

**Albemarle County Planning Commission
FINAL Minutes September 12, 2023**

The Albemarle County Planning Commission held a public hearing on Tuesday, September 12, 2023, at 6:00 p.m.

Members attending were: Julian Bivins, Acting Chair; Karen Firehock; Luis Carrazana; and Lonnie Murray.

Members absent: Corey Clayborne, Fred Missel.

Other officials present were: Kevin McDermott, Deputy Director of Planning; Andy Herrick, County Attorney's Office; Bill Fritz; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Mr. Kevin McDermott said that the Chair and Vice Chair were absent from the meeting, so he would open nominations for an acting chair for the evening.

Ms. Shaffer called the roll.

Mr. McDermott established a quorum.

Appointment of a Temporary Chair

Mr. Moore nominated Commissioner Bivins as temporary chair. Mr. Carrazana seconded the nomination.

Mr. McDermott said that they had a nomination for Commissioner Bivins to be acting chair. He asked if there was a motion to appoint Commissioner Bivins as the chair.

Mr. Moore moved to appoint Commissioner Bivins as chair. Mr. Murray seconded the motion. The motion carried unanimously (3-0). (Mr. Bivins abstained; Mr. Clayborne and Mr. Missel were absent.)

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

Mr. Carrazana moved to approve the Consent Agenda. Mr. Murray seconded the motion. The motion passed unanimously (4-0). (Mr. Clayborne and Mr. Missel were absent.)

Public Hearing

ZTA202300003 Residential Density Bonus Factors

Mr. Bill Fritz, Community Development Officer, explained that the zoning text amendment dealt with residential bonus factors in the zoning ordinance. He said that the ordinance had a provision

that allowed for density to be increased if certain community benefits were provided, such as affordable housing or preserving wooded areas. He said that the ordinance stated that the density achieved through the use of the residential density bonus could not exceed the density recommended in the comprehensive plan.

Mr. Fritz said that the Zoning Administrator had determined that a project came in seeking to utilize residential density bonus. He noted that the property was situated within an area designated for office, research and development, flex, and light industrial use. He said that the particular zone did not have any cap on residential density. He said that residential usage was considered secondary in the comprehensive plan area. He said that the Zoning Administrator had determined that the density bonus could not be applied as the comprehensive plan did not recommend a specific density, and an increase in density would exceed the limits set forth in the comprehensive plan.

Mr. Fritz said that the Board of Zoning Appeals had heard an appeal and decided that the density bonus could be used. He said staff believed that the appropriate thing to do would be to amend the ordinance to achieve the goals of the comprehensive plan. He said that they had to reformat the text. He said that a key aspect of the change was that it added a simple sentence: "if no density range or maximum density is shown in the comprehensive plan, no bonus factor may be applied." He said that it made it very clear that density was not to exceed what was recommended in the comprehensive plan. He recommended approval and had two possible options for the Commission to consider.

Mr. Moore said that he was aware of the fact that discussions on housing affordability were not very common, and it seemed to be the first time it had occurred.

Mr. Fritz said that it was the first time they were aware of anyone using bonus density before. He said that they knew they had denied projects who wanted to apply for it in the past. He said that they told them no, they could not apply for it, and they had not appealed the decision. He noted that one of the things they discussed was making all other staff working on the comprehensive plan aware of this text amendment. He said that the comprehensive plan could state density is capped at 15 units per acre unless affordable housing was provided. He said that once this ordinance was in place, and they would be able to use bonus factors.

Mr. Moore said that it was in reference to the current comprehensive plan.

Mr. Fritz said that was correct.

Mr. Moore said that the part where it would prevent the use of bonus provision for affordable housing did not appear to be a top priority at present. He said he understood that for the sake of clarity, this was necessary.

Mr. Fritz said that Mr. Moore was correct. He said that the staff report mentioned the property owner's option of applying for a rezoning to achieve an increase in density. He noted that what was not mentioned in the staff report was the fact that the property owner could use affordable housing as a justification to achieve that rezoning.

Mr. Bivins said that he would open the hearing to the public and proceeded to read out the rules for public comment.

Whit Graves, Evergreen Home Builders, said that he lived at 2385 Corals Road. He said he was the applicant for the property. He said that Robin and JT Maxwell were the owners, and he was partnering with them on the project. He noted how the ZTA would specifically impact their development plan. He said that under the by-right development, they could get only 21 units, but with bonus factors, they had bumped up to 28 units, including seven affordable units. He said that if they did not have those bonus factors, they would only have 21 market rate units. He said that the bonus factors were one of the few tools available to increase density in the County, and their project specifically needed these factors to provide more affordable housing units on the market.

Mr. Graves said that he hoped they could get some clarity on whether their particular project would be grandfathered in, because they had a preliminary site plan approval based on their BZA meeting, or if they would be back to 21 units and have to redesign their project. He mentioned that this disproportionately and unfairly impacted properties subject to the Places29 master plan and the southern and western neighborhoods master plan. He said these were the only two master plans that had land use designations that were not listed as residential as a recommended use and did not provide density ranges. He said the most recently updated master plans, the Crozet master plan and Pantops master plan, listed density ranges for land use designation. He said that those included office, R&D, flex, light industrial, and commercial mixed use that listed residential as a recommended use.

