

**Albemarle County Planning Commission
FINAL Minutes September 14, 2021**

The Albemarle County Planning Commission held a public hearing on Tuesday, September 14, 2021 at 6:00 p.m.

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

Members absent: none.

Other officials present were Andy Reitelbach; Charles Rapp, Director of Planning; Andy Herrick, County Attorney's Office; Rachel Falkenstein; Tori Kanellopoulos; 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.

After Ms. Shaffer called the roll, Mr. Bivins established a quorum.

Mr. Bivins asked if "COVID-19" should be called something else since we have gone beyond 19.

Mr. Herrick responded that the official name is still "COVID-19."

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

Mr. Keller moved to approve the consent agenda.

Mr. Clayborne seconded the motion, which passed 7-0.

Public Hearings

SP202100011 Field School of Charlottesville

Mr. Andy Reitelbach, Senior Planner, presented a map showing the subject parcel, TMP 60-68, stating that it is located on Barracks Road approximately 400 feet southeast of Colthurst Drive and about 750 feet northwest of the intersection of Montvue Drive with Barracks Road. He said the property is 21 acres in size and is zoned RA, as well as having that designation in the comp plan. He presented two additional maps showing the zoning of the property RA, surrounded largely by other parcels zoned RA, with a few parcels to the southeast zoned PRD and R-1 at one unit per acre. Mr. Reitelbach said that in looking at the comp plan, all of the surrounding parcels are also designated RA.

Mr. Reitelbach reported that the purpose of tonight's public hearing is an amendment to an existing special use permit, SP2019-00012, approved by the Board of Supervisors on July 1, 2020. He noted that that was an amendment to an earlier SP, so last summer's was to change the boundaries of the parcel that the SP applied to and the location of a tree buffer. He stated that the original SP approved for the private school use was SP2015-00024, which was approved in March 2017, and he referenced the code section that states an SP is required for a school within the RA district.

Mr. Reitelbach stated that the applicant's request is to eliminate Condition 9 in the existing SP, and the language of that condition is: "If the construction of the private school for which the special use permit is issued is not commenced by February 28, 2022, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate." He said that the applicant is requesting that this condition be eliminated to allow for additional time for the construction of the private school use to commence, since the end of February 2022 is less than six months away.

He mentioned that there is another small part of the request, which is minor changes to the concept plan approved—but this is more of a housekeeping matter that includes revising labels, notes, legal references to reflect a boundary line adjustment recorded earlier this year based on the SP approved last summer with SP2019-00012. He noted that Condition 1 is also being amended, but only to reference the most recently revised version of the concept plan.

Mr. Reitelbach reported that all the other items and conditions of the SP are not changing and will remain at 150 students maximum; the hours of operation are not changing; the layout of the site, including the entrance onto Barracks Road, is not changing. He said that there are minor changes to the concept plan and the major request to eliminate Condition 9. He referenced a concept plan presented as a reminder of what the layout of the school is supposed to look like.

Mr. Reitelbach stated that there are several recommended revisions for this application before it goes to the Board of Supervisors, requesting that the applicant provide additional information in their application. He said that this includes more information on their proposed timeline for construction of this use since they are requesting to amend that condition, and more information as to whether removing this condition might have additional effects on future traffic flow on the surrounding street network.

Mr. Reitelbach said that favorable factors include that there are no enrollment increases requested, no revisions to the site layout, no revisions to the hours of operation requested, and the proposed changes are not expected to impact the surrounding area and are largely expected to remain the same, as has been previously approved with both the original SP granted for this use and the first amendment that was approved last summer.

He stated that there were no unfavorable factors identified, so staff recommends approval of SP2021-00011 with the following conditions and that the previously mentioned recommended revisions are made to the application prior to it going to the Board of Supervisors: reference the most recent version of the concept plan, including the correct dates; conditions two through eight remain the same; and Condition 9 is eliminated. He presented suggested motions for the Commission.

Ms. Firehock asked if the applicant still had to construct the school within a certain number of years for the SP to still be valid, if they eliminate Condition 9.

Mr. Reitelbach responded that they would not have to and could construct it, hypothetically, in 10 years.

