

**ACTIONS**  
**Board of Supervisors Meeting of November 12, 2008**

November 13, 2008

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
1. Call to Order. <ul style="list-style-type: none"> <li>Meeting was called to order at 3:32 p.m. by the Chairman, Mr. Boyd. All BOS members were present. Also present were Bob Tucker, Larry Davis, and Meagan Hoy.</li> </ul>	
2. Work Session: Five Year Financial Plan. <ul style="list-style-type: none"> <li><b>HELD.</b></li> </ul>	
3. Recess. <ul style="list-style-type: none"> <li>At 5:06 p.m., the Board went into closed meeting to consider appointments to Boards, Commissions, and Committees, and to consult with legal counsel and staff regarding specific legal matters requiring legal advice relating to the acquisition of property necessary for a transportation project.</li> </ul>	
4. Call to Order. <ul style="list-style-type: none"> <li>Meeting was called back to order at 6:00 p.m. by the Chairman, Mr. Boyd. All BOS members were present. Also present were Bob Tucker, Larry Davis, Wayne Cilimberg and Ella Jordan.</li> <li><b>Certified</b>, by a vote of 6:0, the Closed Meeting.</li> </ul>	
7. From the Board: Matters Not Listed on the Agenda. <ul style="list-style-type: none"> <li>Skipped to the end of the meeting.</li> </ul>	
8. From the Public: Matters not Listed on the Agenda. <ul style="list-style-type: none"> <li>Jeff Werner, of PEC, provided Board members with a copy of the Charlottesville Area Buy Fresh Buy Local holiday food guide. The guide is to help residents support farms as part of their holiday shopping.</li> </ul>	
9.2 Resolution to accept roads in Chestnut Ridge Subdivision into the State Secondary System of Highways. <ul style="list-style-type: none"> <li><b>ADOPTED</b> the attached resolution.</li> </ul>	Clerk: Forward resolution and signed AM-4.3 Form to Glenn Brooks. (Attachment 1)
9.3 Fiscal Year 2009 County of Albemarle & State Health Department Local Government Agreement. <ul style="list-style-type: none"> <li><b>APPROVED</b> the Fiscal Year 2009 County of Albemarle &amp; State Health Department Local Government Agreement and <b>AUTHORIZED</b> the County Executive to execute the attached Agreement.</li> </ul>	County Executive's office: Provide Clerk with copy of fully executed document. (Attachment 2)
10. <b><u>Abandonment of public right-of-way – Jefferson Mill Lane (Route 618).</u></b> <ul style="list-style-type: none"> <li><b>DEFERRED</b> to January 7, 2009.</li> </ul>	Clerk: Re-advertise and schedule on January 7, 2009 agenda.
11. <b><u>ZTA-2005-007. Storage yards.</u></b> <ul style="list-style-type: none"> <li><b>ADOPTED</b>, by a vote of 6:0, ZTA-2005-007.</li> </ul>	Clerk: Forward copy of adopted ordinance to Community Development and County Attorney's office staff. (Attachment 3)
12. <b><u>STA-2008-001. Rural Areas 2-lot street standard; single point of access.</u></b> <ul style="list-style-type: none"> <li><b>DEFERRED STA-2008-001</b>, by a vote of 6:0, for additional staff review to include participation by the public in a roundtable.</li> <li>Ms. Mallek said she would serve on the</li> </ul>	Community Development: Proceed as directed.

	roundtable.	
13.	<p><b><u>ZTA-2006-001. Country Stores.</u></b></p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b>, by a vote of 6:0, ZTA-2006-001.</li> </ul>	<u>Clerk:</u> Forward copy of adopted ordinance to Community Development and County Attorney's office staff. (Attachment 4)
	At 8:41 p.m., the Board recessed, and then reconvened at 8:50 p.m.	
14.	<p><b><u>CPA 2008-01. Water Supply Planning Update.</u></b></p> <ul style="list-style-type: none"> <li>• <b>DEFERRED</b>, by a vote of 6:0, CPA-2008-001 until December 3, 2008</li> </ul>	<u>Clerk:</u> Reschedule for December 3, 2008 consent agenda.
15.	<p><b><u>PROJECT: ZMA-2008-04. NGIC Expansion (Sign #77).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, ZMA-2008-004 inclusive of proffers dated 10/16/08 and signed 10/21/08.</li> </ul>	<u>Clerk:</u> Set out proffers. (Attachment 5)
16.	<p><b><u>PROJECT: SP-2008-45. NGIC Expansion (Sign #77).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, SP-2008-045, subject to the one condition recommended by the Planning Commission.</li> </ul>	<u>Clerk:</u> Set out condition of approval. (Attachment 6)
17.	<p><b><u>PROJECT: SP-2008-46. NGIC Expansion (Sign #77).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, SP-2008-046 subject to two conditions recommended by the Planning Commission.</li> </ul>	<u>Clerk:</u> Set out conditions of approval. (Attachment 6)
18.	<p><b><u>PROJECT: ZMA-2008-05. Old Trail Village Block 2 (Signs #1,2,22&amp;47).</u></b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, ZMA-2008-005 inclusive of revised proffers dated and signed October 23, 2008, and revised Table 4 of the Code of Development dated October 22, 2008.</li> </ul>	<u>Clerk:</u> Set out proffers. (Attachment 7)
19.	<p>From the Board: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> <li>• <b>APPOINTED</b> Fred Huckstep to the Fire Prevention Board of Appeals, to fill an unexpired term to expire November 21, 2009.</li> <li>• <b>REAPPOINTED</b> William (Bill) Daggett and Fred Missel to the Architectural Review Board, with said terms to expire on November 14, 2012.</li> </ul> <p><u>Lindsay Dorrier:</u></p> <ul style="list-style-type: none"> <li>• He, Ms. Mallek and Ms. Thomas attended the recent VACo Annual meeting. The sessions were interesting and very productive.</li> </ul> <p><u>Sally Thomas:</u></p> <ul style="list-style-type: none"> <li>• The next meeting of the SFRR Task Force is November 13th, 6:00 p.m., in the City Hall Basement. Mr. Rooker is not available to attend. If any other Board members wants to attend in his place, let her know.</li> <li>• The High Growth Coalition has drafted public facility impact fee legislation which they do not believe they will enter into this General Assembly session unless there is a counter bill proposed.</li> <li>• It was reiterated at the VACo Conference that there is no money for transportation. There was a small work session on sustainable community investment, a plan by the Administration to support projects that are similar to the County's Neighborhood Model.</li> </ul>	<u>Clerk:</u> Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.

