

Albemarle County Planning Commission
August 22, 2017

The Albemarle County Planning Commission held a public hearing on Tuesday, August 22, 2017, at 6:00 p.m., at the County Office Building- McIntire, Lane Auditorium, Second Floor, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Amelia McCulley, Zoning Administrator/Director of Zoning; Leah Brumfield, Senior Planner, Andrew Gast-Bray, Assistant Director of CDD/Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

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

Public Hearing Item.

[ZTA-2017-00007 Housekeeping II](#)

The Planning Commission will hold a public hearing on August 22, 2017 to receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code: Amend Section 18-3.1 to establish definitions for children's residential facility and skilled nursing facility and adds the term skilled nursing facility to the definition of hospital, capitalizes terms in the definition of assisted living facility, and deletes the terms sanitariums, nursing homes, and convalescent homes from the definition of hospital; Amend Section 18-4.12.6 by deleting the terms rest home, nursing home, and convalescent home and adding the terms assisted living facility and skilled nursing facility; Amend Section 18-4.17.3 to amend the definition of lamp; Amend Section 18-4.17.4 to clarify that outdoor luminaires equipped with LED lamps which emit 3,000 or more lumens as indicated by the manufacturer shall be full cutoff fixtures and removes the terms rated lamp wattages; Amend Section 18-5.1.13 to delete the terms rest home, nursing home, convalescent home, and orphanage and to add the terms assisted living facility, skilled nursing facility, and children's residential facility; Amend Section 18-5.2 to remove the term nursing homes and add the terms skilled nursing facility and assisted living facility; Amend Sections 18-14.2.2, 18-15.2.2, 18-16.2.2, 18-17.2.2, 18-18.2.2, 18-19.3.2, 18-20.3.2 by substituting the terms skilled nursing facility, assisted living facility, and children's residential facility for the terms rest home, nursing home, convalescent home, and orphanage; Amend Section 18-20A.8 by substituting the term skilled nursing facilities for nursing homes; Amend Section 18-20B.1 by deleting references to the CT5 and CT6 Urban Core transects; Amend Section 18-20B.2 by substituting the terms skilled nursing facilities and assisted living facilities for the term convalescent homes; Amend Section 18-20B.4 by substituting the terms skilled nursing facilities and assisted living facilities for the terms convalescent homes and nursing homes; Amend Section 18-26.5 by deleting a reference to off-street parking and loading requirements and clarifying that a buffer is not required when a commercial or industrial district zone is across the street from a residential or rural area district; Amend Section 18-31.3 to clarify that the zoning administrator may conduct a post-construction, pre-use inspection of a building or structure not required to file a building permit application; and Amend Section 18-5.1.11 to substitute the term sound for noise. A copy of the full text of the proposed ordinance amendments 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.dd

Leah Brumfield presented a PowerPoint presentation. She said today staff will be presenting to the Commission Zoning Text Amendment, ZTA-2017-07. This was previously known as Housekeeping II as now known as Term, Updates and Clarifications. This is the second so called Housekeeping ZTA, the first of which was recommended for approval by this Commission on June 20th, and it was just adopted by the Board two weeks ago on August 9th. As we know these two housekeeping amendments, ZTA-2016-06 and ZTA-2017-07 make small administrative changes to the ordinance and no changes to policy implementation. This is also very similar in scope to ZTA-2017-02, which was the Section 1 Introduction Text Amendment that staff presented to the Commission in July. She noted that the title of this ZTA has been changed as we move forward. Previously, a question was raised as to whether housekeeping amendments had to do with actual housework; and, they do not. To avoid further confusion we have turned this into the descriptive title Term Updates and Clarifications.

Ms. Brumfield said just for a little context, this set of changes in Housekeeping II/Term Updates and Clarifications was separated from the original bulk of the Housekeeping I ZTA June 20, 2017 when staff discovered additional changes of the text be made immediately before the Planning Commission meeting. For example, there was a change in 5.1.11 that put decimal limitations on both sound proofed and non-sound proofed kennels and at the last minute they realized that it should be changing the term “noise” to “sound” as noise is subjective but sound is measured by decibals, but it was too late. Ms. Brumfield explained that is the kind of thing that we are working with today.

