

## Appendix H

### Digest of Key Matters Considered by the Board of Supervisors, the Planning Commission, the Architectural Review Board, and by County Staff

This appendix reviews 15 land use matters pertaining to the comprehensive plan, zoning, subdivision, water protection, and other matters regularly considered by the board of supervisors, the planning commission, the architectural review board, and by county staff.

#### 1. Amendments to the Comprehensive Plan

*Nature of the Matter:* The comprehensive plan is the plan for the physical development of the locality. It may be amended from time to time and must be reviewed at least once every 5 years to determine whether it is advisable to amend the plan. Although the comprehensive plan is significant in most, if not all, zoning decisions, the plan itself is not regulatory in nature but, instead, is considered to be *advisory* when applied to those zoning decisions.

*Commission Role:* The commission holds a public hearing and makes a recommendation to the board on the proposed amendment.

*Board Role:* The board holds a public hearing and is the decision-making body on the proposed amendment.

*Board Act:* Action to amend or not amend, or to remand to the commission for further consideration.

*Nature of the Act:* Legislative.<sup>1</sup>

*Considerations:* The following statement is from Virginia Code § 15.2-2223, which is a summary of the considerations for the adoption of a comprehensive plan, but which could be applied to amendments as well: “The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.”

#### 2. Reviewing a Proposed Public Feature under Virginia Code § 15.2-2232 (“2232 Review”)

*Nature of the Matter:* Proposed public features (generally, some type of public facility such as a street, park, public area, public building, public utility facility, or public service corporation facility (other than a railroad facility or certain underground facilities)) must be reviewed under Virginia Code § 15.2-2232 if they are not shown on the comprehensive plan and not part of a proposed subdivision, site plan, or plan of development.

*Commission Role:* The commission holds a public hearing, is the decision-making body, and reports its decision, with reasons stated, to the board.

---

<sup>1</sup> A legislative act has been explained by the Virginia Supreme Court to involve balancing the consequences of private conduct against the interests of public welfare, health, and safety. In general, a legislative body exercises a legislative power when it prescribes a course of conduct. Legislative acts are presumed to be reasonable, correct, and constitutionally valid. In the land use arena, actions on comprehensive plan amendments, ordinance text amendments, special use permits, special exceptions, and certificates of appropriateness are legislative acts.

- Board Role:* The board receives the commission’s report of its decision and may decide whether to take further action.
- Nature of the Act:* Legislative.
- Considerations:* Whether the proposed public facility’s location, character and extent are *substantially in accord* with the comprehensive plan. Generally, “substantially” means “largely, but not wholly.”

### 3. Zoning Map Amendments

*Nature of the Matter:* The entire county is classified into more than 20 zoning districts. The regulations for each zoning district delineate the uses that are allowed by right and by special use permit, and establish other standards such as minimum lot sizes, the minimum and maximum setback of structures from property lines, and maximum building heights. A zoning map amendment, also known as a *rezoning*, changes the zoning district in which the land is located, or amends previously approved application plans or codes of development, or previously accepted proffers.

*Commission Role:* The commission holds a public hearing and makes a recommendation to the board on the proposed amendment. The commission’s recommendation may be a recommendation that the applicant’s land be rezoned to a district designation other than the one requested by the applicant.

*Board Role:* The board holds a public hearing and is the decision-making body on the proposed amendment.

*Board Act:* Action to amend or not amend, or to remand to the commission for further consideration. If the board decides to amend the zoning map, it adopts an ordinance.

*Nature of the Act:* Legislative.

*Considerations:* For zoning map amendments to conventional and planned development zoning districts and amendments thereto: Virginia Code § 15.2-2284 provides that one or more of the following factors are to be considered when developing zoning regulations and drawing zoning district boundaries:

- The existing use and character of property.
- The comprehensive plan.
- The suitability of property for various uses.
- The trends of growth or change.
- The current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies.
- The transportation requirements of the community.
- The requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services.
- The conservation of natural resources.
- The preservation of flood plains.
- The protection of life and property from impounding structure failures.
- The preservation of agricultural and forestal land.
- The conservation of properties and their values.
- The encouragement of the most appropriate use of land throughout the county.

