

Policy Committee Government Center Complex Large Conference Room, Building A

August 13, 2015 - 4 p.m.

1. Roll Call

2. Minutes

a. July 16, 2015

b. Historic Minutes Reconciliation - Approval Date

3. Old Business

a. ZO-0001-2015, Article VI, Division 3 - Floodplain Area Regulations

4. New Business

a. ZO-0005-2015, Article VIII - Appeals

- o Memorandum
- o Draft Ordinance
- o Legislative Update
- o

5. Adjournment

POLICY COMMITTEE MEETING

July 16, 2015

4:00 p.m.

County Government Center, Building A

1.) Roll Call

Present

Mr. John Wright
Mr. Tim O'Connor
Mr. Heath Richardson
Mr. Rich Krapf

Absent

Ms. Robin Bledsoe

Staff Present

Mr. Paul Holt
Ms. Christy Parrish
Ms. Savannah Pietrowski
Mr. Darryl Cook
Mr. Tom Coghill
Mr. Scott Thomas
Mr. Alex Baruch

Others Present

Mr. John Wright called the meeting to order at 4:00 p.m.

2.) Minutes

a. April 16, 2015

Ms. Tim O'Connor moved to approve the April 16, 2015 minutes.

In a unanimous voice vote, the minutes were approved as submitted (3-0, Mr. Richardson late, Ms. Bledsoe absent).

3.) Old Business

There was no old business to discuss.

4.) New Business

a. ZO-0001-2015, Article VI, Division 3 –Floodplain Area Regulations

Ms. Christy Parrish, Deputy Zoning Administrator, asked the other staff members present to introduce themselves and give a synopsis of their participation in the ordinance update.

Ms. Savannah Pietrowski, Planner, stated that she has helped with the ordinance review process and is responsible for updating the Floodplain website.

Mr. Darryl Cook, Stormwater Engineer, stated that he is the Community Ratings System Administrator. This program recognizes communities that go above and beyond the requirements of the National Flood Insurance Program (NFIP) to gain insurance premium discounts for citizens.

Mr. Tom Coghill, Director of the Building Safety and Permits Division, stated that he is a certified Floodplain Manager through the Association of State Floodplain Managers (ASFPM). Mr. Coghill

stated that part of his job is to ensure new construction complies with the Building Code and Zoning Ordinance for flood resistant construction.

Mr. Scott Thomas, Director of Engineering and Resource Protection Division, stated that Mr. Cook is also certified as a Floodplain Manager. Mr. Thomas stated that his role includes the review of development plans and the review of hydraulic related issues.

Ms. Parrish summarized the different aspects of the ordinance update which included changes to the Flood Insurance Rate Maps (FIRM), required changes to the ordinance, and options to consider for additional requirements regarding Coastal AE and Limit of Moderate Wave Action (LiMWA) Line.

Ms. Parrish stated that James City County did an extensive community outreach in 2014. Over 2,500 property owner notifications were mailed regarding the proposed map changes and public open house with Federal Emergency Management Agency (FEMA) representatives on August 13, 2014. FEMA published a 90 day appeal period allowing property owners to appeal the change using scientific data. Ms. Parrish stated that there were no appeals submitted.

Ms. Parrish stated that the County received a letter of final determination from FEMA stating the new maps will become effective on December 16, 2015. Ms. Parrish stated that James City County must update the ordinance to reflect the new maps to ensure compliance with the National Flood Insurance Program by that date.

Mr. John Wright asked if the County missed that deadline at any point would the homeowners of the County have to become self-insured.

Ms. Parrish stated that is correct.

Ms. Parrish stated that James City County participates in the Community Rating System which rewards communities that carry out floodplain management activities.

Ms. Parrish discussed the current zoning requirements. She stated that the special flood hazard areas include Zones A and AE which are areas subject to inundation by the one percent (1%) annual chance flood event. Ms. Parrish stated that new construction and substantial improvements in these areas require the lowest floor, including basement or cellar, be at least two feet above the one (1%) annual chance flood and all utilities and sanitary facilities including mechanical, plumbing and electrical systems and gas lines must be flood proofed up to the level of two feet above the one (1%) annual chance flood.

Ms. Parrish stated that the required changes to the ordinance included additional definitions, terminology (i.e. 100 year floodplain to one (1%) percent annual chance flood), effective date of map and study (December 16, 2015), require studies to be submitted to FEMA when available (such as the WEG study), replace County Engineer to Development Manager or his designee, and ensure all federal and state permits be obtained when applicable.

Ms. Parrish stated first new flood zone designation added to the map was zone AO, AO zones are areas subject to inundation by one (1%) percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Ms. Parrish stated

that there is only one area in the County with this designation. This area is near the Jamestown Ferry and is owned by the Commonwealth of Virginia.

Mr. Heath Richardson inquired where the AO area was near Jamestown Ferry property.

Ms. Parrish stated that it is right before you get to the Ferry on the left.

Mr. O'Connor asked if it is anticipated that there will be more AO properties in the future.

Ms. Parrish stated that she was unsure if there would be but if a natural event takes place which changes the topography it is possible more properties could be changed.

Ms. Parrish stated that the new coastal zones will be the main topic of discussion moving forward. The proposed zones include the V zones, the coastal AE zone, and the LiMWA line.

Ms. Parrish stated that V zones are areas subject to inundation by the one percent (1%) annual chance flood event with additional hazards due to storm-induced velocity wave action of three feet or greater. Ms. Parrish stated that the areas with V zones are located along the shorelines of the York and James Rivers. The base flood elevations are derived from detailed hydraulic analyses and staff has identified 213 parcels, including four (4) residential dwellings that have portions of this designation.

Mr. Heath Richardson inquired if the elevation was three feet above the wave action from a storm?

Ms. Parrish stated that it is three feet above the 100-year stillwater elevation. Ms. Parrish stated that the blue line on the diagram simulates the waves.

Mr. Coghill stated that the base flood elevation is not a horizontal plain, it varies in elevation depending on where you are.

Ms. Parrish stated that when building in a VE zone, the building would have to be elevated on pilings or columns so the bottom of the lowest horizontal structural member of the lowest floor is elevated at least two feet above the base flood level. In addition, new construction shall be landward of reach of mean high tide and fill for the structural support and alteration of sand dunes are prohibited.

Mr. Coghill stated that garages are allowed to be below the base flood elevation however flood vents would be required, Storage and access to higher floors are also allowed below the base flood elevation.

Mr. O'Connor stated that all of the electrical, and plumbing would have to be above the base flood elevation or flood proofed.

Mr. Coghill confirmed Mr. O'Connor's statement.

Ms. Parrish stated that AO and VE zones are mandatory and must be added in to the ordinance. However, FEMA has also added a Limit of Moderate Wave Action Line to the maps which is non regulatory.

