

**Albemarle County Planning Commission
FINAL April 6, 2021**

The Albemarle County Planning Commission held a public hearing on Tuesday, April 6, 2021 at 6:00 p.m.

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

Members absent: Daniel Bailey.

Other officials present were Charles Rapp, Director of Planning; Bill Fritz; Jodie Filardi; Amelia McCulley; Bart Svoboda; 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(16), "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 at www.albemarle.org on the Community County Calendar, when available.

Ms. Schaffer called the roll. All Commissioners indicated their presence except for Mr. Bailey, who was not present.

Mr. Bivins established a quorum.

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

Mr. Bivins said he had an item on the consent agenda and asked if any Commissioner would like to pull that item and heard no requests to do so.

Mr. Clayborne moved to approve the consent agenda.

Mr. Randolph seconded the motion, which carried with a vote of 6:0 (Mr. Bailey absent).

Public Hearing

PROJECT: ZTA201900008 Section 33 zoning text amendments, zoning map amendments, special use permits and special exceptions

Mr. Fritz presented the staff report. He stated that this was a public hearing to discuss the potential amendments to Section 33, and that was how he was going to continue to refer to this. He said it covers the procedures, some middle requirements, and everything associated with legislative action, zoning text amendments, zoning map amendments, special use permits, and special exceptions. He provided a packet and stated that it contained the proposed ordinance that includes potential amendment language. He said he wanted to note that there is a typo at the top

of that. He indicated that it said it was prepared in 2010, but it was prepared in 2021. He stated that he has done that on virtually every document, where he has rolled over and changed it to 2010 instead of 2021.

Mr. Fritz reminded the Commissioners that they had heard this back in January, but for the benefit of the public, he stated that these amendments correct some existing and previous errors in references within the ordinance. He stated that it clarifies procedures to determine if any application is complete or incomplete. He said it adds some non-severability language to conditions associated with a special exception and allows for the review of projects when they have been deferred. Mr. Fritz said that it provides that once a deferred application is reactivated, the timeline for review is reset and that new fees can be collected for a reactivated application. He stated that it also provides that an application is deemed withdrawn if a deferral request is accepted and the project is not reactivated within six months.

Mr. Fritz stated that In January, the Planning Commission held a work session to discuss this zoning text amendment, and at the request of the Planning Commission, staff prepared a brief summary of the history of section 33. Mr. Fritz said that this general summary was included in the packet and that this information was also provided to the Board of Supervisors for their work session in February. He said that at the January meeting, the Planning Commission supported the proposed amendment and requested that the language add a provision to allow them to defer an application at the request of an applicant, a provision to consider equity when evaluating that, and that cultural and heritage resources be included as a type of study that may be required when submitting a special use permit or a zoning map amendment. He said that the Board held a work session in February where they endorsed the Planning Commission comments. He said that they also made specific comments about a provision to include equity and that all of these changes have been made to the ordinance.

Mr. Fritz provided some background that the ordinance was amended in 2018, and it was necessary to fix deficiencies that had been identified in the ordinance and improve the process. He said that unfortunately, it did not quite have the desired effect. He said that some of the changes made the administration of the ordinance much more complex and resource consumptive. He said though there was some desire to simply repeal the 2018 ordinance and go back to what was there prior to 2018, they had not done that as there would still be a need to amend the ordinance, so they tried to fix it instead of repealing it.

Mr. Fritz said that he was going to go through these changes quickly and could answer questions on anything at any point. He said that it reorganizes the ordinance but does not restore the organization to pre-2018; it builds on some of the lessons learned and changes things around.

Mr. Fritz addressed time limits for actions, and he said that was a big issue in 2018. He said the amendment in 2018 created a 36-month time limit such that everything had to be acted on within 36 months except for special exceptions, as they are slightly different. He said the process involved with this time limit was very complex and created a significant administrative burden. He said the proposed amendment removes this time limit and replaces it with a clear statement that the County is not obligated to accept a request for deferral.