*Additional considerations for zoning map amendments establishing a planned development zoning district in Albemarle County:* (1) whether the proposed planned development satisfies the purpose and intent of the planned development district; (2) whether the area proposed to be rezoned is appropriate for a planned development under the comprehensive plan; and (3) the relation of the proposed planned development to major roads, utilities, public facilities, and services.

*Additional considerations for zoning map amendments amending a planned development zoning district in Albemarle County:* (1) whether the proposed amendment reduces, maintains, or enhances the elements of a planned development; and (2) the extent to which the proposed amendment impacts the other parcels within the planned development district.

#### **4. Zoning Text Amendments**

*Nature of the Matter:* A zoning text amendment amends the zoning ordinance.

*Commission Role:* The commission holds a public hearing and makes a recommendation to the board on the proposed amendment.

*Board Role:* The board holds a public hearing and is the decision-making body on the proposed amendment.

*Board Act:* Action to amend or not amend, or to remand to the commission for further consideration. If the board decides to amend the zoning text, it adopts an ordinance.

*Nature of the Act:* Legislative.

*Considerations:* *Consideration of the purposes of zoning.* Virginia Code § 15.2-2283 requires that zoning regulations be designed to give reasonable consideration to each of the following purposes:

- Provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime, and other dangers.
- Reduce or prevent congestion in the public streets.
- Facilitate the creation of a convenient, attractive, and harmonious community.
- Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements.
- Protect against the destruction of or encroachment upon historic areas.
- Protect against the overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other dangers.
- Encourage economic development activities that provide desirable employment and enlarge the tax base.
- Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment.
- Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities.
- Promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality, as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated.

- Provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard.

The 12 factors in Virginia Code § 15.2-2284 that apply to zoning map amendments, delineated in section 4-300, also apply to drawing district boundaries in zoning map amendments.

## 5. Special Use Permits

*Nature of the Matter:* Zoning district regulations delineate those uses allowed by right and those allowed by special use permit. Special uses are generally consistent with the purposes of the zoning district and the uses allowed by right, but they tend to have impacts that warrant case-by-case review so that conditions may be imposed to address those impacts.

*Commission Role:* The commission holds a public hearing and makes a recommendation to the board on the proposed special use permit. The commission's recommendation also includes a recommendation on any proposed conditions to be imposed in conjunction with the special use permit.

*Board Role:* The board holds a public hearing and is the decision-making body on the proposed special use permit.

*Board Act:* Action to approve or deny the special use permit, or to remand to the commission for further consideration. If the board decides to approve the special use permit, it adopts a resolution. The board may impose reasonable conditions to address the impacts from the special use.

*Nature of the Act:* Legislative.

*Considerations:* Albemarle County Code § 18-33.8 provides that the following factors are to be considered: (1) the use will not be of substantial detriment to adjacent property; (2) the character of the district will not be changed by the proposed use; (3) the use will be in harmony with the purpose and intent of the zoning ordinance, with the uses permitted by right in the district, the regulations provided in section 5 of the zoning ordinance, and with the public health, safety, and general welfare; and (4) the use will be consistent with the comprehensive plan.

## 6. Special Exceptions

*Nature of the Matter:* *Special use permits* and *special exceptions* are used throughout the Commonwealth to often mean the same thing. In Albemarle County, special exceptions serve a different purpose than special use permits because special exceptions merely allow certain regulations pertaining to the size, height, area, bulk, or location of structures, and other similar types of standards, to be modified, waived, or varied, and do so only when they are expressly authorized in the zoning ordinance.

*Commission Role:* The commission considers only those applications for special exceptions for which staff does not recommend approval. When the commission considers those applications, it makes a recommendation to the board. The commission's recommendation also includes a recommendation on any proposed conditions to be imposed in conjunction with the special exception. An even limited number of special exceptions require a public hearing before the commission when there is a proposed change in use or an increase in the bulk of a building by more than 50% (two issues generally not allowed by special exception under the zoning ordinance), where the parcel is located within one-half mile of a boundary of an adjoining locality.

- Board Role:* The board is the decision-making body, and most special exceptions are considered on the board’s consent agenda. If a public hearing is required (see explanation in “Commission Role” above), the board first holds a public hearing before making a decision.
- Board Act:* Action to approve or deny the special exception, or to refer or remand to the commission for further consideration. If the board decides to approve the special exception, it adopts a resolution. The board may impose reasonable conditions to address impacts from the exception.
- Nature of the Act:* Legislative.
- Considerations:* The factors, standards, criteria, and findings, however denominated, in the applicable sections of the Zoning Ordinance allowing the modification, waiver, or variation.