<p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> <li>• She is a member of the State's Agricultural Committee. This is an area where there may be some money available for biosolids. There are parts of the State that have heavy reliance by some farmers on distributions of biosolids from wastewater plants in Northern Virginia. The licensing fees that companies pay to the State go into a pot for localities to pay for inspections. The distribution companies will pay for inspectors on the site because they are very interested in having a place to take their materials. She hopes that the County can act on this since it is revenue neutral.</li> <li>• The State is considering coming back to localities to take back 30 to 50 percent of localities' stormwater fees to run their administrative supervision of the stormwater regulations.</li> <li>• Asked for additional information on definitions and stipulations for home occupations, particularly the use of degreaser compounds.</li> </ul> <p><u>Ken Boyd:</u></p> <ul style="list-style-type: none"> <li>• Asked the Board to consider initiating the Comprehensive Plan Amendment for the Yancey Mills Business Park request that the Commission did not recommend moving forward.</li> </ul> <p><b>CONSENSUS</b> of Board to get a report on the Commission's action including a status of the timing of the 2009 Crozet Master Plan revision.</p>	<p><u>Wayne Cilimberg:</u> Provide update to Board.</p>
<p>17. Adjourn.</p> <ul style="list-style-type: none"> <li>• At 10:20 p.m., the meeting was adjourned to November 25, 2008, 2:00 p.m., Room 241.</li> </ul>	

ewj/mrh

- Attachment 1 – Resolution – Chestnut Ridge Subdivision
- Attachment 2 – Health Department Local Government Agreement
- Attachment 3 – Ordinance - ZTA-2005-007. Storage yards
- Attachment 4 – Ordinance – ZTA-2006-01. Country Stores
- Attachment 5 – Proffers - ZMA-2008-04. NGIC Expansion
- Attachment 6 – Conditions of Approval
- Attachment 7 – Proffers – ZMA-2008-05. Old Trail Village Block 2

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 12th day of November, 2008, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Chestnut Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **November 12, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Chestnut Ridge Subdivision**, as described on the attached Additions Form AM-4.3 dated **November 12, 2008**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

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

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

\* \* \* \* \*

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

- 1) **Roberts Lane (State Route 1634)** from the intersection of Buck Mountain Road (Route 663) to the intersection of Cleopatra Court (Route 1635), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3181, pages 225-246, with a 50-foot right-of-way width, for a length of 0.11 miles.
- 2) **Roberts Lane (State Route 1634)** from the intersection of Cleopatra Court (Route 1635) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3181, pages 225-246, with a 50-foot right-of-way width, for a length of 0.28 miles.
- 3) **Cleopatra Court (State Route 1635)** from the intersection of Roberts Lane (Route 1634) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 3181, pages 225-246, with a 50-foot right-of-way width, for a length of 0.21 miles.

Total Mileage – .60

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH

## STATEMENT OF AGREEMENT WITH the Board of Supervisors of the County of Albemarle, Virginia.

Under this agreement, which is created in satisfaction of the requirements of 32.1-31 of the **Code of Virginia** (1950), as amended, the Virginia Department of Health, over the course of one fiscal year, will pay an amount not to exceed **\$661,495**, from the state general fund to support the cooperative budget in accordance with appropriations by the General Assembly, and in like time frame, the **Board of Supervisors of Albemarle County** will provide by appropriation and in equal quarterly payments a sum of **\$806,739** to include **\$541,223** as local match and **\$104,818** in support of the Children's Dental Program, **\$29,340** in support of the Food Program, and **\$131,358** in support of the Jefferson Area CHIP. These joint funds will be distributed in timely installments, as services are rendered in the operation of the **Charlottesville/Albemarle Health Department**, which shall perform public health services to the Commonwealth as indicated in Attachment A(1.), and will perform services required by local ordinances as indicated in Attachment A(2.). Payments from the local government are due on the third Monday of each fiscal quarter.

The term of this agreement begins **July 1, 2008**. This agreement will be automatically extended on a state fiscal year to year renewal basis under the terms and conditions of the original agreement unless written notice of termination is provided by either party. Such written notice shall be given at least 60 days prior to the beginning of the fiscal year in which the termination is to be effective. Any increase or decrease in funding allocation shall be made by an amendment to this agreement.