Mr. Fritz stated that the proposed amendment also clarifies procedures for reactivating applications and reviews of applications when they are in a state of deferral. He said it also fixes some problems with the procedure. He explained that currently, a deferred application is not supposed to be reviewed, but that is the primary purpose of a deferral—to allow issues to be identified and addressed. He said that the proposed amendment clarifies that the public hearing

is deferred but not the review. Mr. Fritz stated that the proposed ordinance provides that once a deferred application is reactivated, the timeline for review is reset. He said the current ordinance creates a procedural problem for determining what the timelines are for a deferred application when it is reactivated. He said the proposed ordinance allows for collection of a new fee for a reactivated application and that they believe this to be important because a reactivated application may contain so much new information that it is essentially a new application. He stated that the proposed ordinance provides that an application is deemed withdrawn if a deferral request is accepted and the project is not reactivated within six months. He said this will provide a much easier way to administer the process and prevent applications from lingering.

Mr. Fritz added that he has had some communications with members of the public about this issue of getting rid of the 36-month time limit and whether or not projects would sit linger indefinitely, which was a problem before 2018. He stated that the ordinance very clearly says, “If we accept a request for deferral, which we are not obligated to do, and you don’t reactivate it within six months, it goes away with no further action”; it is deemed withdrawn. He said that if a particular application is thought to be deserving of deferrals and going much longer than 36 months, that can now be done. He said the 36 months was a one-size-fits-all solution to a problem and now would be a right-size solution to the problem. He gave an example of a simple project where they are continually deferring and said at some point the County would say, “No—we are going to act on this.” He contrasted that to a major project for 2,000 units and 500,000 square feet of industrial whereby it might be appropriate to grant longer deferrals, and he felt this was a much better way of administering the ordinance.

Mr. Fritz explained that the 2018 amendments modified submittal requirements and allowed the planning director to determine that some information may not be required in certain applications. He said that the proposed amendments provided tonight retain the submittal requirements and clarify the process for determining what information is required. He said the 2018 addition of being allowed to accept electronic submissions was maintained and the notice to easement holders was also maintained. He said that was a big issue in 2018, and the 2018 amendments adopted revised procedures for the rejection of incomplete applications, but these amendments were inadequate. He said that the proposed amendments clarify the timelines and actually include a provision to notify the applicant, which the current ordinance does not have.

Mr. Fritz stated that this also clarifies the collection of fees and the establishment of a start date to calculate the time for review, so it fixes some past issues. He said there were changes to the state code and that those changes were made to the ordinance. He said the 2018 amendment added a provision to allow the revocation of a special exception, and that has been maintained. He said the proposed ordinance adds non-severability language to conditions associated with the special exception so that if one of them is found to be invalid, the whole special exception is deemed to be invalid. He said it removes a reference to judicial review of denied applications because the 2018 amendment added it, but it is a self-executing provision of the state code, they were not changing anything with that, and it is still permitted.

Mr. Fritz said that the 2018 amendment allowed the Planning Director to require additional community meetings. He said the proposed amendments retain that, but they also strengthen those provisions to make it much clearer and much easier for the Planning Director to do that.

Mr. Fritz stated that another significant issue identified with the 2018 amendment was internal errors in the ordinance where it said, for example, that this particular thing would be reviewed for compliance with section ABC, and you went to ABC, it dealt with historic taverns and inns—something that was totally disassociated from the processing of a special use permit. He said that

all of those internal errors have been fixed. He said that the report provided to the Commission actually has links within it and that staff is going to try to do that in the future so that when you are reviewing it, you can jump to the internal references within the ordinance. He gave as an example that in one section it might say, "Public notice shall be given as provided in 33.11." He said if you click 33.11, it will take you directly to that notice provision, to avoid having to restate the notice provision in the rezonings, special use permits, etc., so it shortens the ordinance and makes it more concise.

Mr. Fritz said that they are recommending approval of ZTA201900008, and he requested that the Planning Commission recommend approval. He said that currently this is scheduled to be heard by the Board of Supervisors on June 2, 2021. Mr. Fritz stated that he would be happy to answer any questions.

Mr. Bivins asked the Commissioners if there were any questions for Mr. Fritz.

