

**Albemarle County Planning Commission
Final Minutes Regular Meeting February 28, 2023**

The Albemarle County Planning Commission held a public hearing on Tuesday, February 28, 2023, at 6:00 p.m.

Members attending were Corey Clayborne, Chair; Fred Missel, Vice-Chair; Julian Bivins; Karen Firehock; Luis Carrazana; and Lonnie Murray.

Members absent none.

Other officials present were Kevin McDermott, Director of Planning; Andy Herrick, County Attorney's Office; Rebecca Ragsdale; Alberic Katrina-Plun; and Carolyn Shaffer, Clerk to the Planning Commission (via Zoom).

Call to Order and Establish Quorum

Ms. Shaffer called the roll.

Mr. Clayborne established a quorum.

Other Matters Not Listed on the Agenda from the Public.

Ms. Annie Lorenzoni stated that she was speaking on behalf of Livable Cville to discuss homelessness in the Charlottesville and Albemarle area. She stated that housing was a human right, and it was a violation of that right when someone experienced homelessness in the community. She stated that the underlying problem was insufficient housing.

Ms. Lorenzoni said that homelessness was increasing in the area, and according to the Blue Ridge Coalition for the Homeless, the point-in-time count for the area increased by 50% to 266 people in 2022. She said that more than 440 people accessed the Haven's Day Shelter services more than 19,000 times in 2022. She said that they had to address stereotypes related to homelessness and that attributing homelessness to individual choices or behaviors misunderstood the reasons why people became homeless, resulted in harmful policies, and deferred real solutions.

Ms. Lorenzoni distributed copies of the book, *Homelessness is a Housing Problem*, by Clayton Page Aldern and Gregg Colburn, and copies of a flyer from Haven with information about the work of the organization to the Commissioners.

Consent Agenda

There were no items on the consent agenda.

Public Hearings

ZMA202200010 Riverside Village NMD: Block 1 Amendment

Ms. Ragsdale stated that the request was for an amendment to the code of development, and only one action was required of the Commission. She stated that Riverside Village was located in the Pantops development area along Route 20, and it was located at the front of the Riverside Village NMD. She said that Riverside Village was built out, and the subject proposal was limited to Block 1 of the development.

Ms. Ragsdale stated that there were three mixed-use buildings with ground-level commercial use and 24

residential units above. She said that the commercial space totaled 13,200 square feet, and it was constructed in 2019. She said that there had been three tenants in the space since 2019. She noted that Grit currently occupied 1,600 square feet, and the remaining space was vacant. She said that previous tenants included River Birch, which occupied 3,800 square feet, and a dance studio, which occupied 2,100 square feet.

Ms. Ragsdale stated that the surrounding uses included NMD, R1 Residential, R10 Residential, and R15 Residential. She noted that Wilton Farm and Avemore developments were nearby, and so was the Cascadia NMD. She noted that Avemore and Cascadia had approvals for nonresidential uses. She said that areas close to the intersection of Route 250 and Route 20 were commercially zoned.

Ms. Ragsdale said that the project was originally approved in 2012 with 69 residential units, a minimum of 16,000 square feet nonresidential and a maximum of 46,000 square feet nonresidential. She said that at the time, the property was designated neighborhood density, which was a lower density than the present buildout. She said that the residential and nonresidential uses exceeded the recommendations of the master plan at the time.

Ms. Ragsdale explained that an amendment related to the number of units and nonresidential space was approved in 2016. She said that the amendment added 36 units to the total allowed. She said that the minimum nonresidential space was reduced to 8,000 square feet.

Ms. Ragsdale explained that the present request was to reduce the minimum nonresidential space from 8,000 square feet to 1,600 square feet. She said that the unused nonresidential space would be converted to residential units in Block 1. She said that the maximum nonresidential use would remain at 36,000 square feet in Block 1 and 46,000 square feet total. She noted that the neighborhood center was now located at Elks Lodge.

Ms. Ragsdale noted that the area was designated as urban density, and nonresidential uses were secondary under the designation. She said that there was no specific square-footage guidance for the property. She said that the change was reviewed for traffic impacts, and no concerns were identified. She said that the EDA had no concerns about the reduction in commercial inventory. She noted that residents were concerned that commercial uses could not return to the site. She said that staff recommended approval.

Mr. Clayborne clarified that the proposed minimum square footage of 1,600 square feet was determined from the space occupied by Grit Coffee.

Ms. Ragsdale responded yes.

Mr. Clayborne opened the public hearing.

Mr. Justin Shimp, engineer for the project, said that he conceived the project in 2010. He noted that the foot traffic into the development had not materialized. He said that the commercial area of the development only had 600 households within the development tract, and the area was not walkable. He said that the surrounding community was not large enough to support the businesses in the development. He noted that the use could be converted back to a commercial use in the future.

Mr. Zach Zingsheim, Stony Point Development Group, said that he had been involved with the project since January 2022. He said that they did not see a demand for the vacant retail spaces. He said that the 24 residential units had been historically 100% leased. He noted that they would add residential units.

Mr. Clayborne asked if there were any questions from the Commissioners.

Ms. Firehock asked if the units were to be leased as rentals.

Mr. Red said that that was correct. He said that they retained the ability to convert them to rentable apartment units.

Ms. Firehock asked if the market changed again the use could be switched back and no further permissions were needed because they had met their code of development.

Mr. Shimp said that was correct. He said that having the building code's structure as commercial allowed them to change it to a residential use by removing only a few walls.

Mr. Missel said that if they were marketing their larger NMD development to homeowners and commercial users and was based on the mix that was outlined in the application plan, but then the mix changed, there was no benefit to having that mix promised on later in the process.

Mr. Red said that they had every intent to bring forward the conditions of a mixed-use development, but market forces had shown that there was not the demand for the amount of retail that was built at that time, so it would be a loss to have empty retail space as well as space that could be used for housing.

Mr. Joe Regg said that optionality was the main focus of their work, and when they made promises to the residents when selling the condominiums there, their intent was to fill out the area with a mixed-use development. He said that they wanted to create a centralized community there with amenities that allowed for people to do things without leaving the neighborhood, but unfortunately those dreams were not a reality.

Mr. Regg said that they had pushed for leases and deals, but they had been unable to fill those spaces. He said that he would do everything in his power to provide the amenities that people wanted in these developments such as the endcap restaurant in River Birch, but it was best to use the space for residents rather than allow it to sit vacant and deteriorate in condition.

Mr. Bivins said that he would like to see that space in the endcap space shared, because while it began as a lively community area, it recently had become much less busy, which was not a good sign for these kinds of developments. He said that there was a question of how to make these small-scale mixed-use projects viable with the reality of the economics.

Mr. Bivins said that they should consider other ways to incorporate mixed uses coexisting, because the model may not be workable for at least a decade with the current market being what it was. He said that he understood what they were going through, was disappointed that they were bringing it down to 1600 and was hopeful that they considered sharing the empty spaces.

Ms. Firehock asked for the price per square foot of the commercial space being advertised for lease.

Mr. Red asked if Ms. Firehock was asking in terms of rent.

Ms. Firehock said yes.

Mr. Red said that they had marked the rent down considerably, a number greater than 20%, in addition to tenant improvement allowances, by way of free rent and a combination of percent rent, but that had not been enough for the interior spaces to garner any interest.

Ms. Firehock asked if the rent being requested was cheaper, higher, or in line with other industry examples.

Mr. Red said that they were at market level and had to drop along with the market. He said that he had not seen with any concession of price a number that would gather interest when looking at the whole package of offerings.

Ms. Firehock asked what variety of spaces were available to businesses.

Mr. Red said that there were a combination of spaces including 2,000 square feet, 4,000 square feet, a 17,000 square foot bay, and a 2,300 square foot bay that was vacant.

Mr. Clayborne asked what industries were being pursued to fill these spaces.

Mr. Red said that the restaurant space was planned to be backfilled, but specifically for the interior bays that had not been filled, there were businesses such as dentists, law firms, and florists, with no particular industry being targeted.

Mr. Clayborne asked why the square footage of the restaurant space was not included in renting the commercial space.

Mr. Red said that it was meant to maintain optionality, so that conversion between uses would be more efficient.

Mr. Shimp said that the process, while limited, still took a year to get through, and many thousands of dollars on the part of the applicant, so if the applicant were to wait to find out that there was a problem, they would have to put in the same request with the County yet again, which was to be avoided.

Mr. Clayborne opened the public hearing.

Mr. Richard Allen said that he lived at Trailside Court. He said that it was important for the Planners to take into account the points of view of the residents who had received the promises just described. He thanked Mr. Missel for landing on that with his remarks. He said that it should be noted this was a significant second shrinkage of retail, and it was highly unlikely that Stony Point would return it to retail space. He said that walkable retail nearby was a large reason why many residents moved to Riverside Village, and Stony Point's website and realtor, Ms. Mills, promised this feature repeatedly to all buyers. He said that Mr. Henry also pledged to place one tier of rental apartments on top of the shops at Riverside, where he instead placed two tiers of rentals and an additional 12 units there, collecting that rental profit for several years.

Mr. Allen said that the Planners should remember that they were hearing from the point of view of the residents. He said that they now wished to remove the space promised to residents and they were to expect a third tier of rental profits on the ground floor where retail space should be. He said that Mr. Henry made large profits selling out Riverside Village and used the development as a model to gain other Albemarle and Charlottesville development permits, created a profit center of houses developed near Penn Park, a second time with Dairy Park with 180 apartments. He said that he had proven that at Dairy Market he could find successful retail space, as well as Freedom Drive and Zion Crossroads.

Mr. Allen said that he requested that Mr. Henry continue to receive his rents on the third tier of rentals that he already received and should leave this space open. He said that he needed to do a better job post-Covid of finding retail space there, and a restaurant was certain to become profitable to him, for users across the way at Cascadia, Wilton Pond, as well as three seasons of people at Darden Towe Park. He

said that Stony Point had been deceptive by failing to locating promises to tenants there and for the deception of adding the third story of rentals, and this developer must not be allowed to default on his contract with them. He said that voting citizens of Albemarle deserved to have their residential rights respected.

Mr. Edwin Scorza said that he was also a resident of Riverside Village. He said that he was reluctant to have the loss of commercial space availability. He said that River Birch did not have a plan or consistent menu, and the current problem with all restaurants was staffing. He said that he knew that Mr. Regg had worked hard to find places to fill the space, but he was unsure of how attractive they had made the rental amounts, because they did not want to share that.

Mr. Scorza said that he had attempted to locate potential restaurateurs, but none had worked out. He said that he understood that the economics had changed, but they did not know when the economy would come back, and Stony Point could make enough additional money with converting some of the units, but they should at least have a few years to try and get the restaurant space filled. He said that optionality was a word that he found somewhat offensive.

Mr. Dick Ruffin said that he was Chair of the Pantops CAC and had been a resident of Riverside Village for three years. He said that he agreed that all stakeholders wanted a restaurant there, and that was not the issue, however there were economic concerns. He said that a concern that had not been raised was that the master plan talked about walkability and accessibility, but no one walked across Route 20. He said that far more people lived in proximity to that restaurant space on the east side of Route 20 than on the west side, and there was no safe place to cross.

Mr. Ruffin said that crossing at the light at Darden Towe and those areas had no area to walk in front of Elk Lodge, so it must be done in front of the restaurant. He said that someone in the County should pay attention to how to get people to walk across Route 20 so that they could access a restaurant there safely. He said that if this was done in a timely way, it may relieve Stony Point of the problem that they had. He said that he urged the County to solve the issue of crossing Route 20 so that the restaurant had a better chance of thriving there.

Mr. Clayborne asked if there were any speakers signed up online.

Ms. Shaffer said that there was no one who wished to speak at this time.

Mr. Clayborne asked if the applicant had any closing remarks.

Mr. Shimp said that even without commercial space, this continued to be a desirable neighborhood in a convenient location, which they expected, so it did not seem fair to say that the developer backed out of the promise. He said that the mixed-use buildings that were constructed were not cheap, and he did not know of any other developers who did that in that timeframe.

Mr. Shimp said that they were very genuine efforts, and the last effort was to take River Birch out, but this was a year-long process, and they were asking to be able to clean it up for the worst-case situation. He said that because it was market-driven, a restaurant would be there. He said that the walkability was a good point, because there was a question of how many years it would be until they had enough population density where this would be very successful.

Mr. Shimp said that Stony Point made multiple offers to buy the Elk Lodge next door, and if they had been able to, there would have been a connection and resulting walkability. He said that he understood the neighbor's concerns, but he felt strongly that Stony Point had put forth the effort to get this done and

invested a lot of money to do so. He said that they were trying to do something now that made sense in turn with the current conditions.

Ms. Firehock asked how long the units had been vacant.

Mr. Shimp said that some units had not been occupied for three years.

Ms. Firehock asked if some of the units had been available before Covid-19.

Mr. Shimp said yes.

Mr. Clayborne asked if there was a fitness studio in the space.

Mr. Shimp said that one internal space was occupied, or approximately 10% or 20% of the space was occupied, but that had been vacant for about one year.

Mr. Missel asked what the square footage was of the River Birch restaurant.

Mr. Shimp said that it was approximately 3,800 square feet.

Mr. Clayborne closed the public hearing.

Mr. Bivins said that he wondered how to sustain this model of development as an owner, and he appreciated that people purchased homes there with the belief that services were to be provided. He said that if the services did not manifest, there must be some return for those who had invested, with the ability to have it converted. He said that a former Commissioner had voiced the need for space that could be converted back and forth from commercial to residential.

Mr. Bivins said that he would be more supportive if the restaurant space was the last to be given up. He said that the applicant seemed to appreciate that that was a serious investment for the community as well as a lifestyle option for the community. He said that he hoped the company would maintain the space until it was truly unable to do so, and it was unfortunate that this project was the way that it was.

Mr. Carrazana asked if 1,600 was the minimum being set.

Ms. Ragsdale said that was correct.

Mr. Carrazana said that if every attempt could be made to find a tenant and keep the restaurant space operable, it would be a great amenity for the community. He said that the intent of having a mixed use was part of how the buildings were constructed, but the last few years had been difficult for rental properties to get off the ground. He said that he understood and appreciated the residents' points of view, but he also knew that the landowner did not want their properties to sit empty for three or four years. He said that he was supportive, also with the hope that the second restaurant could open.

Mr. Missel said that this was a complicated item. He said that there was concern that the NMDs were built into that as commercial mixed use and there was walkability included. He said that here, it could be seen that the tenants may have been promised something, but he did not know because he was not a part of those conversations and was unsure if that was pertinent. He said that this item was more about land use than the economics of the market. He said that as Planning Commissioners, their primary focus should be what the best orderly development of this property.

Mr. Missel said that he was sympathetic to the developer because retail spaces often needed to be subsidized. He said that there was a benefit to having a restaurant there due to the internal trip captures to the restaurant or other commercial use. He said that he was sympathetic to the community members, but those people did not need to pay the bills for these things and make them actually work. He said that there was risk and reality on both sides, and this issue was not about economics or past promises but the economic development of the County and its environs.

Mr. Missel said that there was a need for a greater amount of mixed use in this original neighborhood model, and they had seen it progressively go down over time. He said that he could not support the request as was written here, but he would support something that would include keeping the restaurant, which would mean it was basically reduced from 8,000 square feet to 5,400 square feet, and while there was hope that the restaurant would go last, there was nothing that guaranteed that.

Ms. Firehock said that she concurred with Mr. Missel's remarks. She noted that while she was not an expert, she looked at space for lease often, and she could not find these spaces in Albemarle County, so perhaps it was a best-kept secret. She said that because she was unable to hear from the applicant what price they were asking for or any other information, she had no way to judge whether their efforts to lease were reasonable or diligent enough, and although it could be converted back, it was unlikely they would undo the apartments once that expense was incurred. She said that this concept could still work, with perhaps a better marketing and better pricing along with more distance from the pandemic. She said that she was not in support of the application.

Mr. Murray said that he did not support the application either. He said that if the County stepped in to allow conversion of commercial space into residential space during a time of economic downturn, they were preventing the free-market condition that allowed small businesses to find leases at low prices. He said that as the Planning Commission, they should be planning for the community that was 20 to 40 years in the future.

Mr. Clayborne said that this facility was within his magisterial district and a place he frequented. He said that he was worried about the precedent of allowing continuous amendments to a project as it progressed. He said that there were many unknown economic factors related to the empty business space, such as poor management of the restaurant, expensive rent, or other unfavorable conditions.

Mr. Clayborne said that if the proposal had given some sort of attempt to keep the restaurant space, he could have supported it. He said that the current proposal cut it out and included houses and a coffee shop, which did not seem to be the intent of the NMD district. He said that he would be unable to support the proposal as presented tonight.

Mr. Carrazana said that he thought that there was a lot of merit to the proposal that Mr. Missel made, which was that there was a middle ground to be found. He said that there was a reduction, so there was allowance to make a change, however, there was a commitment to it being a mixed-use community, so he understood the line of thought and agreed that the overall mixed use in that area made sense and was needed long-term, and it was hard to change it. He said that he would support an amendment to include that suggestion.

Mr. Clayborne asked if an amendment was possible.

Mr. Herrick said no, a vote on the current proposal must be made.

Mr. Bivins said that he could appreciate the idea of coming dramatically down from what was authorized before this, even if it were to go to 5,400 square feet, there was no way to be sure that the restaurant space would be the space that would be preserved. He said that there was purely a business sense from

the owner that there was a capital investment that must be preserved, but if someone were to come around and say that they would take the entire inventory, it would change things quickly.

Mr. Bivins said that he never believed anyone would walk across Route 29 when reviewing the Rio Small Area Master Plan. He said that the shopping center near the Home Depot was absolutely empty of businesses for reasons unknown. He said that while this area may be zoned as it currently was, he believed it was incorrectly done so, because the infrastructure to make that a walkable community did not exist and would not exist. He said that therefore, he was still in support of this because it was mis-zoned.

Mr. Missel said that he understood Mr. Bivins' perspective. He said that if it were mis-zoned, it was mis-zoned by the County. He said that there was a certain application that had a mix of uses that made sense, and it was now being reduced for a second time, so there was question about at what point that zoning was proper. He said that perhaps the area around it did not develop the way they thought it would in terms of connectivity, but as a land use planner, the mix of uses would have to be almost internally self-supporting.

Ms. Firehock said that she lived in the rural area, but she would drive to a restaurant if she had heard it was very good. She said that they could all agree that there was not enough foot traffic to bring people to that space, but it was on a very busy corridor, so an excellent restaurant with a great menu would succeed. She said that while they should strive for the neighborhood to be self-supporting, it did not need to be by walking.

Mr. Missel said that he did not mean that it must be solely supported by walking, but that it was an important component.

Mr. Carrazana said that the infrastructure may already be in place for this use because the street capacity was there. He said that the challenge in the past was that when they were building dense housing with no transit and roads could not handle the traffic, the roadways became constricted, and that was when infrastructure was needed before development caused those issues. He said that with this item, the infrastructure was there, and there may be other economic pressures being dealt with currently, but did not mean that it was not appropriate in the long-term. He said that he was unsure if it was a mistake when it was done, and if the vision for what it could be was not the right vision for that area.

Mr. Clayborne said that walkability meant different things for the different areas of the County. He said that during the wintertime, it was dark at 5 p.m., so even with a sidewalk down Route 20, he could not imagine families walking down that road at night to and from River Birch restaurant, and was only useful for those living at the adjacent developments.

Mr. Murray said that it was important to keep in mind that the way that infrastructure was paid for was through commercial development, because residential development frequently cost more in infrastructure than what was received in taxes. He said that if commercial development continued to be reduced in all of these places, they would not have the revenue to build the needed infrastructure. He said that counties such as Fluvanna had much higher tax rates per person because the ratio of residential development to commercial development was much higher.

Mr. Bivins said that there was a reasonable conversation to be had about the viability of the commercial mix within the County. He said that the community also sent messages to developers by allowing things to remain vacant, because at some point, the business model did not work for the community. He said that the economic balance today was different for small businesses who could not get loans or find trustworthy investors. He said that he was unsure if some of their development models could sustain under what was a shifting economic model at the County level. He said that there would be many more small

businesses closing due to the many negative conditions. He said that he did not believe that by saying they had to have commercial meant that it would be filled.

Mr. Missel said that the vacancy was not the issue but the use was.

Mr. Missel motioned to recommend denial of ZMA202200010 to reduce minimum nonresidential square footage from 8,000 to 1,600 square feet for the reasons discussed by the Planning Commission.

Mr. Clayborne asked if specific reasons should be stated.

Mr. Herrick said that was preferable.

Mr. Missel said the reason for the recommendation of denial was that the mix of uses should be retained, either as currently required with the 8,000 commercial square feet, or as a reduced amount, and that it was important for the order of the planning associated with this development. Mr. Clayborne seconded the motion, which passed (5-1). Mr. Bivins was the dissenting vote.

Adjournment

At 8:20 p.m., the Commission adjourned to April 12, 2022, Albemarle County Planning Commission meeting, 6:00 p.m. via electronic meeting.



Kevin McDermott, Director of Planning

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

Approved by Planning Commission
Date: 03/28/2023
Initials: CSS

[Attachment #2](#)
[Attachment #3](#)

Attachment 1
Letter submitted by Judy Schlusel

I had planned on speaking in person to the Planning Commission at the February 28, 2023, meeting. However, due to the death of a family member, I will be attending the funeral. Please consider my points and include them in the Planning Commission minutes.

When this application came before you quite a while ago, this body as well as the BOS gave approval to the proposal since it fell under the Neighborhood Model District. The rezoning is requesting the following changes:

- =eliminate the commercial pad
- =now proposing between 10-38 residential units
- =include building envelopes
- =include parking
- =include green space for amenities and storm water management

While eliminating the commercial pad and increasing the density may fall under guidelines meeting a county's bullet point, I am deeply concerned. This parcel is located in the Entrance Corridor nestled among several housing developments that are single family and duplex style homes which all have the common feature of a yard...aka greenery.

The proposed placement of the amenities and storm water management is of concern which will front Rio Rd. From what I understand this development will be rentals rather than the original proposal of "small homes" to purchase falling in the category of affordable housing.

Developers promise the moon yet deliver much less than that. Developers are notorious for leveling a parcel plowing down all greenery, The front part of this parcel is flat with no large trees. However, the back part does have many large trees which I suspect could be labeled as Witness Trees considering the history of this portion of Albemarle County. Is the developer going to plow everything to satisfy a bullet point in the Neighborhood Model District guideline making another attempt to obliterate a portion of history? The developer will probably tell you those trees will be replaced. However, will they be replaced with a twig style tree that will take 25+ years to mature.

Look around this section of Rio Rd and how many of the developments have any amenities facing Rio Rd. What type of amenities is the developer planning....a playground, tennis courts, exercise course? Although you may think some of these thoughts are far-fetched, developers are creative to lure potential clients to their site.

The proposal of green space is of concern. Since this development is being proposed as rentals who will be responsible for the maintenance of the green space? Remember the location is in the Entrance Corridor and all one needs to do is drive by and see the unsightly overgrown unattended junipers located on Rio Rd. Do you, the Planning Commission want to approve and ultimately encourage another unkept section of the Entrance Corridor?

The developer is eliminating the commercial pad and increase density now to a maximum of 38 units. This increase by itself may seem insignificant but that is more traffic funneling onto Belvedere Blvd and ultimately onto Rio Rd. This intersection is a traffic nightmare. I attended the recent meeting at the center presented by VDOT and the County, one does not need to be a traffic engineer, but it came

through loud and clear that although there are several traffic options on the table all theoretical and many years down the road till implementation becomes reality.

At the Feb 23, 2023, Rio 29 CAC meeting storm water management issue came up. Supervisor Ned Gallaway indicated that the Board of Supervisors are aware there are problems with the storm water system in this development area.

Although the rezoning application is being promoted as new and improved, perhaps it should not be approved but at least tabled until more concrete answers can be obtained regarding some of the points, I've raised namely traffic and storm water management.

Thank You.

Judy Schlusel
Rio District Resident
Member of the Rio 29 CAC