The parties agree that:

1. Under this agreement, as set forth in paragraphs A, B, C, and D below, the Commonwealth of Virginia and the Virginia Department of Health shall be responsible for providing liability insurance coverage and will provide legal defense for state employees of the local health department for acts or occurrences arising from performance of activities conducted pursuant to state statutes and regulations.
  - A. The responsibility of the Commonwealth and the Virginia Department of Health to provide liability insurance coverage shall be limited to and governed by the Self-Insured General Liability Plan for the Commonwealth of Virginia, established under 2.2-1837 of the Code of Virginia. Such insurance coverage shall extend to the services specified in Attachments A(1.) and A(2.), unless the locality has opted to provide coverage for the employee under the Public Officials Liability Self-Insurance Plan, established under 2.2-1839 of the Code or under a policy procured by the locality.
  - B. The Commonwealth and the Virginia Department of Health will be responsible for providing legal defense for those acts or occurrences arising from the performance of those services listed in Attachment A(1.), conducted in the performance of this contract, as provided for under the Code of Virginia and as provided for under the terms and conditions of the Self-Insured General Liability Plan for the Commonwealth of Virginia.
  - C. Services listed in Attachment A(2.), any services performed pursuant to a local ordinance, and any services authorized solely by Title 15.2 of the Code of Virginia, when performed by a state employee, are herewith expressly excepted from any requirements of legal defense or representation by the Attorney General or the Commonwealth. For purposes of assuring the eligibility of a state employee performing such services for liability coverage under the Self-Insured General Liability Plan of the Commonwealth of Virginia, the Attorney General has approved, pursuant to 2.2-507 of the Code of Virginia and the Self-Insured

General Liability Plan of the Commonwealth of Virginia, the legal representation of said employee by the city or county attorney, and **the Board of Supervisors of Albemarle County** hereby expressly agrees to provide the legal defense or representation at its sole expense in such cases by its local attorney.

- D. In no event shall the Commonwealth or the Virginia Department of Health be responsible for providing legal defense or insurance coverage for local government employees.
- 2. Title to equipment purchased with funds appropriated by the local government and transferred to the state, either as match for state dollars or as a purchase under appropriated funds expressly allocated to support the activities of the local health department, will be retained by the Commonwealth and will be entered into the Virginia Fixed Asset Accounting and Control System. Local appropriations for equipment to be locally owned and controlled should not be remitted to the Commonwealth, and the local government's procurement procedures shall apply in the purchase. The locality assumes the responsibility to maintain the equipment and all records thereon.
- 3. Amendments to or modifications of this contract must be agreed to in writing and signed by both parties.

\_\_\_\_\_  
State Health Commissioner  
Virginia Department of Health

\_\_\_\_\_  
Local authorizing officer signature

\_\_\_\_\_  
Authorizing officer printed name

\_\_\_\_\_  
Authorizing officer title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ORDINANCE NO. 08-18(6)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

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

**By Amending:**

- Sec. 3.1 Definitions
- Sec. 24.2.1 By right
- Sec. 24.2.2 By special use permit
- Sec. 25.2.1 By right
- Sec. 25.2.2 By special use permit
- Sec. 25A.2.1 By right
- Sec. 25A.2.2 By special use permit
- Sec. 27.2.1 By right
- Sec. 27.2.2 By special use permit
- Sec. 28.2.1 By right
- Sec. 28.2.2 By special use permit

**Chapter 18. Zoning**

**Article I. General Regulations**

**Sec. 3.1 Definitions**

*Heavy equipment.* Equipment that requires an oversize/overweight permit from the Virginia Department of Motor Vehicles to be transported over public highways.

*Heavy equipment and heavy vehicle parking and storage yard:* An area used for parking, storing and/or maintaining heavy equipment and heavy vehicles used off-site in the trade, business or other commercial or industrial activity of the owner or occupant (collectively, the "off-site activity"), and which may include storing and maintaining heavy equipment and heavy vehicles within buildings or structures and storing explosives, including blasting caps, that are used in the off-site activity, and kerosene and other volatile materials in volumes that are reasonably necessary to maintain equipment and vehicles; but which use does not include storing nuclear products, by-products or wastes.

*Heavy vehicles.* Vehicles that have more than five (5) axles or haul heavy equipment. For the purposes of this definition, the axles of tractor trucks and their trailers shall be counted as though they are a single vehicle.

*Storage yard:* An area used for parking, storing and/or maintaining equipment, vehicles and materials used off-site in the trade, business or other commercial or industrial activity of the owner or occupant, and which may include storing and maintaining equipment, vehicles and materials within buildings or structures; but which use does not include parking, storing and/or maintaining heavy equipment and heavy vehicles, storing explosives, including blasting caps, storing nuclear products, by-products or wastes, or storing kerosene or other volatile materials except that which is reasonably necessary to maintain equipment and vehicles.

**Article III. District Regulations**

**Sec. 24.2.1 By right**

The following uses shall be permitted in any HC district subject to the requirements and limitations of these regulations. The zoning administrator, after consultation with the director of planning and other

appropriate officials, may permit, as a use by right, a use not specifically permitted; provided that such use shall be similar to uses permitted by right in general character, and more specifically, similar in terms of locational requirements, operational characteristics, visual impact and traffic generation. Appeals from the zoning administrator's decision shall be as generally provided in section 34.

