

**COUNTY OF ALBEMARLE  
PLANNING STAFF REPORT SUMMARY**

<b>Date:</b> July 26, 2007	<b>Planning Commission Worksession</b>
<b>Project Name:</b> ZTA 04-02 Neighborhood Model Ordinance Amendments	<b>Staff:</b> Elaine K. Echols, AICP, Bill Fritz, AICP, David E. Pennock, AICP, Stewart Wright
<b>Planning Commission Public Hearing:</b> NA	<b>Board of Supervisors Public Hearing:</b> NA
<b>Proposal:</b> Amend the Zoning Ordinance to modify setback requirements to support development in keeping with the Neighborhood Model in the Development Areas. Recommendations are also made for Subdivision Ordinance amendments.	<b>Applicant:</b> Staff; however, the Free Enterprise Forum and the Cox Company have also made zoning and subdivision text amendment requests.
<b>RECOMMENDATION:</b> Staff recommends that the Commission review the proposals and receive input from the public. If the Commission is in agreement with the proposed changes, the County Attorney's office can work on the text changes while staff continues to work on the EC issues as well as dealing with setbacks on "parking lot" streets.	

**PRIMARY STAFF CONTACT:**  
**PLANNING COMMISSION:**

Elaine K. Echols, AICP  
July 26, 2007

**ZTA 04-02:** Zoning Amendment to Setbacks and suggested Subdivision Changes

**ORIGIN:** Adoption of the Neighborhood Model in 2001 and directive by Board of Supervisors to prepare ordinance changes to implement the Neighborhood Model.

**PROPOSAL:** The recommended changes are shown in a table on Attachments A and B. A summary of the changes is shown below:

Amend the Zoning Ordinance for R-1, R-2, R-4, R-6, R-10, and R-15 residential districts to:

- reduce the minimum front, side, and rear setback requirements in non-EC zoning districts
- reduce the setback for encroachments
- reduce the building separation requirement between primary structures on the same lot
- add a building separation requirement for primary and accessory buildings
- change the measurement method for yards for attached housing and multi-family developments
- make distinctions between public/private Neighborhood Model streets and “parking lot” private streets
- require an entrance to buildings from a public or private (non-parking lot) street on which the building fronts
- allow for zero lot line development by-right using building separation requirements rather than side yard requirements

Amend the Zoning Ordinance for non EC commercial districts (CO, C-1, and HC) to:

- establish a front yard requirement for public and private streets rather than a setback from the adjacent public street
- reduce the setback/front yard requirement
- change the setback requirement for parking areas adjacent to public and private streets
- add a maximum front setback for stand-alone parking adjacent to public and private streets
- require an entrance to buildings from a public or private (non-parking lot) street on which the building fronts
- change screening requirements for parking lots adjacent to public and private streets
- reduce the setback for side and rear lot lines adjacent to rural and residential districts

- allow for further reduction by PC of building and parking setbacks from adjacent rural and residential districts
- allow for the buffer to be disturbed adjacent R-10 and R-15 districts without going to the PC
- augment requirements for vegetation of buffers adjacent to rural and residential districts
- allow for reduction or removal of buffer adjacent to rural and residential districts

Amend the Zoning Ordinance for non EC industrial districts (LI and HI) to:

- establish a front yard requirement for public and private streets rather than a setback from the adjacent public street
- reduce the setback/front yard requirement for internal streets
- allow for reduction of or elimination of setbacks and buffers from adjacent rural and residential districts by PC

Amend the Site Plan section of the Zoning ordinance to:

- require sidewalks along public and private streets in the Development Areas where sidewalks do not currently exist
- allow for street trees to be placed in the r.o.w. rather than only on private property

Suggested Subdivision Ordinance changes:

- require that all new public and private (not parking lot) streets in the Development Areas have curb and gutter, sidewalks and street trees. (At present, the sidewalk and street tree requirement is only for single-family residential developments.)
- allow for lots to be created which front common open space that is adjacent to a public street. Zoning regulations will have to change for front yard measurement as well as require driveway easements that don't act as private streets.

