

**Albemarle County Planning Commission
DRAFT Minutes February 16, 2021**

The Albemarle County Planning Commission held a public hearing on Tuesday, February 16, 2021 at 6:00 p.m.

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

Members absent: none.

Other officials present were David Benish, Rachel Falkenstein, Lea Brumfield, Michaela Accardi, Serena Gruia, Jodie Filardi, Francis MacCall, Amelia McCulley, Bart Svoboda; 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(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.

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

Mr. Bivins established a quorum.

Consent Agenda

Mr. Keller moved to approve the consent agenda.

Mr. Randolph seconded the motion, which carried unanimously (7:0).

Mr. Bivins noted that although Matters from the Public was not on the agenda for that evening, they would be adding this back to the agenda going forward. He explained that it had fallen off when they moved to the virtual meeting format.

Public Hearings

ZTA201900006 and ZMA202100002 Rio29 Form Based-Code Overlay District

Ms. Michaela Accardi, Senior Planner, said she was joined by Ms. Rachel Falkenstein and Ms. Lea Brumfield. She said she would start by sharing an overview of the project background and the four years of staff work and community engagement that has led to this point. She said Ms. Brumfield would share recent feedback on the draft that has been shared with staff since November of 2020, and Ms. Falkenstein would provide an overview of prioritized future work related to this project. She said that after the public hearing, there would be time for a discussion. She added that staff has prepared motions for the Commission.

Ms. Accardi said she would share a brief overview of the project. She said the Rio29 Small Area Plan was adopted by the Board of Supervisors in December 2018, after two years of staff and consultant technical work as well as community engagement. She said the small area plan envisions the area as a connected network of complete streets designed for all users – cyclists, pedestrians, transit, and vehicles – as well as a network of sustainable and usable public spaces and a diverse mixture of uses.

Ms. Accardi said the plan specifically identifies updating the Zoning Ordinance with a form-based code as a recommendation in the Character chapter to promote the desired form. She said it highlights one of the project's main goals: to find the appropriate balance between regulation and flexibility, regulation to achieve the form envisioned in the plan, as well as flexibility to accommodate market changes and a mixture of uses.

Ms. Accardi said following adoption of the small area plan, the Board of Supervisors directed staff to begin work on drafting a form-based code for the Rio29 area. She said throughout 2019, County staff led internal technical working groups, in-person and online community workshops, and work sessions with the Planning Commission and the Board. She said they also facilitated project steering committee meetings. She said this work resulted in the creation of a draft framework for the ordinance, which was essentially an outline of key concepts that reflected the year of research as well as rigorous community engagement. She said this framework was supported by the Board of Supervisors in December 2018.

Ms. Accardi said that over the past year, County staff has continued to collaborate across departments as well as external agencies such as Fire Rescue, VDOT, and their local transit partners JAUNT and CAT. She said additionally, they have hired the Form Based Code Institute (FBCI) and [Dover Cole and Partners] to facilitate a peer review of the draft ordinance, provide feedback, and develop hypothetical scenarios (like the one that was shown on the screen). She said they reconvened the Rio29 Steering Committee; held virtual sessions with property owners and community members; and held work sessions with the Planning Commission, Architectural Review Board (ARB), and Board of Supervisors.

Ms. Accardi said ultimately, these four years of work have culminated in the Rio29 Form-Based Code before the Commission for review that day.

Ms. Lea Brumfield said she would be going through some of the feedback staff received and some of the ways they have addressed each point in the document, or if sometimes this was not necessarily within the scope of time that staff had, the scope of their future work and plans for the design standards they are looking forward to working on after the ZTA is adopted.

Ms. Brumfield said that throughout the fall of 2020, staff held virtual sessions with community members and property owners, and they also held work sessions with the Commission, ARB, and the Board. She said the ARB focused on particular aspects of the architectural standards. She said staff worked on the materials list the ARB had, some of the transparency standards they had concerns with, and discussed those options in the draft. She said staff made changes to the lists of materials and requirements for how the ARB would handle the certificate of appropriateness, which is one of the changes in the draft before the Commission.

Ms. Brumfield said other standards that staff received feedback on were around e-bike and electric vehicle charging as well as very specific landscape standards. She said there was a lot of feedback on specific architectural standards, as well creating a pattern book for the area, and

that these things have been delineated as the scope of future work when staff hopefully has more time to work on those things. She said she did want to make sure everyone knew that their feedback was heard and incorporated wherever possible.

Ms. Brumfield said there was also an online feedback form that opened on January 28. She said this went out in the County's newsletter (previously called A-mail) to the public. She said it is also on the website for anyone who wants to leave a comment on the draft that is posted there.

Ms. Brumfield said that since November 2020, some of the changes that staff has incorporated from the Planning Commission's and public's feedback include increasing the amount of space that was permitted for compact or autonomous vehicles for pickup and drop-off and including that language. She said green buildings and sustainability has been listed as a priority for future work, especially as the County's priority for lowering its greenhouse gas emissions and fighting climate change is one of its top priorities.

Ms. Brumfield said staff did revise the map and that the Commission should see a clearly delineated map in their packets and online, which cleans up the edges of the parcels to make sure that they were not including any residences in this overlay district. She said staff also adjusted based on feedback from the Fashion Square property and some of the surrounding community business owners for aligning the current parcel boundaries on Fashion Square Mall to meet the different character areas for the actual map itself.

Ms. Brumfield said she did want to make sure that everyone had the correct draft in front of them. She said there was a typo in the draft that went out in the Commissioners' packets that did not make the change listed on the top of the slide, which is to permit drive-thru windows by special exception instead of special use permit. She said the current draft the Commission had in front of them should be dated February 16 and should contain that change. She said this was one of the items of feedback staff had received from community members as well.

Ms. Brumfield said the staff-reviewed process for countywide certificates of appropriateness is Section 30.6.4, at the very end of the draft ordinance, to allow ARB staff to issue a countywide certificate of appropriateness when an application comes to them that they feel meets all of the criteria for meeting the entrance corridor guidelines. She said this allows them to bring the application to the ARB if they feel they need to, but it does not necessarily make this part of the standard process. She said if the application can meet the standards, then staff reviews it and issues the countywide certificate of appropriateness. She said if it needs more work and a hands-on human touch that one cannot necessarily get simply through an ordinance, or if it is perhaps not quite right for the entrance corridor, it would then go to the ARB and still be reviewed by them.