46. Storage yards.

**Sec. 24.2.2 By special use permit**

The following uses shall be permitted by special use permit in the HC district:

**Sec. 25.2.1 By right**

The following uses shall be permitted by right in the PD-SC district:

1. Uses permitted by right in the C-1, CO and HC districts, except for storage yards. Outdoor storage, sales or display shall be permitted only when enclosed by appropriate visual screening.

**Sec. 25.2.2 By special use permit**

The following uses shall be permitted by special use permit in the PD-SC district:

1. Commercial recreational establishment included but not limited to amusement centers, bowling alleys, pool halls and dance halls. (Amended 1-1-83)
2. Electrical power substations, transmission lines and related towers; gas or oil transmission lines, pumping stations and appurtenances; unmanned telephone exchange centers; microwave and radio-wave transmission and relay towers, substations and appurtenances (reference 5.1.12).
3. Parking structures located wholly or partly above grade. (Added 11-7-84)
4. Drive-in windows serving or associated with permitted uses. (Added 11-7-84; Amended 9-9-92)
5. Veterinary office and hospital (reference 5.1.11). (Added 11- 15-89)
6. Tier III personal wireless service facilities (reference 5.1.40). (Added 10-13-04)
7. Storage yards.

(§ 20-25.2.2, 12-10-80; 1-1-83; 11-7-84; 11-15-89; 9-9-92; Ord. 04-18(2), 10-13-04)

**Sec. 25A.2.1 By right**

The following uses shall be permitted by right in the PD-MC district:

1. Uses permitted by right in the C-1, CO and HC districts, except for storage yards. Outdoor storage, sales or display shall be permitted only when enclosed by appropriate visual screening.

...

**Sec. 25A.2.2 By special use permit**

The following uses shall be permitted by special use permit in the PD-MC district:

1. Uses permitted by special use permit in the C-1, CO and HC districts.



2. Outdoor amphitheater (reference 5.1.37). (Added 10-9-96)
3. Storage yards.

**Sec. 27.2.1 By right**

Except as otherwise limited by section 27.2.2.10, the following uses shall be permitted by right in the LI district: (Amended 2-13-85)

9. Storage yards.

**Sec. 27.2.2 By special use permit**

The following uses shall be permitted by special use permit in the LI district:

18. Heavy equipment and heavy vehicle parking and storage yards.

**Sec. 28.2.1 By right**

Except as otherwise limited by section 28.2.2.14, the following uses shall be permitted by right in the HI district: (Amended 2-13-85)

19. Storage yard.
26. Heavy equipment and heavy vehicle parking and storage yards.

**Sec. 28.2.2 By special use permit**

The following uses shall be permitted by special use permit in the HI district:

**ORDINANCE NO. 08-18(7)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

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

**By Amending:**

- Sec. 3.1 Definitions
- Sec. 6.4 Nonconforming lots
- Sec. 10.2.1 By right
- Sec. 10.2.2 By special use permit
- Sec. 10.4 Area and bulk regulations

**By Adding:**

- Sec. 5.1.45 Country stores

**Chapter 18. Zoning**

**Article 1. General Provisions**

**Sec. 3.1 Definitions**

*Country Store:* A store whose primary use is to offer for sale a wide variety of retail merchandise.

*Country Store, Class A:* A country store located in a historic country store building, and which may include accessory uses including those expressly authorized in section 5.1.45.

*Country Store, Class B:* A country store located in a non-historic country store building, and which may include accessory uses including those expressly authorized in section 5.1.45.

*Country Store Building, Historic:* A building whose primary use at any time on or prior to January 1, 1965 was a country store.

*Country Store Building, Non-Historic:* A building constructed after January 1, 1965 whose primary use at any time after that date was a country store.

**Article 2. Basic Regulations**

**Sec. 5.1.45 Country stores**

Each country store, Classes A and B, shall be subject to the following, as applicable:

- a. *Country store, Class A.* Each country store, Class A, shall be subject to the following:
  - 1. *Primary use.* At least fifty-one percent (51%) of the gross floor area of a historic country store building shall be used as a country store, including accessory food sales and interior seating for accessory food sales as provided in section 5.1.45(a)(2)(a).
  - 2. *Accessory uses.* The following uses are permitted as accessory uses:
    - a. *Accessory food sales.* Accessory food sales, which may include, but are not limited to, luncheonettes, snack bars, refreshment stands and other restaurant uses. Interior seating for luncheonettes, snack bars, refreshment stands and

other restaurant uses shall not exceed twenty percent (20%) of the total gross floor area of the country store use. An additional twenty percent (20%) of the total gross floor area of the country store use shall be allowed as exterior seating.