There are two major issues which haven't been addressed by the staff as of yet. Setbacks along Entrance Corridors have not been proposed nor have building setback requirements been proposed in relation to "parking lot streets". Both of these items need more work before staff brings them to the public and the Commission.

**PUBLIC PURPOSE TO BE SERVED:** The development standards in the Zoning Ordinance promote a rural/suburban form that is not in keeping with the Neighborhood Model. In order to make it easier for developers to create the Neighborhood Model form of development, the zoning ordinance needs to be amended, especially with regard to setbacks.

**BACKGROUND:** Since the Neighborhood Model was adopted in 2001, many ordinance changes have taken place. The first set of changes had to do with allowing for alleys and shared driveways in the Development Areas. The Zoning and subdivision

ordinance changes related to alleys and shared driveways were approved in February of 2002.

At the same time, staff was working on development of the Neighborhood Model District. Text was submitted by an applicant in 2001. This district was reworked by staff and the Commission and adopted in March of 2003.

The third set of changes began in 2002. They included a major revision to the parking requirements. Relegated parking was a difficult issue and parking changes were adopted in February of 2003. They did not include requirements for relegated parking.

In 2002, staff also began work on more changes to the subdivision ordinance to require curb and gutter, sidewalks, and interconnections. Work on the subdivision ordinance changes took three years to adoption. Overlot grading was a difficult issue and these requirements were not part of the subdivision ordinance that was adopted. The subdivision ordinance changes were adopted in April of 2005.

In 2003, while staff was working on subdivision ordinance changes, they were also working on zoning text changes. In March and May of 2004, staff brought the recommended changes to the public and held two meetings for input. Less than ten persons (in combination) attended the two meetings. Work on this comprehensive set of changes was put on hold while the subdivision ordinance was under review.

After completing work on the subdivision ordinance, staff immediately began work on front setback changes in the Development Areas. In August of 2005, staff brought a set of setback changes to the Planning Commission for a review and public hearing. Concerns were expressed by the ARB relative to area for landscaping in front yards in the Entrance Corridor. Some members of the development community believed that further changes were needed; other members of the development community said they weren't appropriately included in development of the changes. As a result, the Commission directed staff to work with the ARB, set up a joint meeting with the ARB and Commission on setbacks, provide a new resolution of intent, and bring a comprehensive set of changes to the zoning regulations related to setbacks.

Since that time, the public has brought two requests to the County relative to zoning and subdivision ordinance changes. The first request was from the Free Enterprise Forum to allow for creation of lots that do not have public or private street frontage. The second request was for the ability to create zero lot line developments in the R-4 district.

Zoning, Current Development, and Planning staff have been working on the attached concepts since January 2007. Staff is recommending inclusion of the concepts of both of these requests in the zoning and subdivision text amendments.

**STAFF COMMENT:** A new resolution of intent will be provided at the July 26, 2007 meeting for Commission review. The attached recommendations do not include zoning

text language yet. They do reflect major changes from the current suburban form of development required by our zoning ordinance.

**STAFF RECOMMENDATION:** Staff recommends that the Commission review the proposals and receive input from the public. If the Commission is in agreement with the proposed changes, the County Attorney’s office can work on the text changes while staff continues to work on the EC issues as well as dealing with setbacks on “parking lot” streets.

- Attachment A: Existing and Proposed Residential Zoning District Standards
- Attachment B: Existing and Proposed Commercial and Industrial Zoning District Standards
- Attachment C: Excerpt from Planning Commission Minutes of September 13, 2005

**Existing Requirements for Residential Zoning Districts  
From Albemarle County Zoning Ordinance**

**Existing Regulations**

<b>All Residential Districts</b>	<b>Front</b>	<b>Side</b>	<b>Rear</b>
<b>Yards</b>	25'	15'	20'
		Can be reduced to 10' if structures are located within a four (4) mile radius of a responding fire station where available fire flows are adequate.	
<b>Accessory Structures</b> -- No building separation requirement between primary and accessory structures	6'	6'	6'
<b>Porches, awnings, and other structural elements</b> may encroach into a yard a maximum of 6', but must be at least 4' from a property line.			
<b>Building separation</b> – 30' minimum separation between primary structures on a single lot.			
<b>Building heights</b> – For R1, R2, R4, and R6 – maximum building height 35'. For R10 and R15, maximum building height 65', except that for each foot above 35' the setback is an additional 2'.			