Ms. Parrish stated that LiMWA line indicates the potential for moderate waves that may cause damage to structures (wave heights between 1.5 feet and 3 feet). Ms. Parrish stated that areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet and identified on the Flood Insurance Rate Map (FIRM) as AE areas that are seaward of the LiMWA Line also known as Coastal A zone. Ms. Parrish stated that staff has identified 284 parcels, including four (4) residential dwellings and three (3) nonresidential structures that have this designation or a portion of this designation on the property. Ms. Parrish stated that Department of Conservation and Recreation (DRC) and FEMA recommends localities adopt Coastal A zone as a higher standard in the zoning ordinance.

Mr. Richardson inquired how the non-regulatory nature of the LiMWA line translate to the zoning ordinance/local policy.

Ms. Parrish stated that the County has the option to adopt the Coastal A zone as a high standard. However, if the County chose not to, the area seaward of the LiMWA line will be treated the same as the AE flood zone.

Mr. Coghill stated that local floodplain regulations are one thing that is not under the Dillon rule so localities can adopt their own floodplain regulations.

Mr. Holt stated that this is a decision point coming up later in the conversation.

Mr. Rich Krapf inquired whether adopting the LiMWA line would give the County additional CRS credits.

Mr. Cook stated that from a CRS standpoint it is very helpful and could reduce the premiums going forward.

Ms. Parrish showed a few slides depicting the LiMWA line and Coastal A zone.

Ms. Parrish discussed the options to consider regarding the Coastal AE and LiMWA line:

1. All new construction and substantial improvements in zones V, VE and Coastal A shall meet the following requirements
 - (a) Elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated at least two feet above the base flood level. The pile of column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to effects of wind and water loads acting simultaneously on all building components. A registered design professional engineer or architect shall develop and seal the structural design, specifications and plans for the construction, and shall certify the design and methods of construction.
 - (b) New construction shall be landward of reach of mean high tide.

- (c) Fill for structural support and alterations of sand dunes are prohibited
2. Coastal Floodplain zones identified as “Coastal AE” zone on the FIRM that is subject to wave heights between 1.5 feet and 3 feet, and which is identified on the FIRM as being within the LiMWA, buildings and or structures shall have the lowest floor elevated to provide at least one (1) additional foot of freeboard (i.e. 3 feet).
 3. Provide the two options above in the ordinance as alternatives to provide flexibility to the property owner.
 4. Do not recommend adopting higher standards for the “Coastal AE” zone.

Mr. Krapf inquired what the pros and cons are for giving citizens the choice to choose which option they would like to use as opposed to the most stringent option.

Ms. Parrish stated the options were provided to promote flexibility for the owner. However, the most stringent option would promote safer construction in this areas.

Mr. Krapf stated that the higher the standard would lower the insurance premium and if something does happen less damage to buildings will have occurred.

Mr. Wright stated that he would rather make the rules more stringent so the homeowner and future homeowners will not have to think about the safety of the house because it is already taken care of.

Ms. Parrish discussed different localities and how they have adopted different aspects of the Coastal A. Ms. Parrish stated that they could ask if the additional foot of freeboard would help with CRS points.

Mr. Thomas stated that the studies that were done for the V zone and Coastal AE do not include sea level rise as a variable, just storm surge.

Mr. Holt stated that this is based off what we know now and the variables that are on the ground today.

Mr. Richardson asked if a property owner wanted to do construction on their house and they are in the Coastal A zone, would they have to bring it up to the new standard.

Ms. Parrish stated that new additions and alteration must meet current requirements. However, should the construction valuation exceed 50% (substantial improvements) the entire structure must be brought into conformation with the current requirements.

Mr. Wright stated that he thinks we should adopt the higher standards.

Mr. Richardson and Mr. Krapf agreed with Mr. Wright.

Mr. O’Connor inquired if CRS would still give the County additional points if the two options were adopted in the ordinance.

Mr. Cook stated he did not think so but would look into it.

Ms. Parrish stated that she would send the proposed ordinance to the Department of Conservation and Recreation (DCR) and FEMA to ensure everything is in compliance before bringing it to the Planning Commission.

Mr. Krapf moved to go forward with the mandatory portion of the ordinance and wait to hear back from staff regarding CRS points before making a decision on the Coastal A.

The motion passed (4-0) with the discussion of the LiMWA line and Coastal A deferred to the next Policy Committee Meeting on August 13.

4.) Adjournment

Mr. Krapf moved to adjourn (4-0).

The meeting was adjourned at approximately 5:08 p.m.

John Wright III

MEMORANDUM

DATE: August 13, 2015
TO: The Policy Committee
FROM: Paul D. Holt, III, Director of Planning
SUBJECT: Historic Minutes - Approval

The Records Management Division is in the process of building a public website for all of the historic Planning Commission Meeting Minutes, to include the Development Review Committee and the Policy Committee.

As staff is going through records and minute books, the following meeting minutes of the Policy Committee were found to be lacking an approval date:

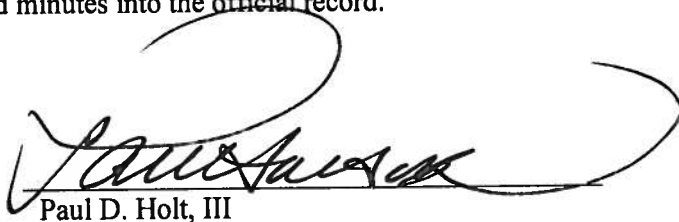
- 12/06/2011
- 12/12/2011
- 02/15/2013

These minutes were either never voted on or presented for approval in the months surrounding those meeting dates. These minutes, to the best of staff's knowledge, are the official minutes of those meetings.

In addition, when minutes from the 12/06/2012 Policy Committee meeting were approved, there appears to have been a typo in the approval date. The Policy Committee appears to have subsequently approved minutes for 12/06/**2013**. Staff believes this reference was a typo and the minutes should have reflected approval for minutes on 12/06/2012.

Recommendation

Staff recommends the Planning Commission adopt the attached minutes into the official record.



Paul D. Holt, III

Attachments

Recordation Sheet and Minutes for:

1. 12/06/2011
2. 12/12/2011
3. 02/15/2013
4. 12/06/2012



MEMORANDUM

Date: August 14, 2015
To: Records Management
From: The Policy Committee
Subject: Policy Committee Minutes: 12/06/2011

The following minutes for the Policy Committee of James City County dated 12/06/2011 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the 12/06/2011 Policy Committee meeting.

They were APPROVED by the current Policy Committee at the August 13, 2015 meeting.

Please accept these minutes as the official record for 12/06/2011.

John Wright
Chair

Paul Holt
Secretary

POLICY COMMITTEE MEETING

December 6, 2011

12:00 p.m.