Ms. Rachel Falkenstein, Planning Manager, said she would talk about what comes next with the form-based code. She said rather than going through section by section of the form-based code, staff wanted to highlight the revisions since last time, which Ms. Brumfield did. She said other than those changes, the code is largely the same as when the Commission saw it in November 2020 at their work session.

Ms. Falkenstein said she wanted to talk about next steps, with the first being the development review process, or what would happen if a property owner in Rio29 would like to develop under the form-based code, should the Board adopt the code as proposed. She reminded everyone that this is an optional overlay district, so if a property owner wishes to develop, redevelop, or add a new use to their property, they can do so using the current zoning that is there today, or they can

develop in accordance with the form-based code regulations. She said if they choose to develop under the form-based code regulations, all of the regulations within the code would apply to the entire parcel.

Ms. Falkenstein said if the owner would like to pursue a phased development on their property (e.g., if it was one of the larger parcels in the district), they could do so by submitting a conceptual plan for review and approval through a special exception process. She said the conceptual plan would allow staff and the Board to ensure that the proposed development would not preclude future development of the larger site and that features such as streets and civic spaces are planned for the entire site in advance to achieve a coherent development pattern for the larger site.

Ms. Falkenstein said the application process for development under form-based code would look fairly similar to the by-right development process the County has today, with a couple of small tweaks. She said the first is that the County is requiring a pre-application meeting for applications under the form-based code. She said is a meeting with staff prior to making an application under form-based code where staff can discuss topics with the applicant such as location of streets and civic spaces, as well as any unique site characteristics. She said they can also invite reviewers from other agencies such as VDOT, transit agencies, and Fire Rescue in that conversation to make sure specific factors are considered when the applicant submits.

Ms. Falkenstein said from there, the process would be to submit an application, then an initial site plan and final site plan. She said there are two areas where the process may differ, which is if it is a phased development or redevelopment, as she previously mentioned, and then the applicant would be required to submit a conceptual plan through the special exception process, which is reviewed by staff and approved by the Board. She said there is also the countywide certificate of appropriateness, which would be applicable only to entrance corridor parcels within Rio29. She said this is a staff-approved process where staff is reviewing the application against the Entrance Corridor Design Guidelines as well as specific criteria that are within the form-based code.

Ms. Falkenstein said that as Ms. Brumfield mentioned, if there was an issue with the Entrance Corridor Design Guidelines, review by the ARB would be available in those situations if staff does not believe that the criteria are being met.

Ms. Falkenstein said the next topic she would touch on is staff's future work. She said Ms. Brumfield mentioned this in her slide when she was talking about some of the revisions. She said as the Commission would recall from their last meeting in November 2020, they had identified some topics where additional work would be needed before they could incorporate the topics as requirements within the form-based code. She said several of the topics included areas where staff would need significant collaboration with other agencies or other County departments, such as Parks and Recreation or transit agencies. She said two of the priorities on the list on the slide – Transit Planning and Civic Space Design Guidance – would fall in this category.

Ms. Falkenstein said many of the Planning Commission's comments from the November 2020 work session touched on the listed topics as well, such as the electric vehicle and e-bike charging, or parking requirements for electric vehicles. She said there were comments about orienting streets to accommodate views, and this would be work staff would have to look at with their Streets Regulating Plan. She said Green Building, Low-Impact Development, and Sustainable Design Guidance is work staff felt they needed to do additional design work and study on to learn best practices and identify appropriate requirements before they could incorporate them into the

code.

Ms. Falkenstein said some of the future work items such as Landscaping Design Guidance, Urban Street Design Guidance, and Updated Lighting Standards are elements that could be addressed countywide. She said these topics could be incorporated in the upcoming Comprehensive Plan and Zoning Ordinance updates that staff will begin working on soon.

Ms. Falkenstein said staff felt that rather than delaying the adoption of the form-based code for several months or years to incorporate the additional detail and design requirements, they developed the list of future work and identified prioritization for this work based on the Commission's feedback and feedback from others that staff had heard previously. She said Community Development leadership intends to bring these topics to the Board during the next review of the Community Development Work Program where they will be considered at that time.

Ms. Falkenstein concluded her remarks, reminding the Commission that staff had slides with motion language to show them when ready. She paused for questions, comments, and discussion.

Mr. Randolph said he understands, given the last meeting's discussion, why incentives may be given a low priority. He said he thinks this is also perhaps a result of planners dealing in the realm of economics, which do not necessarily frequently mix well.

Mr. Randolph said he would submit that without a lot more thought about the incentives and the amount of work that Ms. Falkenstein and staff have put into form-based code (going back 2.5 years ago, when he remembers well the birthing of this concept), if there is not more concrete thinking about the incentives, the question he poses is that while staff is presenting to the Commission a more environmentally sustainable, multimodal, three-character area, integrated commercial/residential public space community, without those incentives being identified and clarified, what motivation there is for the private sector, given that form-based code is optional, to be persuaded that it is in their interest to pursue form-based code versus the current zoning.

Mr. Randolph said there are so many aspects of this plan where there is an implicit requirement for some degree of public infrastructure that has to go in, including public parks, transit stops, and [inaudible] locations where rideshare programs can operate, drop-off, and pickup. He said all of these aspects are things that publicly have to be thought about and implemented, and they need the type of development to help make it happen because the County does not have a Public Works department to build all these things.

Mr. Randolph said he wanted staff to hear that he remains very concerned that without a lot more thought on the incentives and motivators that are going to persuade private developers to entertain form-based code, the County may well have engineered something that will not be implemented which, to him, would be a crying shame and a real loss for the County.

Mr. Clayborne said he would echo what Mr. Randolph said. He thanked staff for elevating Green Building to a high priority and for taking that feedback. He said he would talk about some topics and that staff should let him know if they are not appropriate for form-based code.