Ms. Brumfield explained the public purpose of this, as indicated by the new title, is updating a few terms to more modern and accurate language, replacing confusing terms and updating our Rural Area lighting regulations to include modern technology and codifying established procedures which are practiced and implicit in the text but may not be explicit and we want to clarify that and get rid of any confusion moving forward. The specific changes, the first one is to update the terms

The first change in this amendment is to update the terms for senior residential facilities. Currently, our ordinance uses the terms “rest home, nursing home, convalescent home and orphanage”. Ms. Brumfield said that staff spoke with DSS on this in consultation on this extensively and they had a great time figuring out the differences between the actual Social Services definition, the Zoning definition and we arrived at these to replace with “assisted living facility”, “skilled nursing facility” and “children’s residential facility” as “rest home and convalescent home” are no longer used, and “nursing home” can apply to multiple things so we separated out by use “skilled nursing facilities require a higher level with interaction with patients, more staff and so they may have a slightly more intense land use. Whereas, an “assisted living facility” has a slightly lower intensity of use.

Ms. Brumfield said also, if you will notice there is one change that has been highlighted on the sheet passed out. Staff was hesitant to make changes, but there was a concern raised to speak to the definition of a private family home. Since we have no official definition of that staff removed that and spoke with DSS about that as well and they said that should not change the meaning on this even without that term. So that is in front of the Commission and that will be the official text.

Ms. Brumfield said the second change in this amendment is to clarify confusing or redundant language. The first instance of this, as mentioned in the kennels, is the change in Section 5.1.11 described earlier, replacing the descriptive term “noise” with the measurable term “sound” as sound is measurable in decimal and noise is very subjective. The second instance of this clarification is in the Downtown Crozet District ordinance, Section 20B.1, “Purpose and Intent.” This removes the phrase “as described for the CT6 Urban Core and CT5 Urban Center transects,” which refers to the Crozet master plan, as the Crozet master plan already thoroughly describes the features of CT6 and CT5 transects under Chapter 4 – Future Land Use. Additionally, as there are no other references to transects in the code, this change resolves that inconsistency.

Ms. Brumfield said the third is adding in LED’s to our list of regulated lighting sources in the Rural Area. The difficulty in this particular change, which makes it a little bit more interesting, is that LED’s are not measured in wattages and every single other lighting source that we measure is measured in wattages; LED’s different color temperatures, different numbers of diodes can change the wattages and still have different lumens so we have that particular text in there.

Ms. Brumfield said finally, we are codifying a few long-established existing policies, which may not be explicit in the text. The first is a description of the practice under Section 31.3, which requires structures not needing a building permit to undergo a final zoning inspection prior to use. This is implicit in the code, but is now explicit. These structures are primarily sheds and farm buildings. She noted that staff wants to make sure that everything is checked off before people actually start using these buildings.

Ms. Brumfield said the second codification of a policy is allowing roads to act as buffers for commercial or industrial zones, in Section 26.5. She said we want to keep them separated from other zones and have always allowed roads to act as buffers not increasing the amount of space you need to buffer. This is consistent with the amendment adopted by the Board under Housekeeping I that allowed roads to act as buffers for residential or rural area districts. Ms. Brumfield pointed out these are the four changes that we have in this particular text amendments and clarification.

Mr. Keller opened the public hearing and invited public comment. Seeing none, Mr. Keller invited questions for staff. There being no questions, he asked staff to go through each item with questions and discussions for each one.

Ms. Brumfield said the first item was updating rest home, nursing home and convalescent home and orphanage to assisted living facilities, skilled nursing facility and children’s residential facility.

Mr. Keller asked could we assume that originally when there was the private family home that was referring to something like foster homes.