County Complex, Building A

1) Roll Call

Present

Mr. Rich Krapf
Mr. Al Woods
Mr. Tim O'Connor
Mr. Mike Maddocks
Mr. Jack Fraley

Staff Present

Ms. Tammy Rosario
Mr. Jason Purse
Ms. Leanne Reidenbach
Mr. John McDonald
Mr. Luke Vinciguerra
Mr. Brian Elmore

Mr. Rich Krapf called the meeting to order at 12:05 p.m.

2) Minutes

- a) September 1, 2011
- b) September 6, 2011
- c) September 15, 2011

Mr. Al Woods made a motion to approve all three sets of minutes.

In a voice vote, the Committee approved the minutes (4-0: Absent: O'Connor).

3) Old Business

4) New Business – FY13 – FY17 Capital Improvements Program (CIP) requests

Mr. Krapf stated that at this meeting, the Committee would begin the CIP process, ensure there are no questions or concerns, identify department heads the Committee would like to attend a future meeting, and discuss some preliminary rankings. He stated he did not expect the Committee to have everything finalized until at least the second meeting.

Mr. John McDonald stated Mr. Jack Fraley had asked him for fiscal projections to compare to the project list. He stated he would have the projections at the next meeting.

Mr. Krapf asked if there were any requests for agency heads to be available.

Mr. Fraley stated he would like to speak with Alan Robertson from WJCC Schools.

Mr. Krapf stated he would like to speak with Stormwater Division staff. He stated he wants to get an idea of the scale of need between projects, whether there are regulatory issues involved, and if any projects have to be done now.

Mr. Fraley questioned whether the Stormwater Division's landfill project was a special consideration. He asked if it was required to keep the County's landfill permit and if it was why it was not ranked higher than other projects.

Mr. Krapf stated he would like representatives from Schools, Stormwater, and General Services to attend a future meeting.

Mr. Al Woods stated he would like to speak with a Parks and Recreation representative to discuss utilization questions.

Mr. Purse stated he would follow up with the Fire Department regarding Mr. O'Connor's email about adequate emergency response times in Stonehouse and would have information available in advance of the next meeting.

Mr. Fraley stated he was surprised by the lack of economic development projects on the list. He asked if the Office of Economic Development participated in creating the list.

Mr. McDonald stated the County owns commercial shell buildings and properties it is trying to sell.

The Committee discussed ranking methodologies for economic development scores.

The Committee discussed ranking methodologies regarding the term 'neutral'.

The Committee discussed ranking methods for the projects' affect on operating budgets and revenue.

Mr. Krapf asked staff to use Mr. Fraley's completed rankings as initial figures to encourage further discussion.

The Committee discussed Mr. Fraley's top five ranked projects.

The Committee discussed their ranking methods for Stormwater projects.

The Committee discussed how the various departments rank their own projects. Mr. Mike Maddocks asked why Planning staff did not provide recommendations or scores.

Mr. Purse noted that the individual departments that are requesting the projects rank their priorities rather than Planning staff applying a ranking. Planning staff has done so in the past, but the CIP process was revised to give the Committee a more active role in project evaluations.

Ms. Leanne Reidenbach stated the Commission reviews projects to ensure they reflect the Comprehensive Plan and master plans and that it was a task included in the State Code section pertaining to the role of the Planning Commission.

The Committee discussed Mr. Fraley's lowest ranked projects.

The Committee discussed special consideration rankings.

Mr. Fraley stated special considerations should not be ranked since they automatically attain the highest priority status. These projects should be noted in the Commission's cover memo that is forwarded to the Board with the rankings.

Mr. Krapf stated some members' final rankings will depend on departmental proposals at the next Committee meeting.

5) Adjournment

Mr. Fraley moved to adjourn. The meeting was adjourned at 1:20 p.m.

Rich Krapf, Chair of the Policy Committee



MEMORANDUM

Date: August 14, 2015
To: Records Management
From: The Policy Committee
Subject: Policy Committee Minutes: 12/12/2011

The following minutes for the Policy Committee of James City County dated 12/12/2011 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the 12/12/2011 Policy Committee meeting.

They were APPROVED by the current Policy Committee at the August 13, 2015 meeting.

Please accept these minutes as the official record for 12/12/2011.

John Wright
Chair

Paul Holt
Secretary

POLICY COMMITTEE MEETING

December 12, 2011

4:00 p.m.

County Complex, Building A

1) Roll Call

Present

Mr. Rich Krapf
Mr. Tim O'Connor
Mr. Al Woods
Mr. Jack Fraley
Mr. Mike Maddocks

Staff Present

Ms. Tammy Rosario
Mr. Jason Purse
Mr. Luke Vinciguerra
Mr. John McDonald
Mr. John Horne

Ms. Fran Giessler
Ms. Nancy Ellis
Mr. Alan Robertson
Mr. Brian Elmore

Mr. Rich Krapf called the meeting to order at 4:05 p.m.

2) Old Business – FY13-FY17 Capital Improvements Program (CIP) requests

Mr. Luke Vinciguerra stated staff suggests the Committee asking questions of the departmental planning heads present. He suggested Stormwater and General Services take questions first. Based on departmental feedback, Committee members can recalculate their scores during the meeting. Staff will input either new or adjusted scores from the Committee.

Mr. Krapf stated the Committee will ask questions from the Stormwater Department, followed by General Services, Parks, and Schools.

The Committee discussed Stormwater project requests with Stormwater staff.

The Committee discussed General Services project requests with General Services staff.

The Committee discussed Parks project requests with Parks staff.

The Committee discussed Schools project requests with Schools staff.

Mr. Krapf stated he identified at least four items the Committee would discuss the ratings. He stated the Committee would review items one at a time and see if there's any divergence on the ratings.

Mr. Purse suggested staff could calculate averages scores for each project, with the Committee discussing those averages.

Mr. Krapf stated the Committee should limit its review to the top ten and bottom ten scores.

Mr. Krapf called a break.

The Committee discussed possible CIP financing opinions with Financial Management Services staff.

The Committee discussed the projects' average rankings.

The Committee's top-five ranked projects are Fire Station #1, Landfill Debris Pad, Mill Creek Watershed and Improvement Phase 1, Jamestown Beach Park Entrance, and Greenways.

Ms. Tammy Rosario asked if the top-ten ranked project list developed seemed accurate.

Mr. Krapf stated it did.

Mr. Purse stated the DJ Montague project was the worst-ranked, followed by School storage sheds, and James Blair hockey/soccer field irrigation.

Mr. Purse stated New Horizons would be pulled from the project list and sent forward with a note marking its special consideration.

3) Adjournment

Mr. Fraley moved to adjourn. The meeting was adjourned at 6:20 p.m.

Rich Krapf, Chair of the Policy Committee



MEMORANDUM

Date: August 14, 2015
To: Records Management
From: The Policy Committee
Subject: Policy Committee Minutes: 2/15/2013

The following minutes for the Policy Committee of James City County dated 2/15/2013 are missing an approval date and were either never voted on or never presented for approval in the year surrounding these meetings.

