulations as permitted by right or accessory uses may be added to a district on application by an owner if the commission and board of supervisors find:

- a. That there is no clear intent to exclude such uses; and
- b. That the proposed use is appropriate within the district and would have no more adverse effects on other uses within the district, or on uses in adjoining districts, than would uses of the same general character permitted in the district.

In such cases, the board of supervisors shall proceed to amend the ordinance in accord with the provisions of section 33.

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

#### **Sec. 4.15.5 Signs authorized by special use permit**

Except as provided in subsection (d), electric message signs, off-site signs, and signs in public rights-of-way may be authorized only by special use permit, as provided herein:

...

- c. *Procedure and administration.* The application procedure, the findings and conditions to be applied by the board of zoning appeals when considering an application for a special use permit, and the authority to revoke such a permit, shall be as provided in section 33 of this chapter. In addition to the foregoing:
1. For an off-site sign, the board of zoning appeals shall also find that the issuance of a special use permit is necessary because an on-site sign would be ineffective to communicate its message off-site because of topography or vegetation.
  2. For an electric message sign, the board of zoning appeals shall also find that the sign complies with all applicable state laws for such signs.
  3. A permit number for each special use permit issued for an off-site sign shall be affixed to the sign in a conspicuous place.

...

**State law reference** – Va. Code §§ 15.2-2280, 15.2-2286.

### **Article III. District Regulations**

#### **Sec. 10.5.2 Where permitted by special use permit**

10.5.2.1 The board of supervisors may authorize the issuance of a special use permit for more lots than the total number permitted under section 10.3.1 and section 10.3.2; provided that no such permit shall be issued for property within the boundaries for the watershed of any public drinking water supply impoundment, and further provided that no such permit shall be issued to allow more development lots within a proposed rural preservation development than that permitted by right under section 10.3.3.3(b). (Added 11-8-89; Amended 5-5-04 effective 7-1-04)

The board of supervisors shall determine that such division is compatible with the neighborhood as set forth in section 33.8 of this chapter with reference to the goals and objectives of the comprehensive plan relating to rural areas including the type of division proposed and specifically, as to this section only, with reference to the following: (Amended 11-8-89)

...

**State law reference** – Va. Code §§ 15.2-2280, 15.2-2286.

#### **Sec. 20.1 Intent, where permitted**

PUD districts may hereafter be established by amendment to the zoning map in accordance with the provisions set forth generally for planned development districts in sections 8 and 33 and with densities and uses in locations in accordance with recommendations of the comprehensive plan. As described by the comprehensive plan, PUD districts are intended to serve as neighborhoods or mini-neighborhoods within designated communities and the urban area. Additionally, PUD districts may be appropriate where the establishment of a "new village" or the nucleus of a future community exists and where the PUD development would not preclude achievement of the county's objectives for the urban area, communities and villages.

In order to encourage the community function, appropriate commercial and industrial uses are provided in addition to a variety of residential uses. It is intended that commercial and industrial development be limited to a scale appropriate to the support of the residential uses within the PUD; provided that additional commercial and industrial activity may be permitted upon a finding that the area in which the PUD is to be located is not adequately served by such use.

It is intended that these regulations provide flexibility in residential development by providing for a mix of residential uses with appropriate nonresidential uses, alternative forms of housing, flexibility in internal relationships of design elements and, in appropriate cases, increases in gross residential densities over that provided in conventional districts.

**State law reference** – Va. Code §§ 15.2-2280, 15.2-2286.

### **Sec. 20.2 Application**

Notwithstanding the requirements and provisions of section 8, planned development districts, generally, where certain planned community districts have been established and have been developed or received final site development plan approval prior to the adoption of this ordinance, such districts shall be considered to have been established as PUD districts under this ordinance and shall be so designated on the zoning map.

**State law reference** – Va. Code §§ 15.2-2280, 15.2-2286.

### **Sec. 30.1.2 Application**

Overlay districts and amendments thereof shall be established in accordance with the provisions of section 33 of this chapter.

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

### **Sec. 30.5.5 Permitted uses by right and by special use permit**

...

30.5.5.2 Within the immediate environs of any stream designated in section 30.5.2, no person shall commence any use involving the construction of any structure, the cutting of any living tree over six (6) inches caliper measured at six (6) inches above ground level, or the grading or other like physical alterations of the immediate environs of such stream except as follows: (Amended 9-9-92)

...

d. The following uses by special use permit only:

...

6. Bridges, causeways and other similar structures designed for pedestrian and/or vehicular access; provided that the board of supervisors shall find, by clear and convincing evidence, in addition to the factors to be considered under section 33.8, that:

...

## **Article IV. Procedure**

### **Sec. 31.1 Designation of zoning administrator, authority**

The office of zoning administrator is hereby established, subject to the following:

- a. *Authority.* The zoning administrator shall have all necessary authority on behalf of the board of supervisors to administer and enforce this chapter. This authority includes, but is not limited to:
  1. Interpreting this chapter and the official zoning map;

2. Administering this chapter by making determinations and decisions on any matters arising under this chapter, including but not limited to, how a building, structure or use should be classified, whether a use is permitted within a particular district, whether a proposed building or structure complies with setback, height, bulk and other requirements, whether a building, structure, use or lot is nonconforming, and whether a lot meets minimum lot size requirements.
  3. Ordering in writing the remedying of any use or structure determined to be in violation of this chapter;
  4. Insuring compliance with this chapter, bringing legal action, including an action for injunction, abatement, civil penalties or other appropriate action or proceeding subject to appeal as provided by Virginia Code § 15.2-2311 and this chapter;
  5. In specific cases, making findings of fact and, with concurrence of the county attorney, conclusions of law regarding determinations of rights under Virginia Code §§ 15.2-2307 and 15.2-2311(C);
  6. Enforcing the provisions of this chapter regulating the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws;
  7. Making decisions and determinations as to whether a pending site plan, subdivision plat, building permit application or any other application subject to review and approval by the county or the program authority complies with this chapter;
  8. Administering and enforcing proffers accepted in conjunction with zoning map amendments, including: (i) ordering in writing the remedying of any noncompliance with the proffers; (ii) insuring compliance with the proffers by bringing legal action, including an action for injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee in the form of a surety bond, letter of credit, cash deposit, or another form of guarantee determined to be acceptable by the county attorney, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffers, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the zoning administrator, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part; and
  9. Keeping and making available for public inspection a conditional zoning index. The index shall provide ready access to the proffers accepted in conjunction with a zoning map amendment and the regulations provided for in a particular district or zone. The index also shall provide ready access to all proffered cash payments and expenditures disclosure reports prepared by the board of supervisors pursuant to Virginia Code § 15.2-2303.2. The zoning administrator shall update the index annually and no later than November 30 of each year.
- b. *Absence of specific authority not a limitation.* The specific authority expressly granted to the zoning administrator in other sections of this chapter shall not be construed to be a limitation on the authority of the zoning administrator to administer and enforce those sections where specific authority is not expressed.

**State law reference** – Va. Code §§ 15.2-2286(A)(4), (14), 15.2-2299, 15.2-2300.

## **Sec. 33 Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions**

### **Sec. 33.1 Purpose and intent**

The purpose and intent of section 33 is to establish the procedural and substantive requirements and criteria for considering and acting on zoning text amendments, zoning map amendments, special use permits, except for those delegated by this chapter to the board of zoning appeals, and special exceptions.

**State law reference** – Va. Code §§ 15.2-2285, 15.2-2286(A)(3), (4), (7), 15.2-2303.

### **Sec. 33.2 Uniform requirements for the initiation of zoning text amendments and zoning map amendments**

The board of supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires. The initiation of this process shall be as follows:

- a. *Initiation of a zoning text amendment.* Any zoning text amendment shall be initiated: (i) by resolution of the board of supervisors; or (ii) by motion or resolution of the commission. Any county officer or any other person may request that the board of supervisors or the commission initiate a zoning text amendment. The board of supervisors shall consider an owner-requested zoning text amendment at specified intervals of three (3) months on dates established by resolution of the board in January each year.
- b. *Initiation of a zoning map amendment.* Any proposed zoning map amendment shall be initiated: (i) by resolution of the board of supervisors; (ii) by motion or resolution of the commission; or (iii) by application of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor (collectively, the "owner") of the parcel(s) that is the subject of the proposed zoning map amendment ("owner-initiated application").
  1. *Required signatures on owner-initiated application.* Each owner-initiated application for a zoning map amendment shall be signed by the owner of each parcel that is the subject of the proposed zoning map amendment, provided that:
    - a. *Amendments to existing proffers.* An owner whose parcel is subject to proffers may apply to amend the proffers applicable solely to the owner's parcel, provided that written notice of the application is provided to the owners of other parcels subject to the same proffers under Virginia Code §§ 15.2-2204(H) and 15.2-2302. However, the signatures of the owners of the other parcels subject to the same proffers shall not be required
    - b. *Amendments to planned developments.* An owner within an existing planned development may apply for a zoning map amendment, and the signatures of any other owners within the planned development is required only if the amendment could result in or require: (i) a change in use, density or intensity on that parcel; (ii) a change to any regulation in a code of development that would apply to that parcel; (iii) a change to an owner's express obligation under a regulation in a code of development; or (iv) a change to the application plan that would apply to that parcel.
  2. *Documentation.* The director of planning may require the applicant to submit documentation establishing ownership of any parcel and the authority of the signatory to sign the application on behalf of the owner.

