

**Albemarle County Planning Commission**  
**January 26, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, January 26, 2016, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Daphne Spain, Karen Firehock, Pam Riley, Jennie More, Bruce Dotson, and Tim Keller, Chair. Absent was Mac Lafferty. Bill Palmer, UVA Representative, was present.

Other officials present were Bill Fritz, Chief of Special Projects; Sarah Baldwin, Senior Planner; Ron Higgins, Chief of Zoning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission; Mark Graham, Director of Community Development and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

Mr. Keller noted that the next item, ZTA-2015-00015 Drive-Thru was related to the first agenda item.

**ZTA-2015-00015 Drive-Through Windows**

The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-4.12.6, Minimum number of required parking spaces for scheduled uses, 18-20A.6, Permitted uses, 18-20B.2, Permitted uses, 18-22.2.1, By right, 18-22.2.2, By special use permit, 18-23.2.1, By right, 18-23.2.2, By special use permit, 18-24.2.1, By right, 18-24.2.2, By special use permit, 18-25.2.1, By right, and 18-25.2.2, By special use permit, and adding Sec. 18-5.1.60, Drive-through windows, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-4.12.6 by amending or deleting definitions or portions thereof that pertain to stacking spaces serving drive-through lanes, and Secs. 18-20A.6 through 18-25.2.2 referenced above by allowing drive-through windows by right instead of by special use permit; and would add Sec. 18-5.1.60 to establish design and performance standards for drive-through windows which, if satisfied, would allow drive-through windows by-right. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Bill Fritz)

Mr. Fritz presented a PowerPoint presentation to summarize the staff report for ZTA-2015-00015 Drive-Through Windows.

This is a zoning text amendment to make drive through windows by right. When the ordinance was adopted in 1980 drive-through windows were not as common as they are today so they were made a use by special use permit. Staff was unaware of any request that has been denied by the Board. Each project is reviewed individually and the designs have varied over time. Some sites clearly function better than others. Reviewing special use permits is a resource intensive effort for the County involving staff from the Community Development Department (CDD), County Attorney's Office, County Executive's Office, and of course the

Planning Commission and the Board of Supervisors. Standardizing the review of drive-through windows and making them by-right will free resources so they may be used on other projects.

### **History**

- *Drive-through windows have been by special use permit since adoption of the ordinance in 1980.*
- *Staff is unaware of any drive-through application that has been denied by the Board of Supervisors.*
- *Since 2013 drive-through window applications have accounted for 11% of all Special Use Permit applications.*
- *The ordinance has limited regulations for drive-through windows.*
- *Fees for special use permits cover only a portion of the cost of review. Making drive-through windows by-right would have reduced County cost by approximately \$17,000.*

Staff researched the best planning practices across the United States and Canada for drive-through windows. From that work standard design regulations were developed. The items with an \* asterisk next to them are not currently addressed in any way by the current ordinance. The current regulations address stacking lanes and some lane width. Stacking lanes now vary by user and it is not clear what it really means. Stacking lane is defined as having space for five vehicles, but what length vehicle. The proposed regulations standardize it by having actual foot measurement and where you measure that from and to.

### **Summary of Proposed Regulations**

- Places window on side or rear of building\* (This is something the ARB has been doing. This would standardize that.)
- Separates lanes from streets by landscaped area\*
- Establishes setbacks from residential and rural areas\* (This is something that is not done right now.)
- Establishes operational hour limits if lane is within 100 feet of residential or rural areas\*
- Addresses conflict between lanes and pedestrian access\*
- Addresses access points for lanes\*
- Establishes a space beyond the service window\*
- Addresses traffic flow\*
- Standardizes stacking length
- Revises lane width

What do these conditions look like? In the slide the drive through window was located at the side or rear of the building; entrance way/access is not on a primary travel way, and there is a landscape buffer adjacent to the main road.

An example of a drive through window that doesn't work was next. There are no barriers at the edges of the drive-through lane with the traffic not well defined. The flow of traffic adjacent to the drive-through lane is in opposite directions of one another. So there are basically three lanes of traffic there with no physical controls and they are going in the wrong direction.