These minutes, to the best of my knowledge, are the official minutes for the 2/15/2013 Policy Committee meeting.

They were APPROVED by the current Policy Committee at the August 13, 2015 meeting.

Please accept these minutes as the official record for 2/15/2013.

John Wright
Chair

Paul Holt
Secretary

POLICY COMMITTEE MEETING

February 15, 2013

2:00 p.m.

County Government Center, Building A

1) Roll Call

Present

Ms. Robin Bledsoe
Mr. Al Woods
Mr. Rich Krapf
Mr. Tim O'Connor
Mr. Chris Basic

Staff Present

Mr. Paul Holt
Mr. Jason Purse
Mr. Scott Whyte
Mr. Chris Johnson

Ms. Christy Parrish
Mr. Brian Elmore
Ms. Tammy Rosario
Ms. Leanne Reidenbach

Ms. Robin Bledsoe called the meeting to order at 2:00 p.m.

2) Old Business – Pawnshops

Mr. Jason Purse stated based on Committee recommendations at the January 17, 2013 meeting, staff prepared changes to three sections of the Zoning Ordinance. He stated staff added definitions for pawnshops and payday title loan establishments to the definitions in Section 24-2. Staff also added pawnshops and payday title loan establishments as specially-permitted uses (SUP) in the M-1, Limited Industrial, and M-2, General Industrial zoning districts. The County Attorney's Office said the County cannot outright prohibit pawnshops. Staff also reviewed the cap. The SUP process would better to handle the cap. Coming up with a number would be arbitrary without anything to base it on. The Committee has more discretion and control during the SUP process.

Mr. Al Woods asked how other localities employ the cap.

Mr. Purse stated it's an overall number anywhere in the community.

Mr. Krapf asked if staff reviewed performance standards.

Mr. Purse stated that any standards would have to be enforced county-wide.

Ms. Bledsoe stated she had researched pawnshops' own national standards. She stated they provide a service for people who do not necessarily go to banks. She stated she was comfortable with them as SUPs.

Mr. Krapf moved to recommend approval of the Zoning Ordinance amendments.

In a unanimous voice vote, the Commission recommended approval. (4-0)

3) New Business –

a) Landscape Ordinance Amendments (PLAT Committee Recommendations, Public Lands, Economic Opportunity)

Mr. Scott Whyte stated at their January 22nd meeting, the Board of Supervisors passed an initiating resolution to modify the transfer and modification sections of the Landscaping Ordinance to create an enhanced landscaping policy. He stated at their February meeting, the Planning Commission approved an initiating resolution to amend the landscaping sections of the Public Lands and Economic Opportunity ordinances. The enhanced landscaping policy is based on recommendations from the PLAT Committee's landscaping professionals and is intended to give landscape designers more flexibility to address certain site constraints. The amendments to the Public Lands and Economic Opportunity are minor and intended to clarify the buffering language.

Mr. Krapf asked about the utility easement mitigation language.

Mr. Whyte stated utility easements are often in the buffer area and they include restrictions on what can be planted there. He stated it typically squeezes the landscape area.

Mr. Chris Johnson stated there was a legislative application to reduce the front buffer from 50' to an average of 37'. He stated when the potential planting area is further constrained by multiple easements running parallel to each other, it made the required amount of planting seem far and above what was warranted for that site. The PLAT committee agreed there ought to be an ability to objectively look at sites on a case by case basis to view unique needs or intents, and whether that means additional screening of objectionable features, providing additional landscaping, larger size plants, or transferring hardscapes.

Mr. Paul Holt stated there is a desire to custom-define what enhanced landscaping means rather than blanket 125% planting. He stated allowing site designers to be more adaptable, and have them work together in context of the site location within the County will set the stage for more well-rounded proposals. Landscaping will be reviewed earlier in the process.

Mr. Krapf asked if early landscaping review was conceptual. He asked if they would be able to specific at that stage.

Mr. Whyte stated staff will encourage applicants to get as much as on the table as possible during the conceptual plan process.

Mr. Chris Basic stated it is a preliminary thought process, where instead of saying 'plants', we start to think in terms of focus of evergreens, or shrubs, without necessarily getting specific trees.

Mr. Woods asked what the word 'encourage' meant.

Mr. Basic stated during the legislative process, for all groups, submitting the enhanced landscaping became a rubber stamp. He stated this policy forces all groups to start to accept a customized thought process. The term 'encourage' works pretty well.

Mr. Krapf stated with staff and the DRC reviewing these, it will not take very long for applicants to realize they have to address that.

Mr. Holt stated that using the word 'shall' creates a minimum requirement and no longer an enhancement above and beyond.

Mr. Johnson stated each site has its unique opportunities, constraints, and challenges. He stated some are full wooded. Others have no trees. There may be features that should be screened or blended with surrounding areas. Enhanced landscaping should show intent. We may want to minimize screening to highlight a building's architecture.

Mr. Whyte stated that before, staff always considered bumping up the size of plants as a benefit. He stated it is not always necessarily a benefit. The policy is to make people focus on what they are trying to accomplish. Applicants will define a benefit and how their application will accomplish it.

Ms. Bledsoe stated the language allows an applicant to provide something they don't necessarily have to do.

Mr. Whyte stated the County gets better proposals while the applicants get to address a goal or concern rather than just spending more money on landscaping.

Mr. Krapf stated that with the 125% requirement, applicants will overplant or cram immature planting too close together. He stated as they mature, they choke each other out.

Mr. O'Connor asked how does this dovetail into community character corridors (CCCs).

Mr. Holt stated that designing these plans up front allow the designer to be more responsive to the specific type of CCC.

Mr. O'Connor stated he was concerned with how do we protect the landscape ability of someone trying to maximize the useable space on their lot.

Mr. Whyte stated the ordinance currently allows shrinking the landscape area if they meet certain criteria.

Mr. Johnson stated that by having communication up front, the County lays out to the applicant what the Comprehensive Plan calls for. He stated there is less ambiguity through all levels of the process.

Mr. Woods stated the nature of the plantings at Courthouse Commons will never be able to achieve the buffering density along the road at Monticello Marketplace. He asked what is it about the interpretation of the ordinance that can result in that inconsistency.

Mr. Basic stated that part of the visual disconnect was due to the wetlands RPA buffer at Monticello Marketplace.

Mr. Johnson stated there is also a different zoning once you get past News Road to WindsorMeade marketplace, which has different buffering. He stated it is confusing,

Mr. Woods asked that going forward, looking at Courthouse Commons, would we ask for enhanced landscaping in that buffering.

Mr. Whyte stated that buffer is above ordinance requirements. He stated designers can meet the ordinance but have a completely different look through selection of plant materials. If they had

picked screening materials, it would have looked reforested. Dwarf plants allow more visibility with a more suburban application.

Mr. Woods asked if we want, in terms of character, all of the development to be clearly visible or screened.

Mr. Johnson stated it depends on the type of development.