**State law reference** – Va. Code §§ 15.2-2285, 15.2-2286(A) (4), (7), 15.2-2302.

### **Sec. 33.3 Uniform procedures for zoning text amendments and county-initiated zoning map amendments**

Each zoning text amendment and each county-initiated zoning map amendment shall be subject to the following:

- a. *Determining completeness of the application for zoning map amendment; rejecting incomplete applications.* An application that provides all of the information required by the director of planning shall be determined to be complete and be accepted for review and decision.
- b. *Worksessions and community meetings.* The director of planning is authorized to schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, and community meetings, as he determines to be appropriate.
- c. *Public hearings.* Before the board of supervisors acts on a zoning text amendment or a zoning map amendment, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board also shall hold at least one public hearing before acting on the zoning text amendment or zoning map amendment.
- d. *Notice of public hearings.* Notice of public hearings shall be provided as follows:

1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204 and Virginia Code § 15.2-2285(C).
  2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application for a zoning map amendment shall be posted as provided in section 33.4(m)(2) to the extent those provisions are applicable in the context of the application.
- e. *Time for decision.* Decisions shall be made within the following periods:
1. *By the commission.* Once an application is determined to be complete as provided in subsection (a), it shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval, unless the commission extends the ninety (90) day period.
  2. *By the board of supervisors.* An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the board extends the twelve (12) month period.
  3. *Referral.* The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board is within the twelve (12) month period provided in subsection (e)(2), unless the twelve (12) month period is extended.
- f. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

**State law reference** – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A) (4), (7).

### **Sec. 33.4 Uniform procedures for owner-initiated zoning map amendments and special use permits**

Each application for an owner-initiated zoning map amendment or special use permit, except for those delegated by this chapter to the board of zoning appeals under section 4.15.5, shall be subject to the following:

- a. *Pre-application meeting.* A pre-application meeting shall be held with each prospective applicant (the “applicant”), and the applicant shall complete and submit information on county-provided forms before submitting an application (collectively, the “pre-application meeting”), subject to the following:
  1. *Purposes for a meeting.* The purposes for a pre-application meeting are to: (i) provide the applicant and the county a common understanding of the proposed project; (ii) inform the applicant about the proposed project’s consistency with the comprehensive plan, other relevant policies, and county regulations; (iii) broadly identify the planning, zoning and other issues raised by the application that need to be addressed by the applicant; (iv) inform the applicant about the applicable procedure; and (v) allow the director to identify the information the applicant must submit with the application, including the supplemental information delineated in subsection (c). Receiving the relevant supplemental information will allow the application to be comprehensively and efficiently reviewed.
  2. *Factors to consider in requiring meeting.* A pre-application meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the proposed use, the proposed density, the proposed scale and potential impacts, the proposed district, and other considerations he determines to be relevant under sound zoning principles do not warrant a pre-application meeting; (ii) whether the supplemental information delineated in subsection (c) can be identified without the meeting; (iii) whether the application would be one of a recurring nature for which the

required information and the issues raised are well-established for the proposed application; and (iv) whether the application raises any complex issues that create the need for the meeting.

- b. *Applications.* Each application shall be composed of a completed county-provided application form and supplemental information (collectively, the “application”) required to review and act on the application.
1. *Application forms.* The director of planning is authorized to establish appropriate application forms for zoning map amendments and special use permits. The application form shall delineate the supplemental information required to be provided, as set forth in subsection (b)(2).
  2. *When supplemental information may be required; establish or amend conventional districts; amend planned development districts; obtain or amend special use permits.* For each application for a zoning map amendment to establish or amend a conventional district, to amend a planned development district, and for each application to obtain or amend a special use permit, the director of planning may require some or all of the supplemental information delineated in subsection (c) to be submitted with each application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed district, and other considerations he determines to be relevant under sound zoning principles.
  3. *When supplemental information required; establish planned development districts.* Each application to establish a planned development district shall submit all of the supplemental information delineated in subsection (c).
- c. *Elements of the supplemental information.* The supplemental information is the following:
1. *Project proposal.* A narrative of the project proposal, including its public need or benefit; an application to establish a neighborhood model district shall include a statement describing how the proposed district satisfies the intent of this chapter and if one or more characteristics of the neighborhood model delineated in section 20A.1 are missing from an application, the applicant shall justify why any characteristics cannot or should not be provided.
  2. *Comprehensive plan.* A narrative of the proposed project’s consistency with the comprehensive plan, including the land use plan and the master plan for the applicable development area; an application to establish a neighborhood model district also shall include a narrative as to the project’s consistency with the neighborhood model.
  3. *Impacts on public facilities and infrastructure.* A narrative of the proposed project’s impacts on public facilities and public infrastructure.
  4. *Impacts on environmental features.* A narrative of the proposed project’s impacts on environmental features.
  5. *Proposed proffers to address impacts.* A narrative of the proffers proposed to address impacts from the proposed project.
  6. *Maps.* One or more maps showing the proposed project’s regional context and existing natural and manmade physical conditions; if the project is to amend an existing planned development district and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing planned development district and identifying any area to be added to or deleted from the district, or identifying the area to which the amended application plan, code of development, proffers or any special use permit or special exception would apply.
  7. *Conceptual plan for zoning map amendments for conventional districts and special use permits.* For an application for a zoning map amendment to establish a conventional district or a special use permit, a conceptual plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated



as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; and (ix) conceptual grading.

8. *Application plan for zoning map amendments for planned development districts.* For an application to establish a planned development district or to amend an approved application plan for an existing planned development district, an application plan showing, as applicable: (i) the street network, including circulation within the project and connections to existing and proposed or planned streets within and outside of the project; (ii) typical cross-sections to show proportions, scale and streetscape/cross-sections/circulation; (iii) the general location of pedestrian and bicycle facilities; (iv) building envelopes; (v) parking envelopes; (vi) public spaces and amenities; (vii) areas to be designated as conservation and/or preservation areas; (viii) conceptual stormwater detention facility locations; (ix) conceptual grading; (x) a use table delineating use types, the number of dwelling units, non-residential square footage, building stories and/or heights, build-to lines, setbacks and yards, and other features; (xi) topography, using the county's geographic information system or better topographical information, and the source of the topographical information, supplemented where necessary by spot elevations and areas of the site where there are existing critical slopes; (xii) the general layout for water and sewer systems; (xiii) the location of central features or major elements within the project essential to the design of the project, such as major employment areas, parking areas and structures, civic areas, parks, open space, green spaces, amenities and recreation areas; (xiv) standards of development including proposed yards, open space characteristics, and any landscape or architectural characteristics related to scale, proportions, and massing at the edge of the district; (xv) a conceptual lot layout; and (xvi) if the application is to establish a neighborhood model district, the location of proposed green spaces and amenities as provided in section 20A.9.
9. *Code of development in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a code of development satisfying the requirements of section 20A.5.
10. *Parking and loading needs study in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include a parking and loading needs study that demonstrates parking needs and requirements and includes strategies for dealing with these needs and requirements, including phasing plans, parking alternatives as provided in section 4.12.8, and transportation demand management strategies as provided in section 4.12.12; provided that the applicant may elect to submit the parking and loading needs study in conjunction with the preliminary site plan for the development if it determines that the uses that may occupy the buildings are not sufficiently known at the time of the zoning map amendment.
11. *Stormwater management in a proposed neighborhood model district.* An application to establish a neighborhood model district shall include strategies for establishing shared stormwater management facilities, off-site stormwater management facilities, and the proposed phasing of the establishment of stormwater management facilities.
12. *Traffic impact statement.* For zoning map amendments, a local traffic impact statement as required by Virginia Code § 15.2-2222.1 and 24 VAC 30-155-40.
13. *Recorded plat or boundary survey.* The most recently recorded plat of the parcel(s) composing the proposed project, or a boundary survey if a portion of one or more parcels compose the proposed project, both of which shall include a metes and bounds description of the boundaries.
14. *Ownership information.* Documents that verify the identity of all record title owners of the parcel(s) composing the proposed project and documents identifying the authorized signatories of the application, the proffer statement, if applicable, and all other related documents.
15. *Contact person.* The name, address, telephone number and e-mail address of a single contact person for communications between the county and the applicant.
16. *Other information.* Other special studies or documentation, if applicable, and any other information identified as necessary by the county on the pre-application comment form.

