

Albemarle County Planning Commission June 20, 2017

The Albemarle County Planning Commission held a public hearing on Tuesday, June 20, 2017, at 6:00 p.m., at the County Office Building, Room #241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Daphne Spain; Mac Lafferty; Pam Riley; Jennie More; and Bruce Dotson. Commissioners absent were Karen Firehock, Vice Chair and Bill Palmer.

Other officials present were Rachel Falkenstein, Senior Planner; Amelia McCulley, Zoning Administrator/Director of Zoning; Frank Pohl, County Engineer; David Benish, Chief of Planning; Ron Higgins, Chief of Zoning; Andrew Gast-Bray, Director of Planning; Sharon Taylor, Clerk to Planning Commission; and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

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

Consent Agenda

- a. [Resolution of Intent](#): Housekeeping II
- b. [Approval of Minutes](#): November 22, 2016, December 13, 2016 and March 7, 2017

Mr. Lafferty moved to approve the Consent Agenda as presented. Ms. Riley seconded the motion, which passed unanimously 6-0 (Firehock absent).

Public Hearing:

- a. [ZTA 2016-00006 Housekeeping](#) – The Planning Commission will hold a public hearing on June 20, 2017 to receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code: Amend Section 18-35.5 to waive the zoning text amendment or special use permit fee for a nonconforming use which possesses an Albemarle County business license and has operated continuously at the same location for at least fifteen years and has paid all real estate, business license, and personal property taxes related to such use; Amend Section 18-32.6 to clarify that specifications for recreational facilities comply with Sections 18-4.16-4.16.3; Amend Sections 18-4.15.3, 18-4.15.5, 18-4.15.8, 18-4.15.9, 18-4.15.10, and 18-4.15.11 to amend the definition of advertising vehicle, to establish criteria for a sign permit exemption for qualifying advertising vehicles, to prohibit certain advertising vehicles from displaying signs, exempt certain advertising vehicles from maximum sign number, area, height, and minimum sign setback regulations in Sections 18-4.15.9, 18-4.15.10,

and 18-4.15.11, and prohibit certain advertising vehicles in all zoning districts that do not meet the criteria in amended Section 18-4.15.5; Amend Section 18-5.1.11 to remove duplicative language concerning commercial kennels and veterinary and animal hospitals and to clarify the maximum decibel level from all confinements; Amend Section 18-5.1.20 to clarify that underground storage tanks and loading facilities served by the public water supply are not subject to a 100 foot lot line setback applicable to above ground storage tanks and loading facilities; Amend Sections 18-3.1 and 18-5.8 to clarify that the term industrialized building encompasses the term temporary nonresidential mobile home and replace the term temporary nonresidential mobile home with the term temporary industrialized building; Remove condominiums as a by-right or special permit use in Section 18-20B.2; Remove the terms sanitariums, convalescent homes, and rest homes from Sections 18-3.1, 18-4.12.6, 18-14.2.2, 18-15.2.2, 18-16.2.2, 18-17.2.2, 18-18.2.2, 18-20.3.2, 18-20B.2, 18-20B.4, and 18-24.2.2; To amend Sections 18-3.1, 18-10.2.1, 18-10.2.2, 18-12.2.1, 18-13.2.1, 18-14.2.1, 18-15.2.1, 18-16.2.1, 18-17.2.1, 18-18.2.1, and 18-19.3.1 amend the definition of group home, delete the definition of home for developmentally disabled persons, establish group homes as a by-right use in the Rural Areas zoning district, and remove the term homes for the developmentally disabled from the Albemarle County Code; Establish a thirty-five foot maximum structure height in cluster developments located in the R-1, Residential, zoning district; Amend Section 18-22.2.2 to remove fast food restaurant as a use authorized by a special use permit; Amend Section 18-23.2.2 to remove research and development activities and medical or pharmaceutical laboratories as a use authorized by special use permit; Amend Section 18-21.7 to permit commercial zoning district construction activity without a buffer zone when the construction activity occurs in a commercial zoning district across the street from a residential or rural areas zoning district; Amend Section 18-3.1 to establish a definition for temporary family health care structures and to establish Section 18-5.1.62 to establish regulations for temporary family health care structures; Amend Sections 18-30.3.5, 18-30.3.15 and 18-30.3.17 to amend the definition of accessory structure in the Flood Hazard Overlay District, establish regulations for accessory structures located in the floodplain, and establish a variance process for accessory structures larger than 200 square feet but not exceeding 600 square feet to locate in the floodplain; Amend Section 18-30.3.11 to establish a definition of fine grading and to permit flood control, stormwater conveyance, and environmental restoration projects in the floodway and floodway fringe if the projects do not change the base flood plain elevation or horizontal limits to the flood plain; Amend the maximum height regulations to clarify setback requirements in Sections 18-18.8, 18-17.8, 18-19.7, 18-21.4, and 18-20.8.4; Amend section 18-3.1 to add the definition of religious assembly use; Amend sections 18-3.1, 18-4.12.6, 18-5.1.27, 18-10.2.2, 18-12.2.2, 18-13.2.2., 18-14.2.2, 18-15.2.2, 18-16.2.2, 18-17.2.2., 18-18.2.2, 18-19.3.2, 18-20.3.2, 18-20B.2, 18-22.2.1, 18-23.2.1, 18-24.2.1, and 18-30.2.5.1 to replace the term church with the term religious assembly use; Amend Section 18-4.19 establishing new infill and non infill setback and stepback requirements; and Amend Section 18-4.20 establishing new setback and stepback requirements; Amend Section 18-10.2.2 by removing the reference to adjunct cemetery; and Amend the maximum height regulation in section 18-26.4 to clarify stepback requirements and remove a reference to standard ratios. A copy of the full text of the proposed ordinance amendments 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. (Amelia McCulley)