## 7. Certificates of appropriateness

- Nature of the Matter:* In Albemarle County, a number of streets and highways have been identified as significant routes of tourist access to the county and to designated historic landmarks, structures, or districts within the county or in contiguous localities. Structures and site improvements along and visible from these *entrance corridors* that are established, changed, or reconstructed must obtain a *certificate of appropriateness* unless they are exempt (exempt structures include primary and accessory dwelling units and structures for agricultural or forestal uses if a site plan is not required). The certificate of appropriateness is a decision by the architectural review board (“ARB”) that the proposed structure or site improvement is consistent with the applicable design guidelines for the entrance corridor.
- ARB Role:* The ARB is the decision-making body. In issuing a certificate of appropriateness, the ARB may impose reasonable conditions to ensure that the structures and site improvements are consistent with the applicable design guidelines.
- Commission Role:* The commission has no role in a certificate of appropriateness application or appeal.
- Board Role:* The board may consider appeals from the decision of the ARB filed by the applicant, any person aggrieved, the zoning administrator, or the county executive.
- Board Act:* The board may affirm, reverse, or modify in whole or in part the decision of the ARB.
- Nature of the Act:* Legislative.
- Considerations:* Under Albemarle County Code § 18-30.6.4, the decision whether a proposed structure or site improvement is consistent with the applicable design guidelines considers architectural features such as structure height, scale, mass, roof forms, building materials and colors, the arrangement of structures, the location and configuration of parking areas and landscaping, proposed landscaping, the preservation of existing vegetation and natural features, the appearance of signs, and the location, type, and color of all fencing. Albemarle County Code § 18-30.6.8 provides that, on appeal, the board “shall give due consideration to the recommendations of the [ARB] together with any other information it deems necessary for a proper review of the appeal. When considering an appeal pertaining to a public safety facility, the board may issue a certificate of appropriateness if it finds that the facility is a public necessity.”

## 8. Subdivision Text Amendments

- Nature of the Matter:* Amend the subdivision regulations.

- Commission Role:* The commission holds a public hearing and makes a recommendation to the board on the proposed amendment.
- Board Role:* The board holds a public hearing and is the decision-making body on the proposed amendment.
- Board Act:* Action to amend or not amend, or to remand to the commission for further consideration. If the board decides to amend the subdivision text, it adopts an ordinance.
- Nature of the Act:* Legislative.
- Considerations:* Whether the proposed regulation is enabled by Virginia Code §§ 15.2-2241 through 15.2-2245.1.

## 9. Subdivision Plats

- Nature of the Matter:* Subdivision plats are schematic drawings that show how land will be divided into 2 or more lots, and show the location and nature of required improvements.
- Commission Role:* The commission considers only appeals by the subdivider from the disapproval of a subdivision plat by the county's subdivision agent, or the approval of a preliminary subdivision plat with conditions to which the subdivider objects. The commission's sole role is to determine whether the plat satisfies the minimum requirements of the subdivision ordinance. The commission may approve or disapprove the plat, and it may approve a preliminary plat with the conditions to which the subdivider objects if they are required to satisfy an express requirement.
- Board Role:* The board considers only appeals by the subdivider from the commission's disapproval of the subdivision plat or its approval of a preliminary plat with conditions to which the subdivider objects. The board's sole role is to determine whether the plat satisfies the minimum requirements of the subdivision ordinance.
- Board Act:* Action to approve or disapprove the plat, and it may approve a preliminary plat with the conditions to which the subdivider objects if they are required to satisfy an express requirement.
- Nature of the Act:* Ministerial.<sup>2</sup>
- Considerations:* The Subdivision Ordinance, and any other regulations that must be satisfied under the Subdivision Ordinance.

## 10. Site Plans

- Nature of the Matter:* Site plans are schematic drawings that show how land will be developed but not subdivided, including the location and nature of required improvements. Site plans are required for new developments, with limited exceptions for: (1) establishing not more than two single family dwellings on a single lot; (2) most agricultural activities; and (3) changes or expansions of uses that do not affect parking, access, or ingress or egress.

