

**Albemarle County Planning Commission  
March 8, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, March 8, 2016, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Daphne Spain, Pam Riley, Jennie More, Bruce Dotson, and Tim Keller, Chair. Absent was Karen Firehock, Vice Chair. Bill Palmer, University of Virginia Representative, was present.

Other officials present were Megan Yaniglos, Principal Planner; Scott Clark, Senior Planner; Wayne Cilimberg, Acting Director of Community Development; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

**Public Hearing Item.**

**ZTA-2016-00002 Expedited Proffer Amendment**

The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-33.4, Uniform procedures for owner-initiated zoning map amendments and special use permits, 18-33.7, Owner-initiated zoning map amendments; authority to accept proffers, and 18-35.1, Fees, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Secs. 18-33.4 to authorize the Board of Supervisors to reduce certain application and process requirements that apply to applications for zoning map amendments (rezonings) if the application is only to amend existing proffers that do not affect use or density, 18-33.7 to reflect the changes to Sec. 18-33.4, and 18-35.1 to establish a new reduced fee of \$457.00 for applications for rezonings to amend existing proffers that do not affect use or density if the Board reduces application and process requirements. The proposed fee is authorized by Virginia Code § 15.2-2286(A)(6). A copy of the full text of the ordinance, and the documentation pertaining to the proposed fee being imposed, is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Wayne Cilimberg)

Mr. Cilimberg presented a PowerPoint presentation to summarize the executive summary for ZTA-2016-00002 Expedited Proffer Amendment entitled LEGISLATIVE REVIEW - Proffer Amendments Not Affecting Use or Density.

This zoning text amendment really applies to proffer amendments which are legislative process rather than ministerial like the one the Commission was just dealing with. It actually has some relationship to amendments that were done a few years ago as an outgrowth of the Development Review Task Force and the Board of Supervisors' interest in 2010 as we look at how to satisfy and improve the public as well as the staff's interest in processing rezonings and special use permits.

### **Clarifying the Goal**

- Applicants want clarity
- Avoid Unnecessary and Burdensome Regulations
- Maintain Opportunities for Public Information/Input
- Maintain Community Quality in whatever process we had in place

### **Primary Interests**

- Applicants want clarity, consistency and reasonable predictability
- Staff wants information necessary to provide comprehensive review
- Public wants to be informed
- All want reliable decision-making timeframe

### **Specific Goal**

- Create a value-added process
- Provide clear expectations
- Reduce iterations of re-submittal
- Get decisions made most efficiently

### **History**

- Comprehensive Amendments Adopted by Board 12/5/12
  - Required pre-application meeting
  - More specific application requirements that came out of the pre-application meeting
  - Community meeting process
  - Application acceptance process
  - Possibility of work session(s) with Planning Commission and/or Board of Supervisors for particular projects
  - Included waiver provision of public hearing possibility for proffer amendments that do not affect use or density, but still required compliance with requirements for:
    - Pre-application meeting
    - Full application
    - Community meeting
    - Standard application fee
- **Board of Supervisors Resolution Of Intent**
  - Consider amendments that provide a simplified process for proffer amendments that do not affect use or density – at the Board's discretion.
  - The Board passed a resolution of intent on 1/6/2016 to consider amendments that would provide for that.

### **Proposed Ordinance Changes**

- **Allowance of simplified process for proffer amendments that do not affect use or density**
  - Waiver of public hearing(s)
  - Waiver of certain procedural requirements
    - Pre-application meetings
    - Work sessions

- Community meetings
- Waiver of certain application requirements
- **Reduced application fee - \$457** (As noted in the staff report \$457 is the same fee for special exceptions that go directly to the Board of Supervisors.)
- **Case by case reviews**
- **Board discretion** – There is no guarantee that any of them would, in fact, get the simplified process. But, at least they would have the opportunity to go to the Board of Supervisors to request that.

Based on a research just on the last few years the following are potentially eligible types of Proffer Amendments:

- Phasing of public improvements, particularly roads
- Change to character of public improvements
- Removal of certain public improvements – ex. interparcel connection
- Timing/sunset for public improvements/cash
- Change to cash proffer amounts
- Timing of requiring certain uses based on other uses – ex. commercial square footage based on residential units
- Change to private amenities – ex. trail, tot lot
- Phasing of development
- Change to form/character of development
- Change in location of features of development

If the county were to change its cash proffer policy and they had old proffers requesting a reduced amount and the policy called for a reduced amount that would be the kind of proffer amendment that could be subject to the expedited or simplified process.

**Factors to Consider in Determining in whether or not a proffer amendment can go through that more simplified process are:**

- Was the proffer as originally provided essential to the approval of the original rezoning?
- Does the change in proffer have a potential impact on adjacent properties not anticipated with the original rezoning?
- Has development already occurred within the rezoned area for which the current residents/businesses would have relied on the proffer or for which a change in the proffer would materially affect them?
- Is there a general public interest in the proffer as originally provided that would be materially affected by the requested change?