AND

b. [STA 2016-00003 Housekeeping](#) – The Planning Commission will hold a public hearing on June 20, 2017 to receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code: Amend Section 14-403 to clarify that each lot in a subdivision shall have frontage on an existing or proposed public or private street. A copy of the full text of the proposed ordinance amendments 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. (Amelia McCulley)

Ms. McCulley addressed the Commission and introduced Lea Brumfield, who replaced Mandy Burbage as a senior planner. Ms. McCulley stated that staff had collated the amendments being presented, and said there was a periodic need to update, correct and clarify regulations. She said that as staff, the public and applicants work with regulations, they take note of problematic wording – but the longer between housekeeping amendments, the longer the list becomes, so they were faced with an extensive, cumbersome list.

Ms. McCulley said the origin for these amendments stemmed from a 2016 resolution of intent, and there had been a change in priorities based on the Board of Supervisors putting the farm winery, brewery, and distillery work ahead of other priorities. She stated that this put things like the housekeeping amendment on the back burner, coupled with the departure of staff member Mandy Burbage – which was the only position dedicated to ordinance work.

Ms. McCulley stated that in her entire career with the County, she had never seen this many ordinance amendments in the works, with 40 currently in the pipeline. She said that many of these items fell into the category of things staff feels they can streamline, as housekeeping amendments or administrative changes necessary prior to recodification. Ms. McCulley stated that others were more substantive and related to work plan policy items, the strategic plan, etc. She noted that all the amendments in the works, Mr. Kamptner had taken a resolution of intent to the Board of Supervisors on April 5 that included 20 resolutions for separate ordinance amendments. She mentioned that most of those involved work needing to be done before recodification – because recodification was really just reformatting and did not address reorganization or substantive changes. She cited an example of use categories in 30.3.11, Flood Hazard Overlay District as a table of uses. Ms. McCulley stated that this was the way most codes were going, and the way Albemarle wanted to go, as people could read and understand them better. She said that one resolution related to putting commercial uses in a table, another related to putting residential uses in a table, so some of the changes

were as simple as that. Ms. McCulley noted that they also have many definitions in many different sections in the ordinance, so another goal was to consolidate so people knew they could find them all in one section.

Ms. McCulley reported that there were fewer substantive changes, there were several amendments that warranted an expanded public engagement process – some of which had stakeholder interest and required a great deal of work, such as Rio/29 Small Area Plan implementation. She stated that there was a request from the April 5 resolution to reconsider use categories for commercial recreation in the rural areas – which currently included just swim, golf and tennis – and that was a substantive change. Ms. McCulley said that this was so substantive and needing of public engagement, there would be a work session with the Board and with the Planning Commission.

Ms. McCulley stated that the last item under these amendments was modernization of the zoning code, which was interpreted differently by different people, and some of it involved taking the input heard during the economic development strategic plan. She noted that the plan had not been completed because here wasn't a director yet, but there were a lot of focus group opportunities by which they heard that the County ordinance was out of date with what the community wished to achieve – and that substantive work would have its own process.

Ms. Spain asked if form-based code would be introduced in the “modernization of the code” area.

Ms. McCulley responded that it would initially be introduced under number one, as that would pilot and inform how to address it in the modernization area.

