

Albemarle County Planning Commission
May 28, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, May 28, 2019, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Vice-Chair; Daphne Spain; Pam Riley, Vice-Chair; Karen Firehock; Bruce Dotson; Jenie More; and Luis Carrazana.

Members absent: none.

Other officials present were Rebecca Ragsdale, Rachel Falkenstein, David Hannah, Cameron Langille, Lea Brumfield, Andy Herrick, David Benish, Carolyn Shaffer.

Call to Order and Establish Quorum

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

The meeting moved to the next agenda item.

ZTA 20190004 New Residential Proffers

Mr. Fritz reported that this is a zoning text amendment to bring the county code into alignment with a change in the state code that will go into effect on July 1, affecting proffers. He stated that in 2016, there was an amendment to the state code that significantly limited localities' ability to accept proffers -- and for an offsite proffer to be deemed reasonable, it had to address public transportation facilities, public safety facilities, public school facilities, or public parks.

He said that the proffers had to address impacts specifically attributable to a proposed new residential development, address an impact where that development creates a need or an identifiable portion of a need for improvements, and provide each new unit with a direct and material benefit from that proffer. He stated that it was a very precise measurement that prevented offsite proffers from being accepted, and the language in 2016 had a damping provision that did not allow localities to discuss proffers, because suggesting them presenting problems -- but that provision would be removed as of July 1, 2019.

Mr. Fritz said that it also retained the language he had just provided but also had a provision that said at the applicant's choosing, they can make a proffer and as long as they say it was reasonable, it is. He stated that this would allow the county to accept proffers if an applicant was willing to make one -- and the county cannot deny an application because the application did not choose to make a proffer and instead chose to go under the narrow proffer language. He said that was what the provision did, and the Commission would simply be adopting the state code language.

Ms. Spain asked how this was different from where they were two years ago.

Mr. Fritz responded that there have been some lively discussions about this, and arguably it takes them to a better place than they were in 2016, because it has the language that says if the applicant says a proffer is reasonable, it is -- which may be slightly better than where they were in 2016. He added that it was at least as good as 2016.

Mr. Herrick agreed, stating that the section adopted in 2016 was Section 15.2-2303.4, and this adds an important provision that allows developers and localities to have discussions. He stated that if the developer signs a voluntary proffer and agrees that it's fair and reasonable, then it is. He stated that the proposed ZTA simply strikes out the sole reference to Subsection C, which was the very demanding list that appeared in the 2016 law, and says that all of 2303.4 as revised now applies, including the provision that allows there to be voluntarily signed proffers that stipulate to the reasonableness.

Mr. Dotson said the key date was July 1, 2019, and asked if that was the date for a completed and accepted application, or if it was the date for Board of Supervisors' action on applications files before that date.

Mr. Fritz responded that it applies to actions filed after July 1, 2019.

Mr. Herrick added that there is an enactment clause the General Assembly put in saying it "shall apply to all applications filed after July 1, 2019," and for pending applications that cross over the date, the applicant has the option of choosing either set of proffer laws.

Mr. Dotson said that a school might serve several developments, but an applicant can say a proffer is reasonable even if other students are attending.

Mr. Herrick read the language of the new law: "An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate as conclusively evidenced by the signed proffers." He said that by signing the proffers, they are acknowledging that they are reasonable and appropriate.

Mr. Keller opened the public hearing.

Mr. Bivins invited speakers.

Mr. Sean Tubbs of the Piedmont Environmental Council spoke in favor of the item before the Commission to amend the county's rules to accept proffers from developers for rezonings and special use permits. He said that this restores the possibility of what should have been happening all along -- conversation. Mr. Tubbs stated that the ordinance before them is in response to legislation that was in response to local decisions made all across the Commonwealth over the past 10 years or so. He said that in the last public hearing, they were made aware that the mechanism by which developers pay for the cost of development and cost of growth was a tricky subject. He stated that this issue had been underway for decades and this amendment was a chance to make the conversation better -- mostly because of what they have learned over the last several years. Mr. Tubbs said that how to cover the cost of development is a topic that all of the state's growing localities were facing -- but what matters is that the conversation happens and that the county's toolbox remains stocked, which this amendment helps achieve.

Mr. Tubbs stated that county staff was getting very good at developing master plans that clearly lay out what is desired by the community as it grows, and this has happened with the Rio Road Small Area Plan and would happen with Pantops. He said it would take a lot of good planning and some good luck to bring all the places of urban Albemarle come together, and this amendment opens the door and gets them back to the point they can simply have the conversations between things.

Mr. Tubbs said that the Fiscal Impact Advisory Committee, which was disbanded a few years ago, has not come back together -- and with all the tools happening with economic development and the work being done with planning and school populations, perhaps the time was right to convene a group to bring all of it together. In the meantime, he said, this was a good step forward.

Mr. Neil Williamson stated that this discussion takes him back to the time of negotiated proffers, and they rose to such a point that developments didn't happen. He said that the Commission has an opportunity tonight to look back at the legislation there was and limit the proffers to be those things most directly associated with new development. He stated that the previous legislation included parks, public safety, transportation, and schools -- which seemed reasonable to him -- and the Commission could limit and consider how much they were planning to spend in the CIP per current housing unit and back it up five years, rather than what they got out of the last applicant. Mr. Williamson said that he is in favor of this least bad choice, but it could be so much better.

There being no further public speakers, Mr. Keller closed the public hearing and brought the item back for discussions and action.

Ms. Spain asked Mr. Herrick about the choice an applicant had to go under the new rules or the old rules, and she asked if this also affected the Commission's ability to talk to applicants.

Mr. Herrick responded that one of the problems with the current law is it prohibits requiring or even suggesting proffers, which has had a chilling effect on dialogue. He said that if an applicant chose to proceed under the old law, the county and its imputed agents could not suggest, request, or require any unreasonable proffers as defined in the legislation.

Ms. Firehock **moved** to adopt ZTA20190004. Mr. Bivins **seconded** the motion, which passed unanimously (6-0).