- d. *Payment of delinquent taxes.* The applicant shall provide 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.
- e. *Filing the application; number of copies.* The owner, the owner's agent, or a contract purchaser with the owner's written consent (the "applicant") may file the application with the department of community development. The director of planning is authorized to establish for each class of application the number of collated copies of the application required to be filed.
- f. *Determining completeness of the application; rejecting incomplete applications.* An application that provides all of the required information 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 director of planning shall determine whether an application is complete within ten (10) days after the application was received.
  - 2. *Procedure if application is incomplete.* The director of planning 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 director of planning does not send or deliver the notice as provided in subsection (f)(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 director may reject the application as provided herein if the applicant fails to timely provide the omitted information.
  - 4. *Notice to other owners of application for zoning map amendment to amend existing proffers.* Within ten (10) days after an application for a zoning map amendment seeking to amend existing proffers is determined to be complete, written notice of the proposed amendment shall be provided to each owner subject to the same proffers as required by Virginia Code §§ 15.2-2204(H) and 15.2-2302.
- g. *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.
- h. *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 director of planning as provided in subsection (f)(2), the applicant may resubmit the application with all of the information required by subsections (b) and (c) for a new determination of completeness under subsection (f).
- i. *Worksessions.* For any application, the director of planning may schedule worksessions before the board of supervisors, the commission, and the architectural review board, if applicable, as he determines to be appropriate considering the nature of the approval requested, the acreage affected, the possible impacts that could result from an approved application, and any other factors deemed relevant upon applying sound zoning principles, subject to the following:
  - 1. *Purposes for a worksession.* The purposes for a worksession are to present the proposed project to the board or the commission with the department of community development's analysis of the major issues, seek direction from the board or commission on their expectations in addressing those issues, and to allow the board or commission to receive public comments.
  - 2. *When applicant's consent required.* The applicant's consent to a worksession shall be required if the worksession would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- j. *Community meetings.* A community meeting shall be held for each application, subject to the following:

1. *Purposes for a meeting.* The purposes for a community meeting are to: (i) provide interested members of the public the opportunity to receive information about the proposed project, the applicable procedure, the policies of the comprehensive plan, other relevant policies, and regulations applicable to the proposed project; and (ii) to allow the public to ask questions about the proposed project.
  2. *Factors to consider in requiring meeting.* A community meeting shall be held unless the director, in his discretion, decides that the meeting would not achieve the purposes for the meeting upon considering the following: (i) whether the application would be likely to generate any public concerns because of the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and the potential impacts; (ii) any other factors deemed relevant upon applying sound zoning principles; and (iii) whether the applicant has already held one or more community meetings regarding the application so as to make a community meeting under this subsection unnecessary.
  3. *Guidelines.* The director of planning is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process community meetings should be conducted, and how a community meeting should be conducted including, but not limited to, how and to whom notice should be provided for community meetings, which notice may include posting signs at the site before the meeting, who should schedule and lead the meeting, the format of the meeting, and how the issues identified at the meeting should be documented.
  4. *When applicant's consent required.* The applicant's consent to a community meeting shall be required if the community meeting would extend the time for action by the commission or the board beyond the deadlines in subsection (n).
- k. *Review of staff comments.* Upon request by the applicant, the director of planning shall meet with the applicant to review comments to the application made by county staff.
- l. *Public hearings.* Before the board of supervisors acts on a zoning map amendment or a special use permit, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
- m. *Notice of public hearings.* Notice of public hearings shall be provided as follows:
1. *Published and mailed notice.* Notice of the public hearing before the commission and the board of supervisors on an application shall be provided as required by Virginia Code § 15.2-2204; for zoning map amendments, as also provided by Virginia Code § 15.2-2285(C); and, for zoning map amendments seeking to amend an existing planned development district, written notice of the proposed amendment also shall be provided to the owner of each parcel within the planned development district and the substance of that notice shall be as required by Virginia Code § 15.2-2204(B), paragraph 1, regardless of the number of parcels affected.
  2. *Posted notice.* Notice of the public hearing before the commission and the board of supervisors on each application shall be posted, as follows:
    - a. *When sign must be posted.* The sign shall be posted by the zoning administrator at least twenty-one (21) days before the commission's public hearing on the application and shall remain posted until the board of supervisors has acted on the application or the application has been withdrawn.
    - b. *Where sign to be located.* The sign shall be erected within ten (10) feet of each boundary line of the parcel(s) that abuts a street and shall be so placed as to be clearly visible from the street. If more than one street abuts the parcel(s), then either: (i) a sign shall be erected in the same manner as above for each abutting street; or (ii) if the area of the parcel(s) to be used if the application was granted is confined to a particular portion of the parcel(s), a sign erected in the same manner as above for the abutting street that is in closest proximity to, or would be impacted by, the proposed use. A sign need not be posted along Interstate 64 or along any abutting street if the sign would not be visible from that street. If no street abuts the parcel(s), then signs shall be erected in the same

manner as above on at least two boundaries of the parcel(s) abutting land not owned by the applicant in locations that are most conspicuous to the public. The filing of the application shall be deemed to grant consent to the zoning administrator to enter the parcel(s) to erect the signs.

- c. *Content of sign.* Each sign shall state that the parcel(s) is subject to a public hearing and explain how to obtain additional information about the public hearing.
- d. *Maintaining the sign.* The applicant shall diligently protect each sign from vandalism and theft, maintain each sign in an erect position in its posted location, and ensure that each sign remains legible. The failure of an applicant to comply with these responsibilities may be cause for the commission or the board of supervisors to defer action on an application until there is reasonable compliance with this subsection.
- e. *Ownership of sign; violation for removing or tampering with sign.* Each sign is the property of the board of supervisors. It shall be unlawful for any person to remove or tamper with any sign, except the applicant performing maintenance required by this subsection or the zoning administrator.
- f. *Effect of failure to comply.* If the requirements of this subsection to post notice are not complied with:
  - 1. *Prior to action by board.* The board of supervisors may defer taking action on an application if it finds that the failure to comply with this subsection materially deprived the public of reasonable notice of the public hearing.
  - 2. *Action not invalid.* No action on an application shall be declared invalid solely because of the failure to post notice as required by this subsection.
- n. *Time for decision.* Each application shall be acted on as follows:
  - 1. *By the planning commission.* An application shall be acted on by the commission within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning. The failure of the commission to make a recommendation on the application within the ninety (90) day period shall be deemed to be a recommendation of approval unless the applicant requests or consents to the ninety (90) day period being extended.
  - 2. *By the board of supervisors.* An application shall be acted on by the board of supervisors within a reasonable period as may be necessary not to exceed twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
  - 3. *Tolling.* The period in which action is required by the commission or the board of supervisors shall be tolled during any period in which the applicant has requested that the review of the application be suspended or the public hearings or action thereon be deferred or continued.
  - 4. *Referral.* The board of supervisors may refer an application to the commission after the commission has made a recommendation or the application has been deemed to be recommended for approval, provided that further action by the commission and action by the board of supervisors is within twelve (12) months following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, unless the applicant requests or consents to the twelve (12) month period being extended.
- o. *Recommendation by commission.* The commission shall either recommend approval of the application as proposed, approval subject to changes being made prior to action by the board of supervisors, or disapproval. For any application for a zoning map amendment, the commission's recommendation also should include its recommendations on proposed proffers and, for any application to establish or amend a planned development district, its recommendations on the application plan, the standards of

development, the code of development, and any special exception requested by the applicant under section 8.2. For any application for a special use permit, the commission's recommendation should include its recommendations on the proposed conditions.