Ms. McCulley stated that if there was anything the Commission was not comfortable with tonight, it could be pulled aside and put into housekeeping. She said that would be a separate public hearing and it was a separate resolution of intent on their Consent Agenda at this meeting.

Mr. Keller mentioned that this was why the Consent Agenda included the housekeeping item, so there was a mechanism for them to postpone work if necessary.

Ms. McCulley added that there would also be fewer amendments, so it would be easier to focus in on changes.

Ms. McCulley reported that the first housekeeping item was correcting and updating terms, as there were many that were incorrect or were not consistent with building code, the land use plan amendment (LUPA), etc. She stated that the term “church” was inappropriate and was being changed to “religious assembly use.” Ms. McCulley said that the term “temporary non-residential mobile home” really pertained to office trailers or classrooms, so that would be changed to the current term recognized in the State Code. She stated that under “correcting and updating terms,” Ms. More had pointed out the change related to “rest home, convalescent home, sanatorium, nursing home,” and

staff removed everything but “nursing home” in the draft ordinance before the Commission. She explained that “nursing home” on its face would not incorporate assisted living under State Code, and staff did not intend to remove uses they currently have. Ms. McCulley said that because she does not have enough time to get that corrected tonight, she would like them to consider pulling it out and putting it in housekeeping also.

Ms. Spain asked if hospice would be involved in the same change or in the group home definition.

Ms. McCulley responded that hospice would probably be covered under one of the current terms either as nursing home or as hospital, because it could go under two different terms.

Ms. McCulley stated that there were several areas requiring compliance with State Code as listed in the staff report, and those sections were provided in the summary – with the attached ordinance accomplishing that compliance. Ms. McCulley said that several items have conflicting text, such as condominiums, which are a form of ownership and not a land use, and thus should be regulated accordingly. She stated that the structure height under low-density residential district is 35 feet, but was shown as 30 feet in the chart for “cluster bonus.” Ms. McCulley said that in Item C there was a practical fix, as it did not make sense to require a buffer zone when commercial zoning is across the road from the residential or rural area zoning. She noted that the standard landscaping requirements along the street for that commercial development would apply, as this item addresses the buffer zone of the non-disturbance.

Ms. McCulley reported that there is also a conflict represented in Item D, relating to requirement for a higher standard for sound-proof confinements in commercial kennels as opposed to non-sound proof, so that needs to be adjusted. She said that Item E corrects overlap where there are criteria that are the same between what is a permitted advertising vehicle and what is prohibited, so it’s not a clear indication of which is which. Ms. McCulley stated that Item F relates to a mistake made in the industrial district amendments that was really intended for bulk petroleum product sales and storage – but inadvertently applies to any fuel sales for any use.

Ms. McCulley stated that County Engineer Frank Pohl would offer technical expertise for items relating to floodplain regulations, such as Item A, which codifies the longstanding practice of allowing storm water conveyance in the floodplain, subject to limitations that are really best practices. She said that Item B creates a definition of “fine grading,” which is a by-right use; Item C addresses by-right stream crossings that serve a single family dwelling, but the use listing is “dwellings” (plural), which implies multiple dwellings – and it’s very clear from legislative intent that it’s intended to be one single family dwelling.

Ms. McCulley stated that Item D and Item F arose because of flood insurance program compliance requirements, and the County must run its zoning floodplain regulations by

DCR, which reviews them on behalf of FEMA. She noted that local regulations must meet their minimum standards so the County qualifies for the flood insurance program, and Albemarle tended to go above and beyond the minimum requirements for many things – state health regulations and floodplain regulations. Ms. McCulley explained that Albemarle’s regulations allow an accessory structure up to 200 square feet, and DCR accepted that but stipulated that there must be a variance to allow people to go up to 600 square feet. She added that DCR also requires that there be clear construction standards for those accessory structures. Ms. McCulley offered to have Mr. Pohl answer questions.

Ms. Riley asked for an explanation of Item A, as she felt it was not clear.

County Engineer Frank Pohl explained that when there is a development near a floodplain, the County typically liked to see discharges to a channel instead of into an area where there were no channels. He said that this change allowed improvements to the floodplain with an effect to floodplain elevations or limits, to build a channel to a creek. Mr. Pohl stated that the County had quite a few projects that came in that were right up against the floodplain, had nowhere to discharge, and did not necessarily have a channel. He said that some type of channel to the creek must be provided, and this allowed that to occur.

