

**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.

Public Hearing: ZTA 2015-00006 Shadwell Estates

ZMA-2015-00006 Shadwell Estates (Sign 35 & 36)

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 079000000023F0

LOCATION: Located on North Milton Road (Route 729) across from Stone Robinson Elementary School.

PROPOSAL: To amend the proffers for approved ZMA1977-24 to allow up to 7 residential lots. Critical slopes waiver is requested.

PETITION: Request to amend proffers for ZMA1977-24 on property zoned Planned Residential Development (PRD) which allows residential (3-34 units/acre) with limited commercial uses.

OVERLAY DISTRICT: Entrance Corridor (EC); Flood Hazard (FH)

PROFFERS: YES

COMPREHENSIVE PLAN: Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots). (Rachel Falkenstein)

Ms. Falkenstein reported that this public hearing was a request for a rezoning to amend proffers and an application plan for a previously approved ZMA from 1977. She stated that the property is located on Milton Road across from Stone Robinson Elementary School, east of the Clifton Inn, and the lake is referred to as “Clifton Lake” in many application plans, and the property line ran directly through it. Ms. Falkenstein stated that the property is Tax Map 79-23 and is zoned planned residential development, located in the rural area of the Comprehensive Plan – with the property currently vacant and mostly wooded. She referenced some aerial photos of the property. She said that the property was rezoned through the 1977 rezoning from A-1 to residential planned neighborhood, allowing 39 units on 92 acres. Ms. Falkenstein said the previous rezoning included property across the lake, which was three separate parcels today, and today’s request only pertained to the parcel to the west of the lake. She stated that in 1980, the comprehensive county rezoning changed the zoning from RPN to PRD, and in 2014, the two

properties east of the lake were placed under conservation easement and thus were no longer part of the request.

Ms. Falkenstein reported that the proposal was for seven residential lots on 28 acres, and the applicant was proposing access via a private street, with 9.3 acres or 43% of the property proposed as open space, and 6 acres being added to adjacent parcels the applicant owns – with other features such as storm water, fire access, and like access. She stated that the previous PRD from 1977 showed nine lots west of the lake, but the applicant was requesting only seven lots. Ms. Falkenstein noted that the applicant has included two proffers with his request: the first referring to the application plan features such as the lots and open space, as well as a tree preservation easement; and the second being Department of Conservation and Recreation (DCR) review of the dam.

Ms. Falkenstein said that staff's first recommendation for the proffers was for the applicant to provide additional clarity on DCR review of the dam, as DCR was requiring the dam to meet state requirements and staff would like clarification that this was done before the first subdivision plat. She stated that the second recommendation for the proffers was that the applicant consider adding a proffer for architectural review of the residences, which the applicant had included in a previous iteration of the proffers but eliminated in the most recent version.

Ms. Falkenstein stated that the applicant had included areas of critical slopes and stream buffer on private lots, and she noted the property line and building site on Lot 7. She said that the applicant was proposing a tree conservation easement to cover areas of the stream buffer, which was delineated on the plan, but not areas of critical slopes outside of the stream buffer. Ms. Falkenstein commented that her recommendation is for areas of critical slopes on private lots that are not protected by the tree conservation easement be included in the easement as well so that it includes stream buffer as well as critical slopes. She asked Commissioners to note the special exceptions in the application plan and mentioned that the references to RA zoning would need to remain PRD because they were not included in the original request.

Ms. Falkenstein pointed out that this application was a reduction of what was approved in 1977, which was why staff reached the recommendation for approval of the request, and the applicant was also asking for a private street authorization – which was a Planning Commission approval – so there would need to be a separate motion on that. She noted that her staff report had referred to the incorrect section of the ordinance under which the private street can be authorized, as it can be authorized under Section 14.232-3, General Welfare, rather than Environmental Preservation – but staff's analysis remained the same. She reiterated that staff's recommendation was for approval and there would be two motions: one for the ZMA and one for the private street.