These kinds of questions will be good for staff to analyze in making recommendation to the Board regarding any particular request should these amendments be passed.

Staff has provided ordinance language and recommends the Planning Commission recommend the Board's approval of the zoning text amendment. Again, it does not guarantee any particular amendment will have that process approved for them. However, it does give them the opportunity to request it with the Board if they meet the requirements as set out in state law and in the County Code.

Mr. Keller invited questions for staff.

Mr. Lafferty asked if the director of planning has the discretionary part in this to carry it forward

to the Board.

Mr. Cilimberg replied that any request can go to the Board; however, it is only after a consultation with staff that such a request would be then sent to the Board. Then, of course, staff would be analyzing that request and advising the Board as to whether or not we felt that the request would be justified in that particular case.

Mr. Lafferty asked if the director and staff have control over notification and things like that.

Mr. Cilimberg replied that would be a decision of the Board as to how they felt a proffer amendment should be processed in a particular case.

Mr. Kamptner pointed out staff would make recommendations if they thought it was appropriate depending on the particular application.

Mr. Keller asked would this expedite the development process timeline.

Mr. Cilimberg replied it would certainly in cases where it is a fairly simple type of amendment that we have to otherwise go through two public hearings. Again, if you have some particular provisions that have been set out under our own policies that an amendment is attempting to address that is not about use or density in a process it does give it a lot quicker approval route. Very honestly that is why staff proposed the lower fee. Staff feels like it is similar to the special exceptions that the Board reviews and it has the potential for some of the amendments that we might get to reduce staff time.

Mr. Keller said given the governor's signature today this is all about past proffers and it really wouldn't have applicability going forward. He asked if they are looking back for this.

Mr. Kamptner noted he sent Mr. Cilimberg an email just before the meeting that may change everything, and it probably does. He suggested that we may want to adjust this ordinance. His expectation for the new projects that are going to be qualifying under the new proffer legislation in a number of those staff would recommend that the expedited process not be available because the level of servitude that is required in our analysis is such that it is just too risky for the county to expedite the process.

Mr. Cilimberg explained this is somewhat of a laymen's view of how this code change may affect us. It is supposed to be prospective, not effective or applicable to any of the zonings in place as of July 1, but those of the future. This is for amendments to proffers that have already been provided. So this would be a system in place to address amendment requests even after July 1 to projects that already have gotten approvals. The new projects will fall under the new process after July 1, and if they came in later for an amendment then they would be amending based on approvals that already took place under the new code provisions.

Mr. Kamptner pointed out that even for a new project if the applicant was suggesting to amend a proffer with respect to the phasing of the development and it was something that staff supported, then something like that would warrant an expedited review. As Mr. Cilimberg said when you are looking at this each request will be evaluated on a case by case basis; there will be a consultation with the director of planning, and then it also goes to the Board to weigh in and ultimately decide whether the expedited review should be allowed in a particular situation.

Mr. Keller invited other questions from the Commission.

Mr. Dotson said as he understands the two-step process that a property owner or developer would file what we are calling a request that would go to the Board to make a determination as to whether the amendment is major or minor.

Mr. Cilimberg replied that if it was not a use or density amendment the applicant developer would more than likely come in for a pre-application meeting with staff saying they want to do it. Staff may identify it as eligible or the applicant may say that they like to pursue this as an eligible type of amendment. After that the applicant would then submit that request and it would go directly to the Board with a staff recommendation.

Mr. Dotson asked since some staff time would have been invested in that if there is a fee for that request.

Mr. Cilimberg replied no, there is not. There are no fees now for pre-applications and this type of request is on the order of a pre-application. Very honestly it could end up being quicker or easier than a pre-application in some cases. In some cases we have an exploratory and then have to have a mandatory pre-application. So in this case if the exploratory discovers that this is possible we would just say make the request and staff will take it directly to the Board. However, staff will have to write an executive summary for the Board of Supervisors. So that is a commitment of time for staff that is not currently a commitment we have for pre-applications.

Mr. Benish said in terms of the fee for the work that staff does if that work in that preliminary process takes a lot of time it is probably an indication that it is not going to be recommended for that process. If there is a lot of assessment from a staff perspective of whether this request has merit or not that is probably the first red flag that it is not and most of those costs would incur through the full fee for the rezoning review.

Mr. Cilimberg said that staff was going to advise someone more than likely out of the pre-application process that this particular request does not look like a good candidate.

Mr. Dotson added or the request does look like a good candidate.

Mr. Cilimberg agreed and pointed out it is ironic that we have had a few cases of proffer amendments that were a use request that made all the sense in the world; however, under the code allowances we can't do that in the same way or process. As an example, staff had a very quick request to change a use in Old Trail that became the independent living facility, and we can't do that under this same process.

Mr. Dotson asked if that was because that was involving a use, and Mr. Cilimberg agreed because it is a use.

