

Appendix A

Authorized Signatories for Land Use Applications

1. Introduction

This appendix delineates those persons authorized to sign land use applications and proffers on behalf of corporations, partnerships, religious organizations, trusts, and other unincorporated bodies, societies, benevolent associations and organizations. We have focused on the most common entities and relationships your departments will encounter and ask that you contact us if you are faced with an entity that is not addressed here.

This appendix also identifies the supporting documentation an applicant should submit to demonstrate the authority of the person signing an application or proffer.

2. Stock corporations

Authorized signatories: (1) the board of directors; (2) any person in the corporation expressly authorized by the board of directors to complete prescribed acts on behalf of the corporation (*Virginia Code § 13.1-673*); (3) a committee of the board of directors (*Virginia Code § 13.1-689*); or, (4) a corporate officer as provided in the by-laws or in a resolution of the board of directors (*Virginia Code § 13.1-694*).

Supporting documentation: (1) for a board of directors, the articles of incorporation or a shareholders agreement may limit the board's statutory authority (*Virginia Code § 13.1-673*); (2) for a person expressly authorized by the board of directors, written evidence of that authorization, such as a board resolution or board minutes; (3) for a committee, an action of the board of directors authorizing the committee to act; the articles of incorporation or the by-laws may limit the statutory authority (*Virginia Code § 13.1-689*); (4) for a corporate officer, the by-laws or the delegating resolution of the board of directors (*Virginia Code § 13.1-694*).

3. Nonstock corporations

Authorized signatories: (1) the board of directors; (2) any person in the corporation expressly authorized by the board of directors to complete prescribed acts on behalf of the corporation (*Virginia Code § 13.1-853*); (3) a committee of the board of directors (*Virginia Code § 13.1-869*); or, (4) a corporate officer as provided in the by-laws or in a resolution of the board of directors (*Virginia Code § 13.1-872*).

Supporting documentation: (1) for a board of directors, the articles of incorporation and the by-laws, the latter of which may include a member or director agreement, may limit the board's statutory authority (*Virginia Code §§ 13.1-852.1, 13.1-853*); (2) for a person expressly authorized by the board of directors, written evidence of that authorization such as a board resolution or board minutes; (3) for a committee, an action of the board of directors authorizing the committee to act; the articles of incorporation or the by-laws may limit the statutory authority (*Virginia Code § 13.1-869*); (4) for a corporate officer, the by-laws or the delegating resolution of the board of directors (*Virginia Code § 13.1-872*).

4. Limited liability companies ("LLCs")

Authorized signatories: (1) if the LLC is not a manager-managed LLC, any member; (2) if the LLC is a manager-managed LLC, the manager or any member unless the articles of organization limit the members' authority (*Virginia Code § 13.1-1021.1(A)*).

Supporting documentation: articles of organization (*Virginia Code § 13.1-1021.1(A)*).

5. Partnerships

Authorized signatories: (1) if the land is held in the name of the partnership, by any partner; (2) if the land is held in the name of a partner, but the instrument transferring to the partner indicates the partner's capacity as a partner or the existence of a partnership, but without identifying the partnership, by the partner in whose name the property is held; (3) if the land is held in the name of a person (who is a partner) but the instrument transferring to the person does not indicate the person's capacity as a partner or the existence of a partnership, by the person in whose name the property is held (*Virginia Code § 50-73.92*).

Supporting documentation: statement of partnership authority, which may limit the authority of one or more partners (*Virginia Code § 50-73.93*).

6. Limited partnerships

Authorized signatories: any general partner (*Virginia Code § 50-73.29*).

Supporting documentation: partnership agreement, or amendments thereto, which may limit the authority of one or more general partners (*Virginia Code § 50-73.29*).