Ms. Brumfield replied no that was something she clarified with DSS the private family home for a foster home does not fall under this in any way because it is a residence and not a facility. Therefore, using the word facility in there excludes foster homes, which was her primary concern with removing that phrase and they said that was fine.

Ms. More said she appreciates Ms. Brumfield’s email to clarify since she had brought up the original concern.

Ms. McCulley thanked Ms. More for bringing that up because we have more accurate and appropriate terms based on that consultation with DSS.

Ms. Spain said last time she asked about hospices and so is that something we need to include here. She asked is that a designated facility.

Ms. McCulley replied that an inpatient hospice situation is allowed anywhere a hospital or skilled nursing facility is allowed and those terms are so broad and regardless whether it is hospice or some other organization that is providing the care that is where that use would be allowed. Ms. McCulley pointed out that we do not have the name hospice specifically; it is allowed in either of those land use category. She thanked Ms. Spain for the reminder because they were going to circle back around to that.

Mr. Keller asked staff to go to the next section.

Ms. Brumfield said the second section involves two changes: Section 5.1.11 replacing the descriptive term “noise” with the measurable term “sound” and removing the reference in the Downtown Crozet District Ordinance Section 20.b.1 removing CT6 Urban Core and CT5 Urban Center transects.

Mr. Keller invited questions.

Ms. More said she was okay with the Crozet change.

Mr. Keller asked staff to go to the next section.

Ms. Brumfield said the third is the addition of LEDs in our lighting ordinances determining which ones will be full cut off luminaires and also defining LED’s in the Code and including them in our definition of a lamp. She pointed out even though a LED does not have a traditional lamp it is a collection of light emitting diodes, which in case you did not know that is what it stands for.

Mr. Keller invited questions for staff on this one. Hearing none, he asked to move to the next one.

Ms. Brumfield said finally codification of existing practices including requiring a final inspection prior to use by zoning inspection for buildings that do not require building permits and allowing roads to act as buffers to commercial and industrial zones.

Ms. Firehock said amendments b. Commercial or industrial buffers - Roads act as buffers that she understands from what you are saying is in your research of practice that the county has always considered a road a buffer. Ms. Firehock asked do we have to do that because she actually has some discomfort with that in terms of one use across the road; she did not even know how wide this road is and does that come into play. She said something across a six-lane road is really a different matter than a 20- foot wide road and certain uses are much more obnoxious than others and so to eliminate all buffering requirements simply because there is a road she did not really like that personally. However, she did not know enough of that history.

Ms. McCulley agreed that was a great question and asked to describe it a different way because the buffer requirement is basically a requirement that when you have residential or rural areas property you are protecting it by not disturbing within 20’ or 30’ of the boundary of that non-

residential with the residential or rural areas property. So you are maintaining existing wooded area; you are maintaining existing vegetation of whatever type. In addition to that, our site plan regulations require that you plant what amounts to a substantial screening and it can be done different ways, and you are probably familiar with it, as you have seen site plans in the past. So this and what we had in Housekeeping I basically says that when you have that commercial or industrial property that is separated by a road from that residential or rural areas property you don't have to pull the distance, that 20' or 30' non-disturbance buffer from the commercial or industrial property. She noted you still have to because there is a road, and we have pretty substantial street landscaping requirements so there are going to have to be street trees across from that rural or residential property when you develop the commercial or industrial. She said if you have parking in addition to a building, which you typically do but hopefully it is behind the building; then, you have to put some screening shrubs. She noted that it does not eliminate the landscaping requirement; it just eliminates the non-disturbance, which does not make as much sense when the residential or rural property you are trying to protect is separated by a road from the developing commercial or industrial property. It was somewhat a disconnect and we had not really been administering it that; we just took that question off the table. Ms. McCulley said honestly you know most roads have a substantial right-of-way so by the time you pull that 20' or 30' distance it goes beyond and it is in the middle of the road right-of-way so it does not even get on to the rural or residential property. Therefore, it is almost a non-issue; but at least it eliminates the question of whether you have to create that buffer when there is an intervening road. She suggested that maybe staff could draw it if it is still kind of a question in your mind.

