

**Albemarle County Planning Commission
FINAL Minutes September 28, 2021**

The Albemarle County Planning Commission held a public hearing on Tuesday, September 28, 2021 at 6:00 p.m.

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

Members absent: Luis Carrazana, UVA representative.

Other officials present were Andy Reitelbach; Kevin McDermott; Andy Herrick, County Attorney's Office; Mariah Gleason; Rebecca Ragsdale; Jodie Filardo; Amelia McCulley; Francis MacCall; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Mr. Bivins said the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(16), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster." He said opportunities for the public to access and participate in the electronic meeting will be posted at www.albemarle.org/community/county-calendar when available.

After Ms. Shaffer called the roll, Mr. Bivins established a quorum.

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

Ms. More moved to approve the consent agenda.

Mr. Bailey seconded the motion, which passed 7-0.

Mr. Bivins asked staff to let the applicant for SUB202100060 Glenbrook Phase III to know that he may move forward, pursuant to this approval.

Public Hearings

ZTA202100002 Public Hearing on Zoning Text Amendment to clarify the Board of Supervisor's authority to approve Special Exceptions, consistent with case law

Principal Planner Rebecca Ragsdale reported that this zoning text amendment (ZTA) is a clarification and clean up to the references to the Planning Commission or administrative officers that do not actually have the authority to grant the waivers, variations, or modifications referenced in the ordinance. Ms. Ragsdale noted that Mr. Herrick has worked on this a great deal and is available as questions came up. She said that in 2012, there was a significant court case that established that no administrative staff person or Commissioner has the approval to grant waivers or modifications of the zoning ordinance; administrative staff refers to the planning director or

agent, or the zoning administrator. She stated that the planning director used to include variations to codes of developments and application plans associated with plan developments—so those types of actions must be legislative.

Ms. Ragsdale stated that in 2012, the County added special exception provisions to the ordinance, which have been updated since then, and as part of their overall comprehensive zoning modernization project in the board work program, this is on the list to get addressed as part of getting the ordinance ready for more substantive things. She noted that this are the waivers and modifications to the zoning ordinance, but that does not include the subdivision ordinance because there is authority for the Commission to grant those waivers.

Ms. Ragsdale reported that the draft was about 30 pages of corrections, mostly replacing the authority where there were outdated references, and some sections needed to be deleted because they included an appeals process that is no longer needed. She gave an example that if the Planning Commission denied something, it could be appealed to the Board, but currently it would go straight to the Board. She said that the section on administrative waivers needed to be repealed altogether because they cannot do that.

Ms. Ragsdale stated that the sections affected the most are Section 4, Section 5, Section 8, and a few things in Section 20B, the Downtown Crozet District. She noted that this is not the complete list of those sections where someone can seek a waiver or modification, and since 2012 when they've done other text amendment updates or introduced regulations into Section 5, they have updated it so that it is consistent with state law, such as wireless regulations, homestays, lot access, height, lighting, and noise. She said that Section 5 is structured in a way that states the Commission can waive or modify any of those regulations, provided that it's not expressly prohibited in the specific criteria of the regulations.

Ms. Ragsdale said that Section 8 is the section of the ordinance that speaks specifically to the planned development districts, with variations typically needed in the Neighborhood Model District, where they have the most specificity. She mentioned that when the special exceptions were adopted in 2012, the County felt that it was important to have flexibility in these places in the ordinance. She emphasized that it isn't taking away any authority that the Commission has now; it is just remnant updates.

Ms. Ragsdale stated that since staff provided them with a draft and advertised the ordinance, they took a second look at it carefully in terms of a provision where the Commission or an agent would actually be waving something, and the County Attorney has identified some things they do not have to change, and there are also some minor technical corrections. She said that the Commission's motion for approval is shown with changes on Slide 4, and this would move onto the Board for their December 1 meeting for a public hearing for them to review and adopt the text amendment.

Mr. Bivins asked Mr. Herrick to speak on the item.

Mr. Herrick responded that he didn't have a lot to add to what Ms. Ragsdale had reported, as she has done an excellent job covering this. He stated that this dates back to the U.S. Supreme Court's Sinclair decision in 2012, and at that time, some ordinance revisions were made that dealt with the immediate issue. He explained that the Supreme Court ruled that special exceptions were legislative decisions and the local governing body—which in Albemarle's case is the Board of Supervisors—couldn't delegate its legislative decisions either to administrative agents or the

Planning Commission. He said that revisions were made in 2012, and they are just going back to make revisions elsewhere in the ordinance so it's easier to understand and so that there aren't places in the ordinance that give the Commission or administrators powers that are reserved to the Board. He reiterated that it doesn't involve a policy change or shift away from the Planning Commission; it is simply implementing what the Supreme Court said must be done.

The Clerk indicated that there is no one from the public wishing to speak on this item.

Mr. Keller moved to recommend approval of ZT2021-02 as shown in the draft zoning ordinance, Attachment B in the staff report, with changes to the draft ordinance listed on Slide 4.

Ms. Firehock seconded the motion, which passed unanimously (7-0).

Old Business/New Business

There was none.

Items for Follow-Up

There were no items.

Adjournment

At 10:13 p.m., the Commission adjourned to October 5, 2021, Albemarle County Planning Commission meeting, 6:00 p.m. via electronic meeting.



Charles Rapp, Director of Planning

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

Approved by Planning Commission
Date: 10/19/2021
Initials: CSS