- p. *Action by the board of supervisors.* The board of supervisors may either approve or deny the application, or defer action to allow changes to be made prior to final action by the board. In approving an application for a zoning map amendment, the board may accept the proposed proffers as provided in section 33.7. In approving an application for a special use permit, the board may impose conditions as provided in section 33.8.
- q. *Intensification of use classification prohibited without additional notice and hearing.* No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice is provided as required by Virginia Code §§ 15.2-2204 and 15.2-2285(C).
- r. *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 body considering the application 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 commission or the board of supervisors. 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 body considering the application 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 commission or the board of supervisors 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 director of planning before the one (1) year period expires, the director may grant one extension of the deferral period for a period determined to be reasonable, taking into consideration the size or nature of the proposed use, 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 clerk of the board of supervisors before the extension of the deferral period granted by the director expires, the board of supervisors may grant one additional extension of the deferral period determined to be reasonable, taking into consideration the size or nature of the proposed use, 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.
- s. *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.
- t. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

**State law reference** – Va. Code §§ 15.2-2204, 15.2-2285, 15.2-2286(A)(3), (4), (7), (B).

### **Sec. 33.5 Uniform procedures for special exceptions**

Each application for a special exception shall be subject to the following:

- a. *Matters requiring a special exception.* Notwithstanding any other section of this chapter:
  - 1. Any request for a waiver, modification, variation or substitution permitted by this chapter shall be considered and acted upon by the board of supervisors, provided that no special exception shall be required for the development and construction of residential dwellings at the use, height and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.

2. Any requirement for a decision by the commission required by this chapter shall be considered and acted upon by the board of supervisors. For the purposes of this section, a decision by the commission does not include the consideration and action by the commission on a preliminary or final site plan under section 32 of this chapter or any variation or exception provided in section 32.
- b. *Application.* Each application for a special exception shall be made as provided by, and include the information required by, the applicable section of this chapter authorizing the waiver, modification, variation or substitution. An application shall be deemed to be officially submitted when the applicant has submitted all of the required information as determined by the director of planning.
  - c. *Public hearings.* Before the board of supervisors acts on a special exception that would increase by greater than fifty (50) percent the bulk or height of an existing or proposed building within one-half mile of an adjoining locality, the commission shall hold at least one public hearing before making its recommendation to the board on each application. The board shall hold at least one public hearing before approving an application.
  - d. *Notice of public hearings.* Notice of public hearing before the commission and the board of supervisors on an application for which a public hearing is required under subsection (c) shall be provided as required by Virginia Code § 15.2-2204(C).
  - e. *Time for decision.* Each application for a special exception shall be acted on by the board of supervisors within ninety (90) days following the first meeting of the commission after it was referred to the commission, according to the schedule established and administered by the director of planning, or concurrently with a zoning map amendment, special use permit, or site plan appeal, whichever is longer.
  - f. *Recommendation by planning commission.* For those applications considered by the commission, the commission shall either recommend approval of the application as proposed, approval of the application with changes to be made prior to action on the application by the board of supervisors, or disapproval. The commission's recommendation should include its recommendations on the proposed conditions.
  - g. *Action by the board of supervisors.* The board of supervisors may either approve the application, deny the application, or defer action to allow changes to be made prior to final action by the board. In approving the application, the board may impose conditions as provided in section 33.9.
  - h. *Judicial review.* Any action contesting a decision of the board of supervisors under this section shall be as provided in Virginia Code § 15.2-2285(F).

**State law reference** – Va. Code § 15.2-2286(A)(3), 15.2-2288.1.

### **Sec. 33.6 Zoning text amendments and zoning map amendments; relevant factors to be considered; effect of approval**

A zoning text amendment or a zoning map amendment shall be subject to the following:

- a. *Basis to act.* The board of supervisors may amend, supplement, or change the zoning regulations, district boundaries, or classifications of property whenever the public necessity, convenience, general welfare, or good zoning practice requires. The commission shall consider these bases when making a recommendation on an application.
- b. *Factors to be considered when acting.* The commission and the board of supervisors shall reasonably consider the following factors when they are reviewing and acting upon zoning text amendments and zoning map amendments: (i) the existing use and character of property; (ii) the comprehensive plan; (iii) the suitability of property for various uses; (iv) the trends of growth or change; (v) the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies; (vi) the transportation requirements of the community; (vii) the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services; (viii) the conservation of natural resources; (ix) the preservation of flood plains; (x) the protection of life and property from impounding structure failures; (xi) the preservation of agricultural and forestal land; (xii) the conservation of properties and their values; and (xiii) the encouragement of the most appropriate use of land throughout the county.
  1. *Additional factors to be considered when acting; application to establish planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, the commission and the board of supervisors shall consider the following when reviewing an

application to establish a planned development district: (i) whether the proposed planned development satisfies the purpose and intent of the planned development district; (ii) whether the area proposed to be rezoned is appropriate for a planned development under the comprehensive plan; and (iii) the relation of the proposed planned development to major roads, utilities, public facilities and services.

2. *Additional factors to be considered when acting; application to amend existing planned development district.* In addition to the other factors relevant to the consideration of a zoning map amendment, including those in subsections (b) and (b)(1), the commission and the board of supervisors shall consider the following when reviewing an application to amend an existing planned development district: (i) whether the proposed amendment reduces, maintains or enhances the elements of a planned development set forth in section 8.3; and (ii) the extent to which the proposed amendment impacts the other parcels within the planned development district.
- c. *Effect of approval.* The board of supervisors' approval of a zoning map amendment shall constitute acceptance of the proffers and also, for any application to establish or amend a planned development district, approval of the application plan, all standards of development, the code of development, and any waivers or modifications it has approved by special exception as provided under section 8.2. The district designation, the accepted proffers, and, if applicable, the approved application plan, standards of development, and code of development, and, if applicable, the special exception shall be included as part of the zoning regulations applicable to parcel(s) that were the subject of the zoning map amendment.

**State law reference** – Va. Code §§ 15.2-2284, 15.2-2285, 15.2-2286(A)(7).

### **Sec. 33.7 Owner-initiated zoning map amendments; authority to accept proffers**

The board of supervisors is authorized to accept proffers pursuant to Virginia Code § 15.2-2303 in conjunction with owner-initiated zoning map amendments as follows:

- a. *Purpose.* Proffers are conditions that are intended to provide for the protection of the community that are not generally applicable to land similarly zoned. Accordingly, proffers are reasonable conditions that are in addition to the regulations provided for the district under this chapter.
- b. *Form.* Proffers shall be in writing and in a form that is approved by the county attorney. The director of planning is authorized to provide applicants with a proffer statement form.
- c. *Timing of submittal.* Proffers, signed by the owner of all parcels subject to the zoning map amendment, shall be submitted to the department of community development prior to the public hearing before the board of supervisors on the proposed public hearing. The director of planning is authorized to establish written guidelines that require signed proffers to be submitted a reasonable period of time prior to the public hearing so as to allow the county and members of the public a reasonable period of time to review the proffers.
- d. *Amendments to proposed proffers after public hearing has begun.* The board of supervisors may accept, in its sole discretion, amended proffers once the public hearing on the zoning map amendment has begun if it concludes that the amended proffers do not materially affect the overall proposal. If amended proffers are submitted after the public hearing is closed, the board may accept, in its sole discretion, the amended proffers after holding another public hearing.
- e. *Effect of proffers once accepted.* Once proffered and accepted by the board of supervisors in conjunction with an approved zoning map amendment, the proffers shall continue in effect until a subsequent zoning map amendment changes the zoning of the parcel(s) subject to the proffers; provided that the proffers shall continue in effect if the subsequent zoning map amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.
- f. *Subsequent amendments to proffers.* Once accepted by the board of supervisors in conjunction with an approved zoning map amendment, proffers may be amended by an owner-initiated zoning map amendment. An application to amend proffers shall be subject to the procedures under section 33.4, provided that a public hearing before the commission under section 33.4(l) and a recommendation from the commission under section 33.4(o) shall not be required unless the board refers the application to the

commission for a public hearing and recommendation. The board shall act on the application within a reasonable time not to exceed twelve (12) months after the date it was determined to be complete by the director. Before the board acts on an application to amend proffers, it shall hold a public hearing. Notice of the public hearing shall be provided as required by sections 33.4(f)(4) and 33.4(m). In its sole discretion, the board may waive the requirement for a public hearing on an application to amend proffers if it concludes that the proposed amendments do not pertain to conditions affecting use or density.