Ms. Firehock replied that she thinks she understands it; but still has the same reservations as before. She understands that you could really impact somebody's ability to use their property; but nevertheless she can think of some examples where someone is across the street from something that is radically different that more of a buffer would actually be more helpful so that she would support it.

Ms. McCulley pointed out when you are thinking of the buffer, the buffer as it is used in this requirement that we are proposing to modify is a non-disturbance; that's not a re-planting buffer and that is not what you have to have as a resulting landscaping screen. She said it is really a non-disturbance.

Mr. Keller asked Ms. McCulley if she could paint a picture orally using the farmer's market on one side of the road and a residential directly across from it.

Ms. McCulley explained that it is a 30-foot area of non-disturbance and if you had a road with an easement or right-of-way that is less than those 30 feet, you had your farmer's market on commercially zoned property, and across the road from that, you had residential or rural areas property. She suggested they say it is just a narrow country road, and not a state road because we know there is a prescriptive easement on the state road that is going to take care of the 30 feet. It is a private road so it is only 20 feet wide as an easement. So that means on that farmer's market property, you need a 10' non-disturbance area without getting a modification, which is a special exception through the Board. For a modification of that 30' buffer requirement, you would have to not disturb in any way that 10' right off the road. Honestly, you could not even plant in it because you are going to disturb the plant in it; but we really do want to have plantings along the road. It is not necessarily for farmer's markets; however, you can think of those commercial situations.

Ms. More said she thinks this was in the same section about the inspection and her question might be misplaced and not pertinent in this section. She said the example she asked about

was in the Rural Area where a brewery erected a new structure that is a contributing structure to their business called a tasting room. Ms. More said it was her understanding there is no inspection of this structure prior it being open to the public for use.

Ms. McCulley replied that there is no building inspection because that farm brewery, winery or distillery is an agricultural use that is exempt as a farm building from the Uniform Statewide Building Code. She said she loved working here because we care so much about land use and instead of exempting every aspect of that use in that structure we have created this term called a zoning permit. She suggested that they could even bring up that ordinance. She explained that for those things exempt from the Building Code you still need a zoning permit. Therefore, that is the way for it to go through the process to make sure the use is allowed and the setbacks are okay. Ms. McCulley said in the case of a local brewery they began to use the building without having all of their final inspections, and in this case, we were coordinating with the Health Department because in the rural areas it is on private well and septic. She pointed out that zoning permit and the requirement for the final inspection is our mechanism for making sure that everything is checked off, as it should be before they invite the public into that building that is exempt from inspections under the Building Code. She thanked Ms. More for bringing that up.

Mr. Keller asked would farm worker housing have the same exemption.

Ms. McCulley replied that was a great question; and, she did not know the answer to that.

Mr. Blair replied no, he did not think it would have the same exemption under the USBC. If that is what you are asking Mr. Blair said he did not believe that farm worker housing has the same.

Mr. Keller pointed out it was one of the things on the list of things that can occur in a Rural Area.

Mr. Blair asked Mr. Keller if his question was, are farm worker houses subject to the USBC, and Mr. Keller replied yes.

Ms. McCulley noted that some other things that get zoning permits besides farm buildings are small sheds, tents and things like that at some point it was even wireless facilities that were exempt from the building codes so the zoning permit is our permit for doing the inspection. Right now, it indirectly says you have to get your inspections before you can use the structure, and it is not as direct as we would like it to be. Ms. McCulley pointed out that you do not get a certificate of occupancy as you do with something that is subject to the Building Code. That certificate of occupancy very clearly is what you need before you can occupy and use that structure, and we do not have the same thing when it is exempt from the Building Code. Ms. McCulley said that is what we need this language for.

Mr. Keller said that is why the housing issue would be good for a clarification

Ms. McCulley said she can ask our Building Official to come to answer that and we can come back on that.