Mr. Dotson asked if the site was in the development area where they distinguished between managed and slopes to be preserved, whether staff felt they would fall into one category or the other.

Ms. Falkenstein responded that the criteria used to distinguish between managed and preserved was adjacency to a body of water, the size of the slope, and whether they were natural or man-made. She stated that these might be preserved because of the body of water there and the presence of large areas of slopes, but she had not looked at it close enough to say for certain.

Ms. Riley commented that the staff reports said there was soils work performed but not provided to the health department for review for water and septic, and asked why it was not provided.

Ms. Falkenstein responded that the applicant did not provide an explanation but said they had the soils survey done but the health department nor staff had ever received it.

Ms. Spain commented that the issues raised were the private road, the dam, the critical slopes, the setbacks, and the rectangular lot – and she asked for clarification that the Commission was deciding on all of those issues.

Ms. Falkenstein replied that there were three special exceptions – critical slopes, setback, and rectangular building shape – that would not be decided tonight, but the Board of Supervisors could consider the Commission's recommendation. She said the private street authorization would need to be decided by the Commission under their purview, and the dam was state regulated so it was part of the applicant's proffers but was not a special exception.

Ms. Spain asked for an explanation of the rectangular buildings.

Ms. Falkenstein clarified that they were rectangular building sites on the lots.

Ms. Spain asked if that was the case throughout the County.

Ms. Falkenstein explained that there was a Zoning Ordinance requirement for rural area lots to have a 30,000 square foot building site that is rectangular in shape, to prevent people from using odd shaped building sites that may meet the 30,000 square foot requirement but would not be buildable.

Ms. Spain asked why that would matter and whether it was something that most counties followed.

Ms. Falkenstein responded that she did not know the history of when this was put in the ordinance, but the justification for the shape was that it be something that could be built upon.

Chair Keller opened the public hearing and invited the applicant to speak.

Mr. Katurah Roell addressed the Commission on behalf of the applicant, commenting that the shape of the lots was in general conformity with the 5:2 ratio, and the reason they may not be perfect rectangles was that they followed the shores of the lake on the property. He stated that the applicant has tried to achieve a fairly regular box, but it did require some flexibility from the Commission. Mr. Roell noted that they had reduced the plan from nine lots to seven lots to meet that requirement, and still were able to make buildable lots. He stated that they did performance soil studies with Gooch Engineering and determined they had adequate soils, but didn't want to run it through the health department until they were certain of getting the seven lots – and they were confident of good soil and perks tests.

Mr. Roell reported that this property was located on a short street that VDOT indicated they were not interested in maintaining, so the applicant requested private road justification and information related to soil disturbance for a public road versus private road. He stated that in terms of critical slopes, the applicant has included the entire buffer along the lake off the lakeside water buffer slopes, with the last lot being a critical slope lot that falls back off to the west toward Milton access and another parcel that separates this property from the Rivanna

River. Mr. Roell noted that he did not have an issue with including it in the buffer area, and the applicant has no intent to disturb it – as there are large mature trees that they intend to keep as preserved as possible.

Mr. Roell stated that he has discussed with the owner that the HOA will maintain control over all the properties, designs, and architecture on the site – and he had been working with the architect, Hank Brown, to consider different designs for small homes to be placed on the lots. He said that the applicant has met with DCR, there have been visits to the site, and the dam was in process of being cleared of trees and debris through a DCR process so that it resolved to their satisfaction. Mr. Roell noted that the applicant has no issue completing that prior to platting the first lot because the dam is currently under construction and repair.

Mr. Lafferty asked if he knew about the soil type.

Mr. Roell responded that he did not know, but there was some silty, sandy loam – with an average of two feet in some places to four or five feet in other places found in taking about 60 soil borings, and he had been out to the site several times with Mr. Gooch to look at the quality of the clay and the soils.