Mr. Graves said that properties within the Places29 plan and the southern western neighborhoods plans are unfairly impacted simply because their master plans have not been updated in more than eight years. He said that they were currently applying for a rezoning to take it from R6 to R15 to increase that density, which took a lot of time, adding a year to the project and making it harder to achieve. He requested that the ZTA be denied or deferred to allow additional time for property owners impacted by the ZTA to consider how it might affect their properties.

Mr. Bivins said that there were no more speakers and asked if staff would like to respond or add comments.

Mr. Fritz said that there were two main comments he had heard regarding the issue at hand. He said one was how the new ordinance affected this particular project, and if they had received initial site plan approval under the prior ordinance, they could proceed as long as they remained vested. He said the other issue he mentioned was how it might disproportionately affect Places29. He explained that based on the way the Board of Zoning Appeals made their decision, it was theoretically possible for this to apply across a much broader range of comprehensive plan designations. He said that this would mean that all properties conventionally zoned without proffers or planned developments in those designations could be affected by the new ordinance. He said that his opinion was that it would be inconsistent to have a density increase within those designations, and that such an action should be taken through a zoning action by the Board of Supervisors.

Ms. Firehock said that she was aware they were not making a zoning decision on the case and her intention was to understand which bonus density factors had been utilized.

Mr. Fritz said that he did not recall the reasons and added that he could look it up.

Ms. Firehock said that she understood the request to mean that the comprehensive plan was the governing document, and that any attempt to include additional density factors for areas not designated as such by the plan would be unacceptable.

Mr. Fritz said that the zoning text ordinance was viewed as a tool to implement the recommendations of the comprehensive plan. If the comprehensive plan did not recommend a density above and beyond, he believed that the bonus factor should not be administratively applied. He said that instead, they should be decided upon by the Board of Supervisors during a rezoning process.

Ms. Firehock asked how I would interpret what the applicant had said about the places where the density was not specified, where there was not a range and it just said "residential." She asked if that was an issue.

Mr. Fritz said that the rezoning of property to residential may or may not be considered as a factor in the rezoning. He said that if the Board of Supervisors intended to allow bonus density to achieve affordable housing, it could be written into the comprehensive plan. He said that the way the ordinance had been interpreted is that the number of units allowed through bonus density was based on the comprehensive plan. He explained that they were trying to align the zoning ordinance with the comprehensive plan. He recommended that in the updated comprehensive plan, it should be made clear whether or not bonus factors can be applied if there was an upper limit or if it can be applied for specific projects.

Ms. Firehock said that they were in the process of updating their comprehensive plan and would do the necessary due diligence to ensure clarity for everyone.

Mr. Fritz said that if the zoning ordinances required amending in order to align with an updated comprehensive plan, then that would be the appropriate moment to take action.

Mr. Moore said that the proposal was in an R6 zone with a proposal to rezone to R15. He noted that each of those comes with by-right residential uses with density allowances and bonus factors. He asked why office, light industrial, and the other designations needed the amendment.

Mr. Fritz said that the zoning text amendment was not about any particular project but rather a decision of the Board of Zoning Appeals. He said that he did not know the details of the project that led to the appeal, but he explained that it involved office, industrial, and other uses with residential as a secondary use. He said that the comprehensive plan recommendation included this language, which specified that residential is a secondary use in certain areas. He noted that there are also areas where residential is not specified as a primary or secondary use. He clarified that if someone were to apply for bonus density, they would need to meet specific qualifications and could only go up to the bonus density limit. He said that if the comprehensive plan simply listed residential without any range or qualification, this language would remove the requirement for an administrative bonus density.

Mr. Herrick said that the zoning text amendment was designed to address situations where the comprehensive plan did not specify a numerical density. He explained that the Places29 master plan currently specified residential as a secondary land use in the office, R&D, flex, and light industrial land use designation but did not give a number. He said that the zoning text amendment was necessary to provide guidance for those situations where the comprehensive plan did not provide a specific density requirement.

Mr. Moore said that when he was looking at the zoning map, there were zones indicating specific planned developments or other regions with varying R factors.

Mr. Fritz said that the current language and the proposed language would not apply to any property that is a planned development, neighborhood model, PRD, or any of those. He said that it would not apply to those or to any property that is subject to proffers that limited the amount of development. He said that it had always been applicable only to conventionally zoned residential districts.

Mr. Herrick said that one must take into account the interaction between the zoning district and the comprehensive plan. He explained that the zoning provided a foundation for calculating the density, but he emphasized the need to refer to the comprehensive plan to determine any caps on the applicable bonus density.

Mr. Bivins said that it was mentioned that if there was a desired change, there is a path for that to occur.

Mr. Fritz replied yes.

Mr. Bivins said that the purpose of the policy was to delineate the opportunity on a specific type of land, so as not to freeze out other potential opportunities.

Mr. Fritz said that it would limit the opportunity for an administrative bonus density to be given if it exceeded the density recommended in the comprehensive plan.

Mr. Bivins said that the decision was made in contrast to a legislative approach.

Mr. Fritz said that legislative was always available.

Mr. Bivins noted that there were options available.

Mr. Carrazana moved to recommend the approval of ZTA202300 with the conditions contained in Attachment 2. Ms. Firehock seconded the motion. The motion carried unanimously (4-0). (Mr. Clayborne and Mr. Missel were absent.)

Adjournment

At 7:37 p.m., the Commission adjourned to September 26, 2022, Albemarle County Planning Commission meeting, 4:00 p.m.



Kevin McDermott, Acting Director of Planning

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

Approved by Planning Commission
Date: 10/10/2023
Initials: CSS