The next example shows adequate separation with the entrances separated from one another. The isles are separated and it is the same as a travel isle. There is a space beyond the window, which is a place where somebody can collect themselves and whatever product they may have purchased before moving out into traffic. It allows the lane to continue to flow and the service to be provided. Again, the window is located at the side or rear of the building.

## Staff Recommendation

Staff recommends approval of ZTA-2015-15 with a modification to the provisions of Section 5.1.60(c) and (d) to include reference to agricultural areas and not Rural Area property. Staff will make that change. When developing this staff failed to recognize that there are a few commercial properties that are adjacent to rural property and the setbacks would have only applied to residential districts and so we needed to add that.

These design standards are essentially the same as what you saw in Fifth Street a couple of weeks ago and what you saw two items prior to this one. The standards were developed over time working with using the research we did around the country. The one interesting thing about this is it still preserves the developer's ability to have a varied design and it does not lock them into this, is they can still apply for a special exception. For example, if they don't want a physical barrier between the travel lane and their drive-through lane they can request that and it would come to the Planning Commission or Board depending on the process that we would use that we have established for special exceptions. So it still provides for a lot of flexibility, but it makes review much more precise and predictable and frees up a significant amount of staff resources that can then be devoted to other projects. He would be happy to answer any questions.

Mr. Keller invited questions for staff.

Ms. More said she was curious just going back for reference to the Bojangles drive-through that we talked about earlier that parts of the report talk about asking the Planning Commission and the Board that the proposed special use will not be a substantial detriment to adjacent lots, and more importantly the character of the district will not be changed by this proposed special use. When she is looking at staff's proposal for better standards for guidelines how are we capturing that?

Mr. Fritz replied when developing the standards staff was keeping in mind Mr. Fritz noted it is interesting when you read some of the studies and best practices that were developed they talk exactly about those things that by applying these sort of design standards you are preventing changes in the district. You are preventing adverse impacts on adjacent properties. You are doing all of those things. So that is why you should have some standards and why staff pulled them forward. Staff believe that these standards will prevent those detrimental impacts that could occur from a drive-through.

Ms. More asked could we have those standards and still require the special use permit.

Mr. Fritz replied that staff is proposing that the drive-through windows will become a by right use, and as long as they met these design standards that he just went through that a drive-through would then be permitted by right. It would not be a use by special use permit. If someone wanted to deviate from the standards, then that would be a special exception and that would need to have a public hearing.

Ms. More pointed out that she was a little reluctant to go by right and lose potential control when you look through this and staff has changed language that specifically refers to the Crozet District and the DCD adding in drive-through windows by right. Even with the performance standards staff recommends when you look at the character of the district being unchanged that is a concern since it would be very hard not to change the character of that district even with

these performance standards in place. So she worries that there are places in the county where drive-through windows might be asked for where these performance standards might not be enough.

Mr. Fritz said if she was concerned about the DCD, which is a new district and we have had no special use permits for a drive-through in the DCD, you could of course leave drive-throughs by special use permit in the DCD. In the other districts there has never been a case where the Board of Supervisors has stated that approving the drive-through would be a change in the character of the district. That is taking almost 30 years of experience that the county has done. We have done it time and time again, which is an indication that the Board through practice has essentially determined drive-throughs don't change the character of the district that they are located in.

Ms. More said she would say that is probably true for most districts, but with exception to some she could see it be a huge change in the character.

Mr. Fritz noted that there was no track record in the DCD. However, staff still believes that these performance standards would minimize, reduce or address any impacts that would occur to adjoining properties in the surrounding area.

Mr. Keller invited further questions.

Ms. Firehock said she thought staff's diagrams were very helpful. She was trying to imagine how this would apply to the drive-through window new designs that the Commission are seeing come forward where you have the one window that you pull up to, there is one right next to it, and then maybe there is a third one. She questioned how that works and if there needs to be lots of landscaping.