Mr. Randolph told Mr. Fritz that he thought he and staff had done an incredible job in pulling this all together. He said that he knew it had not been an easy process, having himself been with the process since 2012. He reiterated that the law of unintended consequences surfaced after 2018, recognizing that the Board and Planning Commission had gone into that with the best of intentions, but problems arose that one never really anticipated.

Mr. Randolph stated that he had expressed concerns about equity to Mr. Fritz the previous Friday when they were in the southern portion of the Scottsville District, noting that he had also appealed to Mr. Herrick on this. Mr. Randolph stated that his understanding was that by state law, the Board of Supervisors is obligated to avoid at all times engaging in any actions that can be reasonably construed as being arbitrary, unreasonable, and capricious. He asked Mr. Herrick if that were correct.

Mr. Herrick told Mr. Randolph that if a Planning Commissioner or the Board engages in those actions, it certainly subjects the ordinances that are passed to greater legal challenge. He said if a standard of an ordinance or a decision of the Board is deemed arbitrary or capricious, that makes it subject to a legal challenge.

Mr. Randolph agreed and said that under normal operating procedures, he knew firsthand that the Board deliberates very carefully to undertake any action that could in any way enter the County into a zone where another legal party could construe the County's actions as being arbitrary, unreasonable, and capricious. Mr. Randolph stated that his understanding of the terms "unreasonable" and "arbitrary" in some sense address the concept of equity, and it is the obligation of the County to undertake actions that are equal and fair to all parties.

He suggested that rather than just putting in a clause as the Board has suggested—stating that in all decisions undertaken for zoning text amendments, zoning map amendments, special use permits, and special exceptions, the County policy is to affirm equity—he hoped they would state that the intent of the Board is always to avoid undertaking any decisions that can appear to be arbitrary, unreasonable, or capricious. Mr. Randolph said that is basically a statement of trying to avoid negative legal behavior (arbitrary, unreasonable, and capricious).

Mr. Randolph referenced the fact that nobody walks around and specifically plans to be arbitrary, unreasonable, and capricious. He stated that those are negatives they seek to avoid, whereas equity is a positive that they are aspiring towards, so he would add to the sentence of "avoid undertaking any decisions that can appear to be arbitrary, unreasonable, and capricious," to say,

“and to seek simultaneously and independently to promote equity in all decisions.” He stated that it then makes it clear what they are talking about in terms of equity and that in some sense it is linked to the negative behavior they seek to avoid, which is conduct which is arbitrary, unreasonable, and capricious. He said it was just a thought that rather than just saying equity--because equity is legally defined as that which is equitable or fair or the state of being equal or fair—that what they are really talking about is when they go ahead and make decisions that they seek to promote equity in all those decisions, trying to make sure that the decisions undertaken factor in equity.

Mr. Randolph said that related to special use permits on page 9, there are no “X’s” for planned development districts and neighborhood model districts or concept plan showing as applicable. He said that the 5th and Avon CAC had discussed the Albemarle Business Campus after the fact—after the Board had reached a decision—and two members basically wanted to deconstruct the decision-making. Mr. Randolph said that was a case where the applicant had provided a very detailed concept plan ahead of time, so there was no lack of clarity by this body nor by the Board as to what the developer’s intent was for this site. He said that the criticism of members of the CAC was they felt that the developer needed to spell out exactly the phases ahead of time and then be held to whatever was agreed to in the phases, and he mentioned that they had an active discussion that that is not necessarily a realistic model.

Mr. Randolph said that they may recall from 2019 that when they had an application for Southwood, there was a major push by Commissioners and himself as a supervisor at that time to try to have the applicant provide even a rough concept plan. He said it was never provided, and he felt they owed it to the neighbors and the taxpayers because they had County money involved here through the Economic Development Authority. He stated that under “normal operating procedure,” there does not need to be an X on page 9 under “planned development districts” and “neighborhood model districts” for concept plans, but if there is Albemarle County support through the EDA involved with a project, he felt there was an obligation for the applicant to be more forthcoming in terms of a concept plan that is provided both to the Planning Commission and the Board of Supervisors.