- b. *Single family dwelling and offices.* Up to forty-nine percent (49%) of the gross floor area of an historic country store building may be used for one single family dwelling and/or one or more offices.
3. *Exemptions.* Country stores, Class A shall be exempt from sections 4.1.2, 4.1.3, 4.12.6, 4.12.13, 4.12.14, 4.12.15, 4.12.16(a) and (b), 4.12.17, 4.12.18, 4.12.19, 6.3 (B), (F) and (G), 6.4(D), 32.7.2.7, 32.7.2.8, and 32.7.9.
4. *Building size.* An historic country store building shall not exceed the gross floor area of the building as it existed on November 12, 2008 or four thousand (4,000) square feet gross floor area, whichever is greater.
5. *Front yard setback.* The following minimum front yard setback shall apply:
  - a. *Building satisfies minimum front yard setback.* If, on November 12, 2008, a historic country store building satisfies the minimum front yard setback set forth in section 10.4, then that setback shall apply.
  - b. *Building does not satisfy minimum front yard setback.* If, on November 12, 2008, a historic country store building does not satisfy the minimum front yard setback set forth in section 10.4, the minimum front yard setback shall be the distance between the building and the street, road or access easement on November 12, 2008 and that distance shall not be thereafter reduced. An enlargement or extension of the building shall: (i) be no closer to a right-of-way than the existing structure or footprint; (ii) be set back from the street, road or access easement the minimum distance required by the Virginia Department of Transportation to provide sight distance; and (iii) comply with the rear and side yard setback requirements, unless they can be reduced pursuant to section 4.11 of this chapter.
6. *Entrances.* No existing entrance for a new use shall be used until the Virginia Department of Transportation approves the entrance to the site. Except for those changes to the entrance required to meet applicable design standards, provide adequate sight distance and safe and convenient access as determined by the county engineer, each existing entrance shall retain its existing site character as determined by the director of planning.
7. *Sewage disposal systems.* Notwithstanding any other provision of this chapter, if an on-site conventional sewage disposal system cannot be approved:
  - a. *Off-site conventional sewage disposal system.* The zoning administrator may approve a conventional sewage disposal system to serve a country store and its accessory uses that is located on an abutting lot, provided that the owner obtains from the owner of the abutting lot an easement and the deed of easement is in a form acceptable to the county attorney that provides perpetual access to the sewage disposal system to allow its installation and maintenance.
  - b. *On-site nonconventional sewage disposal.* The zoning administrator may authorize an on-site nonconventional sewage disposal system if the applicant demonstrates to the satisfaction of the zoning administrator that: (i) a conventional sewage disposal system cannot be provided on-site for the country store use only; (ii) the lot on which the country store use is located cannot be enlarged by boundary line adjustment or subdivision; (iii) a conventional sewage disposal system cannot be located on any abutting lot owned by the applicant because of a physical condition or limitation of that lot including, but not limited

to, topography, soil conditions, or existing improvements on the abutting lot (hereinafter, a “physical condition or limitation”; (iv) a conventional sewage disposal system cannot be located on any abutting lot that is under different ownership than the lot on which the country store is located because of either a physical condition or limitation or the owner’s refusal to grant an easement; and (v) the Virginia Department of Health approves the nonconventional sewage disposal system. In authorizing a nonconventional sewage disposal system, the zoning administrator shall require that the applicant maintain the system as recommended by the Virginia Department of Health or as required by law.

- c. *Systems defined.* For the purposes of this subsection, a “conventional sewage disposal system” means a sewage disposal system regulated and authorized by the Virginia Department of Health that uses a subsurface soil absorption system; a “nonconventional sewage disposal system” means a sewage disposal system regulated and authorized by the Virginia Department of Health that does not use a subsurface soil absorption system including, but not limited to, a Type III system regulated under 12 VAC 5-610-250(C).

b. *Country store, Class B.* Each country store, Class B, shall be subject to the following:

- 1. *Primary use.* At least fifty-one percent (51%) of the gross floor area of a non-historic country store building shall be used as a country store, including accessory food sales and interior seating for accessory food sales as provided in section 5.1.45(b)(2)(a).
- 2. *Accessory uses.* The following uses are permitted as accessory uses:
  - a. *Accessory food sales.* Accessory food sales, which may include, but are not limited to, luncheonettes, snack bars, refreshment stands and other restaurant uses. Interior seating for luncheonettes, snack bars, refreshment stands and other restaurant uses shall not exceed twenty percent (20%) of the total gross floor area of the country store use. An additional twenty percent (20%) of the total gross floor area of the country store use shall be allowed as exterior seating.
  - b. *Single family dwelling and offices.* Up to forty-nine percent (49%) of the gross floor area of the non-historic country store building may be used for one single family dwelling and/or one or more offices.
- 3. *Exemptions.* Country stores, Class B, shall be exempt from section 32.7.2.8.
- 4. *Building size.* A non-historic country store building shall not exceed the gross floor area of the building as it existed on November 12, 2008 or four thousand (4,000) square feet gross floor area, whichever is greater.
- 5. *Front yard setback.* The following minimum front yard setback shall apply:
  - a. *Existing building satisfies minimum front yard setback.* If, on November 12, 2008, an existing non-historic country store building satisfies the minimum front yard setback set forth in section 10.4, then that setback shall apply.
  - b. *Existing building does not satisfy minimum front yard setback.* If, on November 12, 2008, an existing non-historic country store building does not satisfy the minimum front yard setback set forth in section 10.4, the minimum front yard setback shall be the minimum required by the Virginia Department of Transportation to provide sight distance.
  - c. *New building.* Each non-historic country store building established on and after November 12, 2008 shall comply with the minimum front yard set forth in section 10.4.