Mr. Fritz replied that landscaping is not between the travel lanes. But, if you have multiple drive-through lanes the landscaping is between those multiple drive-through lanes and the rest of the world, for lack of a better way of saying it. For those services that have multiple service windows the ordinance speaks to how you measure your stacking lane so that there is adequate stacking. So it is really separating the drive-through from all the other circulation and things that are going on at the site through landscape areas, physical barriers, getting the flow of the traffic to work, and then within those they can widen out and neck back down. You still need that one space beyond the window so you can have a place to collect yourself so you are not just going from two lanes immediately down to one lane. You are going to go to two lanes, a space, and then down to the single point to get back out.

Ms. Firehock asked if each side by side lane in the triple stack would have one pull forward spot.

Mr. Fritz replied yes, that is the way it would be done, and then you would start to transition back to have a control point of access back into whatever the travel lane is that serves the site.

Ms. More referred back to the drive-through the Commission talked about earlier and asked if the Architectural Review Board would still look at the impacts of the drive-through window on the Entrance Corridor and if that process would still be in place.

Mr. Fritz replied yes, the ARB review is still retain. The project has to go through site review and part of that is ARB review of the project.

Ms. More said if it was by right and there were impacts to the Entrance Corridor would the ARB make a recommendation to staff.

Mr. Fritz pointed out in staff working with the ARB in developing this the ARB recommended the drive-through window should be on the side or rear of the building, which is where the ARB always wants them. So that is addressed. The actual physical appearance or design of drive-through windows staff does not know at the time of the special use permit is done now. That always has been done at site plan review so nothing changes there. It pulls forward the standard review the ARB has done into a by right review and retains all of the discretionary review that the ARB had in site plans, which they have now and continue to have

Mr. Keller said just a functional question on the new CVS was there seemed to be a situation where if someone was backing out of a parking space they could back into the access stacking lane.

Mr. Fritz agreed that was correct; but, that site does not meet these standards. They would have had to design that site differently. It has two problems. One, it has traffic flow going in opposite directions of one another. Two, travel lanes are not protected from the drive-through lane. That site would not have been approved by right

Mr. Keller said so this indeed is an upgrade of that site.

Mr. Fritz pointed out that site would not have been approved administratively, and they would have had to ask for a special exception.

Mr. Benish noted it requires a parking separation that is addressed now.

Mr. Fritz noted that was one of the questions that was asked when staff took the 5<sup>th</sup> Street project to the Board of Supervisors and they talked about having these standardized conditions. There was a site the Board had received public comment on that day, which was the Starbucks site at Pantops, and whether or not the conflicts that they had seen occurring out there would be prevented by these standards. The answer is yes, that site does not meet these standards. So there is another example.

Mr. Keller thanked staff. He agreed with Ms. Firehock that the Commission getting more visuals would be helpful.

Mr. Fritz pointed out staff actually looked at every drive-through window either physically going out to them or using aerial photographs to try to figure out in Albemarle County could you really make it work with the proposed standards. The answer is yes, there is nothing magic about the design of drive-through windows and it can be done pretty easily.

Mr. Keller invited public comment.

David Van Roijen said he did not come tonight to comment on this, but it just occurred to him having lived in New Orleans that they have drive-through alcohol. He questioned if we have drive-through ABC Stores or 7-Eleven Stores where you can pick up your beer do you want this

by right?

Neil Williamson, with Free Enterprise Forum, said the concept of drive-through Brew-Thru, etc. is generally covered by State Code, but he did not know about planning commissions. To preclude a logical savings based on his 12 years watching the Board consider these a waste of staff time, he encouraged the Commission to move forward with this proposal.