Mr. Whyte stated there are different types of corridors. He stated urban/suburban and wooded corridors are complete opposites. For urban/suburban, it would be somewhat visible.

Ms. Bledsoe stated the changes are necessary so that that dialogue happens.

Mr. Whyte stated we designated the corridors up front so applicants would know expectations up front.

Mr. Basic stated how the landlord does maintenance is also a factor. He stated if a landlord trims required plantings down, the County has no control.

Mr. Krapf stated in Section 24-91, 'rational' should read 'rationale.'

Mr. O'Connor stated in Section 24-91, paragraph A, where it reads 'adjustments to planting mixtures or densities are needed,' who is defining 'needed'?

Mr. Basic stated it is a collaborate effort.

Mr. Whyte stated the County Attorney's office will make some wording changes.

Ms. Bledsoe asked if the Committee members were comfortable was staff making any language changes.

Mr. Krapf moved to approve the draft ordinances and policy.

In a unanimous voice vote, the Committee recommended approval. (4-0)

4) Dates for Upcoming and Future Meetings

Mr. Holt stated staff wants to bring recommendations to the March Committee meeting regarding the next steps of the coordinated comprehensive plan review process, as well as which proposed zoning ordinance amendments to tackle next, including wind and solar production, electric vehicle charging, chickens, and accessory apartments. He asked what the Committee would like to review for the remainder of the year.

The Committee will meet on March 14, 2013, at 3 p.m.

Ms. Leanne Reidenbach stated the Economic Development Authority's Rural Economic Development Committee is partnering with the Office of Economic Development to apply for a State Governor's Agriculture and Forestry Industries Development Fund Planning Grant for a matching grant

of up to \$20,000 to encourage promotion of rural economic development. The County is attempting to draft a rural economic development strategic plan to tie rural assets together. This is the first step in implementing the related Comprehensive plan Goals, Strategies, and Actions (GSAs). Staff was hoping to have an agritourism component. The process and goals are still being shaped and the application is due March 1.

Mr. Krapf stated he would like to see a more proactive approach to rural lands to facilitate keeping rural lands productive with best practices.

Ms. Reidenbach stated that is exactly what the County hopes to accomplish. She stated rural lands can contribute to the economy and provide alternatives to developing the property residentially. She noted that the County had already looked at the feasibility of a Transfer of Development Rights (TDR) program so this would not be looking at that again.

The Committee discussed the perceived economic value of rural lands.

Ms. Rosario stated a rural lands economic development strategic plan would help provide alternatives and reduce development pressures.

Mr. Holt stated a Committee work plan from a calendar point of view can be a bit of a pacing guide, can help with the joint discussion with the Board and reconciling expectations.

The Committee discussed potential items to review in the remainder of the year.

Ms. Bledsoe asked if staff would send out a list of potential topics and meeting dates.

Mr. Holt stated yes. He stated the Committee will be able to review it before the joint meeting.

5) Other Business

There was no other business.

6) Adjournment

Ms. Bledsoe moved to adjourn. The meeting was adjourned at 3:15 p.m.

Robin Bledsoe, Chair of the Policy
Committee



MEMORANDUM

Date: August 14, 2015
To: Records Management
From: The Policy Committee
Subject: Policy Committee Minutes: 12/06/2012

The following minutes for the Policy Committee of James City County are dated 12/06/2012.

At the subsequent Policy Committee meeting on January 17, 2013, the Policy Committee moved to adopt minutes from their previous meeting, but the date referenced was December 6, 2013.

This appears to be a typo in the referenced date (year).

These minutes, to the best of my knowledge, are the official minutes for the 12/06/2012 Policy Committee meeting.

They were APPROVED by the current Policy Committee at the August 13, 2015 meeting.

Please accept these minutes as the official record for 12/06/2012.

John Wright
Chair

Paul Holt
Secretary

POLICY COMMITTEE MEETING

December 6, 2012

12:00 p.m.

County Government Center, Building A

1) Roll Call

Present

Mr. Rich Krapf
Ms. Robin Bledsoe
Mr. Tim O'Connor
Mr. Al Woods (via phone)

Staff Present

Mr. Paul Holt
Mr. Jason Purse
Ms. Tammy Rosario
Mr. Luke Vinciguerra

Ms. Heather Poulson
Mr. Tom Pennington
Ms. Marie Hopkins
Mr. Brian Elmore

Mr. Rich Krapf called the meeting to order at 12:00 p.m.

2) Minutes

a) October 11, 2012

Mr. Tim O'Connor moved to approve the October 11, 2012 minutes.

In a unanimous voice vote, the minutes were approved (4-0).

b) November 1, 2012

Ms. Robin Bledsoe moved to approve the November 1, 2012 minutes.

In a unanimous voice vote, the minutes were approved (4-0).

3) Old Business

There was no old business to discuss.

4) New Business - FY14 Capital Improvements Program (CIP) requests

Mr. Jason Purse stated six of the eleven CIP applications this exception year are brand new. He stated the other five were amended from the previous year. Staff was able to approach department heads and answer Committee member questions, and two department representatives are present. The department representatives present could discuss their projects before any discussion of rankings.

Mr. Tom Pennington stated the County's fiber optic network has allowed the County to save about \$6000 per month at 43 sites in communications costs versus going with a private company, resulting in annual savings of about \$2,500,000. He stated the schools and library have been added. This system is currently a line, where if one point is lost, the entire system goes down. In a phase two, a circle would replace the line to allow all of the systems to remain connected if one went down. Some areas are still on poles and the County depends on its Cox Communications contract. The County should not depend on outside contractors for its communications. Underground wires are less likely to be disrupted.

Mr. Krapf asked if any of the \$1.9 million from phase one was left to fund phase two and how two costs work with two jurisdictions being involved.

Mr. Pennington stated there was no funding left from phase one. He stated it was so cheap to piggyback the schools into the same cable that the County is not making that calculation.

Mr. O'Connor asked where the signal and the power generation originate. He asked if a hurricane came through and power goes out for an extended period, can the County still function.

Mr. Pennington stated the ring has lots of little points. He stated each point needs power, and each site is backed up by a generator. Larger sites have larger generators.

Ms. Bledsoe asked any if funding was left from the original \$1.9 million and what happens if the full amount is achieved.

Mr. Pennington stated it is electronics, fiber materials, and construction equipment in the ground. He stated half of the costs are electronics, which are self-healing. Equipment can tell when something is wrong, and go another way.

Ms. Bledsoe asked from a project management viewpoint, if "A" is done, do we need "B" and "C" to make the whole thing run right.

Mr. Pennington stated we need "B" and "C" to fulfill the promise of the ring.

Mr. Woods asked if there is \$2,500,000 of actual savings, then the project would be self-funding, wouldn't it?

Mr. Pennington stated yes.

Mr. Woods asked if this is a self-funding project.