**Other features:**

- Setbacks are the same for lots on rural cross-section streets or urban cross-section streets.
- Parking lots are treated as “private streets” for purposes of establishing the front, side, and rear of townhouse or other attached housing lots, which creates odd building to lot relationships.
- Front setback requirement is the same from a parking lot as from a public street for townhouses or other single-family attached product.
- Rear yard is measured on each individual townhouse lot instead of on the overall lot to be developed in townhouses, then subdivided, regardless of the orientation of the lot.
- Parking lots can encroach in the front yard; buildings must be set back further than parking lot.

**Draft Zoning Text Amendment Concepts**  
**Yards and Setbacks in Residential Districts in the Development Areas**  
**Non-Entrance Corridor**

All Residential Districts	Front	Side	Rear
<b>Yards</b>	8' minimum, 15' maximum for urban <u>section street</u> .  Garages to be <u>minimum of 18'</u> .  For existing and new rural cross-section streets – 20' minimum, no maximum.	5'  Can be reduced to zero if minimum 10' separation between buildings.	15'
<b>Accessory Structures</b>	Not allowed	5'	5'
<b>Porches, awnings, and other structural elements</b> may encroach into a yard a maximum of 4 feet.			
<b>Building separation requirement</b> – 20' between primary structures on the same lot; 5 feet between primary and accessory structures.			
<b>Building heights</b> – For R1, R2, R4, and R6 – maximum building height 35'. For R10 and R15, maximum building height 65', except that for each foot above 35' the setback is an additional 2'.			

- For attached housing, townhouses, and multi-family, yards will be measured from the perimeter of the lot to be developed. Frontage requirements will be met by the public or private street creating the front of the overall lot to be subdivided. Private access easements will ensure access to the individual lots.
- Sidewalks will be required along all existing and new streets for attached housing, townhouses, and multi-family developments. Where urban streets exist or are proposed, street trees will be required in the r.o.w. Urban street sections will be encouraged where they cannot be required.
- For attached housing, townhouses, and multi-family buildings, an entrance to the ground floor from the sidewalk along the street on which the building fronts will be required. The entrance to the buildings must be no more than 20 feet from the public or private street on which the buildings front, without crossing a parking lot.
- Zero lot-line development is allowed. Minimum separation between buildings is 10'; maintenance easements are required on adjoining properties and must be shown on a plat

**Existing Requirements for Commercial and Industrial Zoning Districts  
From Albemarle County Zoning Ordinance**

<b>District</b>	<b>Building Adjacent to public streets</b>	<b>Parking Adjacent to public streets</b>	<b>Building setback from lot line adjacent to rural or residential districts</b>	<b>Parking setback from lot line adjacent to rural or residential districts</b>	<b>Undisturbed buffer adjacent to rural or residential district</b>	<b>Waiver of disturbance allowed and screening required</b>
C-1	30'	10'	50'	20'	20'	yes
CO	30'	10'	50'	20'	20'	yes
HC	30'	10'	50'	20'	20'	yes
LI	50'	10'	50'	30'	30'	yes
HI	50'	10'	100'	30'	30'	yes