Valerie Long, Land Use and Real Estate Attorney with the law firm of Williams Mullen, said she looks forward to working with all of the new members. She wanted to just comment on this since she worked very closely with Bill Fritz, Sarah Baldwin, Greg Kamptner and others on the staff. We represent the owners and developers of 5<sup>th</sup> Street Station project, which is the shopping center on 5<sup>th</sup> Street under construction where the Wegman's will be located. This issue first came up when we were working on that project because we had a number of perspective tenants who were not willing to commit to signing leases at the site without knowing for sure that they would be able to have a drive-through at the property. It included a Panera Bread Restaurant, Starbucks and a bank. Today drive-through windows are absolutely critical for those types of retailers. They did not want to incur the time and significant expense of working through the special use permit process without knowing whether they were going to be able to get it or not. Even though we assured them that we had worked on in excess of 20 special use permits for drive-throughs and we never had one denied, they were not willing to commit. So we worked closely with staff and she would have to say it was one of the most collaborative processes she has ever worked on in my 18 years of practicing in Albemarle County. Staff was so wonderful to work with on this. Mr. Fritz did a tremendous amount of research. These conditions, as he stated, not only are more modern, updated and frankly more appropriate to the current design that you see. But, they are actually more restrictive and more effective she thinks in addressing the types of concerns that everyone is looking for. At the same time they are very workable. In fact, the staff is very perceptive to comments both from our clients as well as our civil engineering firm that had designed drive-throughs all around the state of Virginia and just about every jurisdiction. So staff was receptive to input and technical clarifications. We think it is a great approach to it. It has worked very well so far at 5<sup>th</sup> Street Station. We have a handful of tenants now who are very happy to know that their drive-throughs are by right.

Ms. Long said to address Ms. More's comment, she thinks this would help a lot because the drive-through regulations really were intended to ensure that things like traffic flow, stacking and things like that are functioning well. But, she also thinks it can be very helpful for economic development for the reasons she said. She knows that that the development of Downtown Crozet, for instance, is a high priority under the master plan. However, she did not know if a drive-through would be desired by every retailer in that location given some of the design. She would hate to add any additional burdens for regulatory hurdles onto a business owner who might want to bring that whether it be for a coffee shop, such as Mudhouse. It probably would not work there. Or, the Green House Coffee if they wanted to add a drive-through, it would be a way to allow it, but also to ensure the site will function well. She thanked the Commission and offered to answer questions.

Morgan Butler, an attorney with the Southern Environmental Law Center in Charlottesville, said he was the point person for our Charlottesville/Albemarle project which works to promote smart growth and sustainable transportation solutions in the Charlottesville/Albemarle area. He thinks the discussions tonight has been interesting. It is worth emphasizing that Albemarle's Comprehensive Plan encourages Neighborhood Model principles within the county's

development areas. Among other things, these principles encourage a shift towards more walkable and pedestrian oriented development. Although we are not generally opposed to drive-through windows, they currently do not advance the goals of the Neighborhood Model. Rather, they can undercut them by promoting a more suburban feel and car oriented layout for new development by placing idling cars and their exhaust fumes in the middle of the places that they want people to be walking and be excited to be walking and to be outside of their cars. With these considerations in mind, we think it is important for the county to guard against excessive proliferation of drive-through windows within the development areas. This is especially true for those areas where the county is particularly focused on promoting walkability in the Neighborhood Model. So we think it is worth considering whether the county should continue to require a special use permit for drive-through uses at least in the Neighborhood Model and Downtown Crozet zoning districts. It is worth emphasizing that the special use permit is not a band on drive-through windows, but it just provides a layer of review and a decision point rather than making them automatically allowed. It is worth pointing out that just because the Board of Supervisors has approved the special use permit applications that have come forward in the past that does not mean that somebody allowing these by right would no longer have the consideration of an application and review. Allowing drive-through windows by right would not change the character of the zoning districts in which they suddenly would be allowed by right. However, he thinks there is more to this discussion than may meet the eye and just wanted to make sure the Commission has these points in mind when discussing it.

Mr. Keller invited further public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission for discussion and action.

Ms. Spain commented that she approves of the Neighborhood Model, but, she is also reminded that there are a considerable number of people, either the elderly or those who are disabled, who can't walk everywhere. The National figures for the percent of Americans with disabilities is 13%, about 14% of the population is 65 and older, and we seem have maybe a higher proportion of the elderly in this community, and not all of those people can walk and it is an issue of accessibility that able body people are less concerned with than those who can't walk. So, again, she thinks this is one of those issues that has an equity component that is different from just the design component.