Mr. Lafferty noted that across the river, there was a lot of shale and those soils did not perk very well.

Mr. Roell stated that Mr. Gooch was pleased with what they found because the soils on this side of the ridge were much better than soils on the other side.

Mr. Dotson asked Mr. Roell if they were anticipating use of alternative or conventional septic systems, as he had noted in some of the documents that there had been consultation with an alternative system person.

Mr. Roell responded that there may be some engineered systems on some of the lots, and they were not intending on building large homes but instead were planning to build small classic style cottages. He said that they would ensure adequate capacity in either event, and they would try to do a conventional system where there was adequate reserve – but otherwise would do an alternative system to ensure there was an adequate reserve for the future.

Mr. Dotson noted that maintenance and homeowner education are key to the success of alternative systems, and he asked if there could be a way for homeowners to be informed that they have an alternative system, as they may not know – and the County cannot require periodic maintenance but possibly a homeowners association could.

Mr. Roell responded that they had not considered this but it was a good idea to add that to the HOA documentation, and all the grounds and common area maintained by the HOA, and the intent was to maintain it along with the Clifton grounds to keep a consistent, quality environment across the entire piece of property.

Mr. Dotson also commented that all but one of these lots backed onto Hurt Pond, as labeled on Google Earth, and it seemed unimaginable to him that people would not want to clear the trees to get a view of the water or have access to it. He asked were there some creative ways by which they could emphasize that there is a tree preservation easement there.

Mr. Roell responded the easement on the deed would be recorded as a non-disturbed area and monitored by the HOA (homeowners association), so as not to be disturbed down to the lake, with visibility during the winter when foliage was reduced. He pointed out that there was a dock on the lake where people could access it, as shown on the plan, and it included a sitting area.

Mr. Dotson stated that he was still concerned and welcomed any approaches to addressing this.

Mr. Roell responded that they had a deed restriction monitored by the HOA, with the grounds maintained and cleared as part of dues – along with a road maintenance agreement, as it was also maintained by the HOA as a private road. Mr. Roell pointed out they had presented all of that information.

Ms. More asked why the health department had not run the soil samples, and if a cost was associated with doing so.

Mr. Roell responded that once they obtained the soil samples from Mr. Gooch and determined they had adequate soils, they were just waiting to ensure they could get through the process without starting the health approval process. He stated that as they approached soil studies and lot shapes and changes, there was a lot of movement with lot lines, buildable area, septic field and well locations, and other moving parts that had to fit together. Mr. Roell said that having to change lot shapes related to lot irregularity, as discussed, would have bearing on septic field location.

Ms. More responded that requests for special exceptions indicate to her that there are still moving parts, as would be the case if a lot did not perk, and she would like to see things as finalized as possible. She stated that the letter received from DCR dated January 31, 2017 asked the inspector to inspect the dam and provide information within three months, and she wondered what the delay was.

Mr. Roell explained that he and the applicant have met with DCR onsite, but have not submitted information back to County engineering because it is a state issue. He said there were crews onsite clearing and working.

Ms. More said, as she understood the letter, this needs addressed independently from other items required on the application.

Mr. Roell responded that they were working to complete that within the next month or two, with the plan of having a letter from DCR indicating its completion to their satisfaction. He stated that if they do not move the lot lines, they would have septic field sites as currently laid out and designed – but if there is concern about irregularity of the lot lines that could change things.

Ms. Riley stated that in the staff report, there was mention of adding a note to the application plan to allow for fewer, larger lots if adjustments to find suitable well or septic sites were needed, and she asked if the applicant was amenable to that.

Mr. Roell responded that if the health department were to return with a finding that the information submitted by Mr. Gooch was not acceptable, the applicant would have to amend the plan to make a suitable septic field site, which would mean an amendment to the lot shape to make it larger. He said the applicant felt confident in what they had laid out at this point and would submit it to the health department and move forward, once the Commission signed off on it.