**State law reference** – Va. Code §§ 15.2-2296, 15.2-2302, 15.2-2303.

### **Sec. 33.8 Special use permits; relevant factors to be considered; conditions; revocation**

Special use permits shall be subject to the following:

- a. *Factors to be considered when acting.* The commission and the board of supervisors shall reasonably consider the following factors when they are reviewing and acting upon an application for 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 section 5 as applicable, and with the public health, safety and general welfare.
  4. *Consistency with comprehensive plan.* The use will be consistent with the comprehensive plan.
- b. *Conditions.* The commission may recommend, and the board of supervisors may impose, conditions upon the special use to address impacts arising from the use in order to protect the public health, safety or welfare. The conditions may pertain to, but are not limited to, the following:
  1. The prevention or minimization of smoke, dust, noise, traffic congestion, flood and/or other hazardous, deleterious or otherwise undesirable substances or conditions.
  2. The provision of adequate police and fire protection.
  3. The provision of adequate improvements pertaining to transportation, water, sewage, drainage, recreation, landscaping and/or screening or buffering.
  4. The establishment of special requirements relating to building setbacks, front, side and rear yards, off-street parking, ingress and egress, hours of operation, outside storage of materials, duration and intensity of use, building heights, and other particular aspects of occupancy or use.
  5. The period by which the use must begin or the construction of any structure required for the use must commence.
  6. The materials and methods of construction or specific design features, provided such a condition for residential uses shall comply with subsection (c).
- c. *Conditions related to residential uses.* Any conditions imposed in connection with residential special use permits: (i) shall be consistent with the objective of providing affordable housing if the applicant proposes affordable housing; and (ii) shall consider the impact of the conditions on the affordability of housing where the conditions specify the materials and methods of construction or specific design features.
- d. *Conditions deemed to be essential and nonseverable.* Except as the board of supervisors may specify in a particular case, any condition imposed on a special use 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 special use permit.



- e. *Revocation for noncompliance with conditions.* A special use permit may be revoked by the board of supervisors after a public hearing if the board determines that there has not been compliance with the conditions of the permit. Notice of the public hearing shall be as provided in Virginia Code § 15.2-2204, provided that the written notice provided by the board of supervisors to the owners, their agents, or the occupants of abutting parcels and parcels immediately across the street from the parcel(s) subject to the special use permit, the board of supervisors may be given by first-class mail rather than by registered or certified mail.

**State law reference** – Va. Code §§ 15.2-2286(A)(3), 15.2-2309(7).

### **Sec. 33.9 Special exceptions; relevant factors to be considered; conditions**

Special exceptions shall be subject to the following:

- a. *Factors to be considered when acting.* In acting upon a special exception, the board of supervisors shall consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter, provided that the board shall not be required to make specific findings in support of its decision.
- b. *Conditions.* In approving a special exception, the board of supervisors may impose reasonable conditions to address any possible impacts of the special exception.

**State law reference** – Va. Code § 15.2-2286(A)(3).

### **Sec. 34.4 Application for variances**

Any owner may apply for a variance. The application shall be made to the zoning administrator in accordance with the provisions of this section and with rules adopted by the board of zoning appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board of zoning appeals who shall place the matter on the docket to be acted on by the board of zoning appeals. No such variance shall be authorized except after notice and hearing is provided as required by Virginia Code § 15.2-2204. The owner shall provide 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.

**State law reference** – Va. Code §§ 15.2-2286(B), 15.2-2309.

### **Sec. 35.1 Fees**

Each applicant shall pay the following applicable fees, provided that neither the county nor the county school board shall be required to pay any fee if it is the applicant:

- a. Zoning text amendments: \$1000.00
- b. Zoning map amendments:
  - 1. Less than 50 acres; application and first resubmission: \$2500.00
  - 2. Less than 50 acres; each additional resubmission: \$1250.00
  - 3. 50 acres or greater; application and first resubmission: \$3500.00
  - 4. 50 acres or greater; each additional resubmission: \$1750.00
  - 5. Deferral of scheduled public hearing at applicant's request: \$180.00
- c. Special use permits:
  - 1. Additional lots under section 10.5.2.1, public utilities, day care center, home occupation Class B, to amend existing special use permit, or to extend existing special use permit; application and first resubmission: \$1000.00
  - 2. Additional lots under section 10.5.2.1, public utilities, day care center, home occupation class B, to amend existing special use permit, or to extend existing special use permit; each additional resubmission: \$500.00
  - 3. Signs reviewed by the board of zoning appeals: See subsection 35.1(f)
  - 4. All other special use permits; application and first resubmission: \$2000.00
  - 5. All other special use permits; each additional resubmission: \$1000.00
  - 6. Deferral of scheduled public hearing at applicant's request: \$180.00

7. Farmers' markets without an existing commercial entrance approved by the Virginia Department of Transportation or without existing and adequate parking - \$490.00
  8. Farmers' markets with an existing commercial entrance approved by the Virginia Department of Transportation and with existing and adequate parking - \$110.00
- d. Site plans:
1. Initial site plans: \$1200.00 plus \$15 per dwelling unit and \$0.015 per square foot of nonresidential structure; the fee paid for preapplication plans shall be applied to the fee for initial site plans
  2. Preapplication plans: \$500.00
  3. Final site plans: \$1500.00
  4. Exception to drawing of site plan under section 32.3.5(a): \$1500.00
  5. Site plan amendments under section 32.3.3(b): \$500.00 (minor); \$100.00 (letter of revision)
  6. Site plan amendments under section 32.3.3(b) (major): \$1500.00
  7. Appeals under section 32.4.2.6: \$240.00
  8. Reinstatement of review under sections 32.4.2.1(d) and 32.4.3.1(e): \$240.00
  9. Reinstatement of review under section 32.4.2.5(e): \$80.00
  10. Extension of period of validity: \$475.00
  11. Inspections pertaining to secured site plan improvements; per inspection: \$280.00
  12. Deferral of scheduled public meeting at applicant's request: \$180.00
- e. Certificates of appropriateness considered by the architectural review board ("ARB"):
1. For a site plan; per review by the ARB: \$1000.00
  2. For a building permit; per review by the ARB: \$590.00
  3. Amendment to approved certificate of appropriateness: \$225.00
- f. Matters considered by the board of zoning appeals:
1. Variances: \$500.00
  2. Appeals: \$240.00
  3. Special use permits for signs under section 4.15.5: \$500.00
- g. Matters considered by the zoning administrator or other officials:
1. Official determinations regarding compliance: \$185.00
  2. All other official determinations, including development rights: \$100.00
  3. Zoning clearance for tourist lodging: \$100.00
  4. Zoning clearance for a home occupation, class A, a major home occupation, or a minor home occupation: \$25.00
  5. Zoning clearance for temporary fundraising activity: No fee
  6. All other zoning clearances: \$50.00
  7. Sign permits under section 4.15.4; no ARB review required: \$25.00
  8. Sign permits under section 4.15.4; ARB review required: \$120.00
- h. Groundwater assessments:
1. Tier 1 assessment under section 17-401: \$50.00
  2. Tier 3 assessment under section 17-403: \$510.00
  3. Tier 4 assessment under section 17-404: \$1100.00
- i. Miscellaneous:
1. Change in name of development or change in name of street: \$80.00
  2. Relief from conditions of approval; modification or waiver of requirements: \$425.00
  3. Tier II personal wireless service facilities: \$1820.00
- j. Required notice:
1. Preparing and mailing or delivering up to fifty (50) notices: \$200.00, except for uses under sections 5.1.47 and 5.2A, for which there shall be no fee.
  2. Preparing and mailing or delivering, per notice more than fifty (50): \$1.00 plus the actual cost of first class postage.
  3. Published notice: cost based on a cost quote from the publisher, except for farmers' markets under section 35.1(c)(7) and (8) for which there shall be no fee.

The fee shall be in the form of cash or a check payable to the "County of Albemarle." An application presented without the required fee shall not be deemed to be submitted and shall not be processed, provided that for applications for zoning map amendments and special use permits, the fee shall be paid when the application is

determined to be complete. If the zoning administrator determines after a fee has been paid that the review and approval to which the fee pertains is not required to establish the use or structure, the fee shall be refunded to the applicant in full.

(Amended 5-5-82; 9-1-85; 7-1-87; 6-7-89; 12-11-91 to be effective 4-1-92; 7-8-92; Ord. 10-18(7), adopted 8-4-10, effective 1-1-11; Ord. 11-18(1), 1-12-11; Ord. 11-18(7), 6-1-11; Ord. 12-18(6), adopted 10-3-12, effective 1-1-13)

**State law reference** – Va. Code §§ 15.2-2286(A)(6).

This ordinance shall be effective on and after April 1, 2013.

RESIDENTIAL LEASE AGREEMENT  
IVY CREEK NATURAL AREA

THIS LEASE AGREEMENT is made as of this 1st day of December, 2012; by and between County of Albemarle & City of Charlottesville (hereafter collectively, the "Landlord"), whose address is 401 McIntire Road, Charlottesville, Virginia 22902 (hereafter, the "County"); PO Box 911, Charlottesville, Virginia 22902 (hereafter, the "City") and Ashley Crosby and Katharine Cleveland (hereafter, the "Tenant").