6. *Entrances.* No existing entrance for a new use shall be used until the Virginia Department of Transportation approves the entrance to the site. Except for those changes to the entrance required to meet applicable design standards, provide adequate sight distance and safe and convenient access as determined by the county engineer, each existing entrance shall retain its existing site character as determined by the director of planning.
- c. *Sale of gasoline and other fuels.* If a special use permit is granted for the sale of gasoline and other fuels, the sale of gasoline from dispensers shall be limited to one multiple product dispenser or one dispenser containing no more than six nozzles, not including nozzles for diesel fuel.
- d. *Pre-existing country stores.* Any country store existing before and continuing on and after November 12, 2008 that was authorized by a special use permit or a conditional use permit (the "permit") granted by the board of supervisors shall be subject to the following:
  1. *Country store, Class A.* If the country store qualifies as a country store, Class A, the permit and its conditions shall be of no further force or effect. If the permit or a modification, waiver, variation, or a variance granted prior to November 12, 2008 authorizes what would otherwise be allowed only by a modification or waiver of the requirements of section 5.1.45, the country store, Class A and/or the historic country store building as approved shall be deemed to comply with section 5.1.45.
  2. *Country store, Class B.* If the country store qualifies as a country store, Class B, the permit and its conditions shall apply or not apply as follows: (i) if the permit has a condition that is more restrictive than the applicable regulations in section 5.1.45, the applicable regulations in section 5.1.45 shall apply; and (ii) if the permit or a modification, waiver, variation, or a variance granted prior to November 12, 2008 authorizes what would otherwise be allowed only by a modification or waiver of the requirements of section 5.1.45 granted under section 5.1, the country store, Class B and/or the non-historic country store building as approved, shall be deemed to comply with section 5.1.45.
  3. *Gasoline fuel dispensers.* Gasoline fuel dispensers established prior to November 12, 2008 may qualify as a nonconforming use under section 6.2.
- e. *Continuation of accessory uses.* Notwithstanding any other provision of this chapter, if a country store, Class A or Class B, use discontinues, an accessory use authorized by sections 5.1.45(a)(2) or 5.1.45(b)(2) may continue for up to two (2) years thereafter even though a country store, Class A or Class B use is not reestablished during that period.
- f. *Canopies.* Canopies over gasoline fuel dispensers shall be subject to the following:
  1. *Canopies existing on November 12, 2008.* Canopies existing on November 12, 2008 are permitted, provided that the location, height, size, area, or bulk of a canopy existing on November 12, 2008 shall not be thereafter changed, enlarged or extended, and further provided that the height, size, area or bulk of a canopy may be reduced.
  2. *Canopies established after November 12, 2008.* No canopy may be established at a country store, Class A, after November 12, 2008. A canopy may be established at a country store, Class B, after November 12, 2008 as authorized by a special use permit for a country store, Class B, under section 10.2.2(22)

#### **Sec. 6.4 Nonconforming lots.**

A nonconforming lot may continue, subject to the provisions, conditions and prohibitions set forth herein.

- A. *Physical changes to a nonconforming lot.* A nonconforming lot may be changed as follows:

1. *Area or width.* The area or width, or both, of a nonconforming lot may be increased to make the lot less nonconforming.

2. *Boundary line adjustments.* The boundary of a nonconforming lot may be adjusted provided that one lot sharing the boundary to be adjusted is a conforming lot and the boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming.

3. *Public dedication or eminent domain.* The area of a nonconforming lot may be reduced by dedication for a public purpose or by the exercise of eminent domain.

B. *Uses allowed on a nonconforming lot.* A nonconforming lot may be used as though it satisfies the zoning regulation that makes it nonconforming, provided that:

1. The use is either a nonconforming use or is a use that complies with the zoning regulations applicable to the district in which the lot is located; and

2. The zoning administrator determines that the lot may be occupied consistently with the public health, safety and general welfare.

C. *Division, combination, or adjustment of boundary line of nonconforming lot authorized.* A nonconforming lot may be divided, combined with any other lot, or have one or more of its boundary lines adjusted, provided:

1. The resulting lot or lots comply with the requirements applicable to the district in which the lot is located and all other applicable requirements of the Albemarle County Code;

2. In the opinion of the zoning administrator, the resulting lot or lots more substantially conform to the requirements of section 4.0 (general regulations) of this chapter and the area and bulk regulations applicable to the district in which the lot is located, and comply with all other applicable requirements of the Albemarle County Code; or

3. The resulting lot or lots serve a country store, Class A or B, and the division, combination or boundary line adjustment is required to allow the use to meet the requirements of the Virginia Department of Health and the location of all structures on the resulting lot or lots will not become nonconforming or more nonconforming, and the size of the resulting lot or lots will not become more nonconforming.

D. *Setbacks applicable to a nonconforming lot.* The current front, rear and side yard minimum setbacks applicable to the district in which the lot is located shall apply to a nonconforming lot; provided, that if any such setback is thereafter reduced as a result of an amendment to the setbacks applicable to the district in which the lot is located, and in effect when an existing structure is extended or enlarged, then that reduced setback shall apply.

E. *Effect of change of ownership.* A change of the ownership or occupancy of a nonconforming lot shall not affect the status of the nonconforming lot.

(§§ 6.1.1, 6.1.2, 6.5.1, 6.5.2, 6.5.4, 12-10-80, 4-15-81, 9-21-88, 6-14-89, 9-9-92; Ord. 00-18(4), 6-14-00)

**State law reference** – Va. Code § 15.2-2307.

### **Article 3. District Regulations**

#### **Sec. 10.2.1 By right**

The following uses shall be permitted in any RA district subject to the requirements and limitations of these regulations:

- 24. Country store, Class A (reference 5.1.45).

**Sec. 10.2.2 By special use permit**

The following uses shall be permitted only by special use permit approved by the board of supervisors pursuant to section 31.2.4: (Added 10-9-02)

- 22. Country store, Class B (reference 5.1.45).
- 52. Sale of gasoline and other fuels in conjunction with a country store, Class A or Class B (reference 5.1.45).