Ms. Riley asked for confirmation that he agreed to add a note to the application plan.

Mr. Roell said that he would.

Ms. Riley stated that the natural tendency of the lot owner was to want to take trees down, and in the staff report there was an alternative explored to not having all the critical slopes in the tree preservation easement, but instead having the stream buffer put in common land that the HOA would regulate. She said that the applicant had not chosen this as their first alternative as it makes the lot sizes smaller, but HOA enforcement might be a stronger mechanism than individual property owners had.

Mr. Roell responded that the intent was property owners own to the lake edge, but they have both deed restrictions and HOA language prepared that indicates it is not to be touched or disturbed. He said the HOA would maintain the grounds on all of the properties, but that does not provide an opportunity to go onto critical slopes or towards the lake to cut or clear anything – and the grounds maintained and closely monitored. Mr. Roell noted that this was the reasoning for the size of the lot at a half-acre versus a one-acre lot, from an ownership standpoint.

Chair Keller invited public comment.

Mr. Lafferty asked if everyone had received the email from Mr. Jeff Werner of the Piedmont Environmental Council.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Commission and said that the forum has no particular position on this project but notes that several Commissioners have requested that the applicant follow state law – and this seemed duplicative. Mr. Williamson said that there seems to be concern about alternative septic, but State Code had specific regulations as to what they could and could not regulate regarding alternative septic, which he thought Mr. Blair would share with them.

Mr. Roell re-addressed the Commission and stated that the applicant had spent almost two years in preparation and study of this, carefully laying it out and working with staff, and they felt fairly comfortable with what they had proposed – including the design and shape of lots on the overall intent – and felt it would be one of the least disturbed pieces of land given the private road and subtle approach for the preservation and use of the property.

Mr. Keller said the applicant had asked the County to expedite the process in terms of rural area inns so there could be changes that would allow for certain changes to be made at the inn, and asked if they planned to do that at another stage. He asked for clarification as to whether this was an entirely different proposal on the same pieces of land as the inn expansion.

Mr. Roell referenced a map provided and noted this particular parcel, with inclusion of portions of this property in the subdivision plat, would add to the inn property. He stated that the applicant has prepared a special use permit application in conjunction with a zoning text amendment they had pursued in 2016 – which was for the inn itself and was an entirely separate process and parcel to the west of the area pertaining to this application. Mr. Roell emphasized that in this application, they were addressing the 1977 approval of what was nine small linear lots, and this process would bring it to current day subdivision standards and state requirements.

Mr. Keller stated that he was interested in understanding the whole picture and presentation of that picture to the Commission at the same time, acknowledging that these were different parcels but pointing out that the application did not include anything about how they intended to address the other land that would be added. He pointed out that the Commission and Board spent a lot of time making the modifications, and he was interested in knowing the impact to the total site and how these elements worked together.

Mr. Roell responded that when the applicant came back with the SP, they would be happy to submit the complete package – and this had been in process for two years, beginning on a simultaneous track as a zoning text amendment. He stated that these were previously platted, and it had just taken this long to get through the process to meet the requirements and made the modifications. Mr. Roell added that the ZMA was on a different track than what had been the ZTA and would be a future SP, noting that the current application was for seven modest homes along the lakeshore compared to nine previously approved.

Mr. Keller stated that some of these were depressed and were slightly below the sight line from the historic inn itself, but others along Milton Road would be visible to some extent.

Mr. Roell clarified that they would be visible from Milton Road.

Mr. Keller noted that he was referring to those that were next to Stone Robinson School on Milton Road.

Mr. Roell explained that the inn overlooked all of the parcels because they were down below a drop in the road and the slope, and they would follow the same design standards as Clifton Inn.

Ms. Riley asked if there was any development intent for the six acres to be added to the adjoining parcels.

Mr. Roell replied that there was not.

Ms. Riley asked if there were any recreational amenities to be developed along with this subdivision.