1. REAL PROPERTY AND TERM OF OCCUPANCY. In consideration of the promises and covenants herein, Landlord hereby leases to Tenant that property located in the County of Albemarle, Virginia, and known as Ivy Creek Natural Area Park Tenant House together with the fixtures and personal property listed below, (the Premises) for the term of 1 (one) year(s) commencing at noon on December 15, 2012. Thereafter, unless otherwise terminated by either party, as provided herein, this Lease shall renew automatically for four (4) additional one-year terms.
2. PERSONAL PROPERTY. The following personal property is included in the Premises subject to this lease: Range oven, woodstove, and refrigerator.
3. USE OF PREMISES. The Premises will be used by Tenant as a private dwelling and for no other purpose. The Premises will be occupied by no persons other than persons who have signed this Lease as Tenant and such person's children under the age of 18.
4. RENT.
  - a. Tenant agrees to pay as rent the total sum of \$1,800.00 per year, due and payable in advance in monthly installments of \$150.00, except as follows: If the lease term begins on a day other than the first day of a calendar month, the first month's rent shall be \$75.00. If the lease term ends on a day other than the last day of a calendar month, the last month's rent shall be \$75.00. The first month's rent payment is due on December 15, 2012. The monthly installment of rent due for each month thereafter shall be due on the first day of each month. Rent shall be paid to County of Albemarle (landlord/agent) at Albemarle County Parks & Recreation, 401 McIntire Road, Charlottesville, Virginia 22902 (address) or at other such place as Landlord or Agent may from time to time designate in writing. If a monthly installment of rent is not received before the 6th day of the month, Tenant agrees to pay as additional rent a charge of late fee of \$10.00 for each month that the monthly installment of rent is not received by the 6th day of such month. The purpose of this late fee is to compensate Landlord for the expenses of processing such delinquent account. Rent payments will be applied first to all past due balances of rent and other charges owing under this Lease. The remaining portion if any of such rent payments will be applied to current rent. If there are two or more tenants, Landlord shall have the option of requiring that only one check, cashier's check or money order will be accepted for each monthly installment for rent.
  - b. As additional rent, the Tenant shall perform the following duties as long as either of them resides on the Property. The following duties may be modified as duties may be added or deleted by mutual written agreement between the County and City and the Tenant. Failure to perform the following duties on the part of the Tenant shall constitute a material breach by the Tenant under the Lease Agreement and shall entitle the Landlord to terminate this Lease or exercise any other remedy under this lease or available law. The Tenant shall:
    - i. Assure the park entrance gate is opened and closed per posted times and at special requests;
    - ii. Assist the public with information as needed;
    - iii. Clean and stock restrooms and clean up and remove trash in parking lot and open areas;
    - iv. In absence of park personnel, perform emergency repair or maintenance of park facilities and grounds, to the extent possible, and contact park personnel
    - v. Mow and trim grass in park and on grass trails and around tenant house as outlined by Park Superintendent;
  - c. The County and City reserve the right to agree to certain modifications pertaining to the foregoing tenant responsibilities during the term of the lease agreement. It is the intent of the County and City to delegate this responsibility to the Albemarle County Parks and Recreation Department, and its Director.
  - d. The County and City further agree that, in the event tenant performs additional duties at the specific request of the County and City in connection with the property, or for any other reason in the sole discretion of the County and City, then an adjustment in the payment of rent under this lease agreement may be made, provided that any such modifications shall be effective only if in writing between the County, City and the tenant. It is the intent of the County and City to delegate this responsibility to the

Albemarle County Parks and Recreation Department, and its Director.

5. **BAD CHECKS.** Tenant agrees to pay as additional rent a charge of \$15.00 for each check returned for insufficient funds. This charge will be in addition to any late fee, which may be due. If any of Tenant's checks are returned to Landlord or Agent for insufficient funds, Landlord will have the option of requiring that further payments must be paid by cash, cashier's check, certified check, or money order.
6. **SECURITY DEPOSIT.** Tenant agrees to pay the sum of \$150.00 as a security deposit. This sum will be due when this Lease is signed by Tenant. Prior to the termination or expiration of this Lease, if Landlord makes any deductions from the security deposit for charges arising under this Lease or by law, Tenant agrees to pay Landlord such sums as may be necessary to offset such deductions to replenish and maintain the security deposit in the amount set forth above. The security deposit will be held by Landlord to secure Tenant's full compliance with the terms of this Lease. Within 30 days after the termination of this Lease, Landlord may apply the security deposit and any interest required by law to the payment of any damages Landlord has suffered due to Tenant's failure to maintain the Premises, to surrender possession of the premises thoroughly cleaned and in good condition (reasonable wear and tear excepted), or to fully comply with the terms of this Lease, and any balance, if any, to unpaid rent. Landlord shall provide Tenant with an itemized accounting, in writing, showing all such deductions. Within this 30-day period, Landlord will give or mail to Tenant the security deposit, with any interest required by law and minus any deductions. To assist Landlord, Tenant shall give Landlord written notice of Tenant's new address before Tenant vacates the Premises. During the term of occupancy under this Lease, if Landlord determines that any deductions are to be made from the security deposit Landlord will give written notice to Tenant of such deduction within 30 days of the time Landlord determines that such deduction should be made. This provision applies only to deductions made 30 days or more before the termination of this Lease. Landlord will maintain itemized records of all security deposit deductions and these records may be inspected by Tenant, his authorized agent or attorney, during normal business hours. However, when two years has passed from the time a deduction was made, Landlord may destroy the record of that deduction. If Landlord sells or otherwise transfers all or any interest in the Premises during the term of this Lease, Tenant agrees that Landlord may transfer the security deposit, plus any interest required by law, to the purchaser who in such event shall be obligated to comply with the provisions of this section.
7. **PARKING.** Tenant agrees to comply with such parking rules and regulations as Landlord may issue from time to time, and deliver to Tenant; provided that Tenant shall be given a reasonable opportunity to comply with any parking changes made during Tenant's term of occupancy under this Lease. Vehicles parked on or about the Premises in violation of such rules and regulations may be towed at the owner's expense.
8. **PETS AND ADDITIONAL RESIDENTS.** The Tenant shall not be allowed to have pets or additional residents without Landlord's prior written consent, which may be withheld in the Landlord's sole discretion. If such permission is granted the tenant agrees to be responsible for all damages to the property and third parties (persons and property) caused by pets or additional residents. It is understood that if this approval is given that it may be rescinded in the event a problem develops related to a pet or an additional resident.
9. **UTILITIES.** The Tenant is responsible for all utilities.
10. **ALTERATIONS AND IMPROVEMENTS.** Tenant agrees that no alterations; installations, repairs or decoration (including painting, staining and applying other finishes) shall be done without Landlord's prior written consent. However, Landlord may require Tenant to return the Premises to its original condition when this Lease terminates or expires. In addition, Landlord may require that any change, alteration or improvement to the Premises will become a permanent part of the Premises which may not be removed upon the termination or expiration of this lease. Such changes or improvements will include, but not be limited to, locks, light fixtures, shutters, built-in shelves or bookcases, wall-to-wall carpeting, flowers and shrubs.
11. **INSPECTIONS AND ACCESS.** Landlord may enter the Premises to make inspections, repairs, decorations, alterations or improvements, and to show the Premises to prospective tenants, purchasers, mortgagees, workers and contractors and shall have the right to erect or place "For Sale" or "For Rent" signs thereon. Except in case of emergency or when it is impractical to give notice, Landlord will give Tenant reasonable notice of Landlord's intent to enter and may enter the Premises only at reasonable times.
12. **MOVE IN INSPECTION.** Within 5 days after Tenant takes possession of the Premises, Landlord agrees to provide Tenant with a list setting forth all of the defects and damages to the Premises, its equipment and appliances. The list shall be treated as correct unless Tenant objects to the list by written notice given to

Landlord within five days after Tenant receives the list.