**Sec. 10.4 Area and bulk regulations**

Area and bulk regulations within the RA, rural areas, zoning district are as follows:

REQUIREMENTS	DIVISIONS BY RIGHT (Amended 8-14-85)	DIVISIONS BY SPECIAL USE PERMIT (Amended 8-14-85)
Gross density	0.5 du/ac	0.5 du/ac
Minimum lot size	2.0 acres	2.0 acres
Minimum frontage existing public roads	250 feet	250 feet
Minimum frontage internal public or private roads	150 feet	150 feet
Yards, minimum:		
Front (existing public roads)	75 feet	75 feet
Front (internal public or private road)(Amended 11-13-91)	25 feet	25 feet
Side	25 feet	25 feet
Rear	35 feet	35 feet
Maximum structure height	35 feet	35 feet

**PROFFER STATEMENT**

**NGIC EXPANSION**

**Date:** October 16, 2008

**ZMA 2007-003; SP 2007-32 Residential & SP 2007-31 Research & Development Labs**

**Tax Map Parcel # 33-1D and 33-1F (portion of)**

**Existing Zoning:** CO

**Zoning:** CO: SP 2007-32 Residential & SP 2007-31 Research & Development Labs

**Total Land Area:** 15 Acres

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the owner, or its duly authorized agent, hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and it is agreed that the conditions are reasonable.

**Affordable housing**

The Owner shall provide a minimum of eighteen (18) of the residential units as affordable. The affordable housing shall be provided by making these units available for lease under the terms provided in the following paragraph and paragraphs A through F below or by payment of \$19,100 in lieu of each required unit under the terms provided in paragraph G below.

For a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term"), such units shall be leased to households with incomes less than the Affordable Unit Qualifying Income.

- A. Affordable housing and rental rate. "Affordable housing" shall mean rental units for which the initial gross rents does not exceed one hundred twenty (120) % of the fair market rent published by the U.S. Department of Housing and Urban Development (HUD) with a maximum annual increase not to exceed three percent (3%) during the affordability term. Tenant rent shall be the gross rent less the cost of tenant-paid utilities as provided by the Albemarle County Office of Housing.
- B. Affordable term. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this Proffer shall apply for a minimum period of ten (10) years following the date a certificate of occupancy is issued by the County (the "compliance date"), or until the units are sold as low or moderate cost units qualifying as such under Albemarle County Affordable Housing Policy (the "Affordable Term"); provided that if the units are leased by the Owner to a federal agency, the compliance date for providing the affordable residential units begins on the day after the termination of such lease of residential units) between the Owner and a federal agency. The Owner shall provide the County's zoning administrator thirty (30) days' prior written notice of the impending termination of the lease. The Owner also shall submit between June 1 and July 1 of each year satisfactory written evidence to the County's zoning administrator that the residential units are being leased to a federal agency and occupied by employees of, or contractors to, a federal agency, and state whether the lease will terminate in the upcoming July 1 to June 30 period and, if so, state the date. The failure of the Owner to submit such evidence by July 1 in any year shall be deemed to be evidence that the lease between the Owner and the federal agency has terminated and the Owner shall comply with all requirements of this Proffer.



- C. Conveyance of interest. All instruments conveying any interest in the for-rent affordable units from the date of this rezoning and continuing until the Affordable Term has ended shall contain language reciting that such unit is subject to the terms of this Proffer. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete disclosure of the restrictions and controls established by this Proffer. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the Albemarle County Chief of Housing or his successor in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Proffer have been satisfied.
- D. Reporting rental rates. During the Affordable Term, within thirty (30) days after the commencement of the lease term for each for-rent affordable unit, the Owner shall provide to the Albemarle County Housing Office or its successor a copy of the lease agreement for each such unit rented that shows the rental rate for such unit and the term of the lease. In addition, during the Affordable Term, the Owner shall provide to Albemarle County, if requested, any reports, copies of lease agreements, or other data pertaining to rental rates as Albemarle County may reasonably require.
- E. Inspection of records. The County shall have the right, upon reasonable notice and subject to all applicable privacy laws, to periodically inspect the records of the Owner or any successors in interest for the purposes of assuring compliance with this proffer.
- F. Units counted once. No for-rent affordable unit may be counted more than once towards the number of for-rent affordable dwelling units required by this Proffer.
- G. Cash in lieu of providing for-rent affordable units. Notwithstanding the foregoing, the County may opt to receive a cash contribution in the amount of nineteen thousand one hundred dollars (\$19,100) per for rent affordable unit and notify the Owner in writing of its decision within thirty (30) days of the issuance of the building permit for such residential unit. The Owner shall make a cash contribution to the County in the appropriate amount prior to or at the time of issuance of a certificate of occupancy for such residential unit. Upon receipt of such payment by the County, the Owner shall have the right to lease or sell the residential unit without any obligation to comply with the requirements of paragraphs A through F of this Proffer.

**Cash to address impacts to public facilities (CIP)**

The Owner shall contribute twelve thousand four hundred dollars (\$12,400) cash to the County for each market rate dwelling unit constructed within the Property for the purpose of mitigating impacts from the Project. The cash contribution shall be used for schools, libraries, fire, rescue, parks or any other public use as identified in the County's Capital Improvements Program. The per unit cash contribution shall be paid prior to or at the time of issuance of the building permit for each unit.