Mr. Roell responded that these were small, private lots with no amenities offered to them.

Ms. Riley asked if there were additional recreational amenities on the lake.

Mr. Roell responded that there were not, but there was a public access that would serve both the Clifton Inn and these private owners through the common open space area. He added that these homeowners, as part of the HOA, would have the right to use Clifton Inn facilities – which is part of the attraction for these seven special lots.

Mr. Lafferty asked if the HOA could state that public water and sewer would never be available.

Mr. Roell replied that they would not go as far as to say it would “never” be available, but they would state that the lots are provided with septic and well, and that would be included in the HOA covenants.

Mr. Keller asked if the total holding had the land that went down to the Milton landing on the Rivanna now.

Mr. Roell pointed out on a map provided where the property is, noting the location of a large swath of land that incorporates the dam and goes down to the river, then out to a small parcel – and in the midst of that, the Milton access comes in off of Milton Road and ends up back at the Milton property. He confirmed that this was all under the same Milton entity ownership, but had no development rights and no buildable area, as it was all critical slopes or undisturbed property, but was not part of the Clifton Inn historic inn parcel.

Mr. Keller commented that it was basically setting for the inn.

Mr. Roell agreed.

Mr. Keller asked if he would consider working with the County to provide a more official right of way access through that.

Mr. Roell responded that he and the applicant had met with Dan Mahon earlier that day and would be happy to discuss with him the possibility a more formal access, noting that Dr. Hurt's property line splits both the dam and the access road, so they are working on that aspect as well.

Chair Keller closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Mr. Dotson said that several concerns had been expressed regarding the maintenance of alternative systems and potential easement violations, and he hoped they could be highlighted to the Board of Supervisors for their consideration. He suggested that the Commission have a motion on the ZTA, and he was prepared to recommend approval on the private street, with a third motion reflected in an action memo so the Board was more likely to see it.

Mr. Keller stated that there is another significant part to this, which is the fact it is a whole package – and the Commission had worked hard to expedite this, asking staff to address the regulations and modifications that would work. He said that he would like to see all of it before they approve just this piece of it, and would like to discuss an official access to the river, as it is challenging to use Milton for that access. Mr. Keller stated that they have talked about the importance of the river in the Comprehensive Plan, modernizations to help the historic inn, and zoning that could be updated to foster a new viable development – but to him it needed to be a whole package.

Ms. More commented that she agreed with two of the pieces and how they worked together were different from the river access that she did not know was in the Commission's purview. She stated that enabling the inn property to expand would be important, but she would not go as far as to introduce the other parcel and access to the river.

Mr. Keller responded that he was in no way asking for that, but was pointing out that there were different parcels that were all together and would make this ultimately more successful. He said that thinking about those holistically was important, regardless of whether the owners would come back with a plan for access.

Mr. Dotson said that it might just be a mapping exercise that was more dependent on staff putting the pieces together on the special use permit application.

Mr. Keller agreed, stating that he had asked staff whether they could just overlay the last proposal with the current proposal and with the County's rivers and trails proposals.

Ms. Falkenstein pointed out that the County had received a special use permit request from the Clifton Inn to add rooms to the inn, but it was not accepted, as there was a matter that needed to be sorted out first – so staff has not done that review to date.

Mr. Keller asked for a timeline.

Ms. Falkenstein responded that it would be up to the applicant before the County could accept it.

Ms. Riley stated that she agreed with Mr. Dotson regarding moving forward with approval, and mapping with the SP would be helpful in the context of how the various development projects were complementing and fitting together and what their impact could be. Ms. Riley said she was encouraged to hear there was no plan to develop the adjacent six acres, but felt they could move forward with the private street – and she also agreed that an action statement that highlighted Commission concerns would get the Board's attention on those issues.

Ms. Spain stated that one of Jeff Werner's concerns was the possibility of a future Board of Supervisors adding lots back in.