7. Unincorporated churches and other religious bodies

Authorized signatories: (1) all trustees who hold title to the property (*Virginia Code §§ 57-8 and 57-15(A)*); (2) the authorized signatory of a corporation created pursuant to *Virginia Code § 57-16.1* to hold, administer and manage its real or personal property (*Virginia Code § 57-15(B)(ii)*); or (3) a bishop, minister or ecclesiastical officer (*Virginia Code § 57-16*).

Supporting documentation: (1) for trustees, an authorizing court order (*Virginia Code § 57-15(A)*); (2) for the corporation holding title, the appropriate corporate documents (*see, e.g., section 3, above*) or; (3) for a bishop, minister or ecclesiastical officer, the laws, rules or ecclesiastical polity of the entity that authorizes the person to hold, improve, mortgage, sell and convey the property (*Virginia Code § 57-16*).

Comment: The terms describing the various types of entities (churches, religious congregations, and religious societies) are not defined by statute. The Virginia Supreme Court has said that *Virginia Code §§ 57-7.1 through 57-17* encompass property held for the benefit of a local congregation, as opposed to property held by a larger hierarchical body. *Norfolk Presbytery v. Bollinger*, 214 Va. 500 (1974).

8. Incorporated churches and other religious bodies

Authorized signatories: see subsection 3, above.

Supporting documentation: see subsection 3, above.

Comment: In 2005, *Virginia Code § 57-15* was amended to allow religious organizations to incorporate. *Virginia Code § 57-15(B)(i)* authorizes trustees, as an alternative to holding, administering and managing property in the name of the trustees, to incorporate the church or religious body and to transfer the title of the real and personal property held by them to the incorporated church or religious body.

9. Land trusts

Authorized signatory: all trustees who hold title to the property (*Virginia Code § 55-17.1*); provided (1) if a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to

the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust (*Virginia Code § 55-547.03(D)*); and (2) a trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly (*Virginia Code § 55-547.03(E)*).

Supporting documentation: deed of conveyance to the trustees; trust instrument (*Virginia Code § 55-17.1*).

10. Land held under the Virginia Uniform Transfers to Minors Act

Authorized signatory: the custodian (*Virginia Code § 31-49*).

Supporting documentation: instrument evidencing the transfer to the custodian under the Virginia Uniform Transfers to Minors Act (*Virginia Code § 31-46*).

11. Unincorporated bodies or societies who acquire land for charitable purposes

Authorized signatories: all trustees who hold title to the property (*Virginia Code § 57-18*, which incorporates Virginia Code §§ 57-8 and 57-15 by reference).

Supporting documentation: authorizing court order (*Virginia Code § 57-18*).

12. Benevolent associations (such as armed forces veterans associations, Freemasons, Odd Fellows and other fraternal organizations)

Authorized signatories: all trustees who hold title to the property (*Virginia Code § 57-19*, which incorporates Virginia Code §§ 57-8 and 57-15 by reference).

Supporting documentation: authorizing court order (*Virginia Code § 57-19*).

13. Consent requirements for amendments to planned districts

Rezoning in existing planned districts pose unique problems. The intent of a planned district is, among other things, to promote “economical and efficient land use through unified development” and to provide “appropriate and harmonious physical development.” *Albemarle County Code § 18-8.1*. In order to qualify as a planned development, a project must meet the requirements of Albemarle County Code § 18-8.3:

A planned development is a development that meets all of the following criteria: (1) the land is under *unified control* and will be *planned and developed as a whole*; (2) the development is in general accord with one or more approved application plans; and (3) in all planned development districts other than a planned historic district, the development will provide, operate and maintain common areas, facilities and improvements for some or all occupants of the development where these features are appropriate. (italics added)

Under conventional zoning districts, each property is viewed as separate from all other properties and developed without regulatory consideration of the uses on adjoining properties, access, setbacks, scale and massing, or utilities. In a planned district, adjacent uses are planned to be compatible with one another. Setbacks, heights, scale, massing, and, in many cases, architecture, constitute the unifying features of a planned district. Because the use of the lands in a planned district is planned as a whole, the building locations and parking needs are generally known and the owner(s) can take advantage of shared facilities such as stormwater management, utilities, amenities, and parking. As a result, planned districts provide economical and efficient land use through unified development and, in many cases, greater economy of scale.