13. COVENANTS BY LANDLORD. Landlord covenants and agrees to maintain all electrical, plumbing, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in good and safe working condition; and comply with applicable building and housing code requirements materially affecting health and safety. Landlord's failure to comply with the above requirements will not be grounds for Tenant's termination of this Lease unless Tenant has given Landlord written notice of the defective condition and Landlord has failed to remedy the condition within 21 days. However, Tenant may not terminate the Lease if Tenant, a member of Tenant's family or some other person on the Premises with Tenant's consent intentionally or negligently caused the defective condition. Such defective conditions will be repaired at Tenant's expense. Any termination by Tenant shall be made in accordance with the section of this Lease concerning breach by Landlord.
14. COVENANTS BY TENANT. Tenant covenants and agrees to keep the Premises clean and safe; use all electrical, plumbing, heating, ventilating and air-conditioning facilities and appliances in a reasonable manner; conduct himself or herself, and require guests to conduct themselves, in a manner that will not disturb Tenant's neighbors; and to take care not to intentionally or negligently destroy, damage or remove any part of the Premises, and that he or she will not permit any person to do so. The County and City reserve the right to request the Tenant to remove from the site any personal property that is inconsistent with the scenic natural beauty of the park (inoperable vehicles, appliances, etc.). The County and City reserve the right to request the Tenant to cease any activity that is inconsistent with the park or surrounding neighborhood. Tenant covenants and agrees to care for, maintain and repair the Premises, equipment, appliances and fixtures. Upon the expiration or termination of this Lease, Tenant agrees to deliver the Premises in good and clean condition, ordinary wear and tear excepted. Tenant agrees to pay the cost of all repairs and cleaning required by wear and tear beyond the ordinary. During the duration of this Lease, Tenant agrees to give Landlord prompt written notice of any defects in the Premises, its equipment, appliances and fixtures. If further damage occurs between the time Tenant learns that a defect exists and the time Landlord learns of such defect. Tenant will be liable for the costs of any repairs of such additional damage, which might have been avoided, had Tenant promptly notified Landlord of the defect. Tenant agrees to pay all costs resulting from the intentional or negligent destruction, damage or removal of any part of the Premises by Tenant or by any of Tenant's guests or other persons on the Premises with Tenant's consent. Tenant further agrees to release, indemnify, protect, defend and hold the County and City harmless from all liability, obligations, losses, claims, demands, damages, actions, suits, proceedings, costs and expenses, including attorney's fees, of any kind or nature whatsoever, whether suffered, made, instituted or asserted by any entity, party or person for any personal injury to or death of any person or persons and for any loss, damage or destruction of the Premises, arising out of, connected with, or resulting directly or indirectly from the negligent or intentional acts of Tenant, Tenant's guests or other persons on the Premises with the consent or permission of Tenant. The foregoing agreement to indemnify shall continue in full force and effect notwithstanding the termination of this Agreement. Tenant further agrees to release, indemnify, protect, defend and hold the County and City harmless from all liability, obligations, losses, claims, demands, damages, actions, suits, proceedings, costs and expenses, including attorney's fees, of any kind or nature whatsoever, whether suffered, made, instituted or asserted by any entity, party or person for any personal injury to or death of any person or persons and for any loss, damage or destruction of the Premises, arising out of, connected with, or resulting directly or indirectly from the negligent or intentional acts of Tenant, Tenant's guests or other persons on the Premises with the consent or permission of Tenant. The foregoing agreement to indemnify shall continue in full force and effect notwithstanding the termination of this Agreement.
15. TENANT TO CLEAN PREMISES WHEN LEASE ENDS. Upon the termination or expiration of this Lease, Tenant will remove all of Tenant's property from the Premises and deliver possession of the Premises, thoroughly clean and in good condition, reasonable wear and tear excepted, and in compliance with such reasonable conditions as may be set forth in Landlord's rules and regulations. Tenant's compliance with this section is necessary to insure that the Premises will be in good condition for the next tenants to whom Landlord leases the Premises. Tenant will be liable for any damages Landlord may suffer due to Tenant's failure to leave the Premises thoroughly clean and in good condition, reasonable wear and tear excepted.
16. MOVE OUT INSPECTION. Upon the termination or expiration of this Lease, Landlord will inspect the Premises to determine whether Tenant has properly maintained the Premises and has left Premises thoroughly cleaned and in good condition, reasonable wear and tear excepted. Grease accumulation and unreasonable marks, holes, nicks or other injury to walls, ceilings, floors or appliances will not be considered ordinary wear and tear. This inspection will be made to determine what portion of the security deposit will be returned to Tenant and whether Tenant may be liable for damages exceeding the amount of the security

deposit. This inspection will be made with 72 hours after the termination of Tenant's occupancy of the Premises. For the purposes of this section, the termination of Tenant's occupancy of the Premises will not be deemed to have occurred until all or substantially all of Tenant's property has been removed from the Premises. Tenant will have the right to be present during this inspection, provided Tenant gives Landlord written notice of Tenant's desire to be present during the inspection. Upon receiving such notice, Landlord will notify Tenant of the time and date when the inspection will be made. However, Tenant's delay in notifying Landlord of Tenant's desire to attend the inspection will not require Landlord to delay making the inspection more than 72 hours after the termination of Tenant's occupancy. If Tenant attends the inspection, an itemized list of damages known to exist at the time of the inspection will be provided to Tenant by Landlord immediately upon the completion of the inspection.

17. **ABANDONMENT OF PROPERTY.** Any personal property Tenant leaves on the Premises after the termination or expiration of this Lease may be treated by Landlord as abandoned property. Landlord will prepare an itemized list of such property and may immediately remove the property from the Premises and place it in storage for safekeeping for a period not less than one month from the date this Lease terminates and possession of the Premises is delivered to Landlord. Tenant may reclaim the property during this one-month period, provided that tenant pays the cost of its removal and storage. Upon expiration of the one-month period, Landlord will be free to dispose of the property as Landlord sees fit, provided written notice of Landlord's intent to dispose of the property is given to Tenant at least 10 days before such disposal occurs. This notice must be sent to Tenant's last known address, address correction requested. In addition, Landlord must keep the itemized list of Tenant's property for two years after Landlord disposes of that property. Any funds received by Landlord from the disposal of Tenant's property may be applied to Tenant's indebtedness to Landlord for unpaid rent or other damages, including charges for removing, storing and selling the property. Any remaining funds will be treated as security deposit.
18. **DAMAGE OR DESTRUCTION OF PREMISES.** If, through no fault or negligence of Tenant or Tenant's guest, fire or other cause destroys or damages the Premises to the extent that Tenant's enjoyment is substantially impaired, Tenant may immediately vacate the premises and within 14 days thereafter give written notice to Landlord of Tenant's intention to terminate this Lease. In such cases, the Lease will terminate as of the date of termination of Tenant's occupancy and Landlord will return Tenant's security deposit, any interest required by law, and prepaid rent covering the period after Tenant vacated the Premises - subject to any set off for charges or damages Tenant owes to Landlord. If, through no fault or negligence of Tenant or Tenant's guests, fire or other cause damages the Premises to the extent that Tenant's enjoyment is somewhat impaired, though not substantially impaired, Landlord will have a reasonable period of time in which to repair the Premises. Landlord's duty to repair will not arise until Tenant gives Landlord written notice of the damage to the Premises. If Landlord fails to repair the Premises within a reasonable period of time after having received written notice from Tenant, Tenant will be entitled to a reduction in rent for that period of time beginning 30 days after notice was given to Landlord and ending on the date Landlord successfully repairs the Premises. In any dispute concerning Tenant's right to terminate this Lease or receive a rent reduction, Tenant will be required to prove that the condition of the Premises justifies such relief.
19. **BODILY INJURY AND PROPERTY DAMAGE.** Landlord is not an insurer of Tenant's person or property. Except to the extent provided by law, Landlord will not be liable to Tenant for any bodily injury or property damage suffered by Tenant or Tenant's guest.
20. **RULES AND REGULATIONS.** Tenant agrees to comply with Landlord's reasonable and non-discriminatory rules and regulations which concern the use and occupancy of the Premises, which intend to promote the convenience, safety or welfare to tenants or preserve Landlord's property from abusive conduct. Landlord agrees to give Tenant reasonable notice of any new rules or regulations before enforcing such rules and regulations against Tenant.
21. **EARLY TERMINATION OF OCCUPANCY.** Tenant will not be released from liability for all rent and other charges due under this lease unless Landlord signs a written statement on which Landlord agrees to release tenant from such liability.
22. **EARLY TERMINATION OF LEASE BY MILITARY PERSONNEL.** If Tenant is a member of the United States armed forces and (i) receives orders for a permanent change of station to depart 50 miles or more (radius) from the Premises or (ii) is prematurely and involuntarily discharged or relieved from active duty with the United States armed forces, Tenant may terminate this Lease by serving on Landlord a written notice of termination. This notice must state the date when termination will be effective and that date shall not be less than 30 days after the date Landlord receives the notice. In addition, the termination date shall not be more

than 60 days prior to the date of departure necessary for Tenant to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Tenant's written notice of termination must be accompanied by a copy of the official orders. If Tenant exercises this right to terminate this Lease, Tenant shall be obligated for rent prorated to the date of termination. Rent for the final month or portion thereof shall be due on the first day of such month. On account of Tenant's early termination of this Lease, Landlord may require Tenant to pay liquidated damages as follows:

- a. If Tenant has completed less than 6 months of the tenancy under this Lease as of the effective date of termination, liquidated damages may be no greater than one-month's rent.
- b. If Tenant has completed at least 6 months but less than 12 months of the tenancy under this Lease as of the effective date of termination, liquidated damages may be no greater than one half of one month's rent. Any amount owed; as liquidated damages by Tenant shall be due on the first day of the month in which the effective termination date occurs. This section shall not relieve Tenant of any other liabilities, which have accrued as of the date of termination.