Ms. Firehock asked why the original date was put there so it had a deadline.

Mr. Reitelbach responded that his understanding is that the ordinance included in the factors for SPs that there were deadlines, so it was a matter of practice to include them to commence a use, or they would be invalidated. He explained that since then, they have moved away from putting deadlines on SP proposals, including conditions on such proposals.

Mr. Randolph stated that he wanted to clarify the five-year timeframe provided by the Board of Supervisors at the time, noting that the Board wanted to provide a reasonable time period for a capital campaign to be up and operating. He said that he recalled representations by the headmaster that he was confident they would raise the money within a five-year period to raise the money to begin construction onsite. He added that it is important for the Commission to come back to this, and perhaps now in new SP policy or tradition, there is no time limit set—but they might want to talk about extending for the next two years or so a time limit, given the fact the applicant would have had three years to conduct a capital campaign prior to COVID kicking in. He noted that the pandemic completely wiped out any capability to raise money, but in a sense, this is a grandfathered application.

Ms. More asked Mr. Reitelbach if more information about a timeline was not something currently available but that staff was requesting prior to going to the Board, and she said her understanding is that there still would not be a sunset condition.

Mr. Reitelbach confirmed this and said the applicant may have more information this evening as to what their timeline is, so that was included as a recommended revision just to be included in the project narrative so the Board would have that information when they got the report ahead of time.

Mr. Julian Bivins asked for a presentation from the applicant.

Ms. Kelsey Schlein stated that she is a planner with Shimp Engineering and is representing the Field School of Charlottesville in their SP amendment request to eliminate the sunset clause on their current SP. She said that Charlie Skipper, head of school, and Justin Shimp, project engineer, were both present. Ms. Schlein stated that this is simply a request for more time for the Field School to raise the funding necessary to construct their vision and deliver on their promise to their families to realize a permanent home—in a location where they have autonomy over their land and buildings.

Ms. Schlein presented a map showing site context, noting its location just outside of the Charlottesville boundaries and stating that the applicant is not requesting to modify any of the SP conditions, just additional time. She said with almost five years since the original SP approval, it would be helpful to review a timeline as to what the Field School has been working on since then and why the request for additional time is before the Commission.

She stated that in March 2017, the original SP for the private school was approved; the school submitted an initial site plan in April 2017, with the aim to get that in before summer of 2017. She said that it was the school's hope to move forward with construction of at least phase one, which

would be the field, shortly after the approval in 2017. She explained that after submittal of the initial site plan, there was a dispute about a porta-potty spec on the initial site plan, and that was found to be inconsistent with the conditions of the SP, and it took time for the applicant to work that out with County staff—so the critical funding period in summer of 2017 could not be met; after that, the school recalibrated to fundraise and get a new donor lined up.

Ms. Schlein stated that in the fall of 2018, there was a minor boundary line adjustment with the property to the east, and a letter of determination needed to be issued to determine that that could take place. She said that the minor modification request took four months out of their five-year time period to make the determination that the boundary line adjustment could be made. Ms. Schlein said that in March 2019, the property acquisition for the Field School was finalized. She said that in November of 2019, the applicant submitted a SP amendment to adjust the boundary line with another neighboring property and had to modify the SP so that residential property was not encumbered by the conditions of the SP—and ultimately that enabled some revenues to be generated for the school.

Ms. Schlein said at that time, they were still hopeful they could meet the sunset clause in November 2019 that they can have construction underway by February 2022—but in March 2020, plans changed with the declaration of the global pandemic. She stated that the Field School spent a year recalibrating their operations and focusing on serving students the best way possible, ensuring that everyone was safe and that everyone's needs were met. She said that in that time, the applicant was caught in the SP revision to the boundary line adjustment and actually getting to a public hearing. She stated that in July 2020, the SP amendment to adjust limits to the SP was approved. She said that in May of 2021, the applicant submitted the current SP request to remove the sunset clause.