Mr. Keller noted that they have had two very important points made that can complement and can be in conflict. He asked how the Commission can move beyond this.

Ms. More asked to reiterate her point about areas such as the Crozet DCD where she hopes that these rules would permit something like that from happening if it were not appropriate. She asked if someone wants a special exception what would that process be.

Mr. Fritz explained the special exception process. If someone was requesting a special exception what they do now is if staff is recommending approval of that with conditions that the applicant is agreeable to that is placed on the Board of Supervisors consent agenda. Of course, the Board can take it off the consent agenda or do whatever they like with it. If staff is recommending denial or recommending an action that has a condition that the applicant does not agree with, it then comes to Planning Commission for a discussion and then onto the Board of Supervisors for a discussion.

Ms. More suggested if there is a request for a special exception that it immediately becomes a special use permit and this goes through that process.

Mr. Fritz replied that it does not go through a special use permit process. What it does is go through the special exception process, which has a result that is very similar. It is a completely discretionary action at that point. So it is similar in some respects to a special use permit at that point because it is entirely discretionary and the burden is upon the applicant to demonstrate why varying from the standards is appropriate. It is not incumbent upon the county to demonstrate why they should meet the standards. So it carries a burden to the applicant.

Ms. More said they would still come before the Planning Commission and then go on the consent agenda.

Mr. Fritz explained if there were a special exception that would come in it would be difficult at this point in time that staff would feel very comfortable granting much of a special exception or any special exception if this ordinance were adopted because we just adopted an ordinance with standards. Staff generally takes a very limited view of that to say these are the standards, comply with them until there is a track record where the Board has approved special exceptions to say oh okay the standard is normally X number of feet, but the Board routinely grants a 20 percent reduction. Now staff has something to use as a guide. So the likelihood is that for a certain period of time staff would not be recommending approval of special exceptions, which means special exceptions would come to the Planning Commission for discussion and then to the Board of Supervisors for discussion and action. That would help to clarify what the boundaries are that the Board may want to consider for a special exception. If somebody wanted to do a travel lane that did not have a barrier to the adjacent travel way staff would say no, it would then come to the Planning Commission since it is a discretionary action, and it would then go to the Board of Supervisors as a discretionary action just like a special use permit is.

Mr. Dotson noted that he was not clear from what Mr. Fritz said about the process for special exception. Does it go to the Board and then only to the Planning Commission if the Board refers it to us.

Mr. Fritz replied no, it only goes to the Planning Commission. The Board can refer it to the Commission. If staff recommends approval, the special exception goes to the Board of Supervisors on their consent agenda. The only way it would then get to the Planning Commission is if the Board said no that they were not comfortable with this send it to the Planning Commission for them to discuss, and then bring it forward; or, of course the Board can deny it. The other way for the special exception to get the Planning Commission is if staff is recommending denial or conditions that the applicant does not agree with, and then it automatically goes to the Planning Commission before it goes to the Board. This was the procedure that the Board set up after the Sinclair case when they had to do the special exceptions differently.

Mr. Benish said Mr. Fritz's reading is that most likely we are going to follow these standards and not likely deviate from them until we get a track record. So if we are getting these special exceptions it is quite likely that staff will not be recommending favorably, and then the exceptions would be coming to the Commission. Again, that would be based on the concept that we are probably not going to be agreeable to deviations from these standards.

Mr. Fritz said staff typically recommends approval of special exceptions when there is some guidance in the ordinance on how a special exception should be reviewed so it has something

to review it against; or, we have a track record or history of how special exceptions have been granted. Since we don't have a track record our default is going to be comply with the ordinance.

Ms. More pointed out she understands since most special exceptions are approved that going through that process can bog down the system. However, she thought if there is a request for any special exception that it does become a special use request and then go through that process because that means that there is something there that needs to get a closer look rather than the special exception going on the consent agenda and getting pulled and pushed back to the Planning Commission. She thinks that just keeps it a better flow.