Mr. Pennington stated it could be seen that way. He stated although schools have access to half of the \$2,500,000 infrastructure investment, no revenue is generated from the school system. The savings are the costs of not buying the services from a telecommunications provider. This is the cheapest way to operate.

Mr. Woods stated that when he says cost savings, he is referring to actual realized cash flow savings relative to current obligations, looking to future obligations. He stated if the County is spending \$1000 a month to maintain a system, as a result of the expenditure, it would be saving less than half of that.

Mr. Pennington stated it was not a cash flow issue, it's a what-would-it-cost us if we did not have the service. He stated the cash flow is negative, but is a cost of doing business. It is hard to translate private business concepts to investment in government.

Mr. Woods asked what was the incremental cost to the County if we installed this system.

Mr. Pennington stated if it was an operating expense, he sees it staying level. It stated it is from a capital expenditure point of view rather than an investment. Buying the services on the open market would cost \$5,800 per month. The capital investment lowers operating costs.

Ms. Marie Hopkins stated she had submitted the CIP request for the Citizen Relationship Management 311 system. She stated 311 is a handy number for citizens to call and the system can have its own dedicated staff or route calls to the appropriate department. The system allows tracking off all citizen requests, needs, complaints, and concerns in an automated way with metrics. It would reduce citizens being transferred between various departments.

Ms. Bledsoe asked what was the end result of having the system.

Ms. Hopkins stated Mr. Middaugh had received feedback from citizens and Board members regarding people not knowing where their requests were or perceiving too much time was taking to fulfill requests. Requests could be anything.

Mr. Purse stated citizens could speak with three or four staff before they get to the person they need to speak with. He stated the number of connections depends on who the citizen called first.

Ms. Hopkins stated you would have staff trained in how to transfer 311 calls and input into the computer, with one point of contact.

Ms. Bledsoe asked if there was a history of complaints in this area.

Mr. Purse stated that there not complaints but that is it better to have one person disseminating all of calls to make sure the right people are getting them.

Mr. Krapf asked if it added to the existing employee count or if the positions were allocated from other departments without increasing authorized employees.

Ms. Hopkins stated the County is small enough that she thinks it could do that.

Mr. O'Connor asked if he dialed in to report an issue, would he get a work order tracking number.

Ms. Hopkins stated yes. She stated you could also track the case on the website.

Mr. Woods asked if in the \$150,000 proposal, there is recognition of the additional annual costs, such as maintenance and additional personnel.

Ms. Hopkins stated those figures are rolled into the high submitted figures. She stated if approved, she is not sure how the County would implement 311. The costs would include two staff and a server, but she hopes the actual costs would be less. She stated there would be an about \$300,000 in additional annual costs. The program could also be phased in across a few departments at a time.

Mr. Krapf stated one of the Committee's concerns was the \$300,000 annual budget with no end in sight. He stated while the County wants to keep pace with technology, with the economic climate, taking on a project with an annual budget of more than a quarter million dollars makes everyone nervous.

Mr. Krapf asked how Schools handled capital impacts with Williamsburg if the County and the City rank the same capital project differently.

Mr. Purse stated Schools is on a different time frame than the rest of the CIP. He stated the Schools are doing their budget now for the upcoming years. School applications came in at the last minute, with very little information. Schools changes its requests up until its budget is approved in February. Staff is asking the Committee for their input based off what is currently proposed. The Williamsburg City Council and James City County Boards will meet to discuss school proposals in greater detail.

Ms. Heather Poulson stated the contributions are based on a percentage based on enrollment. She stated the County budgets capital projects, and the City usually falls in line with its capital budget.

Mr. Woods asked if the Police covered parking is justified by extending the life and reducing maintenance costs of the protected equipment.

Mr. Purse stated yes. He stated the building was something the Police had always planned on including eventually.

Mr. Woods asked what costs could be avoided.

Mr. Purse stated he did not have an answer.

Mr. Krapf stated the Police are saying that without the shed, there will be increased tire replacement and repainting.

Mr. O'Connor stated the trailers are outfitted for a specific function.

Mr. Krapf stated the Police force simulator seems to be one of the weaker applications. He stated that with about an hour block of time, Police could use creative scheduling. Right now a simulator is available, but is just not as convenient.

Mr. Woods stated there is very little attention paid to the subsequent labor costs associated with it.

Mr. Krapf asked what the potential risk to the County was for the Olde Towne Trail project if the Olde Towne Timeshares defaulted.

Mr. O'Connor stated he had spoken with John Carnifax at Parks and Recreation. He stated Mr. Carnifax was confident that all of the pieces of the trail would come into place, and that proffers or easements would be secured for the Olde Towne Timeshare property prior to construction. It also requires a pedestrian bridge over Route 199 and is pretty extensive to make all of the connections work.

Mr. Purse stated that after completion of Powhatan Trail, this is Parks new number one trail project.

Mr. Krapf asked if anyone had questions regarding the Building D video broadcast proposal.

Mr. Woods asked if, from a capital project standpoint, would Mr. Pennington submit a fragmented proposal that is not inclusive of all of the costs, both capital and operational.

Mr. Woods asked how can we assess impact on budget if we do not understand what all of the capital and as well ongoing operation costs are?

Mr. Krapf stated he had spoken with Jody Puckett before the meeting about that specifically, asking why not hold off if it was a capital issue and bundle it. She had stated there were unexpected sound problems in Building D. They thought when the renovation was finished it would resolve the sound issues. The technology component goes further than the Building D conference room, including offsite meetings and presentations. The sound dampening impact requires more study, possibly for next year's CIP.

Ms. Rosario stated that regarding the ability to broadcast Comprehensive Plan public meetings, there would be less staff involved, it would be more affordable, and it would be a better quality product. She stated that long term, the Building D issue is a helpful one to resolve, since, at the last Steering Committee meetings, it was difficult to operate within the confines of Building F, which has limited work session capacity.

Ms. Bledsoe stated she was having difficulty fitting this project into the capital project rating criteria.

Mr. Purse stated if staff has the opportunity to go out and take meetings to people, show them on TV, and have more outreach that relates to quality of life issues.

Mr. Krapf stated the numbers are all relative, and everyone has a scoring bias. He stated we have to look at the relative ranking within everyone's scoring matrix.

Mr. O'Connor stated he had discussed with Mr. Carnifax the poor condition of some of the ball fields at schools. He stated he is afraid someone is going to get hurt. Mr. Carnifax stated school baseball field maintenance responsibility is transitioning from Schools to General Services. As the fields at the schools get lights, they get a higher level of maintenance.

Mr. Krapf stated in Alan's response, the school projects costs are very preliminary and very likely to go up. He stated these projects are more of a work in progress.

Mr. Purse stated that at tomorrow's meeting, staff would put all of the scores on the board, and then the Committee can discuss their relative rankings and then come up with a list.