---

<sup>2</sup> A ministerial act is one performed under a given set of facts and in a prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of, one's own judgment upon the propriety of the act being done. An act is ministerial even though an officer has to determine the existence of the facts that make it necessary for him to act. Once an applicant has complied with all requirements, the function of approval becomes ministerial, and the application must be approved. Unlike legislative acts, ministerial acts have no presumptions of reasonableness or correctness. Actions on subdivision plats and site plan are ministerial acts.

- Commission Role:* The commission considers only appeals by the developer from the disapproval of a site plan by the county’s site plan agent, or the approval of an initial site plan with conditions to which the developer objects. The commission’s sole role is to determine whether the site plan satisfies the minimum requirements of the site plan regulations in the zoning ordinance. The commission may approve or disapprove the site plan, and it may approve the initial site plan with the conditions to which the developer objects if they are required to satisfy a requirement.
- Board Role:* The board considers only appeals by the developer from the commission’s disapproval of the site plan or its approval of the initial site plan with conditions to which the developer objects. The board’s sole role is to determine whether the site plan satisfies the minimum requirements of the site plan regulations in the zoning ordinance.
- Board Act:* Action to approve or disapprove the site plan, and it may approve an initial site plan with the conditions to which the developer objects if they are required to satisfy a requirement.
- Nature of the Act:* Ministerial.
- Considerations:* The site plan regulations in the zoning ordinance, and any other regulations that must be satisfied under the site plan regulations.

## 11. Variations from and Exceptions to Subdivision or Site Plan Requirements

- Nature of the Matter:* The *general regulations* of the subdivision ordinance or the site plan regulations in the zoning ordinance may be varied or waived.
- Commission Role:* Certain variations and exceptions pertaining to requirements for improvements are considered by the commission in the first instance while others are considered by the county’s subdivision agent or the site plan agent (the “agent”); those variations or exceptions considered by the agent may be considered by the commission on appeal by the subdivider or developer (the “applicant”) from the agent’s disapproval of a variation or exception or the approval of a variation or exception with conditions to which the applicant objects.
- Board Role:* The board considers only appeals by the applicant from the commission’s disapproval of the variation or exception or its approval of the variation or exception with conditions to which the applicant objects. On appeal, the board determines whether the applicant should be permitted to vary or to be excepted from one or more of the otherwise applicable minimum requirements.
- Board Act:* Approval, with or without reasonable conditions, or disapproval.
- Nature of the Act:* Administrative.<sup>3</sup>
- Considerations:* Whether there are unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

---

<sup>3</sup> Administrative acts are those that may be delegated to a subordinate official such as the subdivision or site plan agent. These acts require the exercise of discretion where the decision-maker must determine whether the performance standards stated in the ordinance have been satisfied. The nature of the power delegated has been described as “more essentially ministerial than legislative.” *Ours Properties, Inc. v. Ley*, 198 Va. 848, 852 (1957). The delegation of authority to a subordinate is long-recognized in Virginia and has been described as “essential to carry out the legitimate functions of government.” *Bell v. Dorey*, 248 Va. 378, 379 (1994).

## 12. Erosion and Sediment Control and Stormwater Management

*Nature of the Matter:* In conjunction with the land development process, and unless otherwise exempt, the disturbance of 10,000 square feet or more of land requires that the owner obtain approval of a stormwater management (VSMP) permit under the water protection ordinance. This permit will include, in most cases, approval of erosion and sediment control and stormwater management plans. The VSMP permit is reviewed and acted on by the county engineer, who is designated as the administrator of the county's VSMP program.

*Commission Role:* None.

*Board Role:* The board considers only appeals of certain actions or inaction by the administrator: (1) the disapproval of an erosion and sediment control plan or VSMP permit; (2) the approval of an erosion and sediment control plan or VSMP permit with conditions the owner objects to; (3) the disapproval of a variance or exception; (4) any determination made under sections 17-300 through 17-306; (5) any state permit decision made by the administrator; (6) any enforcement decision made by the administrator; (7) the failure of the administrator to act within the time periods required by the water protection ordinance; and (8) the approval of an erosion and sediment control plan or VSMP permit where the issue is compliance with state law (an appeal of number (8) may be brought by a downstream landowner).

*Board Act:* Affirm, reverse, or modify the action of the administrator, or take any action the administrator failed to take.

*Nature of the Act:* Quasi-judicial or ministerial, depending on the subject matter of the appeal.

*Considerations:* Whether the administrator's decision was correct under the water protection ordinance.

## 13. Capital Improvement Program

*Nature of the Matter:* The capital improvement program ("CIP") identifies all of the public facilities, including any road or transportation improvement to be undertaken in the ensuing 5 years. The CIP includes estimates of the costs of the facilities and life cycle costs, and identifies the means for financing them. The CIP breaks the projects into two categories – those to be undertaken in the ensuing fiscal year (Year 1) and those to be undertaken in a period not to exceed the next four years (Years 2-5).

*Commission Role:* Conduct a public hearing and provide its recommendations on the CIP to the governing body.

*Commission Act:* Recommendation to the governing body.

*Board Role:* Consider as part of its consideration of the budget.

*Board Act:* Legislative.

*Considerations:* The comprehensive plan, which serves as the source for the public facilities to be undertaken. In addition, Virginia Code § 15.2-2239 provides that the planning commission shall consult with the chief administrative officer (*i.e.*, in Albemarle County, the county executive) and the "heads of departments and interested citizens and organizations."

*Source:* Virginia Code § 15.2-2239.

## 14. Six-Year Secondary Road Plan

- Nature of the Matter:* The six-year secondary road plan is the plan for improvements to the secondary system of highways in a county. The plan lists the proposed improvements and the cost estimate of each project listed. The plan is based upon the best estimate of funds to be available to the county for expenditure in the six-year period.
- Commission Role:* Discuss the entire plan with the citizens of the county and consider their views on the plan.
- Commission Act:* Recommendation to the board of supervisors.
- Board Role:* Jointly with representatives of the Virginia Department of Transportation, the board of supervisors prepares a six-year secondary road plan. After conducting a public hearing which is held jointly with the representatives of the Virginia Department of Transportation, finalizes and adopts the plan.
- Board Act:* Legislative.
- Considerations:* The best estimate of funds to be available to the county for expenditure in the six-year period, which is provided by the Virginia Department of Transportation.
- Source:* Virginia Code § 33.2-331.

## 15. Agricultural and Forestal Districts

- Nature of the Matter:* The purposes of agricultural and forestal districts are two-fold: (i) conserve and protect agricultural and forestal lands for food production, environmental and aesthetic reasons; and (ii) encourage the development and improvement of agricultural and forestal lands for producing food and other agricultural and forestal products. Land within a district is prohibited from being developed to a more intensive use, other than a use resulting in more intensive agricultural or forestal production, without prior approval of the governing body.
- Commission Role:* The planning commission conducts public hearings on requests to establish a district and to add land to an existing district, and on periodic reviews of existing districts (generally, once every 10 years).
- Commission Act:* Recommendation to the governing body including, but not limited to, the potential effect of the district and proposed modifications upon the locality's planning policies and objectives. As part of its periodic review of a district, the commission must recommend whether to terminate, modify, or continue the district.
- Board Role:* Action to establish or add land or, for district reviews, action to terminate, modify, or continue the district. If the board decides to establish, add to, continue, or modify a district, it adopts an ordinance.
- Board Act:* Legislative.
- Considerations:* *Establishing and adding land to a district.* Virginia Code § 15.2-4306 lists the following considerations for establishing and adding land to a district: (i) the agricultural and forestal significance of land within the district or addition and in areas adjacent thereto; (ii) the presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production; (iii) the nature and extent of land uses

other than active farming or forestry within the district and in areas adjacent thereto; (iv) local developmental patterns and needs; (v) the comprehensive plan and, if applicable, the zoning regulations; (vi) the environmental benefits of retaining the lands in the district for agricultural and forestal uses; and (vii) any other matter which may be relevant. Also must consider the recommendation of the locality's agricultural and forestal district advisory committee.

*Reviewing a district:* Virginia Code § 15.2-4307 provides that the planning commission must include in its recommendation the potential effect of the district and proposed modifications upon the locality's planning policies and objectives.

*Sources:* Virginia Code § 15.2-4300 *et seq.*