Mr. Fritz said he did not think there was any way to make it go into a special use permit. He noted his point is that staff would not be recommending approval of the special exception so it would come to the Planning Commission and then to the Board, which is an entirely discretionary action just like a special use permit. So the effect is exactly the same as making it by special use permit. He can't think of a mechanism by which we could make it a special use permit.

Mr. Kamptner explained up until now we have tried to keep the special use permit distinct from the special exception. Under the law they really are one and the same; but, localities have carved out different classes. Special use permits right now are generally used for uses. So a special use permit allows an additional use in that zoning district to the party that obtains the permit. Special exceptions are used in Albemarle County as the process for waiving or modifying a standard in Section 5 of the Zoning Ordinance. You can see this section is 5.1.60 so there are 59 other types of uses and performance standards that exist already. Whenever an applicant needs a modification, variation or an exception from one of those standards they go through the special exception process. They are not getting a new use, but just getting permission to deviate from a standard that is in Section 5. They have to demonstrate that the public health, safety and welfare is protected and other criteria that exist in each of those 59 current subsections. The process is also used, for example, in planned developments. The county had an old process where someone could make changes to their application plan, which is the schematic drawing that accompanies a planned development. Once the applicant was ready to develop and realized that certain things needed to be moved around a little bit there use to be an administrative process that the Director of Planning could allow for those minor changes. Those also now go through the special exception process. He thinks that covers all of the purposes for which the special exception process exists.

Mr. Keller said he had a question sort of building on Ms. More's point that he had to ask Ms. Riley. From the CAC meeting last week the subdivision that they were looking at had the one outparcel commercial, and what is the name of that.

Ms. Riley replied Spring Hill Village.

Mr. Keller said he would like to take a hypothetical from that. If we have a Neighborhood Model and because of the mixed use component there is a small commercial by definition might that always be able to be a commercial with a drive-through.

Mr. Fritz replied no, because it would have had to be in the Code that was adopted when the Neighborhood Model District (NMD) was adopted whether or not it is a permitted use because it still is a use. So you could have a rezoning and it will have a list of permitted uses and if it is not

one of those listed uses it is not. The interesting thing is that if you have a planned development right now that is out and there is a commercial portion of the planned development that does not list the drive-through as a permitted use, this zoning text amendment does not have any effect on that. By making it by right it does not necessarily have any effect on it either. There is no standard answer because you have to look at what the rezoning was for the particular project.

Mr. Keller said that was where he was trying to get to Ms. More's and Mr. Butler's point of these more general cases might there be situations where there will might be impact on a more pedestrian oriented neighborhood.

Mr. Fritz pointed out the Commission does not have to include it because in the NMD it is a permitted use. Not every use gets included in a planned development, NMD or any other. There are some that prohibit it.

Mr. Keller pointed out this would be from this point forward so we were interested in that.

Mr. Fritz noted that it is not retroactive. If you believe them not to be pedestrian oriented you would not include drive-through windows as a permitted use within the development.

Mr. Keller invited further discussion. There being none, he asked if there was a motion.

Mr. Fritz noted the last minute change should be to include reference to agricultural districts.

Mr. Kamptner noted what the Commission's action is going to be is a recommendation either for approval or disapproval. If there is a disapproval if the motion maker could articulate the reasons because this will be forwarded onto the Board for their consideration.

**Motion:** Ms. Firehock moved and Ms. Spain seconded to recommend approval of ZTA-2015-00015 Drive-Through Windows with a modification to the provisions of Section 5.1.60(c) and (d) to include reference to Agricultural Districts.

Mr. Keller invited further discussion. There being none, he invited a roll call.

The motion was approved by a vote of 6:1. (More nay) (Lafferty absent)

Mr. Keller noted ZTA-2015-15 Drive-Through Windows would be forwarded to the Board of Supervisors with a recommendation for approval to be heard on a date to be determined.

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)