**Proposed Requirements for Commercial and Industrial Districts  
Not in Entrance Corridor**

<b>District</b>	<b>Front yard for building adjacent to public &amp; private streets<sup>2</sup></b>	<b>Front yard for parking adjacent to public &amp; private streets<sup>3</sup></b>	<b>Front yard for stand-alone parking lot adjacent to public or private streets<sup>1,3</sup></b>	<b>Building setback from lot line adjacent to rural or residential districts<sup>4</sup></b>	<b>Parking setback from lot line adjacent to rural or residential district</b>	<b>Undisturbed buffer adjacent rural and residential districts</b>	<b>Waiver of disturbance allowed and screening required</b>
C-1	3' min; 15' max	no closer to the street than the front of the building	10' min; 15' max	25' with reduction available from PC	20' with reduction available from PC	20' adjacent to RA, VR, R1, R2, R4, R6	yes
CO	3' min; 15' max	no closer to the street than the front of the building	10' min; 15' max	25' with reduction available from PC	20' with reduction available from PC	20' adjacent to RA, VR, R1, R2, R4, R6	yes
HC	10' min; no max	no closer to the street than the front of the building	10' min; 15' max	25' with reduction available from PC	20' with reduction available from PC	20' adjacent to RA, VR, R1, R2, R4, R6	yes
LI	50' min from existing public street; 10' min from internal public or private street <sup>5</sup>	10' min; no max	10' min; no max	50' with reduction available from PC	30' with reduction available from PC	30'	yes
HI	50' min from existing public street; 10' min from internal public or private street <sup>5</sup>	10' min; no max	10' min; no max	100' with reduction available from PC	30' with reduction available from PC	30'	yes

<sup>1</sup>Public and private streets are different than “parking lot” streets. Standards relating to “parking lot” streets are not included with this draft.

<sup>2</sup>Administrative waivers would allow for an increase in setback because of items such as location of utilities, provision of outdoor cafes, allowing for building additions which bring the building closer into conformity.

<sup>3</sup>Except in LI and HI, parking lots parking areas are to be screened from streets with shrubbery or street walls or decorative fencing comprised of materials such as, but not limited to, masonry, wrought iron, and board at a height not to exceed four (4) feet. Street walls and decorative fencing shall be augmented with landscape vegetation such as shrubbery, trees, or other vegetation approved by the agent. If shrubbery is used as the screen, it shall measure at least twenty-four (24) inches in height at the time of planting, and at maturity shall be three (3) to five (5) feet in height. Shrubs shall be planted between three (3) and five (5) feet on-center, depending upon the species selected.

<sup>4</sup>For each foot in height over 35’ an additional 2’ in setback adjacent to VR, RA, R1, R2, R4 & R6. For each foot in height over 35’, an additional 1’ in setback adjacent to R10 and R15.

<sup>5</sup>Planning Commission may reduce setback to 10’ if property is in the Development Areas

*Excerpt from Planning Commission Meeting Minutes of September 13, 2005*

**ZTA-2005-001 Setbacks** – Public Hearing on proposed zoning text amendment to change minimum setbacks for residential, commercial, and industrial zoning districts; to prohibit the location of accessory structures from front yards and across easements; to establish minimum front setbacks for garages; to allow for an increase in the minimum front yard to accommodate required trees and landscaping; and to make other modifications to the text of the zoning ordinance to accommodate these changes. (Elaine Echols)

Ms. Echols summarized the staff report:

- The proposed zoning text amendment would reduce the minimum front yard requirements in all residential districts from 25 feet to 18 feet. If there is no existing or proposed sidewalk in R-2 and R-4 District, the setback reduction would be from 25 to 20 feet. If there is an existing or proposed sidewalk in a higher density residential district, it would go from 25 to 8 feet. If sidewalks exist or are proposed, the amendment establishes a separate setback for garages, which would be 18 feet. For commercial and industrial districts, the setback reduction from 30 to 10 feet is proposed.
- There is language that is in the amendment that would allow for the ARB and the staff to increase the setback in order to accommodate the landscaping and street trees.
- Staff handed out some examples of illustrations that they would want to add to the text to help clarify how the measurements would take place. The amendment also proposes to add in a prohibition against accessory structures being in the front yard closer to the street than the structures. Other minor wording changes were included to clean up and better organize existing requirements.
- As part of staff's internal review they received some input from the ARB staff, which is included in the staff report. They have some concern that 10 feet in the commercial and industrial districts, which would also apply in the multi-family residential districts on the Entrance Corridors, is not really sufficient area in which to plant landscaping. Right now, of course, it is 30 feet minimum in which to plant landscaping. But, also street trees are not allowed in the right-of-way. The street trees have to be on the lot themselves. So the ARB is concerned that there is not enough area required for street tree plantings. They are also concerned that 10 feet may not be sufficient setback in the Entrance Corridor, especially along some of our Entrance Corridor roads like 29 and 250. There is a clause that allows the ARB already to establish a greater setback, but they have added one to this to ensure that the ARB could require additional setback for landscaping. The ARB staff is a little worried about that because they wonder if the ARB is being set up for a conflict if a developer wants a reduced setback and the ARB says no when they want to do the 10 feet. If the site plan section of the zoning ordinance is changed to allow street trees in the right-of-way, which is where staff wants them to be in the residential districts, the ARB staff is worried that they are going to reduce the number of tree species that they have to represent the street trees. Right now VDOT only allows six species. Staff is currently working with VDOT on that issue.
- The ARB is not supportive of the use of tree boxes to satisfy street tree requirements and have a reduced setback. Right now someone could propose to do this, and that is not changing. But, they believe that the pressure might be greater with this reduced setback

for people to try and use tree boxes instead of either planting on the site or in the right-of-way.

- The County Landscape Designer believes that at least 21 feet is needed between the center of a tree and the building to allow for adequate growing space. Staff brings those comments to the Commission from the staff. There are some proposals here on how to deal with some of the ARB concerns, but they or may not be sufficient. That is why staff brings those comments to the Commission in order to get input.
- Several questions were raised in emails by several Commissioners.
  - o Why is a focus discussion not happening?
  - o What is it that causes us to go straight to a public hearing?

ALBEMARLE COUNTY PLANNING COMMISSION – SEPTEMBER 13, □□

It was believed by staff that this issue had been vetted thoroughly through the DISC II Process and it was greatly supported by the development community. The only two issues that arose during DISC II discussions were “you are not going far enough.”

Staff is increasingly getting requests from applicants who want diminished setbacks for by right development to try and achieve some of the design principles that have been established for the Neighborhood Model. Currently there is no remedy to obtain a reduced setback except by going through the rezoning process. Staff is trying to build in an opportunity for people to be able to use this. This is to provide the flexibility. That is why staff went straight to this public hearing.

Staff asks the Planning Commission for their direction on this issue. Staff has attempted to respond to the pressure of being asked to advance things more quickly.

There is a comment that the rear and side setbacks should be considered with respect to the front setback. This can happen, but there is a lot more going on with side and rear setbacks than it is from front setbacks. There is a current requirement in the ordinance that you can have a 6 foot side yard setback if structures are located within a 4 mile radius of a responding fire station and in an area where available fire flows are adequate for insurance service office standards to permit a reduction. So the questions that staff needs to have answered to get into the side yard recommendations are if a 4 mile radius appropriate for response time. Is this restriction still essential? If they just use the Building Code for separation, is there sufficient space for maintenance of a structure on your own property? Those are pretty big questions and staff knows there is a lot of discussion around those. It is going to take a while.

Questions regarding rear yards: Is a rear yard necessary to a single-family dwelling? Is having no rear yard requirement appropriate to all single-family dwellings? What can go in a rear yard? Should accessory structures have separate setbacks than primary structures? Does it matter if a garage is attached or detached from a setback situation? How do we ensure consistency between setbacks from alleys and access easements for side and rear yards and

accessory structures? So it is not that staff is not trying to get as much done as they can with the setbacks. Staff recognizes that there are more things that need to be done. The front was just viewed as being the quickest and easiest to try to respond to the concerns of the community with VDOT's wider street requirements and wider right-of-way requirements with the curb and gutter, sidewalk and street tree standards for our urban areas. That is why staff has tried to advance this to provide the opportunity for the buildings to come closer to the street with our new streetscape.