**Transportation**

- A. Lanes. In order to mitigate traffic impacts resulting from the Project, the Owner shall design and construct to Virginia Department of Transportation ("VDOT") road standards a second left turn lane on the southbound side of Route 29 at its intersection with Boulders Road, in the location shown on the Application Plan, and design and construct all other lane configurations at the intersection of Route 29 and Boulders Road as determined by VDOT. Construction or installation of all improvements required by this Proffer shall be completed and accepted by VDOT within one (1) year after approval by the County of the first final site plan or subdivision plat for the Project.
- B. Signalization. The Owner shall design, bond and construct all traffic signalization improvements at the intersection of Route 29 and Boulders Road required by VDOT. Construction or installation of all improvements required by

this Proffer shall be completed and accepted by VDOT within one (1) year after approval by the County of the first final site plan or subdivision plat for the Project, or prior to the issuance of the first building permit by the County for the Project, whichever occurs first, provided that County, upon the recommendation of VDOT, may establish another completion date.

**Development in general accord with the Application Plan**

The Property shall be developed in general accord with the plans entitled "Amendment to the General Development Plan for ZMA-2007-003", prepared by Collins Engineering, dated August 18, 2008 Amendment (referred to in these proffers as the "Application Plan" if a minimum of forty thousand (40,000) square feet of the property is under a legally binding lease for nonresidential use by a federal agency, as demonstrated to the satisfaction of the County Attorney. Proof of the legally binding lease shall be submitted at the time of submittal of the first building permit application. If the property is not under a legally binding lease to a federal agency, the property shall be developed to allow not more than two office buildings and one apartment building that shall be developed only if in general accord with plans which substantially comply with the principles of the Neighborhood Model set forth in the Albemarle County Comprehensive Plan as determined by the Director of Community Development and that do not increase the square footage of nonresidential uses or the number of residential units as shown on the Application Plan.

**Annual adjustment of cash proffers**

Beginning January 1, 2009, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the MSI as of December in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

**"Federal agency" defined**

For the purposes of these proffers, the term "federal agency" means any unit of the federal government including, but not limited to, any board, commission, bureau, department, agency, authority, administration, office, or service.

**Storage Area**

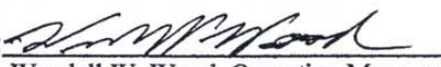
The following areas, as shown on the plan entitled "Amendment to the General Development Plan for ZMA-2007-003" prepared by Collins Engineering and dated 8/18/08 shall be utilized for storage of general files, data, equipment and other related items supportive of the office space located on the top 4 levels of each of the two respective buildings:

- a. One (1) basement level within building #1 consisting of 22,100 sq. ft. of gross floor area.
- b. Two (2) basement levels within building #2 consisting of 44,200 sq. ft. of gross floor area.

These levels shall not include any office space.

Signature of Owner

Next Generation LLC

BY:  10/21/08  
Wendell W. Wood, Operating Manager Date

**CONDITIONS OF APPROVAL**

**PROJECT: SP-2008-45. NGIC Expansion (Sign #77).**

1. A maximum number of one hundred twenty (120) apartment units shall be permitted.

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**PROJECT: SP-2008-46. NGIC Expansion (Sign #77).**

1. Future research, development/laboratory tenants will be subject to approval of a certified engineer's report prior to final site plan approval or occupancy, depending on timing, and
2. If any discharge of other than domestic wastes into the public sewer system is expected, the Albemarle County Service Authority (ACSA) shall be so notified prior to site plan approval.

**PROFFER STATEMENT  
OLD TRAIL VILLAGE**

**Amendment No. 1**

**Date: October 23, 2008  
ZMA#: 2008-005  
Tax Map and Parcel Number: 055E00100000A1**

An approximately 237 acre portion of tax map and parcel number 055E0-01-00-000A1 (portion) was the subject of rezoning application ZMA 2004-024, which was approved by the Albemarle County Board of Supervisors on September 14, 2005. In its approval of ZMA 2004-024, the Board accepted the "Proffer Statement Old Trail Village," which included some handwritten changes to Proffer 6 accepted by the Board. The final accepted proffers were re-signed and the Owner's signature is dated September 15, 2005 (hereinafter referred to as the "Original Proffer Statement").

The Owner desires to amend Table 4 of its Code of Development to add assisted living facilities as a by right use. Because the third paragraph of the Original Proffer Statement refers to the Code of Development dated September 12, 2005, the Original Proffer Statement is amended as set forth below (hereinafter, the "First Amendment to the Proffer Statement") This First Amendment to the Proffer Statement is voluntarily proffered pursuant to Virginia Code § 15.2-2303 as part of ZMA 2008-005. If rezoning application ZMA 2008-005 is denied, this First Amendment to the Proffer Statement shall immediately be null and void and of no further force and effect.

1. The third paragraph on page 1 of the Original Proffer Statement is amended as follows: "This Proffer Statement shall relate to the General Development Plan and to the Code of Development dated September 12, 2005, and the amendment to Table 4 of the Code of Development dated 10/22/2008, and attached hereto as **Exhibit B** (the "Code of Development")."

2. Except as expressly provided in Section 1 above, all of the proffers contained in the Original Proffer Statement shall remain in full force and effect.

WITNESS the following signature:

**MARCH MOUNTAIN PROPERTIES, L.L.C.**

By: [Signature]  
Gaylon T. Beights, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Albemarle, to wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of October, 2008 by Gaylon T. Beights, Manager of March Mountain Properties, L.L.C., a Virginia limited liability company.

My Commission expires: 2/28/2010  
Registration Number: 7014467

[Signature]  
Notary Public

