ORDINANCE

A ZONING ORDINANCE TEXT AMENDMENT TO SECTION 2-705.(3) TO AUTHORIZE A BOUNDARY LINE ADJUSTMENT BETWEEN A NON-COMMON OPEN SPACE PARCEL SUBJECT TO A PERMANENT CONSERVATION EASEMENT AND AN ADJOINING PARCEL ALSO SUBJECT TO A PERMANENT CONSERVATION EASEMENT

WHEREAS, the County holds a number of parcels subject to "non-common open space easements" granted during the cluster Subdivision Ordinance process; and

WHEREAS, the non-common open space easements contemplate the possibility of modification after 25 years in the event that the requirements of Section 2-705.(3) of the Zoning Ordinance are satisfied; and

WHEREAS, the County has determined that the public necessity, convenience, general welfare and good zoning practice require consideration of an Ordinance amendment to consider whether, upon placement of such a non-common open space parcel within a permanent conservation easement held by the County which removes the possibility of modification pursuant to Section 2-705.(3) of the Zoning Ordinance, boundary line adjustments between such a parcel and an adjoining parcel also subject to a permanent conservation easement held by the Virginia Outdoors Foundation or the County should be permitted, where both parcels have no additional subdivision rights; and

WHEREAS, on February 13, 2020, the Fauquier County Board of Supervisors initiated this text amendment; and

WHEREAS, on August 20, 2020, the Fauquier County Planning Commission conducted a public hearing and after considering written and oral testimony, unanimously recommended approval; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 10th day of September 2020, That Article 2-705.(3) be, and is hereby, amended, as follows:

PART 7 **2-700** **NON-COMMON OPEN SPACE AND IMPROVEMENT REGULATIONS**

2-705 **<u>GENERAL REQUIREMENTS</u>**

3. Such open space easements shall also provide that after 25 years they can be changed or modified by a majority of all Board members, and a majority vote of the homeowners association or lot owners party to same. Such vote by the Board to be taken only after a public hearing. A vote to change or modify must be based on a positive finding that:

    A. The open space, the use(s) to which the open space was restricted are no longer possible, and are in conflict with a duly adopted Comprehensive Plan.

and

B. Substitute open space proposed by the application is at least of equivalent usefulness and acreage and would better comply with the duly adopted Comprehensive Plan.

or

C. That there is no provision in the Comprehensive Plan or this Ordinance advancing the purpose for which the deed restriction was required.

3.(a) Notwithstanding the foregoing, a parcel subject to a deed of non-common open space may be reduced in size by a major boundary line adjustment prior to the expiration of 25 years under the following circumstances:

A. Following a public hearing by the Board of Supervisors, the Board may vote to reduce the acreage of the non-common open space parcel and modify the non-common open space agreement subject to the following standards:

1. Both the parcel receiving acreage from the non-common open space parcel and the non-common open space parcel shall be located in or placed within a permanent open space or conservation easement authorized pursuant to either the Virginia Conservation Easement Act, Section 10.1-1009, *et. seq.*, or the Open Space Easement Act, Section 10.1-1700, *et. seq.*, of the *Virginia Code;*

2. The permanent conservation easement or easements do not permit subdivision of the parcel or parcels; and

3. The conservation values of both the non-common open space easement and permanent conservation easement will continue to be protected and use of the land for agricultural or open space purposes will not be impaired by reduction in acreage of the non-common open space parcel.

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Paul S. McCulla, County Administrator
Clerk to the Board of Supervisors