Mr. Keller invited further questions.

Mr. Dotson said he was still trying to visualize the buffer zone and was wondering if maybe a future consideration of this a drawing would be useful. He noted quite frankly, he was picturing his grandmother's front porch, and she used it actively, and there is a sidewalk and a street and

then a drive-in restaurant comes in across the street in commercial zoning and he was just trying to apply this to understand it. Mr. Dotson said he was not necessarily in disagreement with it, he just did not fully understand it and so was wondering if maybe we could have this come back with Round 3 or on its own with a diagram with a couple of options.

Ms. Firehock said she would like to spend a little more time with this because there are many scenarios and one thing she cannot think of was in the rural areas where there is a machine shop across the street from someone and they have enough property that they could avoid disturbing that area. Ms. Firehock said she understands Ms. McCulley's point about planting; however, she did not know that she was prepared to aggregate all review by making it just part of how we always do business.

Mr. Keller pointed out that Ms. McCulley suggested the possibility of a drawing, and he supports that as well. He asked if someone was ready to make a motion possibly with pulling that one item.

Mr. Blair noted there was just one point of clarification, the Virginia Statewide Building Code a farm building, structure is a building, or structure not used for residential purposed. Mr. Blair pointed out that it does make that clarification.

Mr. Dotson moved that the Planning Commission recommend to the Board of Supervisors approval of ZTA-2017-07 draft ordinance with its current title accepting the 26.5 minimum yard reference to buffer zones, which will carry over for further understanding and discussion.

Ms. Firehock seconded the motion.

Mr. Keller invited further discussion. Hearing none, Mr. Keller asked for a roll call.

The motion was unanimously approved by a vote of 6:0 (Lafferty absent).

Mr. Keller asked staff before leaving to outline the process as you see it from here.

Ms. Brumfield asked if he meant specifically for 26.5, and Mr. Keller asked concerning all of the 40 ZTA's that we have been chewing away at.

Ms. Brumfield replied that staff has been working on getting some dates for all of those. This particular section, the term updates and clarifications is scheduled for the Board on October 11 and so it will go to them without the 26.5. In addition, on October 10 staff will be presenting Section 1, which was presented to the Commission in July. The next couple of things on our agenda are going to be the commercial recreational areas and we have a Board work session in October, and she was not sure when that was scheduled. We have transient lodging, which we all know of, that is scheduled to appear before the Commission on November 14. Then we have a number of regulation changes being called base zoning district regulations, which has to do with not quite recodification but organizing all of the different regulations and it is going to involve adding charts. We have not gotten the draft for that yet; but, she knows that is going to be a major part of it. Then as far as upcoming, we have some legislative zoning actions, processes and proffers, which is going to probably be involving a public engagement process. Ms. Brumfield pointed out Ms. Echols is working on getting dates for that right now. So those along with the normal Wireless Ms. Brumfield said she thinks are our next major focus. She said there is a work session on the base-zoning district with the Commission on October 17.

Mr. Keller asked do any of these warrant a joint meeting with the Supervisors to work through. He said that is a question really for Ms. McCulley and Mr. Gast-Bray whether there might be a time saving on any of these to work together and it looks to me like that at the October 17 meeting we are going to talk about later is pretty short and booked up. He asked if that could be a possibility for that.

Ms. McCulley said she thinks that is an excellent idea. She pointed out Mr. Fritz is leading the Wireless based on the Senate Bill change 12-82 and he is also leading the recreational area activities. She noted Ms. Ragsdale is doing the transient lodging. McCulley said she would suggest if they want a joint work session, they could look at opportunities and get schedules as you are looking ahead.

Mr. Keller said he would like to hear from fellow Commissioners if they think breaking these items into small pieces rather than in groups should be continued. After discussion the Commissioners agreed it was helpful for staff to break up the issues. Mr. Keller thanked staff since it was a good process thus far and hoped it continues this way.