Mr. Fritz said that page 10 begins discussion of an application plan showing a variety of things that are required for planned districts. He stated that the reason it is not required for a concept plan but is for an application plan is that those are two different types of plans. He stated that an application plan has very specific, higher standards of detail than a concept plan does, so planned districts always have to submit that, whereas special use permits and conventional rezonings do not have to submit application plans—they submit concept plans. Mr. Fritz said that instead of putting it in here as a concept plan as being required, it is under the other plans and studies where the planning director can require an enhanced level of information given the unique characteristics of any particular application, and that is why there is a difference in the two types of plans.

Mr. Randolph thanked Mr. Fritz for having pointed that out and asked whether it is a concept plan that the Planning Commission would see, or the application plan the County would see at site review. He clarified that it was a question of when the application plan is seen and whether it is seen by the Planning Commission and the Board.

Mr. Fritz replied that it was.

Mr. Randolph said that was an improvement and said he was glad he raised the question because now they would know going forward that if Mr. Rapp signs on to this, this body as well as the Board would be provided with a much more thorough document that can also help inform the

neighbors of the application's exact intent.

Mr. Fritz confirmed that the information would be available at the Planning Commission stage.

Mr. Randolph said that on page 22 under (D)(2), it says on the second sentence ("Before the Board of Supervisors' public hearing"), "The Agent may establish written guidelines that require signed proffers to be submitted a reasonable time prior to the public hearing to allow for review by County officers and by the public." Mr. Randolph stated that he wanted to ensure that those written guidelines made very explicit that this is provided 14 days prior to a Board meeting, as he can again relate the experience of the Board of Supervisors' clerks not getting the signed proffers taken care of in time for a Board meeting and it being rushed on the clerks. He said that they are putting 14 days before the Commission but are not saying that the applicant and the agent must get that information to the clerks with adequate time to ensure that they can put it in the Board packet.

Mr. Fritz said that he could speak to that in generalities and added that Mr. Rapp and Mr. Herrick may be able to say more, but he knows this has been an issue for the Board of Supervisors, and they wanted to make sure there was flexibility that the Board could establish through the director what the timelines were, so that is carryover language from past actions by the Board.

Mr. Randolph thanked Mr. Fritz.

Mr. Bivins said that he did not want to lose sight of the fact that there is also that subtle piece that Mr. Randolph brought up that when funds are being invested in a project from the County that there is a hoped-for level of prep—a level of project refinement—that would come before the Planning Commission and Supervisors that is slightly different. He said that it could fall in that category for which they would get it during the application, but there is this subtleness that if County dollars are invested in it outright, that automatically shifts it into a different level with an expectation for a deeper amount of information.

Mr. Fritz said that if there were public funds involved, it would be appropriate to get plans that address the aspects of the public funds that were going in there. He said that if the public funds were for a specific portion of the development such as to provide transportation, they would want to see that; if it is just public funds for jobs, maybe not. He indicated that they would want to tailor the type of plan to the particular type of funding that might be coming in.

Mr. Bivins said that he would just sort of extend the job piece out. He said he would hope that there would be some well-developed narrative in the proposal about how jobs might be lifted up and multiplied by this investment.

Mr. Fritz agreed and said that it may be in the form of plans or it may be in the form of the agreement. He said that they would tailor it to that and stressed that one of the lessons they learned was not to have the one-size-fits-all solution to every application and to instead allow them to get the right information based on the scale and scope of the project that is before them.

Mr. Bivins asked Mr. Rapp if he was okay with that. Mr. Bivins then asked if there were other comments before opening them up to the public. Mr. Bivins asked Mr. Fritz to reference page 2 of his staff report where it said, "allow for review of projects while in state of deferral." Mr. Bivins said that his assumption is to permit that.

Mr. Fritz said yes.

Mr. Bivins said that he had a hard time reconciling that when on page 27 under (C)), it says, “the application will not be further processed or reviewed by County staff.”

Mr. Fritz said that is for public hearing purposes.

Mr. Bivins repeated that that was for public hearing and then asked where in 33.11 would he see that it is possible once it is deferred. He asked if Mr. Fritz could direct him to where he would be able to know that if he deferred, he could expect to have a conversation.

Mr. Fritz responded 33.11 (F).

Mr. Bivins confirmed that it is at the will of the planning director.