Another comment was who got notified about this. The County notified Blue Ridge Homebuilders, engineering and architectural consultants who have asked for notifications, developers, DISC II and the Planning Commission. There is also a list that she sent this information. Also, the information was located on the website. Staff tried to notify as many people that they thought would be interested in, particularly in the building community. That notice went out August 29.

There was a question about more explanation about the ARB issues and a suggestion that this be sent to the ARB for their consideration, discussion and input. The issue related to the Entrance Corridor is if a 10 foot reduced setback always appropriate in the Entrance Corridor. If the ARB asks for a deeper setback for landscaping or design reasons are they interfering with the County's policy for more urban style development? When the ARB asks for a deeper setback will they be getting into a struggle with the developer that puts them in a bad position?

Staff wants to make sure that all of the bases have been covered. If the Commission feels that it is essential that this go to the ARB for their review and comment, then staff will gladly do that. It will certainly extend the amount of time it is going to take to get this zoning text amendment done. This has been a very long time in coming. Part of that is a result of the work load of the individuals who are working on the zoning text amendment.

#### ALBEMARLE COUNTY PLANNING COMMISSION – SEPTEMBER 13, 2005 567

There are many plats put to record with the building setback. Will this reduction change the requirements on existing developed parcels? Does the change in the ordinance automatically affect these cases or not? Setback requirements come from zoning. The requirements are being reduced and not increased. So this situation is not going to set up nonconformities because the regulations are being relaxed more. That means that there is an opportunity to go closer to the street and not a mandate to go closer to the street.

Mr. Edgerton asked if there were any questions for staff.

Ms. Higgins asked staff to clarify what situations the reduced setback would apply or not apply. She asked for further clarification on the illustrations because it shows the sidewalk in the VDOT right-of-way. She asked if there was a way to handle the reduced 10 foot setback if the sidewalk was outside of the VDOT right-of-way and on private property.

Ms. Echols stated that the measurement of the setback was from the property line and not from the sidewalk.

Ms. Higgins questioned how it would be handled if there was an 8 foot sidewalk with a reduced setback of 10 feet. She felt that if that applicant could not use boxes, then it was going to be difficult to work out. She suggested that the ARB attempt to vet that issue out.

Ms. Echols pointed out that this would not preclude the ARB from asking for a deeper setback.

Ms. Joseph asked that other members of the public be involved in these discussions and that a concrete number be set and not being discretionary to the ARB.

Ms. Higgins agreed that the proposal was not acceptable if it left the setback discretionary to the ARB. She asked how the wider VDOT standards would apply. She felt that there are too many unknowns. The side setback is probably the most critical because of how it affects a corner lot.

Mr. Edgerton opened the public hearing and invited public comment.

Neil Williamson, representative for Free Enterprise Forum, spoke on ZTA-2005-001, Setbacks. He felt that this document went out way too close to this hearing. He spoke with a half a dozen people today about this. Three had looked at it. One had subsequent comments. The development community wants to embrace this. The questions coming back are very logical, such as what about putting a garage on the side. All of these are very technical issues. Therefore, he would forward all the questions on as he receives them. It is really important not to delay, but to engage. He did not think that this County would expect to go to public hearing receiving something two weeks prior. He did not think they should hold the development community to a lesser standard.

Mr. Edgerton asked if there was any other public comment. There being none, he closed the public hearing and bring the matter back before the Commission.

**Motion:** Ms. Higgins moved, Mr. Morris seconded, that ZTA-2005-001, Setbacks be deferred with the idea that there will be a new resolution of intent prepared covering all setbacks and yards and that the Commission will have a work session to involve the ARB and the public.

The motion passed unanimously by a vote of 6:0. Commissioner Rieley was absent.

Mr. Edgerton stated that ZTA-2005-001 was deferred. Staff will prepare a new resolution of intent covering all setbacks and yards to bring back under the consent agenda and the Commission will hold a work session to involve the ARB and public.