23. **TERMINATION, RENEWAL OR EXTENSION OF LEASE.** This Lease will automatically terminate at the end of the lease term on the date on which Tenant's occupancy ends. In addition, Landlord may terminate this lease for any reason by giving at least thirty (30) days written notice to Tenant. The termination of this Lease will terminate Tenant's right to occupancy but it will not terminate any claims Tenant or Landlord may have arising out of events occurring during the Lease term or during any holdover by Tenant. No agreement renewing or extending this Lease will be effective unless that agreement is in writing and signed by Tenant and Landlord. If Tenant remains in possession of the Premises after the lease term is terminated or expires and Landlord consents to such holdover but does not enter into a written agreement extending this Lease or substituting a new written lease, Tenant shall have a month to month lease subject to termination by either party upon 30 days notice. The monthly rent during such holdover period shall be at the same rate as under this Lease or as otherwise agreed in writing.

24. **ASSIGNMENT OR SUBLET.** Tenant will not assign this Lease or sublet the Premises without Landlord's prior written consent, which will not be unreasonably withheld or delayed. Tenant agrees to pay Landlord a \$ N/A fee if Tenant assigns or sublets the Premises, or any part thereof. No assignment or sublet will release Tenant from continuing liability for the full performance of this Lease unless Landlord signs a written statement clearly releasing Tenant from such liability.

25. **BREACH BY TENANT.** If (a) Tenant fails to pay rent within five days after the date when due, (b) Tenant commits a material breach of this Lease, (c) Tenant denies Landlord's exercise of any rights under this Lease or arising by law, (d) legal proceedings are begun by or against Tenant to levy upon or dispose of Tenants leasehold interest in the Premises, or (e) the Premises is used by Tenant or others for any illegal purposes, Landlord will have the right to sue for rent and to enter and take possession through legal proceedings or, if the Premises is abandoned, to enter and take possession by any lawful means. In addition, Landlord will have the right to pursue all other remedies available, including a claim for damages. If Landlord pursues any such remedies (and regardless of whether such remedies are prosecuted to judgment), Tenant will be liable as follows:

- a. For all past due rent and other charges
- b. For all additional rent (future rent) that would have accrued until the expiration of the term of occupancy under this Lease or until a new lease term begins, provided (i) that this will not affect Landlord's duty to minimize the damages by making reasonable efforts to enter into a new lease as soon as practical, and (ii) that if Landlord obtains a judgment for future rent, Landlord shall apply as a credit towards that judgment all funds received by Landlord as rent for the Premises for those months for which the judgment for future rent was awarded.
- c. For all expenses Landlord may incur for cleaning, painting and repairing the Premises due to Tenant's failure to leave the Premises thoroughly clean and in good condition, reasonable wear and tear excepted;
- d. For any court costs and reasonable attorneys fees incurred by Landlord (i) in collecting rent, other charges or damages, and (ii) in obtaining possession of the Premises;
- e. For a collection fee equal to 25% of the judgment amount for rent, damages, court costs and attorneys fees. Tenant understands and agrees that this amount represents damages Landlord will be likely to incur in efforts to obtain a judgment against Tenant (including time and effort spent in case investigation, correspondence, filing suit, discussions with lawyers, case preparation and court attendance) and to collect such a judgment. If Tenant has breached the Lease by failing to pay rent when due, Landlord shall give a written notice to Tenant stating that the Lease will terminate within 5 days if the rent is not paid. If Tenant fails to pay the rent within that 5 day period, Landlord may terminate the Lease and proceed to obtain possession of the Premises by filing an unlawful detainer proceeding. In that proceeding, Landlord may pursue a claim for rent and other damages. In connection with breaches other than failure to pay



rent, if a material noncompliance with this Lease exists or if there is a violation materially affecting health and safety, Landlord may serve Tenant with a written notice stating that acts or omissions constituting the breach and stating (i) that the Lease will terminate upon a date not less than 30 days after Tenant receives the notice unless the breach is remedied within 21 days, and (ii) that the lease will terminate as set forth in the notice. If the breach is remedial by repairs or the payment of damages and Tenant adequately remedies the breach within 21 days or such longer period of time as Landlord may allow, the Lease shall not terminate. On the other hand, if the breach is not remedial, Landlord's written notice to Tenant may state the acts and omissions constituting the breach and state that the lease will terminate upon a specific date, which date may not be less than 30 days after Tenant receives the notice.

26. **BREACH BY LANDLORD.** If Landlord (a) commits a material breach of this Lease, or (b) fails to a substantial extent to comply with any laws with which Landlord must comply and which materially affect Tenant's health and safety, Tenant may give written notice to Landlord identifying the acts and conditions on the Premises concerning Landlord's breach and stating that this lease will terminate upon a specific date (which must be 30 days or more from the date Landlord receives the notice) unless Landlord remedies the breach within 21 days. If Landlord remedies the breach within that 21 day period, this Lease will not be subject to termination by Tenant in that instance. Tenant will not have the right to terminate this Lease because of conditions caused by the intentional or negligent acts of Tenant or persons on the Premises with Tenant's consent.
27. **RENT WITHHOLDING.** Tenant may not withhold rent because of conditions on the Premises that Landlord is required to repair unless Tenant has given Landlord written notice of the condition and Landlord has failed to successfully repair the condition within a reasonable period of time. If Tenant withholds rent because Landlord has breached the Lease, Tenant must immediately give Landlord a second written notice of the breach and of any conditions of the Premises which Landlord is required to remedy or repair and must state that rent is being withheld for such reasons. If Landlord then sues Tenant for possession of the Premises or for withheld rent, Tenant must promptly pay the rent to the court, which will hold the rent until it decides what portion, if any, should be paid to Landlord. If conditions exist which Landlord is required to remedy and which creates a fire hazard or serious threat to the health or safety of Tenant, Tenant may file an action in a court of competent jurisdiction to terminate the Lease, to require Landlord to repair the Premises, or to obtain other relief. In such an action, Tenant may pay rent to the court to be held until Tenant's action is decided. If Tenant withholds rent or pays rent into court under this section and the court finds (a) that Tenant has acted in bad faith, (b) that Tenant, Tenant's family or guests have caused the conditions or have refused unreasonably to allow Landlord or Landlord's written notice of the condition, Tenant will be liable for Landlord's reasonable costs, including costs for time spent, court costs, any repair costs due to Tenant's violation of the Lease, and attorneys fees.
28. **NOTICES.** All notices in writing required or permitted by this Lease may be delivered in person, or sent by mail (postage prepaid) to Landlord, Tenant or Agent at such party's address, as set forth above or at such other address as a party may designate from time to time by notice given in accordance with the terms of this section.
29. **HEADINGS.** The headings of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.
30. **GOVERNING LAW.** This Lease is entered into and shall be construed under the laws of the State of Virginia.
31. **SEVERABILITY.** Any provision of this Lease which is prohibited by, or unlawful or unenforceable under, Virginia law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Lease.
32. **FAILURE TO ENFORCE LEASE NOT A WAIVER.** Landlord's waiver of a breach by Tenant shall not be interpreted as a waiver of any subsequent breach or noncompliance, and this lease shall continue in full force and effect.
33. **AMENDMENTS.** This lease may not be amended or modified except by prior written consent of the Landlord. All amendments or modifications shall be in writing and signed by both parties.
34. **ENTIRE AGREEMENT.** This lease shall constitute the full and complete agreement between the parties, and no other writings or statements (other than amendments or modifications pursuant to Section 32) shall be of any consequence or have any legal effect.

**RESOLUTION IN SUPPORT OF RURAL POST OFFICES**

**WHEREAS**, the Constitution of the United States authorizes post offices including the one in Greenwood, Albemarle County, Virginia which operates efficiently and profitably; and

**WHEREAS**, the United States Postal Service (USPS) is planning to save operational funds to offset a deficit by implementing POSTPLAN (reduced hours of service) and D.U.O. (removal of vital functions); and

**WHEREAS**, the post office is often the only building in a small community which carries the community name; and

**WHEREAS**, users of small rural post offices which are closed will be obliged to travel many miles to obtain postal services; and

**WHEREAS**, mail delivery is already delayed in rural communities and will be further delayed by USPS plans to implement POSTPLAN and D.U.O.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of Albemarle County Virginia supports the continued operation of small rural post offices which are providing essential services to our communities and opposes the closing of any of these post offices or any reduction of services in those post offices which operate at a profit, such as the Greenwood Post Office.