Mr. Pohl stated that it would be a design structural channel, with consideration to velocities and flows, but it would be a controlled release. He said that without this, a developer could potentially build just a large spreader swale, and if they met regulations, they would not need to do anything further. Mr. Pohl stated that if they go back to forested condition under an “adequate channel rule” for developments, the limits of analysis stop at the release point of the facility – and it would not have a channel to get to the creek. He commented that he would prefer to have something that’s a structural designed conveyance channel to a creek, and he has been trying to find the allowance in the code – and it doesn’t specifically say “storm water conveyance channels,” so he felt it should be added.

Mr. Lafferty asked if Item E was referring to a structure in the floodplain.

Mr. Pohl responded that it was referring to structures, and currently the County allowed up to 200-square-foot non-habitable structures, such as sheds, but FEMA allows up to 600 square feet so the County must provide for that. He noted a special use permit would be required if a structure exceeds 600 square feet, so it would not be a by-right use.

Ms. McCulley referenced a table of uses in the floodplain, with the only accessory structures allowed in the floodplain being structures accessory to a permitted recreational use and structures accessory to a permitted agricultural use. She stated that those could be accessory to an Ag use or by-right in the fringe – but not in the floodway. Ms. McCulley said that FEMA would allow some residential and non-

residential structures in the floodway fringe, but the County does not for new construction.

Ms. Spain asked what “fine grading” is.

Mr. Pohl responded that it was basically a balanced cut-fill site, so a developer cannot bring in fill, with no changes to the floodplain elevation or the horizontal limits to the floodplain. He explained that grading for recreation areas is allowed in the floodplain, but the County does not want to see additional topsoil brought in that could impact floodplain elevation. He stated that it is a volume consideration, and if the volume of air or dirt – the void space – is filled, it could impact the horizontal limits or elevation. Mr. Pohl said that fine grading did not have that clarification, and there was recently a recreation facility that challenged how that was determined, so this clarified that item.

Ms. McCulley reported on Neighborhood Model setbacks, which had several amendments, and stated that Deputy Zoning Administrator Ron Higgins was available to answer questions. Ms. McCulley said that as the County applied these, they realized that some things such as maximum front setbacks adjacent to the interstate made no sense, so this eliminated those items. She stated that this was originally adopted June 3, 2015, so there have been two years of experience that reveal a few necessary refinements. Ms. McCulley said the first illustration showed that the infill measurement was taken along the same side of the street as the subject property and clarified which building was used for the purpose of determining the infill setback, as it did not make sense to measure it from a shed – but the language was not clear about that. She noted that staff was proposing to use language that is a defined term in the ordinance, which is “main building,” for the purpose of measuring infill setback. Ms. McCulley stated that the next item clarified that minimum garage setback applied to both attached and detached garages. She noted that there is a practical amendment clarifying that setback applied to each building story above 40 feet or the third story, whichever was less, and she referenced a diagram from the ordinance.

Ms. McCulley said the subdivision text amendment has also been clarified with new language pertaining to lot frontage that now contained “existing or proposed” public street.

Ms. McCulley reiterated that it would be best to remove the amendments related to “rest home, nursing home, convalescent home, and sanatorium,” so there is more time to clarify with the Department of Social Services that they were not inadvertently eliminating a necessary use.

Ms. Spain stated that she would advocate for including “hospice,” as it was more similar to what was being described with those uses.

Mr. Keller commented that given societal trends, it was a definable entity separate from those things – as one of the other facilities could be a hospice, but many communities have a standalone hospice.

Mr. Keller opened the public hearing.

Mr. Williamson addressed the Commission and stated that on June 13, he posted a blog post related to “bad housekeeping,” citing concerns with the dense amendments being considered – as his count was 30 items. He stated that County staff saw his blog post and corrected him, as the section he referenced was not what he thought it was, and that was because it was buried in the text. Mr. Williamson apologized for the error and suggested that the Planning Commission and Planning Director put “housekeeping in June” in the work plan on an annual basis, emphasizing that this had a lot of important things in it but got lost because of its size – with 40 ordinance amendments coming forward that contain critically important detail.

Mr. Keller commented that Mr. Williamson offered a good idea.

Ms. McCulley agreed.

Mr. Blair also agreed.

Mr. Keller asked if it could be a section in the annual report, or an appendix to it, so there was a fixed place that it occurred over time.

Mr. Dotson stated that the annual reports he has seen in recent years had a list of zoning text amendments that had already been acted on in the past year, and he was not sure if the suggested new approach would also include pending items.

