

**Albemarle County Planning Commission  
Final Minutes April 23, 2024**

The Albemarle County Planning Commission held a public hearing on Tuesday, April 23, 2024, at 6:00 p.m.

Members attending were: Fred Missel; Luis Carrazana; Julian Bivins; Karen Firehock; Nathan Moore; Lonnie Murray

Members absent: Corey Clayborne

Other officials present were: Michael Barnes, Director of Planning; Andy Herrick, County Attorney's Office; Syd Shoaf; Bill Fritz; Jodie Filardo; Bart Svoboda; and Carolyn Shaffer, Clerk to the Planning Commission.

**Call to Order and Establish Quorum**

Ms. Shaffer called the roll.

Mr. Missel established a quorum.

**Other Matters Not Listed on the Agenda from the Public**

There were none.

**Consent Agenda**

Mr. Bivins motioned the Planning Commission adopt the consent agenda, which was seconded by Mr. Murray. The motion passed unanimously (6-0). (Mr. Clayborne was absent)

**Public Hearings**

**ZTA202300008 Grading Standards and Steep Slope Standards**

Bill Fritz, Development Process Manager, said that in the current ordinance, a 10-foot maximum retaining wall height was applicable across the entire County. He said that however, in the steep slopes overlay district, which is within development areas only, the maximum retaining wall height was reduced to 6 feet. He said that this regulation led to situations where property owners with managed steep slopes and areas outside of steep slopes had different allowed wall heights.

Mr. Fritz said that the 6-foot limit was initially chosen without a specific engineering purpose and was later replaced by a 10-foot limit for the rest of the County based on engineering considerations. He said that despite these height differences, both types of walls could still be required to have screening due to their objectionable nature. He said that before moving on to the proposed ordinance, he asked if there were any questions regarding the existing regulations.

Mr. Carrazana asked if it was only in the development areas where the 6 feet versus 10 feet became a difference.

Mr. Fritz said that was correct, because steep slopes only exist within the development areas. He said that when moving into the rural areas, they had critical slopes, and they could not build on critical slopes unless they got a special exception. He said that if allowed by a special exception, they could build a 10-foot wall.

Mr. Missel asked if that was the current process.

Mr. Fritz said yes. He said that if someone was outside the development area on critical slopes and wanted to put a retaining wall in, they would need a special exception first in order to build anything. He said that the proposed ordinance did not change that but raised the height of retaining walls on steep slopes to 10 feet, ensuring uniformity in their design and administration.

Mr. Fritz said that the current ordinance limited wall heights to either 10 or 6 feet without any option for an increase. He said that the proposal was that special exceptions be permitted, which could be granted for improvements requiring corridors like roads, trails, and paths. He said that these exceptions must be tied to the comprehensive plan and provide a public benefit. He said that they could not be used as a pretext for personal gain, such as constructing a taller wall for individual convenience or cost-saving purposes.

Mr. Fritz said that when considering special exceptions, the Board of Supervisors must evaluate how the proposed development impacts other features in the area, such as pedestrian infrastructure and the view from adjoining properties. He said that the focus of the amendment was that the height increase of retaining walls would only be considered if necessary for a public purpose, such as operating the facility or if rerouting the road or trail proves too costly in terms of land acquisition. He said that this amendment specifically targeted special exceptions, and that was all that it did. He said that it was pretty narrow in terms of zoning text amendments.

Mr. Murray said that he was still struggling with the concept of public purpose, which can indeed be quite broad. He said that when considering roads and trails as examples, one might question whether providing access to a subdivision through easier roadways or constructing a higher wall serves a public purpose.

Mr. Fritz said that when examining the special exceptions, it discussed that it would not be consistent with the prudent use of public funds because there were no public funds. He said that if it would require rerouting or redesigning improvements to an extent that they would not serve their intended purpose, then maybe. He said that however, they should consider previous language regarding significant increases in maintenance costs and unsafe designs for users and maintenance personnel. He said that the Board of Supervisors had the flexibility to allow improvements based on these factors.

Mr. Fritz said that the text was intentionally written in a narrow manner to provide the Board of Supervisors with the necessary flexibility. He said that they anticipated situations where a project involved an improvement not owned by the public but still desirable by the County. He said that for instance, the road connecting 5th Street and Avon, which Wegmans constructed without a 10-foot retaining wall that is present in the city. He said that in this case, if the retaining wall had been within the County, they must assess how it affected the road. He said that the County had really wanted a connection between there. He said that the Board could take this into account during their deliberation process.

Ms. Firehock said that she had a question regarding a situation she observed in Virginia. She said that in cases where someone constructs a structure in a floodplain, they may remove the floodplain by backfilling and building a high retaining wall. She said that consequently, the area was no longer considered a floodplain. She asked if someone arguing that their lot cannot be developed unless they elevate it out of the floodplain, whether this action aligned with serving a public purpose or merely involved eliminating the floodplain by backfilling and constructing a retaining wall.

Mr. Fritz said that it would be very difficult to establish a finding for that under the special exception criteria. He said he was not sure how one could achieve this, but he also struggled to understand how a special use permit in the floodplain could be bypassed. He said that as a result, there were two significant hurdles there.

Ms. Firehock said that she appreciated the County's commendable approach towards prohibiting development in floodplains, where it was not a good place to build. She said that she wanted to confirm that the proposed changes would not affect that at all.

Mr. Fritz said that considering a hypothetical scenario and taking into account the language used in this context, as someone with experience in reviewing special exceptions, it would prove challenging for staff members to establish the necessary findings.

Mr. Moore said that for clarification if one was located in a rural area and possessed both a critical slope and a preserved slope on their property, it was necessary to obtain special permission before constructing any retaining walls within the development area.

Mr. Moore said that for clarification, if one was located in a rural area, and had a critical slope, or in the development area and had a preserved slope on their property, it was necessary to obtain special permission before constructing any retaining walls.

Mr. Fritz said that in the development area, one would not even be able to come in; a rezoning request would be necessary to change the designation from preserved to managed or to remove it entirely, and in the rural areas they would need a special exception.

Mr. Moore said that currently, in the development area, one could construct a retaining wall by right on a managed steep slope.

Mr. Fritz said that that was correct.

Mr. Missel, said that he assumed that the code requirements for railings, considering potential walkways behind those walls, would remain unchanged.

Mr. Fritz said that that was correct. He said that none of the other standards for retaining walls would be changed. He said that they maintained, for instance, the existing reverse slope and steps between walls. He said that any wall over two feet in height required a building permit. He said that it was during the building permit review process that one would determine if railings or other safety measures were necessary.

Mr. Missel opened the public hearing. He asked if any members of the public wished to speak on this item. Seeing none, he asked the Clerk if there were any speakers signed up online.

Ms. Shaffer said that there were none.

Mr. Missel closed the public hearing and the matter rested with the Planning Commission.

Mr. Murray said that he had some concerns, particularly with the mention of 5th Street Station, as he understood from that comment that the reason for the large wall there was due to Charlottesville. He said that it would be unfortunate to see such an occurrence in Albemarle County. He said that certainly, there exists a situation where growth areas can become canyonized, especially since they do not protect or account for intermittent streams within those areas; these often get filled and covered with pipes.

Mr. Murray said that an important point to consider was the distinction between preserved and managed slopes. He said that when this concept was initially proposed, it aimed to differentiate between areas already impacted or possibly unnatural, so they had differing standards for them. He said that he almost wished he had brought a slide presentation because it felt necessary.

Mr. Murray said that if they have a natural slope like the one in question, removing part of it results in a steeper slope on one side. He said that the fill is then removed or shifted here, creating potentially two new managed slopes on either side of the original. He said that the question arises: when they permitted development within these managed slopes, which were likely once natural slopes, were they exacerbating the situation or improving it?

Mr. Murray said that the primary concern that needed to be addressed was how they could improve the situation to avoid future issues, such as erosion, safety hazards, and canyonizing the growth area. He said that preserving the sense of place in the Piedmont should also be a priority, as flattening the landscape can lead to retaining walls and loss of topography. He said that he was concerned about any policy that incentivized this flattening, as it might exacerbate existing problems. He said that while they discussed exceptions for higher retaining walls, the stream protection ordinance had yet to be revisited. He said that it was concerning that they could devote multiple meetings to this issue but had not resolved it in over ten years.

Mr. Bivins said that he would aim to strike a balance between Mr. Murray's concerns and the need to address the 5% of County land in question. He said that he appreciated the emphasis on preserving the Piedmont topography on one side of the Blue Ridge but also highlighted the importance of considering the 95% of rolling hills in the County. He said that while he acknowledged the significance of stream protection, he pointed out that farmers and the community faced challenges when implementing such measures.

Mr. Bivins said that during his tenure on the Commission, any attempts to advance the conversation about stream protection had been met with strong opposition from a capable lobbying group. He said that they argued that they could not be good farmers and adhere to stringent stream protection rules simultaneously. He said that he understood the resistance but believed they should consider adopting the Chesapeake Bay Act. He said that this would provide a set of ordinances and rules that could help them make significant strides in stream protection.

Mr. Bivins said that, however, he reminded everyone that they were discussing only 5% of the land owned by their fellow citizens. He said that every time they tried to make progress on this issue, there was an outcry. He said that he had refrained from mentioning it earlier that day because he wanted to be diplomatic, but the Avinity project in 2017 illustrated this point.

Mr. Bivins said that a family sought permission to build a modest multifamily development adjacent to Avinity and requested using a nearby street as an emergency access point. He said that they must strike a balance between preserving their natural resources and accommodating the needs of their community members. He said that adopting the Chesapeake Bay Act could help them achieve this goal while addressing stream protection concerns in a more comprehensive manner.

Mr. Bivins said that he had advocated for preservation but advised people to purchase the property if they truly wanted to control the development of it. He said that they had the opportunity to build a modest, family-owned multi-family complex, but Avinity declined because they did not want to share their road. He said that this project was different, and he understood its uniqueness. He said that to see a high retaining wall, they should see behind Berkmar Drive.

Mr. Bivins said that the walls were constructed there to accommodate more houses, as the land was valuable for development. He said that despite his concerns about the wall's safety, he acknowledged that it was well-built and expensive. He said that the main point was that this policy applied only to 5% of the County, while 95% retained its gently rolling hills. He said that they still would not address stream protection due to a powerful lobbying group in their County that refused to let that go forward.

Mr. Missel said that he would like to expand on the previous point as it relates to the height of the wall. He said that considering the same scenario, he thought about the aesthetic impact of a higher wall. He said that specifically, if they increase the wall's height by four feet, as opposed to the alternative of six feet and then four feet behind, they can potentially plant in front of the four-foot step. He said that however, he also realized that increasing the wall's height provides more development area, as mentioned in the staff report.

Mr. Missel said that despite the minor aesthetic impact due to the low percentage of walls seen, focusing on the entrance corridor, there is a possibility that the ARB may suggest modifications if an unappealing 10-foot wall appears. He said that they might recommend screening or stepbacks, for example. He said that they have addressed the concerns from an entrance corridor perspective.

Ms. Firehock said that it was not by right. She said that they still have to come in and approve a public purpose and ask for permission, which could be denied.

Mr. Fritz said that going beyond 10 feet would require special permission.

Mr. Fritz said that going beyond 10 feet would require special permission. He said that regarding the entrance corridor, one of the factors to be considered when drawing up whether an area was preserved or managed was whether or not it was within an entrance corridor and important to that entrance corridor. He said that the areas where slopes were important to the entrance corridor were placed into preserved slopes and cannot have walls built on them at any point.

Mr. Bivins said that at one point, staff mentioned a project examining preserved slopes across the County. He said that they now had access to new technology for more efficient assessments. He said that when creating the new map and overlays, it would be beneficial to utilize this technology intentionally. He said that this would help them understand the steep slope overlay in today's context.

Mr. Bivins said that considering Mr. Murray's remarks, the Berkmar Drive construction was performed when VDOT made that road because they created those slopes by moving the dirt to those locations. He said that they did not know at that time that they would create housing over there, so it had unintentionally impacted those residents. He said that it remained unclear how they could communicate these concerns to VDOT.

Mr. Murray said that they ended up putting a lot of trails through riparian areas, and that had negative consequences. He said that the retaining walls could exacerbate the issue by making the trails inaccessible. He said that he acknowledged Mr. Bivins' comment regarding the 5% and agreed that they should prioritize development within the growth area. He said that however, it was crucial to maintain a livable environment as well. He said that overemphasis on retaining walls and landscape modification could render the growth area uninhabitable, which he would hate to see.

Mr. Moore motioned that the Planning Commission recommend approval of ZTA202300008 Grading Standards and Steep Slope Standards, which was seconded by Mr. Carrazana. The motion passed (5-1). (Mr. Murray opposed and Mr. Clayborne was absent)

### Adjournment

At 7:30 p.m., the Commission adjourned to April 23, 2024, Albemarle County Planning Commission meeting, 6:00 p.m. in Lane Auditorium.



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Michael Barnes, Director of Planning

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

Approved by Planning Commission
Date: 05/14/2024
Initials: CSS