Mr. O'Connor asked staff to follow up with Communications staff to see if they have assessed what the customers use for communication. He stated more and more, he's getting people who want the County to use Facebook, and have instant access to meetings.

Mr. Krapf asked staff to follow up with the Police to see if they can quantify the shed project as far as impact on their operating budget.

Mr. O'Connor asked how the County managed its capital planning.

Ms. Poulson stated there is no set percentage for capital projects, and it can vary from year to year.

Mr. Holt stated part of what helps the County maintain its bond rating is a set of adopted financial management policies. He stated a number of formulas factor into debt capacity. With the Board's

priorities always dynamic, he wouldn't worry too much about funding. It comes down to which projects do best at implementing the Comprehensive Plan and land use priorities.

Mr. Krapf asked Committee members to finalize their scores and send them to staff.

5) Other Business

Ms. Rosario asked the Committee members to review their availability over January 17th, 22nd, and 23rd to discuss pawnshops and the Planning Commission Annual Report.

6) Adjournment

Mr. O'Connor moved to adjourn. The meeting was adjourned at 1:30 p.m.

Rich Krapf, Chair of the Policy Committee

MEMORANDUM

DATE: August 13, 2015
TO: The Policy Committee
FROM: Christy H. Parrish, Deputy Zoning Administrator
SUBJECT: Updated Federal Emergency Management Agency Flood Insurance Rate Maps and Zoning Ordinance Update

At the meeting of the Policy Committee on July 16, 2015, staff was asked to follow-up on the below items. Staff looks forward to discussing these items with the Committee.

Community Rating System:

Staff confirmed that James City County will automatically receive at least 300 points towards a lower CRS rating should James City County adopt the Coastal A zone as a higher standard and require all new construction and substantial improvements to be elevated as if located in VE zones with the following criteria:

- (a) Elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated at least two feet above the base flood level. The pile of column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to effects of wind and water loads acting simultaneously on all building components. A registered design professional engineer or architect shall develop and seal the structural design, specifications and plans for the construction, and shall certify the design and methods of construction.
- (b) New construction shall be landward of reach of mean high tide.
- (c) Fill for structural support and alterations of sand dunes are prohibited

No automatic points are received if the above requirements are not adopted; however, should the County choose to provide an option to either meet the VE construction standards or provide an additional foot of freeboard some points may be awarded on a case-b- case basis.

DCR / FEMA:

Staff forwarded the proposed ordinance changes on July 20, 2015 to ensure compliance with the National Flood Insurance Program. Feedback has not been received as of August 7, 2015.

Williamsburg Area Realtors:

Below is an e-mail received in support of the ordinance changes from Ms. Susan Gaston:

From: Susan Gaston [mailto:susan@gastongroup.com]
Sent: Friday, August 07, 2015 1:56 PM
To: Christy Parrish
Cc: Susan Gaston
Subject: RE: Flood Ordinance Update

Christy,

Good chatting with you this morning. The Williamsburg Area Association of REALTORS is comfortable with the proposed flood ordinance amendments.

There is no perfect solution to this ongoing issue of recurrent flooding and increased storm strength, and with FEMA giving the County little wiggle room, we understand that the overall benefits to the County, especially in regards to receiving a lower CRS, take precedent. And a lower CRS really is the best outcome of all of this!

I'm not sure that I can attend the Policy Committee meeting next Thursday due to a prior commitment to be in Newport News for a Comprehensive Plan meeting at the same time, so I hope that this communication suffices to offer our support for the current language.

If you or the Commission members have questions, please do not hesitate to contact me. I'll keep you posted as to when we can get you out to speak to our members about this!

Recommendation:

Staff recommends the Policy Committee recommend approval of the Coastal A zone as a higher standard and require all new construction and substantial improvements to be elevated as if located in VE zones. This higher standard will not only promote safer construction standards but may, in combination with other factors, improve the County's CRS rating to keep or lower insurance premiums for citizens.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS; BY AMENDING ARTICLE VIII, APPEALS, DIVISION 2, BOARD OF ZONING APPEALS, SECTION 24-650, POWERS AND DUTIES; GRANTING OF VARIANCES; AND BY AMENDING ARTICLE VIII, APPEALS, DIVISION 3, REGULATIONS GOVERNING APPEALS, SECTION 24-666, PETITION FOR CERTIORARI TO REVIEW DECISION OF BOARD.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-2, Definitions; by amending Article VIII, Appeals, Division 2, Board of Zoning Appeals, Section 24-650, Powers and duties; granting of variances; and by amending Article VIII, Appeals, Division 3, Regulations Governing Appeals, Section 24-666, Petition for certiorari to review decision of board.

Chapter 24
ARTICLE I. IN GENERAL

Sec. 24-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

V

~~Variance. A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the chapter would result in an unnecessary and undue hardship. As used in this chapter, a variance is authorized only for height, area and size of a structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variances in the zoning division or district or adjoining zoning division or districts.~~

Variance means, in the application of the zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Chapter 24
ARTICLE VIII. - APPEALS
DIVISION 2. - BOARD OF ZONING APPEALS

Sec. 24-650. Powers and duties; granting of variances.

The board of zoning appeals shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant thereto.

(2) ~~To authorize upon appeal or original application in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided, that the spirit of this chapter shall be observed and substantial justice done, as follows:~~ *To grant upon appeal or original application in specific cases a variance as defined in Va. Code § 15.2-2201 and Section 24-2 of the county code; provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the defined standard for a variance and the following criteria:*

- a. ~~When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant; provided, that all variances shall be in harmony with the intended spirit and purpose of this chapter.~~

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of a variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

- 1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- 2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- 3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- 4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.*
- 5. The relief or remedy sought by the variance application is not available through the process for modification of a zoning ordinance pursuant to Sec.24-644 of the County Code at the time of the filing of the variance application.*

~~b. No such variance shall be authorized by the board unless it finds:~~

- ~~1. That the strict application of this chapter would produce undue hardship;~~
- ~~2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~
- ~~3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

c. No such variance shall be ~~authorized~~ *considered* except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.

- d. ~~No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.~~
 - e. In authorizing **granting** a variance the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to ~~insure~~ **ensure** that the conditions imposed are being and will continue to be complied with.
- (3) ~~To hear and decide appeals from the decision of the zoning administrator or applications for such special exceptions as may be authorized by this chapter. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia 1950.~~
- (4) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after a public hearing with notice as required by **section Va. Code § 15.2-2204** ~~of the Code of Virginia~~, the board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. The board shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by ordinance.

(Ord. No. 31A-88, § 20-115, 4-8-85; Ord. No. 31A-189, 4-13-99; Ord. No. 31A-243, 7-14-09)

Sec. 24-651. - Rules and regulations; meetings; compulsory attendance of witnesses; records.

The board of zoning appeals shall adopt rules and regulations as it may consider necessary. The meetings of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. All meetings of the board shall be open to the public. A quorum shall be at least three members.

(Ord. No. 31A-88, § 20-116, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-652. - Vote required to reverse any order, etc., or to decide in favor of any appellant.

A favorable vote of three members of the board of zoning appeals shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass.

(Ord. No. 31A-88, § 20-117, 4-8-85; Ord. No. 31A-189, 4-13-99)

Secs. 24-653—24-662. - Reserved.

DIVISION 3. REGULATIONS GOVERNING APPEALS

Sec. 24-663. Initiation and effect of appeal; restraining orders.

An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

(Ord. No. 31A-8, § 20-118, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-664. - Procedure; deposit if public hearing required.

- (a) Appeals shall be mailed to the board of zoning appeals in care of the zoning administrator and a copy of the appeal shall be mailed to the secretary of the planning commission. A third copy should be mailed to the individual, official, department or agency concerned, if any.
- (b) Appeals requiring an advertised public hearing shall be accompanied by a certified check payable to the treasurer for the amount set forth in section 24-7.

(Ord. No. 31A-88, § 20-119, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-665. - Public hearing; authority of board.

The board of zoning appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the matter within 90 days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from.

(Ord. No. 31A-88, § 20-120, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-189, 4-13-99)

Sec. 24-666. - Petition for certiorari to review decision of board.

- (a) Petition to circuit court. Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the county may present to the Circuit Court of James City County a petition ~~that shall in accordance with Va. Code § 15.2-2314 within 30 days after the final decision of the board.~~ *be styled "In Re: [date] Decision of the Board of Zoning Appeals of James City County,"* specifying the grounds on which aggrieved within 30 days after the final decision of the board. A "final decision" is the decision that resolves the merits of the action pending before the board or effects a dismissal of the case with prejudice.

~~Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this article. The board of supervisors, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.~~

- ~~(b) Allowance of writ of certiorari. Upon the presentation of such petition, the court will allow a writ of certiorari to review the decision of the board of zoning appeals and will prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals, or if no secretary exists, the chair of the board of zoning appeals, which will not be less than ten days and may be extended by the court. The allowances of the writ will not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.~~
- ~~(c) Board required to return papers and other facts. The board of zoning appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~
- ~~(d) Taking of testimony; finding of facts and conclusions of laws. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reserve or affirm, wholly or partly, or may modify the decision brought up for review.~~
- ~~(e) Costs. Costs shall not be allowed against the county unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.~~

~~(Ord. No. 31A-88, § 20-121, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-189, 4-13-99; Ord. No. 31A-221, 1-10-06; Ord. No. 31A-248, 10-12-10)~~

[history](#) | [hllite](#) | [pdf](#)**CHAPTER 597**

An Act to amend and reenact §§ [15.2-2201](#), [15.2-2308](#), [15.2-2309](#), and [15.2-2314](#) of the Code of Virginia and to amend the Code of Virginia by adding a section numbered [15.2-2308.1](#), relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-2201](#), [15.2-2308](#), [15.2-2309](#), and [15.2-2314](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [15.2-2308.1](#) as follows:

§ [15.2-2201](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ [15.2-2233](#) et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land, or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and~~ purpose of the ordinance, ~~and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at

least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

~~2. To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the ordinance shall be observed and substantial justice done, as follows: the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.*

~~When a property owner can show that his~~ *Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted*

on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

~~No such variance shall be authorized by the board unless it finds:~~

- ~~a. That the strict application of the ordinance would produce undue hardship relating to the property;~~
- ~~b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~
- ~~e. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

No variance shall be authorized *considered* except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

~~No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.~~

~~In authorizing~~ *granting* a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, *general or special*, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property

immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance~~ *proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.*

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.

Legislative Information System

MEMORANDUM

DATE: August 13, 2015
TO: The Policy Committee
FROM: Jason Purse, Zoning Administrator
SUBJECT: ZO-0005-2015, Article VIII – Appeals

The Virginia State Code sections pertaining to variances were amended during the 2015 legislative session. These changes went into effect July 1, 2015.

Unlike rezonings and special use permits, a consideration of applications for variances are reviewed by the Board of Zoning Appeals (BZA), instead of the Planning Commission and Board of Supervisors. The BZA is composed of five county residents appointed by the Circuit Court after endorsement by the Board of Supervisors. State Code empowers the BZA to hear and decide appeals of determinations made by the Zoning Administrator, as well as the ability to grant a variance.

A variance is permission to depart from the literal requirements of a zoning ordinance, as they relate to height, area and size of a structure. The State Code further provides guidelines that must be met in order for the BZA to grant a variance, and since they are a quasi-judicial body the scope of their approvals must strictly follow those requirements.

The changes in State Code require a change to our definition of “variance” and an update to the “granting of variances” section in Article VIII.

Even though the Planning Commission does not review these processes, the new changes must be reflected in our Zoning Ordinance, which requires Policy Committee, Planning Commission, and Board of Supervisors approval.

I.

The new definition of variance reads:

“Variance means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.”

The important change to this definition is the inclusion of the clause “unreasonably restrict the utilization of the property,” rather than the previous language that ties a variance to that which

“would result in unnecessary or unreasonable hardship to the property.” If there is an existing structure or use on the property, whether or not an applicant can establish a right to a variance still requires a focus on the unreasonable restriction of the utilization of property. The unreasonable restriction clause is still a very high standard that needs to be met.

II.

Section 24-650 of the Zoning Ordinance currently establishes three criteria that the BZA must find in order to grant a variance. New State Code language now places the burden of proof on the applicant, and replaces the previous criteria with the following standards:

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of a variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

- (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*
- (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and*
- (v) the relief or remedy sought by the variance application is not available through the process for modification of a zoning ordinance pursuant to Sec.24-644 of the County Code at the time of the filing of the variance application.**

*Item #5 has slightly different language than the state code to more accurately reflect the JCC process

It should be noted that the “unreasonably restrict the utilization of the property” clause is repeated in this section. It is also of note that the “physical condition relating to the property” clause has been interpreted through the courts as natural conditions rather than man-made. Environmental impacts, topography, streams, etc. have all been deemed to be related to the physical condition. However, man-made structures, including buildings and utility pedestals, have not been viewed as related to the physical condition of a property.¹

While the purpose of the code changes was to clarify and standardize how the BZA should grant variances, it is important to remember that the BZA is only empowered to act in accordance with the standards prescribed by statute. Variances may only be granted only to achieve parity with other properties in the district, due to the special characteristics of a property; they cannot be granted to allow the applicant to do what others in the zoning district may not do without a variance.

Staff recommends that the Policy Committee recommend approval of these ordinance amendments to the Planning Commission.

Attachments:

1. Draft Ordinance
2. Legislative Amendment Document

ⁱ Steele v. Fluvanna County Board of Zoning Appeals, 246 Va. 502, 436 S.E.2d 453 (1993) (rejecting argument that utility markers placed on the property were a situation or condition of the property).