Ms. Schlein reiterated that the applicant's request is to remove the sunset clause because the school has already spent a considerable amount of money and created a significant investment in this property. She stated that the school feels this is the right location and would like to have adequate time to ensure that they can call this place their forever home—but they are also very anxious to get this off the ground, and they asked her firm to submit an initial site plan. She pointed out that it was her firm's recommendation to request an extension of the SP, just so they weren't running up against timelines. She noted that the school has done a significant amount of fundraising but would like to secure more so they can build more of their vision at once, and they are aiming for a two- to three-year time period where they can have a shovel in the ground; however, it is her firm's request to have the sunset clause removed.

Ms. Schlein stated that traffic could be impacted by extending the sunset clause, and the impacts of the school have been considered but as funding for road projects moves forward, this plan is on the table with traffic impacts already reviewed. She said that she is available to answer questions, along with Justin Shimp and Charlie Skipper.

Mr. Bivins stated that he is trying to unlink what was a very thorough project plan to the fact that the pandemic is not related to whether the school has been successful raising funds. He said that the capital campaign to build a project is not necessarily a function of boundary readjustments or the ability to make a decision about where people can use their facilities if they're standing out in a field. Mr. Bivins said that he was hoping to hear something that wasn't "the pandemic ate my homework" and more like "this is why we're not able to make the capital campaign that we've established to build this building."

Mr. Bivins said that VDOT would have to look at any site plan that comes out and determine the

traffic impacts, and he understands that the farm store and the increased traffic flow on Barracks Road and Garth Road—which are likely different than they were five years ago.

Field School Headmaster Charlie Skipper stated that in addition to the factors mentioned, there was a transition of leadership at the school in 2018 as he assumed his position. Dr. Skipper said that such leadership transitions always have an effect on fundraising, but another complication was dealing with COVID—and with a very small school and staff, with the development office being just him and his executive assistants. Dr. Skipper emphasized that it was not a failure of will but more one of timing, and they have raised \$1.5 million for the project. He said that phase one would happen very quickly, and his priority for the next two years was to drive this forward and accomplish the rest of the fundraising goal. He noted that the reason that they brought this request for additional time was to ensure that they didn't run afoul of a timeline when they are in the midst of trying to make things happen.

Ms. More asked Mr. Reitelbach what would constitute a significant amount of activity, because in reading the condition, she doesn't understand what would satisfy a start date being achieved.

Mr. Reitelbach responded that with the enforcement of conditions, the zoning administrator would determine what would be considered a start. He mentioned that Francis MacCall was on the call to provide more information.

Zoning Administrator Francis MacCall stated that they have a definition for “start of construction” in the ordinance, and that includes obtaining an issued building permit for the actual structure—and that doesn't happen until they get the final site plan, which in this case is part of the applicant's phasing. He explained that the actual grading after a preliminary approval, with the proper engineering plans approved for grading, doesn't constitute commencing construction. He said that some infrastructure work might qualify for that, but his office would need to look at that and make that determination. He said that the applicant could commence and run into more financing issues and have the project go dormant for a while, but if it is determined to have commenced, it is a valid special use permit.

Mr. Bivins asked for clarification of whether grading constitutes a start.

Mr. MacCall responded that it does not constitute the start of construction.

Mr. Bivins commented that he was struck by Mr. Randolph's comment as to what the Board of Supervisors did when they addressed this in 2017, and he thinks it would be reasonable to extend it at least 2.5 years. He said that this doesn't follow the Board's original intent, it does recognize the change in leadership and health emergency that have impacted the school. He added that the \$1.5 million is a healthy, meaningful start. Mr. Bivins clarified that he would not support eliminating Condition 9 but would support modifying it for an additional 2.5 years.

Ms. More asked if staff could address why it has become common practice not to have that type of clause in an SP, although she does appreciate why it was put in here previously. She commented that if they were starting from the beginning and the common practice was not to have it, she feels more open to not having it at all or having more time that was just suggested—because they have evidence that so much has been put into this and all these reasons to believe there is every intention to move forward, versus another project that comes along and sits for years and years. She asked staff for clarification as to why the sunset clause was removed from SPs to begin with.

Mr. Reitelbach explained that his understanding is that it would run into situations like this where events happened and the applicants or property owners were not always able to commence the use by what was designated in the SP, so they would come back and request an amendment to allow for additional time. He stated that it ended up creating additional applications and gave staff time to process these types of amendment applications.

Mr. MacCall added that he does not have anything else specific to add, but this is something valued with each separate use proposed and what those impacts might be in terms of what might be identified—because it is still in the ordinance, and they could pose that condition if it is found during an evaluation that it may be necessary. He commented that a lot of private schools decide to grow and come back and ask to increase the number of students, as there are associated impacts. He emphasized that these are individual determinations made during review.

Ms. More stated that she is inclined to discuss the option of having no sunset clause, because of the nature of this application and the applicant's commitment—but she is also open to discussion as to why others want to keep it in here. She said that she is sensitive as to why they were not able to achieve it in this timeframe, particularly in light of trying to fundraise during COVID, and she would prefer that they be given a timeline that is similar to the initial one given to the school. Ms. More pointed out that in light of COVID surges and the uncertainty ahead, it might be tough on the applicant to put a more stringent timeline on this.

Mr. Randolph stated that having done institutional fundraising, he can say that nothing gathers the attention of a community like when a government steps in and says, "You need to get this done by this time period." He said that having it loose and extending it over a period of time actually hurts the school; it does not help it. Mr. Randolph noted that the primary body responsible within an independent school for fundraising is not the headmaster—it is the board of directors of the school. He said that the dynamics have been unique, but their work should have continued for this key strategic project. Mr. Randolph stated that he feels that the 2.5-year timeframe will help focus their institutional resources and manpower, especially within their board, to raise funds. He said that they had three good years and a major leadership change with the founder leaving, and he feels that they are helping the school by extending this to August 28, 2024.

Ms. More said that she would support a longer timeframe than 2.5 years, and as a person who has fundraised in the nonprofit sector for the past 35 years, she can tell them that there is the time period where you need to look for grants and support—which sometime take a year to cultivate—and they are still in the middle of the pandemic. Ms. More stated that she would feel much more comfortable giving them five years, as this is a major capital campaign, and a lot of funding has dried up because donors have redirected their funding to health. She emphasized that fundraising now is a lot more difficult, and she feels they should be more sympathetic to this. She added that five years is a reasonable period of time, and the project itself has not changed substantially.

Mr. Clayborne stated that he supports Ms. Firehock's approach and is a nonprofit CEO, so he comes from that position. He said that strategic plans today are about three years in length, and this gives the school another chance to do one and ensure that it is front and center within that vision. Mr. Clayborne said that he would support a five-year term just based on that logic.

Mr. Bailey stated that it seems they are coalescing this around not removing the sunset clause, as current SPs are handled, and he is still struggling to understand the downside risk if it is

removed. He asked for clarification of the impacts of the timeframe and the risk profile of number of years, respectful of what Mr. Randolph said about the board's role.

Mr. Reitelbach responded that as Ms. Schlein mentioned, the use has been approved, and whether they started construction immediately or a few years from now, the use would stay the same, and the traffic generated by the specific use would be expected to stay the same. He said that the background traffic would likely grow as other parts of the county and city would continue to grow, so that would add more traffic on Barracks Road. He pointed out that VDOT would review any traffic requirements at the time the site plan is submitted—so whether it took the applicant a few months or several years to submit a site plan, VDOT would review it based on the traffic at that time and determine what was needed, such as turn lanes, traffic lights, etc. Mr. Reitelbach noted that a lot of this would be addressed at the site plan review phase.

Mr. Bailey thanked him for the clarification and said that given that, he would probably be more lenient because there are checks and balances downstream for this special use. He stated that he would agree with Ms. Firehock and others as to a longer timeframe.

Mr. Keller stated that this has been an interesting discussion and he can see both sides of the argument. He noted that they have examples of SPs that have been dormant for a long time, and policies and controls have become less stringent—yet the current Commission is held to those older standards. He asked counsel if that were going to be the case with it and if it were, whether they could put a condition on it that says they will have to meet current standards at the point in time at which they enact the SP.

Mr. Herrick responded that the proposal that has come forward has proposed retaining the other eight conditions so they would still be in effect, and the proposal would still be subject to the zoning ordinances of the county. He reminded the Commission that the conditions that are fixed to a special use permit are intended to address specific impacts of a proposal, so unless there's some sort of impact that's time sensitive, it seems to him that the condition for a time restriction isn't needed. He said the other eight conditions would still be in effect and would still govern, and the default is for SPs to run with the land.

Mr. Keller said that if they feel they have this at the point they want it, he is not sure what is gained from the timeframe—and it seems to him that if the supervisors are concerned about a timeframe, they would add that to it.

Mr. Bivins asked him for clarification.

Mr. Keller explained that he could support this but could also support the 2.5 or 5 years, if that is the pleasure of the majority.

Ms. Firehock stated that she would not be concerned about the timeframe for this particular application, in terms of it being extended indefinitely. She said that she was trying with five years to give them enough time to raise their fundraising goals but also respect the fact that the supervisors felt the need to put a timeframe on this. She noted that as to why SPs have timeframes, she has been involved with some that came with concerns regarding the detrimental impacts of delays in the context of present conditions. She added that she does not know why the Board put a timeframe on this one, and while she is trying to give deference to that, she is also fine with having none at all, as staff made good points about traffic and other factors that would be addressed as they got closer to implementation.

Mr. Bivins commented that he is not trying to negate anyone's fundraising expertise, but nonprofit fundraising is very different from health and education institutions, and independent schools have a particular timeframe in which students roll out. He stated that from the conception of this project, one would assume that the school's board was engaged in some serious or deep thought about how they were going to fund this, and as far as the timeline, there was only a hiccup last year—and that was not enough for him to eliminate Condition 9, but it was enough time to modify it.

Mr. Bivins said that he would really like to see this project in place, as Barracks Road and Garth Road have become the alternative route for coming in from west of town, so it would be good to know those traffic patterns now and not five years from now. He added that he would struggle with five years because they have already had four and a half years until they got to this point—removing last year, that's still three and a half years, and he does not think that giving someone eight years is keeping with the original purpose of the SP.

Mr. Keller asked if Mr. Bivins would make a motion.

Mr. Herrick suggested that Mr. Bivins make the first motion and then say at the end, "With an amendment to Condition 9 to extend the timeframe of Condition 9 to..." and then provide the date he is recommending.

Mr. Bivins moved that the Planning Commission recommend approval of SP2021-00011 Field School of Charlottesville with the revisions as recommended in the staff report and the additional modification of Condition 9 to having it be completed in three years, or August 2024.

Mr. Herrick asked if he meant three years or three and a half years.

Mr. Bivins clarified that he meant three and a half years, so extending it an extra year.

Mr. Bailey seconded the motion.

Ms. More said that she is no expert for raising money for nonprofits or educational institutions, but she did not see it as her job as a Planning Commissioner to put a date in that she felt would help the applicant. She stated that she appreciated what counsel had advised regarding impacts, and while she appreciates Mr. Bivins comments about traffic in that area, she would still like to be more generous with the timeframe.

Ms. Firehock stated that she concurs with Ms. More.

The motion passed 6-1, with Ms. More dissenting.

Mr. Bivins thanked the applicant and asked that he point to some of the issues raised here as they prepare this item for the Board of Supervisors.

Committee Reports

There were no reports.

Review of Board of Supervisors Meeting – September 1, 2021

Mr. Rapp reported that the Board met September 1, 2021 and reviewed the same Agricultural/Forestral Districts that the Commission had, and the Board adopted the form-based code for the Rio/29 Small Area Plan, after several years of hard work.

Mr. Bivins congratulated Ms. Falkenstein.

Ms. Falkenstein thanked him and said it was very exciting for their team.

Mr. Rapp stated that there would be a “very engaged” public hearing at the Board of Supervisors meeting the following evening with RST Residences.

Old Business/New Business

There was none.

Items for Follow-Up

There were no items.

Adjournment

At 8:24 p.m., the Commission adjourned to September 28, 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)

Approved by Planning Commission
Date: 10/19/2021
Initials: CSS