Ms. Falkenstein responded that the property owner could come back in to amend the PRD and ask for more lots, though there was not a lot of room left onsite with what was shown on the plan.

Ms. Spain said that might depend on how the land perked and where the septic systems were located, and she was a bit concerned that they did not have that information yet, as it seemed like something that should come first – but she respected the developer's attempts at concurrency.

Ms. Spain stated that Ms. Firehock had also expressed concern about preserving the tree conservation easement as much as possible, and given the habitat of the two lots that already existed there that are conserved; she would like to see strong language in the Homeowner's Association (HOA) that made it clear the trees should be left alone.

Ms. Falkenstein pointed out that the way the applicant has written it, it would be a deed restriction, and the County could enforce it if it were part of the proffers and they received a notice or complaint – but once trees were cut down, there wasn't much they could do.

MOTION: Ms. Riley moved for approval of ZMA-2015-0006 with revisions to the proffers and application plan as recommended by staff. Mr. Dotson seconded the motion.

Mr. Keller stated that he could not vote for this because he felt it was a great opportunity to look at all of the parcels, given that there was another piece about to happen.

The motion passed 5:1:1, (Keller nay) (Firehock absent).

MOTION: Ms. Riley moved that the Commission approve the private street request for ZMA-2015-0006 with the private street in the location shown on the application plan. Ms. Spain seconded the motion.

Mr. Keller said he would be voting against this for the same reasons he had stated in the previous item.

The motion passed 5:1:1 (Keller nay) (Firehock absent).

MOTION: Mr. Dotson moved that the action summary from this meeting reflect three concerns expressed by the Planning Commission: maintenance of alternative septic systems; the probability of easement violations; and the need for a comprehensive map showing this development as well as the anticipated development on the balance of the properties associated with this ownership.

Ms. Riley seconded the motion.

Mr. Blair stated that Mr. Dotson's recommendation needed to be conditional in the sense that as part of a ZMA, they could not require a plan for future lots.

Mr. Dotson said that this could be something staff did, rather than the applicant.

Mr. Blair responded that they could do so if they had the information available, but it cannot be interpreted as a requirement that the developer provide such a map.

Mr. Keller suggested an amendment to the third point, so that it addressed comprehensive open space, green ways, blue ways, and trails – as they have all been discussed in the Comprehensive Plan. He stated that he would like to see how this worked because there was a desire to have green and blue trails at the headwaters of the Rivanna and James rivers and into the Chesapeake Bay, and the greater holding here was a significant property linkage in that.

Mr. Keller clarified that in terms of the motion, he would suggest that staff also show the County's plans for future trails.

Ms. More asked for clarification that the Commission wants the Board's attention drawn to those concerns.

Mr. Keller confirmed that he was supporting the first and second part of Mr. Dotson's motion, but wanted to make sure the last point is modified so that it included the open space trail system.

Ms. More asked if he was asking that the Board have this information before making its decision.

Mr. Keller said he thought they would.

Mr. Dotson explained that he was prepared to note these as concerns to be flagged for the Board, but he did not wish to make it a necessary hurdle, and the Board and staff will proceed as they see fit.

Mr. Keller commented that he was supportive of this project but felt it could be better if it were comprehensive.

Mr. Keller called for a second to the motion.

Mr. Dotson said he understood Mr. Keller to be saying that this went beyond the holdings of the entire property, but also the various Comprehensive Plan elements of blue and green infrastructure as part of the comprehensive map.

MOTION: Mr. Keller moved to amend the motion as stated. Mr. Dotson seconded the motion, which passed unanimously (6-0).

The Commission revisited the motion as amended, moved by Mr. Dotson and seconded by Ms. Riley. The motion passed unanimously (6-0).

Mr. Keller reiterated his support for the project with a focus on including all of the pieces worked on for several years.

Mr. Lafferty stated that they should get the health department involved as soon as possible, as they tended to back out of these commitments.

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