Each application for a planned district must be submitted as provided for other zoning map

amendments. *Albemarle County Code § 18-8.5.1*. One of those requirements, of course, is that all of the owners of the property affected by the rezoning must sign the application. This rule applies not only to the creation of the planned district but also to any amendments to the district. *Albemarle County Code § 18-8.6*.

A. Some changes to a planned district do not require a rezoning consented to by all of the owners

Some minor changes to a planned district's application plan or code may be approved by the county's director of planning without going through the rezoning process. *Albemarle County Code § 18-8.5.5.3*. These minor changes are expressly delineated in *Albemarle County Code § 18-8.5.5.3(a)*:

- Minor variations to yard requirements, maximum structure heights and minimum lot sizes;
- Changes to the arrangement of buildings and uses shown on the plan, provided that the major elements shown on the plan and their relationships remain the same;
- Changes to phasing plans;
- Minor changes to landscape or architectural standards; and
- Minor variations to street design.

Any proposed change to an approved application plan or code that is not one of the minor variations listed above may be accomplished only by a rezoning. *Albemarle County Code § 18-8.5.5.3*. A limited number of rezonings in a planned district have been allowed to proceed without the consent of all of the owners where the proposed change was determined not to materially affect other parcels within the planned district. Examples of these kinds of changes within the past 15 years include the relocation of pedestrian pathways, a change to the zoning district designation of certain lands in the development where there was no change to the permitted uses on those lands (*e.g.*, land used by residents for equestrian activities in a planned district was rezoned to rural areas to allow it to be eligible for land use taxation), and a modification to the applicable setback regulations in a newly developed section of a planned district. From these prior examples, changes in use, density, intensity, or key elements of the planned district are material changes because they would impact other lots in the planned district. Also, the planned development policies of *unified control* and *planning and developing the district as a whole* are threatened by the proposed changes.

B. Material changes to an application plan or a code of development are material and require the consent of all of the owners within the district

The ability to amend the regulations in a planned development is governed not only by the county's zoning regulations, but also by proffers and codes of development (in neighborhood model districts).

Generally, changes in one part of a planned district can greatly affect development in other parts of the district. Thus, it is essential for unified control to be established over all parts of the district. For example, proposed changes in building height and square footage increase the intensity of uses in a planned district, and these changes would likely impact other parts of the planned district. When someone buys into a planned district, the buyer is relying on the commitments made in the planned district's application plan, proffers, and code of development for that plan to be accomplished. Allowing individual lot owners within a planned district to unilaterally increase the intensity of the use on their land destroys two of the fundamental policies underlying planned districts – unified control and planning and developing the planned district as a whole. For these reasons, it is essential that all owners within the planned district consent to the substantive material changes within the district.

An apt analogy can be drawn from the typical residential subdivision and the restrictive covenants that

are often recorded against, and applicable to, all of the lots. The restrictive covenants are created to establish common rules to which all of the owners of lots in the subdivision will adhere. Changes to those covenants typically are permitted only by the approval of the residents by either a supermajority or unanimous vote. An individual lot owner cannot amend the covenants as they apply to its lot to suit its needs. Thus, for example, a restrictive covenant that allows flag poles of not more than 20 feet cannot be unilaterally amended by the owner of a single residential lot to allow flag poles up to 100 feet in height only on that owner's lot.

C. Case-by-case analysis

Whether a proposed change requires the consent of all of the owners within a planned district is determined on a case-by-case basis considering the planned district policies and regulations in the zoning ordinance, the district's application plan, proffers and code of development, and the nature of the proposed change to determine its materiality under the principles discussed herein.