Mr. Dotson said he understands step 2 would be after the Board had made a determination whether this is a full application or an expedited application. He pointed out in the staff report there are 4 bullets that are identified on the second page that would guide the staff in reviewing such a request and those are not in the ordinance. He asked if there is some way that those can be endorsed by resolution or something else be able to deal with that since we don't put those in the comp plan, but want them to have some status. Since that is not part of the ordinance how do we deal with that?

Mr. Cilimberg replied one way would be for the Board to separately endorse or pass those as factors to be used in the procedures so it will become part of procedural requirements the Board sets out for the processing of that type of request. He recalled when we did the special exceptions with the Board that there was an accompanying procedural policy. He asked Mr. Kamptner to comment.

Mr. Kamptner pointed out the Board adopted a policy that kind of directed staff as to when it was appropriate for special exceptions to go directly to the Board and when they should first go to the Planning Commission before going on to the Board.

Mr. Dotson asked would it be helpful tonight when the Commission acts on this zoning text amendment to also request that a policy reflecting these four bulleted items be approved.

Mr. Cilimberg replied yes.

Mr. Kamptner noted the other fail safe in this process is even if the Board decides that a particular project is eligible for the expedited review it will come back to the Board. Then if unexpectedly there is public interest and there are some issues that may not have been identified, the Board can remand it to the Planning Commission, direct that public hearings be held and then it gets a different review than was originally envisioned.

Ms. Riley asked how many potential projects there would be since she was trying to get a sense of how many projects or applications there would be after July 1.

Mr. Cilimberg replied that he did kind of a seat of the pants estimate of about two a year that may have been qualifying as requested amendments in the past five years. It is hard to say once this is in place if that increases the number. However, something like a change to the proffer policy, which he knows Ms. Riley has been involved in looking at, if the Board ultimately passes any changes could instigate more requests of that type which may be eligible. It is hard to say the real number that they will be seeing.

Mr. Keller asked how many proffer projects are out there right now that are still in existence and could come back.

Mr. Cilimberg replied that the Commission has seen one and there are two more in process now; however, he did not know the exact number.

Mr. Keller asked if it was in the 30 range.

Mr. Cilimberg replied that it was not that many because actually the proffer policy was passed in 2008, and Mr. Kamptner noted it was actually adopted in 2007.

Mr. Benish said he thinks it is 6 or 8 projects since it is not many that actually utilize and were approved under the cash proffer policy.

Mr. Keller opened the public hearing and invited public comment.

Neil Williamson, representing the Free Enterprise Forum, said this is a great little ordinance that does not do much since it is permissive. What he wanted to do won't happen; however, it could

but just won't. He has written about and told the Commissioners about his concerns that he does not believe proffers belong in front of this body. He thinks that if the cash proffer policy changes, which he is anticipating will have to at some point, that those changes should go directly to the Board where it should be discussed. He thinks what will happen with this is someone will request it; staff will say no; it may go to the Board and the Board will agree with staff and say no and then send it back to the Commission. Whether that is right or wrong that does not matter. Staff might even say yes and he believes the Board will likely say we will send it to the Planning Commission because that provides political cover that we have done what we are supposed to do. He likes it and suggests they run with it since it is not going to streamline a whole lot of anything with maybe two applications. He will say when you look at some of the proffers that are out there, including the plans that are proffered, there are some amendments that are so minor they really are crying for this. That is because of the level of detail that is being required at the rezoning phase. That is neither here nor there since that may help one or two projects get things done a month or two, and maybe three months faster. Three months is a good amount; but, he did not think this is going to change the world. He did not think staff is going to support all cash proffers going directly to the Board. If it is only the cash proffers that is okay; but, not everybody agrees. He thinks this is a very permissive ordinance that allows staff the ability when driveways have to change from one site to another or something that has been proffered in phasing the commercial to the capacity of the residential and you wanted to have the commercial in sooner than the residential that it would allow that. But, he would leave it with the Commission in this way.

Mr. Keller invited further public comment. There being no further public comment, the public hearing was closed and the matter before the Commission. He invited further discussion. There being no further discussion, Mr. Keller noted the Commission would go straight to the motion.

**Motion:** Mr. Dotson moved and Ms. Spain seconded to recommend approval of ZTA-2016-00002 Expedited Proffer Amendment regarding County Code regulations processing certain rezonings on the basis of the recommendation of staff and also include the recommendation that the Board adopt a policy to parallel the ZTA reflecting the factors that staff has proposed go into evaluating such request and that they forward that recommendation to the Board of Supervisors.

Mr. Keller invited further discussion. There being none, he asked for a roll call.

The motion carried by a vote of 6:0. (Firehock absent)

Mr. Keller pointed out the motion for ZTA-2016-00002 carried unanimously and the recommendation would be forwarded to the Board of Supervisors.

(Recorded and transcribed by Sharon Taylor, Clerk to Planning Commission & Planning Boards)