Mr. Blair suggested that the annual report include upcoming housekeeping amendments, and that could be a way to keep it on a regular schedule and explain minor revisions, integration with State Code, grammar and punctuation errors, etc. – which could be brought to the Commission with a subsequent hearing after the annual report.

Mr. Keller commented that State Code changes were usually effective July 1, with the annual report coming out in the fall, so they could have gone through the process and ideally had already made the modifications if the report were after the July date.

Mr. Gast-Bray stated that he has noted the concept and he was hearing from them that this needed to be regularized, so that people expect it and can prepare for it – so there is less disruption when it is actually done, as well as forcing some rigor. He said that staff would need to check on the actual mechanism by which this would be accomplished, as he wanted to make sure all the processes were appropriate. Mr. Gast-Bray agreed that the longer they were out of date with items, even if they were just minor housekeeping items, the more potential there was for problems.

Mr. Keller asked if there was anything else Commissioners wished to discuss with the modifications.

Mr. Dotson stated that he did not know that “advertising vehicles” were recognized in the ordinance, and for future consideration, he wanted to know if there was any cap on the size of the graphics that could be on a vehicle. He said that if they thought of a vehicle as a building, they wouldn’t let an entire building façade be a sign – but that does happen on vehicles.

Ms. McCulley responded that the closest thing to that would be if a manufacturer’s profile has been modified, such as with a sign vehicle, that would not qualify as a permitted advertising vehicle. She stated that in terms of text size and what was permitted as an advertising vehicle that was part of someone’s transportation, they do not regulate that.

Mr. Dotson reiterated that if they thought of it as a building that was limited to four by eight feet, for example, perhaps advertising vehicles could have those same limitations. He said that with a related item, he felt that “temporary industrialized building” did not adequately address this item – and he suggested that they use the language in the explanation of the item, which was “temporary mobile office or trailer.”

Ms. Spain commented that with advertising vehicles, she assumed that many of the concerns arose from a specific example, and asked staff if there was an incident that flagged this item.

Ms. McCulley clarified that the County has not regulated vehicles used in a business that were parked in an approved parking space for that business that advertise that business. She stated that what became a problem was a roofing company that parked a vehicle beside a road with a high volume of traffic, with very large letters advertising that company. Ms. McCulley said they were transacting no business at the location where it was parked, and the County followed that vehicle north and south. She stated that the issue made it to civil court, and the company’s attorney pointed out a conflict in current regulations – with Assistant County Attorney Andy Herrick reviewing it and agreeing there was too much overlap between what was permitted and what was prohibited.

Mr. Keller stated that when Mr. Higgins was talking about this during the sign discussion, there was some conversation as to a vehicle that did not run anymore, was not inspected, and may have flat tires – and he asked how this change might affect that.

Ms. McCulley responded that those were never allowed, and this modification clarifies what is conflicting language between when it is permitted versus when it is prohibited.

Mr. Keller asked if there were further comments prior to someone making a motion.

Mr. Blair asked if the assumption was to remove “nursing homes” from the language, as previously discussed.

Mr. Keller responded that it was, and asked if it should be stated in the motion, such as “all of the above except nursing homes.”

Mr. Blair stated that because staff recommended its removal before an official motion was made, they could operate on the assumption that it would not be part of the motion.

Mr. Keller asked Ms. McCulley if staff would also look into “hospice.”

Ms. McCulley responded that they would have that answer prior to returning for public hearing.

MOTION: Mr. Dotson moved that the Planning Commission recommend approval of ZTA-2016-0006 and STA-2016-0003, except for the portions dealing with “nursing homes, convalescent homes, sanatoriums, rest homes, and hospice.” Mr. Lafferty seconded the motion, which passed unanimously 6:0 (Firehock absent).

Mr. Keller thanked Ms. McCulley and staff for all of their work on this item. He asked staff how many meetings the Commission may need to add to their schedule for the rest of the year in order to accomplish this.

Mr. Gast-Bray responded that at least July would be clarified as of June 21, and there would be a general guideline as to how this would evolve over the summer – but given how tight schedules were, there may be some shifting.

Mr. Keller clarified that he was referring to the possibility of an additional meeting per month from now until the end of the year, to deal with just these kinds of issues, and asked if that was a fair assumption.

Mr. Gast-Bray responded that this option has been made clear to the Board of Supervisors, but they had not acted in the same manner – so he did not think this would happen until August at the earliest, and the Board had not committed to a schedule because of the need for joint meetings.

Chair Keller said the meeting would move to the next item.

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