

**Albemarle County Planning Commission  
DRAFT Minutes November 10, 2020**

The Albemarle County Planning Commission held a public hearing on Tuesday, November 10, 2020 at 6:00 p.m.

Members attending were Julian Bivins, Chair; Karen Firehock, Vice-Chair; Tim Keller; Rick Randolph; Daniel Bailey; Corey Clayborne; and Luis Carrazana, UVA representative.

Members absent Jennie More.

Other officials present were Scott Clark; Rebecca Ragsdale; Bart Svoboda; Jodie Filardo; Margaret Maliszewski; Charles Rapp, Director of Planning; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

**Call to Order and Establish Quorum**

Mr. Bivins said the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(14), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster." He said opportunities for the public to access and participate in the electronic meeting will be posted on the Community County Calendar at [www.albemarle.org](http://www.albemarle.org) when available.

Mr. Rapp called the roll. All Commissioners noted their presence except for Ms. More, who was absent.

Mr. Bivins established a quorum.

**Consent Agenda**

Mr. Randolph moved to approve the consent agenda.

Mr. Keller seconded the motion, which carried unanimously (6:0). (Ms. More was absent.)

**Public Hearing**

**ZTA202000003 Outdoor Activities/Outdoor Storage at Recycling Uses in Industrial Zoning Districts**

Ms. Rebecca Ragsdale said the Commission had seen this item in a work session in October, and that she would review some of the background covered in October. She said the changes before the Commission were consistent with what was presented and the feedback the Commission had provided at the October work session.

Ms. Ragsdale said she had mentioned that the Industrial Districts were comprehensively reviewed in 2013 and that since then, there were some special exceptions that came forward in 2019 and the Climate Action Plan was adopted, which led to this Zoning Text Amendment (ZTA) being added to the Community Development work program in March. She said a resolution of intent was adopted, which was officially initiated by the Board in June. She said there was then the Planning Commission work session in October, which led to the present public hearing.

Ms. Ragsdale said some of the lenses with which staff analyzed the ZTA included input from stakeholders along with relevant policy including the Climate Action Plan, which has a recommendation to increase the amount of materials that are recycled and diverted from landfills. She said staff also consulted with Economic Development staff, considered resource protection, and reviewed goals in the Comprehensive Plan. She said they also considered neighbor impacts and the characteristics of where the districts are located, as well as what is adjacent to them in terms of what might be appropriate.

Ms. Ragsdale said at the October work session, there was discussion about how there are many different sections of the ordinance that work together and provide regulations for industrial uses, starting with what uses are permitted where in the Industrial Districts. She said this is where they have height regulations and the minimum buffer requirements for any industrial use.

Ms. Ragsdale said there are performance standards in the ordinance that get at those other impacts such as vibration, heat, and glare. She said this is where they find the requirements for any industrial use to submit a Certified Engineer's Report, where they get a detailed description of the applicant's processes, materials, any hazards, and mitigation related to mosquito control. She said staff would consult with any outside agencies or the Fire Marshall's office during that process, which is when they would find out what materials are stored and where.

Ms. Ragsdale said at the work session, she had mentioned that this does not affect the lighting or noise regulations that would apply to these uses, and that this text amendment is very focused on Section 5 regulations, which are above and beyond all these other regulations for certain uses, where staff thought they needed this additional regulation.

Ms. Ragsdale presented a map to remind the Commission of how much Heavy Industrial land is in the County and where. She said it is limited to 105 acres and that most of the industrial land is on an Entrance Corridor. She said a percentage of it is either located in the Rural Area or is adjacent to Rural Areas or residential uses.

Ms. Ragsdale said stepping back to the applicable zoning regulations, when talking about recycling uses, she wanted to clarify that recycling collection and storage is by right in any of these districts, but would also be subject to the performance standards. She said recycling processing is allowed by right in Heavy Industrial, but by special use permit in the Light Industrial Districts.

Ms. Ragsdale presented definitions of terms on the screen. She said recycling collection is like what is seen at McIntire, where people put things in containers to be transported to a recycling processing facility. She said they may find as they move forward that they have both located in the same place. She said at the work session, she mentioned that things in containers are not considered outdoor storage.

Ms. Ragsdale said the ZTA is very specific to Section 5.1.51 ("Outdoor activities in industrial districts") and to Section 5.1.52 ("Outdoor storage in industrial districts"). She said she would explain the changes, which are minimal for outdoor activities, that include the recommendation in the draft ordinance that staff provides abutting neighbor notice prior to acting on a special exception. She said special exceptions are only granted by the Board of Supervisors and if staff recommends approval, they go on the Board's Consent Agenda. She said staff also has the option to schedule the special exception as an action item and hold a discussion, if they feel it is

necessary, based on the staff analysis, the individual request, and any concerns that may be raised by abutting property owners.

Ms. Ragsdale said in Section 5.1.52, there are more changes to the section to provide flexibility in the types of screening that would be provided to outdoor storage areas. She said the changes will also allow the outdoor storage of inert materials at recycling facilities or collection centers provided there is an increased setback and buffer, which as recommended are in keeping with the supplemental regulations that exist for other types of uses that are allowed in the industrial districts. She said they also added the requirement that abutting neighbors receive notice of any special exception that is reviewed or acted on.

Ms. Ragsdale said staff has recommended approval of the attached ordinance and suggested the Commission to move to recommend approval of Attachment B, following discussion and questions.

Mr. Clayborne asked Ms. Ragsdale to explain the difference between “shall” and “must.” He said he believed “shall” was stricken, and that the word “must” was added. He asked if there is a policy difference there.

Ms. Ragsdale replied that Mr. Andy Herrick (Deputy County Attorney) has brought this up at many meetings and that based on legal advice, the standard language is now “must” rather than “shall.”

Mr. Herrick said this is a movement in legal draft in moving away from “shall” because the term can be ambiguous. He said the suggestion is to use more specific words such as “must,” “will,” “may,” or “should” rather than “shall” (which could mean any of those).

Ms. Firehock asked if in Section 5.1.52(a), there was an extra word (“screened”) remaining in the language.

Ms. Ragsdale replied yes, and that this was likely a typo on the slide.

Ms. Firehock said it was in the staff report as well and that Ms. Ragsdale had meant to strike the word “screened” so that the sentence would end with the word “agent.”

Ms. Ragsdale said she would strike it.

Mr. Herrick said it seemed to him that there were differences between the draft ordinance found in the body of the report and what had been provided as Attachment B. He said what he believed was in the body of the report (on page 3) was the more current version, and so if there was a consensus in moving forward, he would suggest the Commission adopt the suggested language in the body of the staff report rather than in Attachment B.

Mr. Randolph said what Mr. Herrick was proposing had merit, especially because “shall” appears in Attachment B.

Mr. Bivins said they would then focus on the content on page 3 rather than Attachment B.

Mr. Bailey said it seemed that both in the slides and in the body, in Section 5.1.52(c), it still says “shall” (i.e. “No outdoor storage shall be located within...”). He asked if this was the proper usage.

Mr. Herrick said this was a good question, and that he had to strike a balance between fixing all the “shalls” and just cleaning up the “shalls” where they were going to be changing the ordinance anyway. He said in an act of restraint, he limited himself to only changing the “shalls” where they were changing the ordinance anyway and leaving them in where they were not changing the ordinance.

Mr. Keller said there was reference to adjoining or close-by property owners. He said he recently became aware of issues with the proposed dump in Cumberland County. He said the issue there is one of environmental justice and the voice given to minority populations. He said this was more likely a question for Mr. Rapp, and perhaps it was something they need to consider for the overall wording beyond this specific set of regulations. He asked how they can let people who have not necessarily been given a voice in the past have a voice if their cultural area is potentially impacted by something like this, where it seems like they are moving towards a situation where if A, B, and C is met, it will be approved.

Ms. Ragsdale said she could respond and perhaps Mr. Rapp and Mr. Bart Svoboda could answer as well. She said they mentioned before that industrial uses are the heaviest, most intensive potential uses, and so they wanted to add that there would be abutting neighbor notices. She said these would be the properties on all sides and across the street that touch the subject property that may have a special exception under review.

Ms. Ragsdale said that while each special exception analysis or report may appear simple when it ends up on the Board’s Consent Agenda, but staff actually does think things through in terms of how neighbors and any nearby resources may be impacted. She said just because someone applies, there are no guarantees that staff would support all special exceptions. She said this is why they are still keeping these on a case-by-case for some of the regulations, such as setbacks.

Ms. Ragsdale said she thinks they are trying to move in a direction that allows for more participation. She said she thinks they have some discretion in terms of what they think they need to review for a special exception, and if they thought they needed to notify a broader range of people, this is something she thinks they may be able to do.

Mr. Bart Svoboda said A, B, and C, as Mr. Keller was trying to point out, govern the by-right use. He said unless one is asking for the special exception to modify those, if those are met, it is approved. He said technically, then, this is correct. He said how they get farther than that, or if they decide to make the use by special permit rather than by right, it is a different discussion. He said Mr. Keller’s point was taken in terms of how to equalize the opportunities for people to speak.

Mr. Bivins asked along those lines, when staff brings a special exception forward, if it comes to the Commission.

Mr. Svoboda said this was correct. There is also the option to seek Commission input as well but not all special exceptions are reviewed by the Commission.

Mr. Bivins said he would suggest if staff brings something to the Board, they include a note in a paragraph about what the outreach has been and how they engaged with the community, since there is scrutiny about how the County is engaging with the community. He said this will show the Board how staff engaged with the community and how it was surveyed.

Mr. Keller said he would like to hear from Mr. Rapp and mentioned a list that Mr. Rapp was keeping of things to do (adding that these things were likely a year out). He said it seemed to him that environmental justice is something that should be on a checklist that staff looks at much in the same way they are looking at affordable housing, economic development, and land use compliance. He said he was not concerned with it for this particular piece, but he would like to see it as something that is going to be on the checklist for every project that has a change involved in any sense.

Mr. Rapp said that as far as the public participation component, in many of these instances, community meetings and public notices are required. He said it is also written that as the director, he can require additional community meetings as needed to ensure that the intent was met.

Mr. Rapp said on a larger scale, Community Development is working with the Office of Equity and Inclusion, with Ms. Siri Russell, who is piloting a program to ensure that projects are equitable. He said the Rio Road Corridor is one project where they will start to do this. He said there is a type of checklist where projects and components are analyzed. He said this is still in the pilot stage, and they have not yet figured out how to fully apply it to development applications, but there is potential to keep growing this.

Mr. Rapp said there is also the work plan, and one of the first major items on the plan is the Comprehensive Plan update. He said there is also a major Zoning Ordinance update planned. He said he believes there are opportunities to address the bigger-picture items that can then feed into the ordinances and how they conduct business. He said there will be plenty of opportunities to revisit this and ensure they are looking at this through the correct lens.

Mr. Keller thanked Mr. Rapp, adding that he wanted the public to hear this.

Mr. Bivins asked why Section 5.1.52(b) states that the activity cannot be less than 100 feet from a Residential or Agricultural-Forestal District, but in (c), storage can be within 50 feet. He said below that, it then says that inert materials must be stored 100 feet away.

Ms. Ragsdale replied that (d) only applies to those inert materials at a recycling center, and that (c) would apply to any other outdoor storage that is allowed for other types of industrial uses. She said landscaping materials was an example.

Mr. Bivins asked if they are giving property owners the opportunity or option to decide what the buffer will be. He asked if he were next to a resided-in dwelling, for instance, he could put up a tree as opposed to putting up fences.

Ms. Ragsdale replied that a combination is allowed. She said this could be vegetation, a fence, or a combination. She said this language is being made consistent to the site plan section ordinance that talks about screening, and so it is to the satisfaction of the agent, which is typically Mr. Rapp and the review staff in terms of what they think is providing the screening. She said it is up to the applicant to propose and then staff decides whether or not it is sufficient.

Mr. Bivins said his touchstone is Yancey Mills, where there were trees but there is now a fence. He said trees provide some buffer, as a colleague had mentioned, but they do not provide the type of sound buffer one may get if there is a wooden fence there. He said he wanted to be aware that this was something staff was being sensitive to as they review these applications.

Ms. Firehock said in Section 5.1.52(b), it says, "The parts, materials, and equipment stored in the storage area shall not be stacked higher than the provided screening." She asked if this "shall" did not need to be a "must" because it is only a guidance for review, or if it should be "must."

Ms. Ragsdale replied that this may be one that they want to change to "must," and that she and Mr. Herrick could take another look at the "musts" and "shalls."

Mr. Herrick suggested that this would better be a "may," which would be more appropriate in that context.

Mr. Bivins said this would be "may not be."

Mr. Bivins asked Ms. Schaffer if there was anyone from the public who wished to speak.

Ms. Schaffer replied no.

Mr. Bivins asked Mr. Carrazana if he had anything to add.

Mr. Carrazana replied no.

Mr. Bivins asked Ms. Ragsdale and Mr. Svoboda if they had anything else to discuss.

Mr. Svoboda replied no.

Ms. Ragsdale said they would need to amend the suggested motion.

Mr. Bailey moved to recommend approval of the ordinance changes to Sections 5.1.51 and 5.1.52 as shown on page 3 of the staff report.

Mr. Clayborne seconded the motion, which carried unanimously (6:0). (Ms. More was absent.)

### **Adjournment**

At 6:59 p.m., the Commission adjourned to November 17, 2020, Albemarle County Planning Commission meeting, 6:00 p.m. via electronic meeting.

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Charles Rapp, Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards and transcribed by Golden Transcription Services)

Approved by Planning Commission
Date:
Initials: