

**Albemarle County Planning Commission
FINAL Minutes January 12, 2021**

The Albemarle County Planning Commission held a public hearing on Tuesday, January 12, 2021 at 6:00 p.m.

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

Members absent: Luis Carrazana, UVA representative.

Other officials present were Bill Fritz; Rachel Falkenstein; Michaela Accardi; Tori Kanellopoulos; 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. Charles Rapp, Planning Director, 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/community/county-calendar when available.

Mr. Rapp explained that as elections were being held that evening, he would be leading the meeting. He called the meeting to order, noting that all Commissioners were attending the meeting virtually.

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

Election of Officers: Chair and Vice Chair; appointment of Secretary (if needed)

Mr. Rapp asked if there were any nominations for Chair of the Commission.

Mr. Randolph moved to nominate Mr. Bivins to be Chair for the year 2021.

Mr. Keller seconded the motion, which carried unanimously (6:0). (Mr. Bivins abstained.)

Mr. Rapp congratulated Mr. Bivins on his position as Chair.

Mr. Bivins thanked the Commission, expressing that he hoped they would be able to meet at the dais in 2021. He asked for a nomination for Vice-Chair.

Mr. Randolph moved to nominate Ms. Firehock for Vice-Chair.

Mr. Keller seconded the motion.

Ms. Firehock noted that she was happy to serve as Vice-Chair but that she would be fine with anyone else being Vice-Chair if they desired to do so.

No other nominations were heard, and the motion carried unanimously (7:0).

Work Sessions

ZTA201900008 Section 33-Zoning Text Amendments, Zoning Map Amendments, Special Use Permits and Special Exceptions

Mr. Bill Fritz said he would not be presenting a PowerPoint, but that he would be speaking to the Commission to get their feedback where needed on Zoning Text Amendments. He said this will also be going to the Board of Supervisors for a work session on February 17, and then it will come back to the Planning Commission and the Board of Supervisors for public hearings. He said they want to try to work out any kinks at this time.

Mr. Fritz said the proposed ZTA corrects some of the unintended impacts caused by the amendments that were adopted in 2018, tries to improve the submittal and review process, corrects many technical errors in the existing ordinance, and brings them into compliance with State Code. He said as part of the procedural improvements proposed, it also removes requirements that applications must be acted on within 36 months (or the project is deemed withdrawn).

Mr. Fritz said that in 2018, the ordinance was amended and that this was necessary. He said this was done to fix some deficiencies in the ordinance and to improve the process. He said unfortunately, the 2018 amendments did not have the desired effect in terms of improving the process and, in fact, it was found that the administration of the ordinance has been extremely complex and resource consumptive, which is the opposite of what was desired.

Mr. Fritz said there was some support to simply repeal the 2018 amendments and revert to the prior ordinance, but as he said before, there was a reason why they got rid of the 2018 ordinance and amended it. He said they therefore have not reverted, and simply reverting to the prior ordinance would still leave the need to amend the ordinance again.

Mr. Fritz said the proposed ordinance tries to keep the things that the 2018 amendments did that were helpful and productive while fixing the things that were not. He said one thing that happened in the 2018 amendments, for example, is that they removed the provision that allowed for public submittal of ZTAs. He said this worked and is fine, and so there is no change in that process.

Mr. Fritz said in terms of reorganization, the proposed amendment does substantially reorganize the procedural provisions within the ordinance. He said it does not restore the process to the pre-2018 issue, but it builds on the lessons learned.

Mr. Fritz said the time limits for actions were a major issue in the 2018 amendments. He said at that time, a 36-month time limit was created, so everything had to be acted on in 36 months. He said the processing involved with this time limit is very complex and has created a significant administrative burden. He said the proposed amendment removes the time limit and replaces it with a clear statement that the County is not obligated to accept a request for deferral. He said this very much puts the County in the driver's seat as to when it is time to act on it, and so if it needs to go longer, it can, and if it is time for it to be heard, it can be.

Mr. Fritz said the proposed amendment also clarifies the procedure for reactivating applications and review of applications when in a state of deferral. He said currently, a deferred application is not to be reviewed, and this is part of the procedural problems that exist. He said this is often the

primary purpose of the deferral – to allow issues to be identified and addressed. He said the deferral is only for the public hearing and not for the review.

Mr. Fritz said the proposed ordinance provides that once a deferred application is reactivated, the timeline for review is reset, so one cannot request deferral on Day 89 and then say they have a day to act and be within the 90-day deadline. He said this fixes the potential problem. He said the current ordinance creates significant procedural difficulties because the timeline for deferred actions is not clear.

Mr. Fritz said the proposed ordinance provides for the collection of a new fee for a reactivated application. He said sometimes, reactivated applications are substantially different than what they were originally, so much so that they constitute a new application. He said they could collect a new fee to cover the cost of that review.

Mr. Fritz said the proposed ordinance provides that an application is deemed withdrawn as a deferral request is accepted and that the project is not reactivated within six months. He said this will allow the County to more easily administer the process and prevent applications from languishing.

Mr. Fritz said in terms of submittal requirements, the 2018 amendments modified the submittal requirements and allowed the Planning Director to determine that some information may not be required in certain applications. He said the proposed amendments retain the submittal requirements and clarify the processes for determining what information is required.

Mr. Fritz said the 2018 amendments allow for electronic filings, and this is retained.

Mr. Fritz said another significant change with the 2018 amendments was the notice of certain easement holders on a property (e.g., an open space easement). He said if an application was submitted on that property for rezoning or a Special Use Permit, there was no notice to the easement holder. He said this was added, and this provision is retained.

Mr. Fritz said the rejection of incomplete applications has been a problematic process. He said it was not implemented in a way that made it easy to do, and it has some problems. He said the proposed amendment clarifies the timelines for when an application is determined to be incomplete. He said it actually adds a provision to notify the applicant that their application has been deemed incomplete. He said it allows for a collection of fees and states how the fees are to be collected once an application is determined to be incomplete, which does not exist in the current ordinance. He said it also establishes the start date to calculate the time of review so that one cannot use the original submittal date as the starting date but rather, the date when the corrected application is received, which corrects the problem.

Mr. Fritz said the 2018 amendment corrected some State Code provisions. He said since then, however, there have been some other State Code changes to the proffers, and the proposed amendment fixes that.

Mr. Fritz said the 2018 amendment added a provision to allow revocation of special exceptions, and this provision has been retained. He said the proposed ordinance, however, also includes non-severability language, which will correct the problem of courts finding one condition of a special exception unacceptable and rendering the entire special exception void.

Mr. Fritz said in 2018, there was removal of a reference to judicial review of denied application, and this has been retained. He said it is a self-executing provision in the State Code, and so there is no need for it.

Mr. Fritz said the 2018 amendment made significant changes to how the Planning Director can require additional community meetings if they are needed due to changes in an application. He said these proposed amendments clarify and strengthen this position.

Mr. Fritz said another significant issue that was identified in the 2018 amendments was the existence of many errors in references within the ordinance. He said for example, the existing ordinance requires that a special use permit for historic taverns and inns be reviewed, considering the factors in Section 33.8. He said this section, however, describes how to initiate a ZTA and has nothing to do with the review of a special use permit. He said all of those internal inconsistencies have been fixed.

Mr. Fritz said staff has found additional changes they need to make. He said they are trying to make the ordinances and how they do all the ZTAs more consistent (e.g., correcting the word "shall" and using the term "must" or other appropriate term). He said Mr. Andy Herrick has been working on this, and staff will work on this. He asked the Commission not to focus on these, as staff knows about and will correct them. He said there are other minor issues, but none of them are substantive to change the content.

Mr. Fritz said one thing he did that he hoped was helpful was that in the summary table of the Zoning Ordinance, staff tried to provide a comparison of the old and new ordinances for the Commission to see where things have moved around. He said staff considered showing the Commission a strikethrough version of the old versus new ordinance, but it was unreadable. He said there are things that are carried over, but the format was changed so much that the comparison was incomprehensible.

Mr. Fritz said there was the ordinance, staff report, and brief outline he just provided, which he hoped was helpful. He said he wanted to get the Commission's feedback and also answer any questions he could.

Mr. Bivins thanked Mr. Fritz and said this had been helpful. He asked the Commissioners if they wanted to provide any feedback.

Ms. Firehock said she had two very minor questions. She said on page 16-S, there is a clause discussing the judging of whether the application has substantively changed. She said she was curious as to who makes that determination. She said she has often seen where things have changed dramatically or are just minorly tweaked, and the question comes up. She asked who judges this or if there is a definition for it.

Mr. Fritz replied that the Zoning Administrator makes this determination under the overall authority of the Zoning Administrator to interpret and enforce the Zoning Ordinance. He said the Zoning Administrator could determine if it is substantially the same application, and then an applicant would have to pursue an appeal if they felt this were inappropriate or wrong. He said it is the same language and that there has been no change to it.

Ms. Firehock said on page 27, it talks about the fact that the County is not required to accept an applicant's request for deferral. She asked if this has always been true, and why there is a need to specify this.

Mr. Fritz replied that this has always been the case, but staff thought it appropriate to put it in the ordinance to be absolutely clear and make the statement that the County is not obligated to accept one's request for deferral. He said the County can say no and proceed to public hearing.

Mr. Keller said he had a couple of hypotheticals, after they go through it all, that he would like to go over. He said they could run through some hypotheticals based on things the Commission has seen to make sure Mr. Fritz caught them, adding he was sure that he had.

Mr. Keller said he had one specific question about page 16-B. He said this is something where the Commission had found themselves in difficult situations, and he thinks that most (if not all) the Commissioners now understand the answer to this, as Mr. Herrick has worked with some of them for a number of years on this. He said in the "Recommendation by Commission," when the applicant decides to ask for a deferral in the midst of this process, where (P) is specifically saying that they are either going to approve or disapprove, he wondered if there might be a way that this could be how the deferral fits into that, even if it is an asterisk and a footnote explanation so that when new Commissioners are seeing this, they would get an understanding of what they can and cannot do.

Mr. Fritz asked Mr. Herrick if he wanted to comment.

Mr. Herrick said to Mr. Keller that he was not understanding the question in that both the Commission and the Board of Supervisors have the authority, at any time, to act on a deferral request when it is made. He said the ability to grant a request for deferral is always available to the Commission and to the Board. He said Subsection (P) that Mr. Keller referred to sets out the duty of the Commission to make a recommendation one way or another, be it for approval or denial, before an application is passed on to the Board of Supervisors.

Mr. Keller said he understood this and asked Mr. Herrick if he could see what he was trying to get at. He said they have had a number of cases when the applicant is going back and forth with staff, trying to guess where the vote is going to be, and if there is going to be disapproval, they want to pull in a deferral there at that point.

Mr. Herrick apologized to interrupt and said that as Mr. Fritz pointed out, the Commission and Board always have the ability to deny even a request for deferral. He said if there is a sense that a sort of gamesmanship is going on or that a strategic advantage is trying to be had through a deferral request, the Commission and the Board always have the ability to say no.

Mr. Keller said he believed he and Mr. Herrick were talking across each other. He said Mr. Bivins was nodding, and perhaps he could weigh in.

Mr. Bivins said he believed what Mr. Keller was trying to say was if there is a way to explicitly lay out if there is an opportunity for the Commission to take a path so that it is clear that when someone is reading it, it is one of the options that is available to the Commission. He said while Mr. Herrick is correct that the Commission does have that ability, his sense is that sometimes, the applicant is not fully aware of that, or they may have slid over that possibility. He said the clarity

piece for all parties would be to have a sentence or something in there that says that this is always an option for both parties.

Mr. Herrick asked if the suggestion would be to add the option of a deferral upon request of the applicant in Subsection (P).

Mr. Keller said yes. He said the Commissioners know that they cannot do a deferral. He said another thing would be to say that if the Commission cannot do a deferral on its own, it has to be the applicant. He said this is something that new Commissioners (with he being one himself in the past) never quite understood. He said it seems that if they are trying to have a document that is a roadmap or dashboard and more comprehensible, he thinks that this happens fairly often (e.g., 1 in 10 times or 12 times). He said he would appreciate the clarification.

Mr. Herrick said he thinks the main purpose of this is to spell out what the duties of the Commission are, but if clarity is sought in terms of the opportunity to grant a deferral upon request of the applicant, he thinks this can be added in without taking away from the main message of what the duties of the Commission are, to act upon applications that are before it.

Mr. Fritz asked, in order to get the right comments to the Board of Supervisors, if this is something that would be best in the Zoning Ordinance or in the Rules of Procedure of the Planning Commission, to make it clear that a Commissioner may question an applicant on whether or not they want deferral of an action prior to taking a vote on a special use permit, rezoning, or special exception. He asked which place the right place was to put it.

Mr. Keller said he would leave this to staff.

Mr. Bivins said he did not know how many applicants would actually read the Commission's Rules of Procedure, but he would assume that many of them would at least be guided through the document presently before the Commission.

Mr. Keller said this was his major question.

Mr. Bivins asked if Mr. Keller had other questions.

Mr. Keller replied that he had a couple of hypotheticals.

Mr. Bivins asked Mr. Keller if he wanted to come back to those.

Mr. Keller replied that they may not want to spend time on them due to another matter before the Commission.

Mr. Bivins asked if there was someone else who wanted to come forward with questions or observations.

Mr. Randolph directed his comments to Mr. Herrick. He said there is frequent mention of days in the document in terms of the process. He asked if it is therefore implicit that these are calendar days versus business days, as the language is not explicit as to one or the other.

Mr. Herrick replied that it is not specified, it would be calendar days. The reason for most of these

deadlines is to follow State Code, which requires that there be reasonable timelines for County action on applications. He said this is why the deadlines are included.

Mr. Fritz said he believed that Section 2 included something that says that every reference to days in the ordinance is to calendar days. He said Section 4, 32, and others have this. He said he believed it was either Section 2 or 3 that actually talks about the days.

Mr. Randolph said he presumed it was and thought he would check.

Ms. More said she did not have any specific questions. She said she thinks this is very straightforward and was presented in a precise manner, which she appreciated, including the materials provided. She said because they were having a work session on this and the Commission has made it their practice in the past, she wondered if they would be taking public comments. She said they were having another work session after this one, and so she thought she would bring up public comment during this work session and ask if anyone from the public wanted to comment.

Mr. Bivins replied that they could certainly do this if they were moving along quickly with this, as he would appreciate that.

Ms. More said she did not have anything else to add and that the ordinance was well done.

Mr. Bivins said he had a couple of comments. He said it seems that out of the entire document, there is only one gender-specific pronoun, which is on page 14, under (J), and says “he.”

Mr. Fritz said he thought staff had caught them all.

Mr. Bivins said it was the second word on page 14 (J), on the third line.

Mr. Bivins said the ordinance includes mention of the ability for an authorized agent. He asked if and how they verify the authorization and if they figure that if the owner of the property does not come forward, then the individual has been authorized.

Mr. Fritz replied that when making an application, there is a procedure that staff follows that includes who the owner of the property is and how they have designated (e.g., if it is an LLC, for instance, does the person have the authority to act for the LLC).

Mr. Bivins said this was perfect. He said there is also another piece in the ordinance that says they cannot go forward if they have taxes or fees due, and so he assumes that the County internally verifies that the piece of property does not have any liens on it.

Mr. Fritz replied that the County does what is required by the State Code.

Mr. Bivins said on page 8, regarding the fourth item down that says, “One or more maps showing the proposed project’s regional context and existing natural and manmade physical conditions,” he wondered whether they would ever be looking at where there are cultural or heritage items that might be of interest in a particular area as someone is bringing a property to the Commission. He said there are viewshed pieces in the ordinance, but he wanted to know if they talk about the cultural or heritage pieces that may be changed or involved in a particular effort.

Mr. Fritz replied that he did not believe they had anything specifically there. He said one thing is that there is an umbrella about anything else that may be appropriate, as staff simply could not think of everything.

Mr. Bivins said he understood. He said thinking this through, he thinks there is some value in asking people about this, given some of the issues they have seen about abandonment (particularly in the City, where they stumbled upon graves that some people knew were there while others did not).

Mr. Bivins said he made a point during the Premier Circle application that they are taking a commercial piece of property and potentially moving it to a blended or split residential with perhaps some light industrial or commercial. He said one piece he wanted to hear about is how they will ever get to a point where they know what the best and fair use of a piece of property and whether or not a decision to do something will take it out of that area. He said given that they have 5% of the County's land mass in development, he would be cautious about losing any commercially viable land. He asked how this narrative gets in the ordinance.

Mr. Fritz replied that this is not something that staff asks the applicant to do. He said it is part of what staff's review is.

Mr. Bivins asked if this is then the County's analysis.

Mr. Fritz replied that it is. He said under the State Code, looking at the current and future needs of the County for land use, it is actually in the State Code and in the ordinance (which parrots State Code). He said this is something that staff would need to analyze, and it is how they draft the Comprehensive Plan in terms of whether they need more or less of something. He said the applicant is free to comment on those things, but the analysis should be coming from staff.

Mr. Bivins said he assumed this is the same kind of thing they would do in terms of equity and whether or not they are seeing blocks of land in particular communities being picked up and displacing people from those communities. He asked if this is something that staff would do as well.

Mr. Fritz replied yes. He said it is covered by the things that they should be normally looking at in a special use permit and rezoning.

Mr. Bivins asked Ms. Schaffer if there was anyone from the public lined up to speak on this.

Ms. Schaffer replied that there was no one from the public on this item.

Mr. Bivins asked if there was anything else to add.

Mr. Keller said that at some point, when they have Mr. Fritz back, he is thinking about the land use history that Mr. Fritz gave at the lumberyard hearing, which he and likely all other Commissioners felt was excellent. He said he wondered if in the context of something that Mr. Fritz would be bringing to the Commission relatively soon, Mr. Fritz could refer back to something somewhere in the document about changes that were made that were approved in the early 2000s that have a legacy that lives on where, in many ways, the hope is to clean some of this up so that they do not have legacies in 2021, going into the 2030s.

Mr. Keller said in a hypothetical manner, Mr. Fritz could share with the Commission (and so the public could hear) the bigger benefits of what this is cleaning up. He said that instead of point by point, it is almost like a paragraph. He said this was not for that evening, however.

Mr. Fritz said he could see how he could try to do that. He said he has been with the County since the late 1980s, and they have made a lot of changes in how they process rezonings and the like since then. He said some were thrust upon them by the General Assembly while some were of the County's own doing.

Mr. Keller said he thinks the reflection of the legacies is something that informed this, and so he would like to have this in the public domain before Mr. Fritz's retirement about the big picture of the legacies and what they are trying to do in cleaning this up, both for the development community and for the citizens.

Mr. Fritz said he could give some thought as to how he might be able to pull something like that together.

Mr. Randolph said he wanted to address Mr. Keller's point. He said he himself and Ms. Valerie Long were the only two people who first met with Ms. Elaine Echols when she broached the idea of having a discussion about the need for tighter procedures on special use permits and special exceptions. He said what drove this was not legacy projects, but the fact that staff was frustrated by the number of applicants that were suddenly dropping out, at some point, during the funnel of policy response from Community Development, and then submitting that they had an opportunity to suddenly get back in the pipeline after they were out, procedurally. He said there were then loose ends that were cropping up and a series of anomalies for staff members trying to figure out whether or not the application was going forward.

Mr. Randolph said he was not doubting that legacy projects may be part of the dimensionality here, but part of what was in the field for staff, as he well recalled from the first meeting that talked about exactly what Mr. Fritz presented that evening, were significant staff frustrations with applicants moving in and out of the process without any implications (implications being in terms of obstacles that they would face in terms of coming back in).

Mr. Randolph said his closing remark was that he thinks Mr. Fritz and staff have done a remarkable job in what he presented. He said it is comprehensive, very thorough and detailed, and current with state statute. He said he thinks it will position them, going forward, but as they well know, with the best efforts of everyone to address these challenges, there is bound to be something that falls through the gaps or will arise. He said they will deal with that when it comes, but he did want to compliment Mr. Fritz and staff, collectively, for the work they clearly invested in this, and on what a huge improvement this is.

Mr. Fritz thanked Mr. Randolph and said he would pass this comment along to the team.

Mr. Bivins asked Mr. Fritz if he had received what he needed from the Commission.

Mr. Fritz replied that he did and that it was helpful. He said he would see what they could do about a history of what was done in the past, and how he could pull this together.

Review of Board of Supervisors Meeting: January 6

Mr. Rapp said that on Wednesday, January 6, the Board adopted ordinances supporting staff's and the Commission's recommendations for the two Agricultural and Forestal Districts (Batesville and High Mowing), and the Board also approved a special use permit for Seminole Trail Auto Dealership that came before the Commission with the same recommendation for approval for outdoor sales, storage, and display.

Old/New Business

There was no old business or new business.

Items for Follow-Up

There were no items.

Adjournment

At 9:40 p.m., the Commission adjourned to February 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: 02/02/2021
Initials: CSS