Mr. Fritz agreed and said that is to review a reactivated application, and then all time periods for action will be calculated from the reactivation. Mr. Fritz stated that there is no provision in here. He stated the other section is under (C), the effect of timely receipt of request.

Mr. Bivins said that this feels like if they say something can be reactivated, so staff has been engaged by the applicant with Mr. Rapp as the agent; for example, they want to reactivate the proposal. He commented that this feels like it is now moving out of the deferral stance and is no longer in a deferral stance because it is in a reactivated stance.

Mr. Fritz said that understood Mr. Bivins’ point, indicating that they could better clarify (C)(i) about “not be further processed” to indicate that is only for the public hearings.

Mr. Bivins agreed that if they would do that, he thought that might be helpful because he was just trying to reconcile those two, wearing another hat.

Mr. Bivins asked if there were other questions or comments. Mr. Bivins asked before opening the public hearing if there were people who were waiting in the public.

Ms. Shaffer said that Mr. Williamson had his hand raised.

Mr. Bivins opened the public hearing.

Ms. Shaffer asked Mr. Williamson to please state his name, address, and the organization he represents. She said he had three minutes to speak.

Mr. Neil Williamson stated that he would not take three minutes. He said that first and foremost, he wanted to thank Mr. Bill Fritz, who he said may never be allowed to retire because of his institutional knowledge. Mr. Williamson said that he finds himself in an uncomfortable position of disagreeing with Mr. Fritz in his staff report regarding factors unfavorable. He said that the removal of the requirement that the application must be acted on in 36 months or deem the project is withdrawn has been incredibly cumbersome, and they all have anecdotal information where they have been working behind the scenes trying to get this fixed. He agreed there were unintended consequences as Mr. Randolph mentioned. He stated that with regard to public funds, he thought the idea of the EDA putting any kind of performance standards into the public-private partnership agreement would be better suited, rather than using a broad term for public funds that could include when the County chooses to do capital projects requiring some special use permits or the schools needing to do something. Mr. Williamson said that it was important to provide that

flexibility, as Mr. Fritz mentioned, with the idea that one size does not fit all. Mr. Williamson said that he hoped they would recommend approval of this new ordinance.

Mr. Bivins asked if there were any additional individuals who cared to come forward.

Ms. Shaffer indicated that there were not.

Mr. Bivins closed the public hearing to bring it back to the Commission for further conversations and further questions.

Mr. Bivins said that Mr. Fritz had done his job.

Mr. Fritz thanked him and said he had a lot of help from Andy Herrick, Bart Svoboda, and Amelia McCulley.

Mr. Bivins said that for the revision team, he hoped they could be kept all together because it appeared that there would be a lot of zoning and ordinance rewrites over the next few years. He said that if they could get these done in less than a half an hour, they would be welcoming these changes in a big way.

Mr. Bivins asked for further comments or conversations.

Mr. Randolph moved for approval of ZTA201900008 Section 33.

Mr. Keller seconded the motion, which carried with a vote of 6:0 (Mr. Bailey absent).

Mr. Bivins told Mr. Fritz that it had passed. He thanked Mr. Fritz and asked him to please extend their sincere appreciation to the team. He thanked Mr. Svoboda and those who came alongside of him to make this happen. He stated that it is much appreciated, and they would look forward to continuing to do their work on this in the future.

Mr. Fritz replied that he would pass it along to the team and thanked Mr. Bivins.

Adjournment

Mr. Bivins stated that the next meeting is April 13, 2021. He stated that while it says on the agenda, they should adjourn at 8:00, he did not think anyone had any issue with adjourning a bit early. He asked if anyone had something that they would like to extend the meeting with.

Before adjourning, Mr. Bivins encouraged everyone to wear sunscreen because it was 80 degrees outside and also to start wearing tick protection. He encouraged everyone to continue wearing masks and to get in line for the vaccinations. He recommended going to Penney's to be vaccinated if they hadn't already.

The Commission adjourned to April 13, 2021, Albemarle County Planning Commission meeting, 6:00 p.m. via electronic meeting.



Charles Rapp, Director of Planning

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

| |
|---------------------------------|
| Approved by Planning Commission |
| Date: 05/04/2021 |
| Initials: CSS |