Mr. Clayborne said in terms of the façade transparency, he was looking at the diagrams and based off of whether they are in the Core, Flex, or Edge, there were different percentages for which the façade must be transparent. He said what he noticed is that there is no regard for solar

orientation, and so if one has 60% glazing on the wrong side, where the sun is shining, the building will overheat, and the mechanical systems will be upsized. He said this may do the complete opposite of not only the Green Building, but the Climate Action Plan. He asked if there is any language that can be added in that takes into consideration the solar orientation of the building and compare it to those transparency requirements.

Ms. Falkenstein said she appreciated those comments and that this would have to fall under future work that staff would have to think about. She said this also probably relates to their Streets Regulating Plan because they are requiring buildings to front on the streets, and the way the streets are laid out will have a big impact on the building orientation. She said she thinks this pairs not only with the Green Building design, but also the Street Regulating Plan and how the streets are oriented. She said currently, there is no language for that, and it would probably fall under those two categories of future work.

Mr. Clayborne said he wanted to put this on the radar and that his second question likely falls under the same bucket, or perhaps isn't even appropriate. He said when looking at facades, there is always a primary façade, especially when facing the street. He said when talking about transparency requirements, there is no mention of mechanical penetration. He asked if someone could come in and put louvres all of the primary façade as long as there is the right amount of transparency. He asked if staff wants to control how many penetrations there are in order to have predictable design in terms of form. He said this may not be slightly when thinking through this. He asked if this is appropriate for form-based code.

Ms. Falkenstein replied that her initial thought is if this were to block the transparency, the building would not meet the transparency requirements, but she did not know if staff had contemplated this. She asked Ms. Brumfield and Ms. Accardi if they had any response as to how this would be interpreted from a zoning perspective.

Ms. Brumfield replied that from the zoning perspective, the transparency requirements require visual penetration of the building, so if shutters or louvres block it, then the transparency does not exist. She said if they are permanent semi-louvred, fixed or immovable, they would still allow for some transparency, particularly on the upper stories where this is not necessarily as large of an issue as street-level transparency. She said that in many cases, this would probably be something that would go before the ARB that ARB staff would probably end up addressing under the countywide certificate of appropriateness, as many of those are more likely to be happening on entrance corridor streets.

Ms. Brumfield said that as far as addressing Mr. Clayborne's other question about predictable design, this is something staff has talked about as far as pattern books and architectural styles and is definitely a future work issue. She said it is a big question, and the Green Building issue is especially well above her architectural expertise. She said she knows a lot of professional architects struggle with balancing the transparency of a building and its design with the green design that continues climate control inside of the building, in addition to the mechanical systems that are built into it. She said these are interesting points and that staff would like to talk about them when they do more design work.

Mr. Clayborne said this was fair. He said regarding the louvre comment, Ms. Brumfield was touching on the ARB, and this might be where it gets caught. He said he was trying to prevent this being built like Swiss cheese, and there have been ugly louvres put all over a primary façade. He said if this is not watched, they will not control what they get and may be sorry later.

Mr. Clayborne said his third point was that he saw a list of appropriate materials in the packet, which included stone and different veneers. He said he did not see anything regarding building-integrated PVs. He asked if this is something staff would be talking about. He said he thinks that more and more, they will see the technology of PV panels that are integrated into the façade where one may not even notice it is a PV panel. He said he was thinking futuristically and asked if this could be considered and addressed on the list.

Ms. Accardi replied that regarding the list, staff spent a great deal of time with the ARB talking about each item on it. She said something she recalled as feedback or a way that they thought it was appropriate to frame the materials list was not to think about internal materials, but how they look externally and steering away from the interior composition of them. She said because she is not an architect and is not as familiar with specific building materials, she wanted to bring this up in case it applied to Mr. Clayborne's question as some helpful framing. She said she would let others chime in as well.

Mr. Rapp said Mr. Clayborne raised a lot of good points, and it is certainly an area of work that staff intends to address. He said Mr. Clayborne touched on a few, but there are quite a few other architectural elements that could be expanded there. He said staff is currently advertising for a Planning position with a focus on urban and architectural design. He said there is an entire envelope of concepts and items that they need to open up and address to make this code more effective as it evolves.

Mr. Clayborne agreed. He said he understands it is a work in progress, and he is just trying to help the product rather than stopping the show. He said he had two more questions. He asked if roof pitch and roof materials are appropriate to address regarding form. He said he did not see any language about roof pitch, and he asked staff if they wanted to be able to have a very steep slope roof versus something that would be a flat roof. He asked if there are any constraints or parameters for future work regarding roofs.

Ms. Brumfield replied that staff did discuss excluding roofs from the materials list, and so it is explicitly not in that list. She said it is something that they could theoretically address in the future, but they have actually not talked about roof pitch at all. She said this is an interesting point, however.

Ms. Brumfield said they were less focused on the roof materials, and this was partly a decision to allow a wider expanse of roof materials and also not worry about getting into the details where while a lot of flat roofs that end up having mechanical equipment on top of them are ugly, one cannot see them until they get to the roof. She said staff decided to leave that decision to the architect, at this point. She said if staff does end up making a more detailed list and looking at more design elements, this might be something they could look into.

Mr. Clayborne said his last question was probably silly and he believed he knew the answer but wanted to ask anyway. He said to assume he was putting in a parking garage in the Core area and wanted to dress up the façade to make it match the buildings around him. He said this is seen in many suburban areas such as Short Pump. He asked if he would not have to put glass in the openings in order to qualify as transparent, and if he could just have the punchouts. He said one could still see right through it without glass, and that he would be mimicking a building façade but using a parking garage. He said he was making sure that the word "transparency" does not necessarily mean that he has to have windows. He asked if this made sense.

Ms. Brumfield said she was double-checking to make sure that staff did not inadvertently write that into the ordinance.

Mr. Clayborne said he did not see anything about parking garages, but it was something he was thinking of. He said this concluded his questions.

Mr. Bivins asked Ms. Brumfield if she wanted to respond.

Ms. Brumfield asked Ms. Falkenstein and Ms. Accardi if they could address the commercial parking. She said the way they are describing parking garages is by lumping them under commercial parking.

Ms. Falkenstein said she could speak to the parking. She said there is a section specific to the design requirements for structured parking (page 28, Section 20-C.9.8). She said essentially, they are trying to encourage structured parking to not front an entire street, so there is a requirement that non-parking uses line the street façade for two-thirds of the parking structure so that there is not an entire block that is dead space and parking. She said it does not talk about the transparency in that section, but it does mention that the parking structure that does front the street has to have façade articulation.

Ms. Brumfield said the transparency definition does include glass, but the design standards for the structured parking remove that necessarily. She said what they are envisioning is something similar to a parking garage on Water Street, where there are storefronts in the front, at the ground level. She said there are still requirements for transparency on the sides that are required to have that because those sides are going to be retail or office. She said much of the upper levels would be covered either by something architectural or vegetative screens, which look grim the first couple of years but after a couple of years, those vegetative screens on top of parking garages can look great.

Mr. Clayborne thanked staff for their hard work.

Ms. Firehock said she would go through many items quickly. She said she would begin with a compliment, then go into her quick questions and comments.

Ms. Firehock said her compliment is that she sees a lot of work to incorporate comments from past Planning Commission workshops. She said she also likes the guide staff created that goes with the code, which she thinks is very user-friendly and attractively designed. She thanked staff for making a nice product that helps explain this to the development community.

Ms. Firehock said that since there was talk about parking garage facades, she also wanted to suggest they take a look at the very attractive parking garage facades in Staunton, Virginia. She said they are articulated to look like a building and have metal grids that evoke a window, though being open air. She said they are tucked into the historic district and blend well, and so this may be another option.

Ms. Firehock said in terms of the roof lines, she would note that she would not want them to get too hung up on pitched roofs versus flat roofs. She said they do not want everything to look the same, and the main point she wants to make is that flat roofs allow them to have green roofs, which they have not gotten into yet. She said those roof spaces can become usable. She said

Albemarle County's green roof is not a place to hang out, but there are many green roofs that are designed with benches, gardens, and places to have a picnic lunch. She said in Washington, D.C., the top of the American side of the Landscape Architects building is open to the public, which is a delightful garden in the middle of Downtown Washington.

Ms. Firehock said she also wanted to make note of green walls. She said when talking about wall materials, one of the prominent green roof installers and designers in Virginia has for the past six or seven years been doing more green walls than green rooftops. She said they are very popular, and stormwater can be treated laterally down the building while insulating the building. She said they can be very interesting, and so she would encourage not limiting the imagination by getting carried away. She said perhaps this is something that can be addressed when focusing on Green Infrastructure, to allow some of those materials on rooftops and building sides and facades to also be green. She said she has hundreds of examples and was happy to send them.

Ms. Firehock asked why Lighting was a low priority in the list of future work. She said she understands that everything cannot be a high priority, but she does believe there has been quite a lot of interest in improving the Lighting Ordinance, so she wondered why it was a low priority.

Ms. Falkenstein replied that this was a low priority in the context of Rio29 in that staff has not heard much about it from stakeholders, community members, or others throughout the process of the Rio29 code update. She said this was not to say that it was a low priority for the County as a whole because she knows they have heard about lighting in other contexts. She said she thinks this would have to be weighed against the broader Community Development Work Program in terms of its prioritization.

Ms. Firehock said perhaps this would fall in the bucket of things that need to be addressed on a County scale. She said the other thing she wanted to mention is that the Comprehensive Plan has been evoked in the beginning or introduction as something that the County is going to get to that year. She suggested that the Comprehensive Plan already gives ample fodder for why they need to bring in some of the other elements such as Green Infrastructure. She said she does not think they need more enabling authority from the Comprehensive Plan, though perhaps they need a new map in the plan. She said they have all of the authority they need to go out and address things such as landscaping standards.

Ms. Firehock said when she was reading the code, she was happy to see things about trees in terms of species diversity, caliper size, etc., but nothing addressed the underground planting standards. She said she talked to Mr. Rapp about this, and she knows there is some interest in updating the County's landscaping standards across the County, but she wanted to bring this up as being extremely important.

Ms. Firehock said the County plants a lot of trees in "tree coffins" that last six years. She said all of the trees have already been topped at one of the large shopping malls in the Urban ring, and those trees will not survive. She said she hopes they do not take years to get to landscaping standards and to also say that the Comprehensive Plan does not need to be updated before they can get to that. She said staff did not need to comment on this, but she wanted to make that statement.

Ms. Firehock said she had two more things to discuss. She said one thing that was mentioned that she did not see addressed and also did not see it in future work was the idea of taking advantage of the viewshed and the orientation of buildings and roads such that they can realize

some of the benefits of being on that elevated site, to think about the site lines. She said she recalled staff saying that they did not necessarily have the expertise to address that right now, but she did not want it to be on no work plan or have no focus. She asked staff if they could comment on this, adding that perhaps she had missed it or was not characterizing it correctly.

Ms. Falkenstein replied that she did recall that conversation, and her recollection was that it was talking about where they place and how they orient the streets. She said staff does not currently have a Streets Regulating Plan for Rio29 and have not identified where all the streets should be. She said this has been identified as “high” on the future priority work list because they understand the importance of that, not just for views, but for many other reasons including getting the street network that they want and one that works well for the area.

Ms. Falkenstein said they need a bit more work on that to identify where streets should be, and they need some work with some of the partner agencies in thinking about where entrances should be located, making sure VDOT standards are met, where utilities are, and the like. She said this work needs to be done before they can identify a future Streets Regulating Plan. She said certainly when they do this work, views will be a consideration in how the streets are oriented.

Ms. Firehock said this was fair enough. She said she supposed that in listening to Ms. Falkenstein’s good description of what needs to happen, it feels to her as if the County is not ready for form-based code without that work having been done. She said she was not talking about views, per se, but was talking about the entire concept of the street orientations, entrances, and the like, which seemed that they needed to be worked out. She said she could not fully understand how multiple sites could come in under form-based code if they have not figured out that basic network. She said staff did not necessarily need to comment on that, but she was saying that she could not understand how this could go forward without that work having been completed.

Ms. Firehock said she had one final comment unless Mr. Bivins had a comment to make.

Mr. Bivins asked Ms. Falkenstein if she wanted to comment on Ms. Firehock’s points.

Ms. Falkenstein replied that staff struggles with this a lot and have throughout the entire small area planning process. She said they have heard from property owners that they have concerns about staff going forward and putting streets down haphazardly, and so staff feels that a little more work is needed, and part of it is engagement as well. She said it is designed to be an ad-hoc process done on a case-by-case basis, which is similar to how they do development now. She said when there is a large new development done, they do not have every street in the County identified, and they have a process by which they review site plans, road plans, and subdivision plats to make sure the street network makes sense. She said they envision they will carry this forward with the form-based code until they get to the point where they are ready to adopt the Streets Regulating Plan.

Ms. Firehock said she had one last point to make regarding incentives. She said Mr. Randolph started off talking about this, and she understands from prior discussions with staff that part of the reason they have dropped a lot of those incentives or do not have them in the code is because consultants have let them know that incentives do not tend to work.

Ms. Firehock said her comment on that is that she has had to develop incentives for ordinances in the past, and she has figured out how to make some of them work by actually sitting down with the builders, developers, and architects, and saying, “What would be an incentive?” so that they

can tell her. She said she is sure people would say that an incentive would be one-day permitting and no more Planning Commission hearings.

Ms. Firehock said she believes there are incentives they can offer. She said without incentives, she does not know how they can push or cajole people into adopting the form-based code. She said she knows that by its definition, it is supposed to be easier and move faster, but there is a lot that they are asking for in this particular code. She said the code they are proposing is a much better-quality code than they have had before. She said while she thinks it has a lot of advantages, she is still struggling with how they will get people to want to do this without incentives. She said she thinks the way to get good incentives is to ask the customer. She said they can test those ideas before adopting them.

Ms. Firehock said she has developed incentives that have worked, and she thinks it is doable. She said she is disappointed that they seem to be dropping that approach.

Ms. Accardi responded that in the November work session, when staff was walking through each of the sections and the progress that was made, in the framework, they have a separate section for incentives. She said what they did with this current code was incorporate incentives within sections and then, if they fell within the prioritized list of future work, they captured that with the attachment in the staff report that they would like to do that as future work.

Ms. Accardi said that during staff's engagement with property owners and stakeholders in the area, staff heard feedback about the faster review process, range of mixture of uses that is incorporated into the code, and additional building height being the greatest incentives. She said this was the feedback staff heard so far, so they have incorporated the building height and the affordable housing incentive to respond to that feedback. She said they believe that they are doing this through an administrative process, and there is a greater range of uses available to property owners in the area, which is an incentive for developing under this ordinance.

Ms. Accardi said there is certainly more work that can be done in terms of green buildings and other improvements they would like to see in the area.

Ms. Firehock said she would like this code to become irresistible, and she does not think it is there yet.

Ms. More said she had a quick comment, and that she understood it was probably not what staff was looking for at this particular point in the process, but she thought it was worth saying. She said since Ms. Accardi brought up height, she wanted to mention it. She said she had been thinking a lot about the height they are asking for in this area and what they are saying can be the maximum, with six or seven being permitted with the bonus categories.

Ms. More said they are asking this area to become something that is absolutely is not right now. She said if they imagine what they want it to become, and when thinking about the five by-right stories and bonuses and looking the Downtown Crozet District (which allows for six stories with a special use permit, and four by right), she wonders if they are asking enough from this area that is so much different than Downtown Crozet with the number of people that would move in and out of these places.

Ms. More said if comparing a six-story building to a seven-story, she knows this is quite different from what both of those areas have now, but it makes her wonder if it could be taller. She said

they know this sounds very tall, but it can be done well with some of the things that are being built into the code so that it is not so looming to the pedestrians. She said she wanted to put that out there, as she has been thinking about it and then comparing it to what they ask for from Downtown Crozet and thinking about how the areas are both similar and very different.

Ms. More thanked staff for their hard work.

Mr. Carrazana echoed Ms. More's comment about the hard work. He said this is a planning effort and, as he mentioned in a previous session with the Commission, it is not unlike campus planning, in many ways (although it is simpler for UVA, as they have one landowner). He said he could certainly appreciate the complexity of what staff is doing, and he also sees how the previous work sessions have influenced the work and how staff has taken heed of the comments the Commissioners made, which he appreciated.

Mr. Carrazana said one of the comments he believed he had made well over a year ago, in one of the earlier sessions, had to do with material selection and the guidelines not to be too prescriptive. He said he believed this was getting to some of Mr. Clayborne's comments. He said for the most part, he believes staff has stricken a good line on that, but he would caution as they continue their series of outstanding work, which deals with the ARB and materials (such as roofscapes), not to be too prescriptive because it leads to uninspired design, and he does not believe this is what they are looking for.

Mr. Carrazana said Mr. Clayborne hit on the point exactly. He said regarding orientation that sometimes, one should not treat one side of the street the same as the other and say that everything has to be glass or have visibility in. He said there needs to be a little flexibility there, and one side of the street should not necessarily have the same character of the other, particularly if they are being responsive to green building standards and passive solar design, which they want to incorporate as well.

Mr. Carrazana said it was just reiterating earlier comments about how prescriptive they want to get with materiality and the massing of the building. He said he was glad to see that staff did not get too much into where there are setbacks and sloped versus flat roofs. He said when the City went through their iteration on West Main, there were certainly some things they had to go back and change. He said he was familiar with that because the [Battle] Building was one of the first buildings under the massing that was created for West Main and thankfully, the BAR was open to making changes, which they did.

Mr. Carrazana said he likes the balance, but he thinks there is still an opportunity, particularly as they get architects into the mix, who have a tendency of wanting to design everything. He encouraged staff to try to avoid that and be less prescriptive with materiality and form.

Mr. Keller said he thinks it is wonderful that they have the series of expertise they see on this body and others that staff works with (including Supervisors), and he thinks staff has done a wonderful job (with Ms. Falkenstein, Ms. Accardi, and Ms. Brumfield in the lead) of taking these things that have been presented to them by the community and citizen experts and incorporating them to the extent that they have.

Mr. Keller said he wanted to build on what Mr. Randolph and Ms. Firehock in particular, although he certainly echoed the views of the other two colleagues. He said this is that there still needs to be a structure. He said this was somewhat beyond staff, but since Community Development is

going to be putting this forward, in some ways, he thinks he is addressing this more at Mr. Rapp and Ms. Jodie Filardo.

Mr. Keller said this was somewhat partner to what Mr. Randolph and building on what Ms. Firehock said, which is that in earmarking the essential of the public spaces (perhaps the primary of the public spaces, and the primary of the transportation routes or streets), it would behoove them as a County to think about working with Economic Development and the County Supervisors to think about options or purchase of several of those key elements so that they have the public wish there in order for the private sector to have an idea of what that inherent amenity and structure is that they can give to the County through that public-private partnership that form-based code allows them to do.

Mr. Keller said he agrees with everyone, and certainly with Ms. Accardi about the whole idea of the form-based code being a series of incentives, which is how it is different than the existing zoning, which separates by use. He said he thinks that many of the incentives are there and as Mr. Carrazana said (and as everyone has implied), they will be tweaking this for a number of years. He asked if they were not all in agreement that in many ways, if they find some degree of success here, this will become the model for all of the Development Areas in the future. He said this is why he is so supportive of moving forward with it, because they need to start having the track record. He said they will hopefully have many successes, but likely a few not-as-successful pieces as they are working through.

Mr. Keller said when he looks at the form-based code that has been implemented successfully in other communities around the country, it seems that where there is work within the historic fabric, there is some degree of street structure or open space that is there that encourages the redevelopment with the amenities around them, or that there is some more real structure given to it. He said this is out of staff's purview and is in the political arena, but they do have an Economic Development Authority and things like this as a priority (and certainly 29 North), and he does think they need to think about what they are going to do to encourage the structure that they are envisioning to occur. He said certainly having the staff urban designer is going to be a real complement to the team.

Mr. Keller said in his mind, there needs to be some real commitment to what the most important pieces of this are so that the development community is willing to make that jump that Mr. Randolph was talking about and see that there are incentives.

Mr. Keller said in terms of the specifics, what Ms. More just said, he also agrees with. He said he thinks there is a place that they could go higher. He said he understands that the heights were lowered because of community involvement earlier on, but he does think that this is a place where there is a combination of its proximity to UVA and to the City center, and where its location is an area that can see such major incentives that would allow higher structures. He said perhaps part of the answer is what Mr. Randolph said about what those incentives might be, as being able to go higher might be one of those incentives.

Mr. Keller said they have all heard from the developers about the structural challenges and in going from four to six stories, there is actually a benefit for them to be able to then go higher than the six due to the cost differentials.

Mr. Keller said he thinks it is amazing that staff has stuck with it, that Ms. Falkenstein put this team together, and that they have been working on it so consistently. He said the Commission

can constantly see what they have asked staff to think about be incorporated in a thoughtful matter throughout the entire project, for which he thanked staff very much.

Mr. Bivins asked if the Commissioner from that district would like to speak.

Mr. Bailey said he was happy to make a few comments and a motion.

Mr. Bivins said they would have a public comment period before making a motion.

Mr. Bailey echoed the sentiment of much that was raised. He expressed that he knows the amount of work that has been put in by staff and the complex considerations that go into balancing everything. He said he knows there was a lot of hard work put into that, and it is reflective in the care and consideration in listening to the comments made in the multiple steps, which he sees incorporated. He thanked staff for their hard work and said that this is a great starting point.

Mr. Bailey said with that, thinking about this from a business perspective, being a business owner and thinking about it from a product perspective, if he has the option to go into this, he has to understand how he can fundamentally create a better product for the cost of that redevelopment. He said he appreciates the flexibility and the things that staff have addressed in the form-based code of providing greater flexibility and perhaps more height, but it does come down to having a better view of the structure in the County so that their partners in the development community can understand how they can use their talents to create a product that will transform the area into what the County wants it to be.

Mr. Bailey said he would throw his support around perhaps thinking about the incentives section more than the low priority that it is and figuring out how to get feedback from Economic Development and partners in the development community to assist them in helping them realize this vision that has been laid out. He said it almost certainly will have changes, as there will be questions about transparency and green building that will have to evolve.

Mr. Bailey said he would conclude by encouraging not letting the perfect get in the way of the “good enough for now,” and to move forward, learn, and adjust accordingly.

Mr. Bivins said he had a couple of questions for Ms. Falkenstein. He said he would envision the concept of the missing middle housing, and he wondered if there was a place in the form-based code where they might expect to see that.

Ms. Falkenstein replied that the form-based code certainly allows it. She said they do not actually address density on the form-based code, as it focuses on form. She said housing is a use that is allowed, so housing could take all sorts of forms. She said she thinks the market will dictate that more than anything else in the form-based code area, but especially around the Edge.

Mr. Bivins said he was thinking about the Edge.

Ms. Falkenstein said the Edge area is where they will have shorter heights and smaller parcels, and this would be a great place to see some of those housing types.

Mr. Bivins asked if this would be something that they would speak to a particular developer about doing.

Ms. Falkenstein replied that they would absolutely encourage that.

Mr. Bivins said he was looking at the great field guide on pages 19 and 21, where it says, "Interim uses are prohibited in the Core area on the first floor." He said they are allowed on the second and upper floors. He asked if this means there would not be the ability for pop-up activities there, looking at the definition of "interim uses," which is something that has been helpful during the transition that some of the first-floor commercial spaces have been able to be used for pop-up vendors or organizations.

Ms. Falkenstein replied that she did not believe the intent was to preclude the pop-up uses. She said she believed it was simply to put some parameters around interim uses so that they do not set up shop, get comfortable, and want to stay.

Mr. Bivins asked if there would be a way for that to be facilitated. He said he did not know how they would do that in the code, but if they look at the interim, it could exclude a whole host of things they typically see as pop-up places. He asked staff to look at this.

Ms. Falkenstein said staff would make sure to double-check on that.

Ms. Accardi said she intended to call on Ms. Brumfield to talk about the difference between interim and temporary uses because she believes this addresses the type of use Mr. Bivins was talking about.

Ms. Brumfield said looking under short-term uses, temporary uses are permitted on those first floors and throughout, and they do treat them differently in the code. She said each zoning clearance is permitted for a year and then up to five years. She said something like a temporary event would be processed just like a normal temporary events permit they have right now. She said this would not be any different, and if the use is permitted, it would just be processed under that use as a temporary event.

Mr. Bivins said he was trying to reconcile what was shown on page 21, under "A," where it describes the interim uses and lists retail, service, restaurants, entertainment, office, and artisan manufacturing. He said those are the uses, yet when they go to the other page, it says they are not allowed. He said he wondered if those uses were not allowed, how they would do that.

Ms. Brumfield said they are looking at interim uses as a use that is in a space that would otherwise not be redeveloped. She said there are shopping centers that are currently not redeveloped, and they can be used for interim uses.

Mr. Bivins said he understood.

Ms. Brumfield said staff will make sure that this is clear if they need to make any kind of changes before this goes to the Board.

Mr. Bivins said he would be a little tougher than his colleagues. He said he thinks that without some infrastructure and budget on this, it is not going to happen, and he has said this before. He said he was struck that the new "Wonder Woman 1984" movie was done in the Landmark Mall, which is an old school mall inside the City of Alexandria. He said if anyone has heard him complain about how the Albemarle's mall is starting to feel like Zombieland, the Landmark Mall had already converted, and it was definitely a scary place to go into.

Mr. Bivins said Alexandria purchased the mall, and they are partnering with a NoVA medical group to relocate their primary hospital there, then build a multiuse community around that. He said the city decided they wanted to hyperjump that location because if they were to let developers do it, they would have to measure and confront all the various things that people with those kinds of assets have to confront.

Mr. Bivins said he thinks if the Supervisors really want the intersection to take off, they are going to have to figure out a way to come in there, put some things in place, and perhaps become serious partners with some of the land that is there. He said otherwise, he thinks there is enough distraction with the way they develop things in the community that it will be a long time coming, and staff's work is too good for it to get stale. He said he does not want this to get stale.

Mr. Bivins said he remembered that 2.5 years ago, he struggled with form-based code. He said he could not believe that 2.5 years later, he is so enthusiastic, and part of it is because of staff's work. He said he does not want this work to go stale, and he does not want the intersection of Rio Road and 29 to become an abandoned place. He said he is fearful that without the County becoming more active in making that happen, it will drift on its own, regardless of the great work staff has done. He said he wants the project to be a success, and he does not want to be nervous when he goes to Fashion Square Mall anymore. He said he wants to be happy, eat good things, and see great things there.

Mr. Bivins opened the public hearing.

Mr. Neil Williamson said he serves as President of the Free Enterprise Forum, a privately funded public policy organization focused on Central Virginia's local governments. He said often regarded as the greatest basketball coach ever, University of California at Los Angeles coach John [Wooden] won a total of 11 national titles as a head coach. He said that evening, the Planning Commission was considering the form-based code for the Rio29 small area. He said the Free Enterprise Forum has been engaged in this and the previous Places29 planning efforts for well over a decade. He said during this significant public engagement, staff (to their credit, for the most part) followed some of Coach Wooden's sage advice: "Listen if you want to be heard."

Mr. Williamson said considering the economic import of this area, the significant opportunities available, and the optional nature of this code (which they advocated for), the Free Enterprise Forum sincerely wants to support the form-based code, but they still have concerns.

Mr. Williamson said regarding the requirement of the special use permit for light industrial uses in all but one of the areas, the language surrounding this issue seems intentionally vague, indicating the SUP should be measured to see if it is in harmony with the surrounding uses. He said many of the lawyers he speaks with equate building an argument in support of this ambiguity like nailing Jell-O to the wall. He said light industrial uses are targeted industries in Albemarle County because they bring high-skilled, good-paying jobs with very few negative externalities.

Mr. Williamson said beyond being a transit node, the concept of "live, work, and play" is a significant part of the Rio29 planning paradigm. He said the Free Enterprise Forum believes that light industrial uses could be allowed by right in all areas as long as design guidelines and performance standards are met.

Mr. Williamson said the form-based code, as currently drafted, only allows for time-[inaudible]

special exceptions in the code, and those must be granted by the Board of Supervisors. He said while he understands the intent of the code is to be rigid in design, he knows that every site is unique and presents its own special circumstances. He said the Free Enterprise Forum asks that the administratively approved special exceptions be expanded and include objective metrics as would be required for such a staff approval.

Mr. Williamson said in terms of ARB involvement, the Free Enterprise Forum has spoken at length for the need for the ARB to weigh in on design guidelines on the front end and not be a part of the application process. He said as written, the ARB is not engaged in the process, but it allows the staff to engage the ARB if staff thinks it is appropriate. He said this language should be changed to require the staff to review the plan and give the applicant the opportunity to appeal the plan to the ARB.

Mr. Williamson said with “all or nothing,” the Free Enterprise Forum appreciates the option of using form-based code, and there are large parcels in the area that might benefit from the opportunity to develop the northern portion of a parcel as form-based code and the southern as conventional zoning. He said it seems under the current proposal, however, that such an approach is not only discouraged, but is actively outlawed.

Mr. Williamson said regarding enhanced incentives, as much as the Free Enterprise Forum likes the form-based code, they do not believe this optional overlay offers applicants enough benefits to outweigh the use of the conventional code. He said they would welcome the opportunity for increased incentives, so the code not only gets on the books but has a chance to be utilized.

Mr. Williamson said the Free Enterprise Forum desperately wants to support the form-based code, and they are so close. He said Coach [Wooden] was way ahead of his time since so many of his teachings. He said regarding the Rio29 Form-Based Code, he believes Coach [Wooden] summed it up best: “If you don’t have time to do it right, when will you have time to do it over?”

Ms. Valerie Long with the law firm of Williams Mullen said she appreciated the opportunity to speak and wanted to echo the comments about the many years of work that she knows staff has put into this effort. She said she commends their efforts and recognizes the challenge of trying to strike the right balance between having sufficient incentives to make it worthwhile while also having enough prescriptive design guidelines to achieve the goals. She said she knows this is incredibly difficult, but her overall comment is like many others said that evening, she is not sure it is there yet.

Ms. Long said she thinks there are many good things in the code and a lot of flexibility but based on her experience working with landowners in the area, more flexibility and more incentives are needed to make it worth the effort to go through this. She said if those incentives could be increased and some of the issues addressed, she thinks it would provide tremendous opportunity to avoid the very expensive, time-consuming, and uncertain aspects associated with discretionary land use applications and rezonings.

Ms. Long said she commends the fact that it is an optional overlay and it is all by right, which will make a difference, but incentives should be increased. She said particularly with regard to building heights, as was mentioned, four stories in the Flex area is actually shorter than what one could do by right in Planned Development Mixed Commercial or PRD in other districts, which allow for 65 feet.

Ms. Long said it is certainly an improvement that there is now only a special exception required for things like drive-thrus, but she would recommend this actually be a by-right use subject to design guidelines, as it is in the rest of the Zoning Ordinance. She said she knows Ms. Falkenstein commented to her that this was ideal, but that they need to work out those design guidelines. She said she thinks this is important, as this is a very large area.

Ms. Long said even though the special exception is much better than the special use permit process, it still takes up to 90 days, in most cases, and still involves a lot of additional time, resources, expense, and uncertainty for something that could be achieved with some design guidelines and match the goals for the form.

Ms. Long said she also wanted to caution about the level of detail that might be required on a conceptual plan to avoid that having become too much like an application plan for rezonings. She said she would encourage as much flexibility as possible for special exceptions, modification, and flexibility.

Ms. Long said there is a strong section of the code that provides flexibility for street standards if the street meets the purpose and intent of the design guidelines. She said she thinks this is the type of flexibility that could be added and enhanced throughout the draft to avoid situations she has been in far too many times where her client's engineers have designed something, and the staff agrees that it makes sense and is appropriate but unfortunately, it is just not explicitly permitted by the ordinance, so they are not able to support it. She said she would like to try to avoid those situations.

Ms. Long said likewise, she would agree strongly with the comment about not requiring a special use permit for light industrial uses. She said the definition is already such that it is defined expressly as small-scale uses within enclosed buildings and must be compatible with surrounding uses. She said although this is a bit of a vague term, it still at least conveys the intent. She said she does not understand if they design it that way, why it then has to require a special use permit. She said this is obviously a significant disincentive.

Ms. Schaffer informed Ms. Long that her speaking time had expired.

Ms. Long said her last comment is that she knows the affordable housing is consistent with the draft housing plan, but she would ask that there be an appreciation for the challenges of meeting these standards in the draft.

Mr. Bivins closed the public hearing and asked staff if they cared to speak to these comments.

Ms. Falkenstein said she was not sure if there were any questions, but the main theme was that further design guidance is needed, which is work staff fully intends to do and hopes to get it to a place where they have some more flexibility in those by-right uses.

Mr. Bivins said one piece was about light industrial and asked if Ms. Falkenstein felt called to speak to that.

Ms. Falkenstein said she did not, unless Ms. Brumfield had anything to add as their zoning expert. She said they have updated their definition and tried to incorporate more flexibility to allow this use, but still trying to find that balance with some of the public feedback they received not wanting this use in the area.

Ms. Brumfield said one thing that might address some of the comments staff heard is that some of the light industrial uses that both the legislative bodies and the public have requested for this area would fall under the artisan manufacturing light industrial uses, which are explicitly permitted throughout the district. She said these are things that are explicitly small job creation operations that are local and will generally be things that would be of interest to local people, perhaps more creative endeavors, but also more small-scale technology endeavors. She said one thing that was brought up was laser cutting or 3D printing types of operations, which would be permitted under that type of use. She said she thinks this is line with the feedback staff received from both the Board and much of the public for this kind of use.

Mr. Randolph said he wanted to make one comment about the recommendation that they expand, through form-based code, the opportunity for drive-up windows. He said the first observation he would make is that in general, if they look at the Core area, if they were to go ahead and do this by right, he thinks they would be sealing the future of the multimodal dimension of this community. He said if one thinks about what has transpired at Pantops with the arrival of Chick-Fil-A, they will see cars exiting Route 29, pulling in for fast food, and then quickly reemerging on Route 29.

Mr. Randolph said the only way this would work, which comes back to Mr. Keller's point, is if the County essentially said they will build an arterial in the community, which serves somewhat like Pit Row does at Daytona or any NASCAR track, where cars can exit the high-volume, higher-speed major highway, come off, be on an arterial, get food service, do whatever they need to head further north up Route 29, and then quickly get back on and keep that kind of traffic away from the rest of this community.

Mr. Randolph said this could work, but it would require exactly what Mr. Keller has suggested – an investment to provide that kind of road. He said it would then require under form-based code restrictions elsewhere that there would not be drive-up windows so that they can be assured they will have the kind of multimodal community they are seeking.

Mr. Randolph said he understands Ms. Long's point and thinks it is well-taken, but he would say that it only works on the western extreme edge of the Core area, and in proximity and parallel to Route 29. He said he thinks this would take an investment by the County to make it operate.

Mr. Bivins asked Ms. Accardi if she could present the motion language.

Ms. Accardi said there were a few motions drafted by staff that she would share with the Commission. She said there were two separate motions on the slide for each of the recommendations – one for the ZMA and one for the ZTA. She said these two motions were for recommending approval. She presented a slide with motions recommending approval, with changes, and asking the Commissioner to list those changes. She presented a slide with motions to recommend denial and list the reasons.

Mr. Bailey moved to recommend approval of ZMA2021-02 Rio29 Form-Based Code Overlay Zoning Map as shown in Attachment 3 of the staff report updated February 15, 2021.

Mr. Keller seconded the motion.

Mr. Clayborne said he had a question for clarification. He said he assumed that with this motion to approve, staff had a summary of all the things that were discussed, which would be a part of

the package moving forward.

Mr. Bivins said it would be a part of the transcript, but it would not necessarily be listed as part of the motion. He said it will be part of the package.

The motion carried unanimously (7:0).

Mr. Bailey moved to recommend approval of ZTA2019-06 as shown in the draft ordinance (Attachment 1) of the staff report dated February 16, 2021. Mr. Keller seconded the motion, which carried unanimously (7:0).

Mr. Bivins thanked staff for their efforts, noting that the Commission looked forward to working with them as this comes forward and seeing the other work, as he assumes staff will need their advice on that. He said the Commission is always willing to give their advice on these important matters. He congratulated staff as they move this forward to the Board of Supervisors.

Adjournment

At 8:04 p.m., the Commission adjourned to March 2, 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:
Initials: