

**Department of Community Development  
Staff Report**

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**MEETING DATE:** October 13, 2016

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**REQUEST:** A Zoning Ordinance Text Amendment to allow Special Exception or Waiver Approval of a Reduction in Non-Common Open Space where another Conservation Easement Achieves the Purpose of a Non-Common Open Space Easement

**OUTSTANDING ISSUES** Staff has provided two alternative approaches to address this issue: a Waiver process and a Special Exception process.

**RECOMMENDATION:** Staff recommends approval of the Special Exception approach, and the Planning Commission also unanimously recommended the Special Exception approach.

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**Topic Description:**

The proposed text amendment would provide a process for eliminating the requirement for a non-common open space easement in situations where the property is or will be placed in an alternative conservation easement pursuant to Section 10.1-1700 or Section 10.1-1009 of the *Code of Virginia*. Typical alternative easements include those held by the Virginia Outdoors Foundation, the Land Trust of Virginia, and the Nature Conservancy, as well as other organizations. In many cases, these alternative easements would accomplish the same goal as a non-common open space easement, and there would be little benefit to adding a second easement. Two alternative approaches are presented for consideration, a Board Waiver process and a Special Exception process. Staff is recommending approval of the Special Exception process, as discussed below.

**Background and Analysis:**

Non-common open space is required when any property in the RA Rural Agriculture or RC Rural Conservation district is subdivided; 85% of the original parcel must be maintained in a single lot. This lot is the non-common open space parcel and a non-common open space easement is required to be recorded on the property.

The non-common open space requirement is part of the County's cluster approach to rural development. The goal is to have all available subdivision density cluster on 15% percent of the parcel, leaving the 85% parcel available for agricultural and open space use. The non-common open space parcel cannot be further divided. A home and all of its allowable accessory structures may be placed on the non-common open space parcel, but otherwise use is limited solely to

agricultural uses, i.e., those uses listed under Category 18 in the Zoning Ordinance. The non-common open space easements are in effect in perpetuity unless terminated in the manner set forth in Section 2-705 of the Zoning Ordinance. The easements may only be terminated after 25 years, and then only if the open space is now in conflict with the Comprehensive Plan and substitute non-common open space of equivalent value is provided.

The proposed amendment would allow an alternative easement to be placed on the property in lieu of a non-common open space easement, either by approval of a Board Waiver or a Special Exception.

#### *Special Exception*

Staff is proposing that the alternative easement be allowed by Special Exception approval of a non-common open space easement.

Currently, there are two other situations in which a parcel may be released from the non-common open space requirement, and each of these situations require Special Exception approval. Staff believes it is desirable to maintain a consistent approach to reductions in non-common open space requirements.

More importantly, staff believes that these situations need to be carefully evaluated on a case-by-case basis. While the wording of the amendment would limit eligible alternate easements to those authorized by Section 10.1-1701 or Section 10.1-1009 of the *Code of Virginia*, such easements are held by a myriad of organizations and vary significantly from organization to organization, as well as over time. It is critical that an alternative easement be carefully evaluated to determine whether it achieves the same purpose as the non-common open space easement. While it might seem that such an evaluation would be black and white, this will likely not be the case in many instances. Utilizing the Special Exception process will provide opportunity for the Planning Commission to have input into this land-use evaluation, and will also afford the opportunity for neighbors to weigh in if they are concerned that the alternative easement does not afford the same level of land use protection.

#### *Waiver*

The alternative approach would allow the Board to waive the non-common open space requirement without input from the Planning Commission. The waiver process could include a public hearing element, if the Board desired, although the waiver alternative has been drafted without the public hearing requirement. This approach affords an applicant a simpler and faster method for approval.

#### *Proposed Language*

In either case, the proposed language is similar, allowing the alternative easement to be approved when the alternative easement is of the type authorized pursuant to Section 10.1-1700 or 10.1-1009 of the *Code of Virginia* and protects the land for use as agriculture or open space.

#### **Process:**

This text amendment was initiated by the Board of Supervisors on August 11, 2016. The Planning Commission held a public hearing on the amendment on September 15, 2016 and unanimously recommended approval of the Special Exception approach.