Albemarle County Planning Commission
December 11, 2018

The Albemarle County Planning Commission held a public hearing on Tuesday, December 11, 2018, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair, Pam Riley, Vice Chair, Daphne Spain; Bruce Dotson, Jennie More, Karen Firehock, Julian Bivins and Luis Carrazana, UVA representative. Ms. Firehock arrived at 6:04 p.m.

Other officials present were Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Bill Fritz, Manager of Special Projects, Cameron Langille, Senior Planner, Rachael Falkenstein, Principal Planner; Lea Brumfield, Zoning Planner; Sharon Taylor, Clerk to Planning Commission; Amelia McCulley, Director of Zoning/Zoning Administrator and Andy Herrick, Deputy County Attorney.

Call to Order and Establish Quorum

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

The meeting moved to the next item.

Public Hearing Item.

ZTA-2018-00002 Commercial and Industrial zoned properties not served by public water

The Albemarle County Planning Commission will hold a public hearing on December 11, 2018 at 6:00 p.m. in the County Office Building, 401 McIntire Road, Charlottesville, Virginia 22902, to receive comments on its intent to recommend adoption of the following ordinance changes to the Albemarle County Code:

- Amend Section 18-22.2.1 to permit eating establishments, automobile service stations, and convenience stores as by-right uses in the Commercial (C-1) zoning district when served by public water or central water system;
- Amend Section 18-22.2.1 to permit by-right in the Commercial (C-1) zoning district those uses permitted by right pursuant to subsection 10.2.1 of section 10.2, RA, Rural Areas provided that the use is not served by public water or central water system;
- Amend Section 18-22.2.2 to permit eating establishments, automobile service stations, and convenience stores as special permit uses in the Commercial (C-1) zoning district when not served by public water or central water system;
- Amend Section 18-23.2.1 to permit eating establishments as a by-right use in the Commercial Office (CO) zoning district when served by public water or central water system;
- Amend Section 18-23.2.1 to permit by-right in the Commercial Office (CO) zoning district those uses permitted by right pursuant to subsection 10.2.1 of section 10.2, RA, Rural Areas provided that the use is not served by public water or central water system;
- Amend Section 18-23.2.2 to permit eating establishments as a special permit use in the Commercial Office (CO) zoning district when not served by public water or central water system;

- Amend Section 18-24.2.1 to permit automobile service stations, convenience stores, eating establishments, and fast food restaurants as by-right uses in the Highway Commercial (HC) zoning district when served by public water or central water system;
- Amend Section 18-24.2.1 to permit by-right in the Highway Commercial (HC) zoning district those uses permitted by right pursuant to subsection 10.2.1 of section 10.2, RA, Rural Areas provided that the use is not served by public water or central water system; and
- Amend Section 18-24.2.2 to permit automobile service stations, convenience stores eating establishments, and fast food restaurants as special permit uses in the Highway Commercial (HC) zoning district when not served by public water or central water system.

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. (Bill Fritz)

Bill Fritz, Manager of Special Projects, presented the staff report and noted that this was the first round of a zoning text amendment to deal with what he referred to as "the 400-gallon issue." He said that in the spring and summer of 2018, there were work sessions and public hearings with both the Board of Supervisors and Planning Commission, and staff was instructed to go back and look at the work that was done and bring forward something else. He said to try to bring it forward, staff had broken it into pieces and felt this was something they could harness and bring forward quickly before bringing them a broader zoning text amendment. Mr. Fritz noted that this particular zoning text amendment impacts eating establishments, fast food restaurants, automobile service stations and convenience stores. He stated that on commercially zoned property, these uses would be by right if served by public water or a central water system – and by special use permit if they were not.

Mr. Fritz said for the ease of discussion, he would only use the phrase "public water," but that would refer to public water and a central water supply system. He said that this zoning text amendment also clarifies that convenience stores are a use in the C-1 district. He said they are already allowed by determination but they are not listed as a specific use, so this cleans that up and makes it easier to administer the ordinance. He said the zoning text amendment also expands the list of permitted uses on commercial properties not served by public water – and those parcels would be able to use any of the RA (Rural Areas) by right uses, in addition to the commercial uses.

Mr. Fritz said the four uses identified were those that could generate impacts inconsistent with the Rural Area. He said currently in the RA district, a property may be developed as a country store but only with a special use permit. He said that a country store has the characteristics of a convenience store, an automobile service station, and can have food sales. He said that this zoning text amendment would treat similarly located properties with similar uses in a similar manner. He said by using the special use permit review process, the impacts generated can be analyzed and hopefully mitigated with appropriate conditions. Mr. Fritz noted that this process also allows the intent of the commercial districts to be followed, which in part is that activities involving retail, wholesale and service businesses shall be permitted at appropriate locations within areas designated as the urban areas, communities and villages in the Comprehensive Plan. He said the zoning text amendment was reviewed in accord with Section 33.6 of the ordinance, with the findings in the Commission's report – so he would not go over all of them but would point out a few items.

Mr. Fritz said the establishment of commercial zoning was done years ago; for most properties, it was done in 1980. Since that time, the Comprehensive Plan has been updated several times. Staff opinion is that this zoning text amendment aligns the zoning ordinance with the Comprehensive Plan, and they are recommending approval of this zoning text amendment, with comments provided to the Commission. He said he has also had discussions with one other person who is concerned that the zoning text amendment does not include a provision to allow structures existing prior to the adoption of the zoning text amendment to be used for any by-right use, provided there was no change to the site other than maintenance and signage. He noted that this was in the language that went before the Planning Commission and Board earlier in 2018. He offered to answer questions.

Ms. Spain asked why the Board of Supervisors deferred action again and sent it back to the Commission since this is the second time around for both bodies.

Mr. Fritz said the Board deferred and there was significant public comment on it, and the ordinance that went before the Board of Supervisors was a fairly complicated ordinance to administer. He explained that it impacted uses rather significantly, so the Board deferred action on that and then held a work session to provide staff with additional direction to look at uses in the rural areas that were not served by public water and try to address those uses so there was an easier ordinance to administer, gave more predictability, and tried to get at the impacts caused by those particular uses. He stated that staff is working on it, it is a big project, and staff identified some specific uses and said they were similar to country stores. He said that since country stores are by special use permit in the rural areas, they can treat things similarly with a fairly confined zoning text amendment, which is what is before the Commission now.

Ms. Spain asked Mr. Fritz to comment on Mr. Kohr's letter about his concern about downzoning in other words.

Mr. Fritz replied that the zoning text amendment does not automatically remove or reduce any uses from a property but does require a new special use permit process if there is no public water. He said that currently, they would have to go through a review process to demonstrate whether or not the use was allowed because of the 400-gallon provision in the ordinance, and this pertains just to the special use permit instead of dealing with the water aspect. He emphasized that the use would not be prohibited unless a special use permit was applied for and denied – so it essentially just moves from the by-right to special use permit category.

Ms. Spain commented that it does not qualify for downzoning.

Mr. Fritz responded that this was staff's contention, as it was not a rezoning but was a zoning text amendment.

Mr. Herrick agreed with Mr. Fritz that it is not a piecemeal downzoning.

Ms. Firehock asked if the use would convey if a person sold that property.

Mr. Fritz responded that it would become a nonconforming use or would be covered by a previous special use permit and would continue to operate as it has been. He added that the ownership is not a

factor and it just needs to remain in continuous operation without ceasing for two years – if it does, then the nonconformity is lost.

Mr. Bivins said he tried to see in code where the term "convenience stores" is located but did not find it, adding that he hoped it would be included.

Mr. Fritz said it is listed currently as a use in Highway Commercial district but is not listed as a use in C1; however, in looking at the other uses permitted in the C1 district, they add up to the convenience store. He stated that there has been a long-running interpretation that you can do a convenience store in C1, but it does not appear in the C1 section currently.

Mr. Bivins responded that this was helpful. He said that in talking about the impact of the rural area and crossroads, there has been some significant change – with the Village of Rivanna raising the issue of how this would evolve over the years, as well as the development of Bundoran at Crossroads. He asked if there was language that allowed the rural crossroads to evolve, as they were no longer just places where people got their general delivery packages.

Mr. Fritz responded that they were trying to break this into phases and in looking at the properties, staff has discovered that the commercial properties are not all the same – with some in old villages, some at interstate interchanges, and some in the middle of nowhere. He said that staff is trying to bring forward a more comprehensive ordinance in the future and may revisit these uses in the future. Mr. Fritz noted that it is possible they may revisit other uses also, so if certain performance standards are met, it would become a by-right use. He emphasized that they were not there yet, but they would continue to look at it and at all other uses.

Mr. Bivins stated that staff mentioned Light Industrial, but he also could not find that and hoped it would be included.

Mr. Fritz replied that this ZTA deals only with CO, C1, and HC districts because these uses were only listed in those districts – and staff would be bringing back something to address other uses in the commercial districts and the industrial districts.

Mr. Bivins commented that in Attachment C at the top of the page, "Consideration of new uses in the rural areas," the opening sentence is, "It is important that any change take place slowly," and he did not know what that means.

Mr. Fritz responded that all the things in Attachment C were taken directly from the Comp Plan.

Mr. Bivins said that he assumed this was where they set out as the County what the considerations of new uses would be, in this case in rural areas, but he was not sure what was meant by, "It is important that any change take place slowly, with enough time to evaluate potential impacts."

Mr. Fritz stated that he did not know the exact thinking behind that, but it seemed fairly consistent with how Albemarle has done things in terms of making a change, seeing what the impacts are, analyzing them, and then determining whether another change needed to be made.

Mr. Keller commented that dealing with proposed definition changes was getting them into more specific questions, such as defining “slowly.”

Ms. More said that she wanted clarification that a property not served by water that has a special use permit currently, if the change were to take place, if a property owner could come back and request to amend it if they wanted the property to grow.

Mr. Fritz responded that they could do that, and if there was a nonconforming or SP property -- with this ordinance effectively making it nonconforming -- if they wanted to expand or add on a building addition, they could make the application for an SP that would be reviewed by the Board and Commission.

Ms. More stated that her other question pertained to whether sewer would be reviewed in size and scale and appropriateness for those properties needing water and sewer.

Mr. Fritz responded that in the staff report, they pointed out that one of the advantages of the ZTA was that it allowed them to have an SP, which allowed them to do the review to determine if it would be a substantial detriment to adjacent properties and whether it was consistent with the character of the district -- and the ordinance gave the opportunity to do all those things, with one being consideration of whether it was consistent with public health, safety, and general welfare.

Mr. Dotson asked how this ZTA impacted the church in Earlysville that was concerned with the Kohr’s property.

Mr. Fritz explained that it was a representative from the church who reminded him that the previous ordinance that went to the Board had a provision that said any structure existing as of the date of adoption could make use of any of the by-right uses that existed in the ordinance prior to the adoption of the ordinance, provided there was no change to the site other than maintenance and signage. He explained that if there was a building in Earlysville that currently had a church that wanted to leave -- and an eating establishment wanted to go in there -- providing there were no changes to the site other than maintenance and signage and interior renovations, this ordinance would have no impact.

Ms. Spain commented that on the first page, second paragraph, the language stated, “The proposed amendment would make uses by right in rural areas district available to properties zoned…” and she asked if this was available by right and by special permit.

Mr. Fritz responded that only by-right uses would be permitted, and the last of the uses in the C1 district says, “Uses permitted by right pursuant to Subsection 10.2.1. of Section 10.2 Rural Areas, provided that the use is not served by public water or central water system.” He explained that if there were a four-acre commercial property and the owner said there was no commercial viability, but they wanted to put two houses on it, current regulations would not allow it -- but this change would.

Ms. Spain asked if it could say, “Permitted by right in the rural areas district, available by right, two properties zoned commercial.”

Mr. Fritz responded that it was just poor wording on his part, the idea is that if there is a piece of property zoned commercially without public water and sewer, a landowner has all the by right RA uses available -- and that is what the ordinance states.

Mr. Keller opened the public hearing.

Ms. Riley stated that there was one person signed up to speak, Scott Knight.

Mr. Scott Knight addressed the Commission and stated that he is the pastor of Rivanna Community Church. Mr. Knight commented that the ZTA had already been harmful to the church and has had "a chilling effect" on potential buyers for the property, with one contract lost because of the shadow this has cast over it -- as well as losing the contract on the property they were planning to move into, which would have saved about $750K in building expenses.

Mr. Knight commented that a piecemeal approach was not appropriate, and not knowing what would be happening to the property was especially bad. He said that what was before them did not get rid of the 400-gallons-per-day regulation that was the problem the ZTA was originally billed to fix, as well as being the stated reason for the ZTA in the resolution of intent. He said that the language was back in this version of the ZTA and the proposal seemed like it should be a nonstarter in terms of what the County had repeatedly told the church as being the reason for the amendment. He added that this did not even accomplish what the Board of Supervisors wanted to accomplish in the ZTA, and he was shocked when he didn't see the grandfathering clause -- which was one example of why it needed more work.

Mr. Knight said that his plea to the Board was to slow down and do this right, but they seemed to be having the same conversation as they were six months earlier. He noted that the grandfathering clause was important to the church, and they ended up spending a lot of money to finish a site plan in time for the June hearing. He added that the Board had indicated in June that they were going to seek property owners' involvement in fixing the ZTA and perhaps even making a council that included property owners, but none of that happened. He said that some of the flaws in the amendment could be easily fixed if property owners were invited into the process, and he was frustrated and disappointed that it hadn't happened -- and letters had not gone out to property owners about this Commission meeting.

Mr. Knight said that it was also frustrating to hear how easy it might be to do an SP, but on this side from someone who had applied for an SP and knew people who had applied, it was extraordinarily costly at tens of thousands of dollars and took three to six months -- with denial possible at the end of that. He added that the things being moved from by right to SP were considered by property owners to be lost by-right uses.

Ms. Ruth Dalsky of Keswick commented that she was affected by the development of C1 property in their rural area, and she supported the amendment because the only protection homeowners had was to have property owners who wanted to develop go through the SP process to ensure the establishment was suited for the area, was responsible, and considered the rights of the property owners. She added that this was needed for the protection of other property owners in the area.

Mr. Gordon Sutton of Tiger Fuel Company said he would echo Mr. Knight's comments about how abrasive the SP process had been in their experience. He said that staff presented it as a seamless, easy

process to go through -- but it was an onerous, expensive process that put severe restrictions on a business to the point it was no longer feasible. He added that he also objected to the amendment on the pretenses that convenience stores would be by right, as he did not understand why the use would need to be called out as a by-right use unless it was found to be inconsistent with the rural landscape -- which he did not find to be the case with country stores because they often carried goods and services that were a real benefit to rural area residents.

Mr. Morgan Butler of the Southern Environment Law Center addressed the Commission and stated the SELC felt the proposal was consistent with the direction the Board gave to address the incompatibility of the zoning on these parcels and their rural area designation in the Comp Plan. He stated that the SELC's main comment was a question, as the new proposed ordinance language would allow the four uses as by-right uses when they were served by public water or a central water system, and they would require a special use permit if they were not served by one.

Mr. Butler clarified that the SELC's question stemmed from the fact there were different subcategories of what it meant to have "public water service," ranging from full-fledged water service to subcategories that included water only to an existing structure or limited service. He said that their question was how the by-right versus SP question be resolved for parcels having a more limited water designation and whether they would be interpreted as being served by public water, making the uses by right, or not by public water, making the uses require an SP.

Mr. Butler cited an example of a parcel with C1 zoning on it but was in the rural area and currently having a structure being used for an antique shop, with the parcel granted water service to the existing structure only. He asked if it would be deemed under this ordinance language to be served by public water and therefore be able to change that use in that structure from the antique shop to a restaurant for a convenience store without first obtaining a special use permit. He said that the SELC felt it was not clear in the draft ordinance language but needed to be, as they did not feel it would be consistent with the Comp Plan for that parcel to be able to develop more intensive uses by right.

Mr. Butler stated that the reasons the parcels had more limited water service designation was likely because the Board determined at some point there was a public health or safety issue that required extending water service in that limited fashion -- not because the Board made a broader determination that this parcel was suitable and appropriate for much more intensive commercial development. He added that in those instances where the parcels have a more limited water service designation, they shouldn't be to be deemed to be served by public water and have the uses be by right -- they should still require the special use permit. Mr. Butler emphasized that the SELC hoped it could be made clear in the ordinance so there weren't problems in the future.

Mr. Williamson addressed the Commission and stated that the ordinance as it was written with 400 gallons was flawed, but the new proposal was also flawed. He said that it talked about by-right versus SP processes, and the special use permit process showed that so many issues that were not really about the use were more of a permission and less of a standard. Mr. Williamson said that businesses and individual landowners could use by right with strict objective standards, and the work done on this moves the ball forward just a little bit -- but there was a lot more work ahead and he wasn't sure what benefit there was in breaking it into two parts.

Mr. Maynard Sipe, land use attorney and planner with Boyd & Sipe, commented that the original nexus of this effort was to address water issues and usage, which this amendment did not do. He said that staff indicated it was the first piece of a project that they had expected to do more work on and might even reconsider the uses in what was proposed, which showed him that this might need more analysis and thought. Mr. Sipe commented that in many states, having a by-right use and special use, the special use was still considered a permitted use and people were entitled to it if they met certain standards -- but Virginia was unique in many ways, including how it treated special uses as a legislative decision by the Board. He said that Mr. Herrick had stated he did not feel it was a piecemeal downzoning, but he did not say he did not feel it was a downzoning in general. Mr. Sipe stated that he felt this was an appropriate way to look at it and thus should get more careful consideration, so this probably needed more work.

Mr. Keller closed the public hearing and brought the matter before the Commission.

Ms. Firehock asked Mr. Fritz to address the comment relating to public engagement and letters not sent to property owners. She also asked if he could address Mr. Butler's comment related to parcels with public water to only an existing structure.

Mr. Fritz responded that staff had sent notice only to those people for which there was contact with the prior zoning text amendment and identifying every property that would be impacted by this was not possible because it said, "for properties not served by public water." He said that if a property was in a jurisdictional designation of "no service," it did not have access to water; if it was designated as "limited," they would have to go back to when the jurisdictional area was established to determine what the limitations were on it. Mr. Fritz commented that there were properties that had limited service because they only had sewer service and not water; some had water service to only a few structures on the property; and some had water only to existing structures.

Mr. Fritz said that they could identify the "no service," but there was a category that included properties in the jurisdictional area for water or sewer but were developed without connection to public water for one reason or another. He stated that the J.W. Sieg facility on Route 29 South was in the jurisdictional area for both public water and sewer but was developed without connection to public water because it was too far away to reach it. He added that it would be impossible to identify every property like that. Mr. Fritz noted that in the case of an antique property that only had water to the existing structure, that use has water and the designation of the jurisdictional boundary to water only would be that the use had water to the structure -- and if the use within the structure changed, it still had water. He said that if it was a limited service designation, it might have been limited to a particular use, so that would have to be considered. He added that it was easy to do and would need to be done on a parcel-by-parcel basis.

Mr. Keller commented that at the last session and this one, they had adjoining property owners come forward and discuss potential impacts to their properties, so there seemed to be a logical trend that if there was a decision made for the Board of Supervisors' public hearing to notify property owners, there would also be a need to notify adjacent property owners.

Ms. Riley asked who received notice for this particular public hearing.

Mr. Fritz responded that he did not have the list with him, but it was not a very extensive list and may have been about 8-10 people, adding that Rebecca Ragsdale had an email distribution list she was using with people who were engaged and involved with the ZTA -- and that was the list he had used.

Ms. Firehock recalled that in earlier meetings, that had gotten a list of parcels in all the affected districts, with each Commissioner looking to see which properties and how many. She asked if that was only a sub-list or for example list.

Mr. Fritz responded that Ms. Ragsdale had developed the list, which went through and provided all the properties not served by public water and sewer -- and he did not recall whether it included limited service and water only to existing structures, but it would not have picked up properties in the jurisdictional area that were not served by water due to distance or other factors.

Ms. Firehock commented that she thought the entire list would have received notice of this meeting, because they were identified as affected properties.

Mr. Fritz stated that the list included industrial and commercial properties, so some would drop off, but staff did not notify because it was a ZTA and not a rezoning.

Ms. Firehock said that it was a change in legal status from by right to SP.

Mr. Fritz responded that the State Code has provisions as to when to notify for rezonings, and this did not fit under that notification requirement.

Mr. Herrick pointed out that this was publicly advertised so they met the requirements for public advertising for this hearing, but there was not a requirement for this type of public hearing to individual property owners -- and that requirement was filled with public advertisement.

Ms. Firehock clarified that she was not questioning the legality of anything, but Mr. Knight had mentioned the Board of Supervisors promising more in terms of engagement.

Mr. Fritz stated that with the broader analysis staff was doing, they planned to do something much broader than what was done for this smaller-scale project.

Mr. Dotson said that on page 3 of Attachment B related to Highway Commercial, there was a list of items -- the last of which was convenience stores, stating “public water or a central sewer.”

Mr. Fritz clarified that it should be “a central water system” and confirmed that it was just a typo.

Mr. Dotson stated that the next agenda item proposed removing “eating establishments” from the definition, and he wondered how that aligned.

Mr. Fritz responded that staff was aware of that, and whichever one went first or last would have to be cleaned up to reflect the other and make them match.

Mr. Dotson commented that he also thought the 400-gallon provision was in the past, but when he read Highway Commercial in Attachment B, page 4, it seemed that item 11 had a lot of oblique references.

Mr. Fritz explained that the plain text language of item 11 was what was already in the ordinance, and the underlined language section references were eating establishments, fast food, convenience store, and automobile service station. He said that this left the 400-gallon provision in the ordinance, so for other uses they were still going to have to go through -- but for those four uses, they would not need to do an analysis of the 400 gallons.

Ms. More said that she was struggling with the idea of public water and examples that were raised, as well as what Ms. Firehock had asked about water to an existing structure, and she understood Mr. Fritz to say it would be really hard to break out those from the set of circumstances from those served by public water.

Mr. Fritz responded that they can identify all those properties, but he can't tell whether a property that is a commercially zoned property with limited service would be affected by this ordinance, because he would not know what the limited service was on the property or what might be proposed on it -- and he would have to go look at all of them.

Ms. More asked about a scenario in which properties were taken one by one.

Mr. Fritz explained that staff would look at the action taken by the Board of Supervisors to put it in the jurisdictional area with a designation of limited service and look at it to see what limits the Board put on the water service -- and whether it was limited to a particular use, a time period, a volume amount, fire service only, etc. He confirmed for Ms. More that a use could change slightly without triggering the special use property, citing an example of a limited meter size and a new use wanting to go in that still met those parameters. He added that if a larger meter were required to meet building code requirements for that use and the limited service said you were limited to a particular size, then you would not be served by public water.

Ms. More said that she liked the part about conserving properties and their values, which she felt spoke to both sides of the property value issue and addressed nearby residents as well as property owners -- so notifying everyone affected could be challenging but was important to consider in thinking about property values. She said that she appreciated the provision to look at substantial detriment, the character of the area, and consistency with the Comprehensive Plan because it allowed staff to look at it in the bigger context of each property.

Ms. Riley asked Mr. Fritz to describe what the next phase would look like with these changes, as there were concerns about the uncertainty of the process, and to address the timeline.

Mr. Fritz responded that the timeline was tricky because he was trying to go through and look at every relevant property in the rural areas designated in the Comprehensive Plan and figure out any patterns or characteristics that could be used so performance standards could be utilized. He said that for example, the 250 East corridor was very different than a piece of commercial or industrial property that was not adjacent to anything or even on a major highway. Mr. Fritz noted that the planned approach was to look at every property and its characteristics, then come up with some guidelines to be used. He

added that he was trying to come up with a way to make uses that would be by-right or with performance standards, with a special exception instead of a special use permit -- and build into a ZTA the predictability for the property owners and adjoining property owners so they know what the impacts are or may be in the future, and that it's consistent with the Comprehensive Plan. Mr. Fritz emphasized that this was tricky to do because there was no template, which meant there was no timeline, and there would need to be some work sessions and discussions.

Mr. Bivins asked for an explanation of what an "ethical pharmacy" was.

Mr. Fritz responded that he did not know but the zoning administrator could answer that, adding that his favorite term of all time was "automobile laundry."

Mr. Bivins also mentioned language stating, "It is expected to have a density similar to the city," and he asked if that could be clarified to specify "Charlottesville." He commented that the city was thinking seriously about its density, so if the county were going to follow that path, he would like for it to be explicit in some way.

Mr. Fritz emphasized that it would be in the minutes, but he could not change it because it was language directly from the Comprehensive Plan.

Mr. Bivins noted that he was just putting a placeholder in. He said that in Attachment B, item 5 referenced libraries, and he asked if a library/museum deciding to put a restaurant in would need to do anything, or if it was already permitted.

Mr. Fritz responded that this would be a situation in which the zoning administrator had to make interpretations and having a restaurant or food service there would need to be evaluated in terms of whether it was normal and customarily accessory to the operation of a library or museum -- which seems to be a likely "yes." He said that the second consideration would be how small a library or museum would get before it was no longer normal and customary. He added that just because it says "library/museum" doesn't mean it couldn't also have another use, such as a financial institution, because both of those uses are listed. He noted that it sometimes became an issue for the zoning administrator because compounding two or more uses can actually create an entirely new use.

Mr. Bivins commented that at one point, the property in Earlysville was a restaurant, and he asked if they would be allowed to revert to that use if they wanted to go back to being a restaurant.

Mr. Fritz responded that they would not as the ordinance was currently written, but as Mr. Knight pointed out, with the language included in the ZTA that went to the Board of Supervisors in August, the answer was yes unless it did not make exterior changes beyond normal maintenance and signage.

Mr. Bivins asked if there was a way to get that language back into this process.

Mr. Fritz responded that the Commission could say they recommended including it in the language, and staff would carry that forward to the Board of Supervisors.

Mr. Dotson asked for clarification that their concern was with properties zoned commercial but designated rural.

Mr. Fritz explained that it was not a perfect equation and they could not use the Comprehensive Plan because it was not parcel specific, so the best and closest parameter staff could find that would designate a property as rural was the jurisdictional boundary the Board of Supervisors has set for the Albemarle County Service Authority. He added that one of the things taken into consideration under that scenario is the Comprehensive Plan designation, so that was the best tool staff had in this instance.

Mr. Dotson commented that this was essentially a hybrid situation with urban zoning and a rural designation, so they were grappling with how to reconcile and resolve that -- and the proposal had no particular effect on commercial zoning countywide and impacted commercially zoned properties that were designated rural.

Mr. Fritz responded that this was a fair analogy of what was happening but was not a perfect match, adding that they took the jurisdictional boundary amendment into consideration and realized there were some properties located that were clearly in the rural areas of the Comprehensive Plan but had been designated for water and sewer service. He emphasized that this was an active decision by the Board to say that the property was appropriate for some intense development and then provide it with water and sewer -- so staff has proceeded on the basis that this decision had been made.

Mr. Dotson said that in terms of notification, the list that Ms. Firehock referred to earlier was an easily generated list of those zoned commercial and designated rural. He stated that he was hearing some interest from the Commissioners in having more notice to those property owners even if it didn't cover all the subtle categories mentioned by staff. He added that since having this hybrid situation -- zoned commercial but designated rural -- that was a special situation and it seemed reasonable to him to have special handling through an SP for those situations.

Ms. More stated that Mr. Fritz had discussed the time it would take to look at the nature of different properties by right with performance standards based on adjacency, and she asked if the four categories that didn't have water would always fall into what staff was suggesting here.

Mr. Fritz responded that there was a lot of other work to do, and if they felt it was appropriate to revisit this because if they came up with something that worked, they would at least recommend these again -- and it may or may not be revisited, but there was no certainty because it was unsure what any new products would be.

Ms. Firehock commented that at the top of page 5 of the staff report, the language stated that "the amendment would require a special use permit for certain uses not served by public water or a central water system," and she asked if it was correct to say that the amendment would require an SP for certain new uses.

Mr. Fritz replied that it would apply to proposed uses.

Ms. Firehock noted that the current uses would be covered, because if there was a current use an applicant would not come in for a SP -- but a new use would. She added that an existing use would continue unless it was stopped for a period of two years, in which case it would lose its use status -- then the new owner would have to come in for a special use permit.

Mr. Fritz confirmed her points and said the nonconforming use would continue.

Mr. Keller asked Mr. Fritz to address Mr. Butler's question about different structures on a parcel.

Mr. Fritz explained that if there was a piece of property that had water only to the existing structure and an owner wanted to convert the use within that structure from its current use into a convenience store, they would be able to do it because the designation was water only to the existing structure -- it didn't say water only to a specific use, as that might be a limited use description. He added that water only to an existing structure could provide for conversion of the use within the structure to a by-right use because it had water.

Mr. Keller said that the other half of the question would relate to the addition of a new structure.

Mr. Fritz responded that if there was a new structure added, it would not be eligible for water because the jurisdictional designation was water only to existing structures, and if a new structure were proposed it would not have water -- so the use within it would not have water and it would require an SP.

Ms. More asked what would happen if the new use needed more parking.

Mr. Fritz replied that they would get a site plan, explaining that the designation was to the structure and not to the property as it currently looked.

Ms. Firehock commented that a nonconforming use that needed to expand parking would be expansion of a nonconforming use and would need permission to do that, which may trigger a special use permit where none currently existed.

Mr. Fritz confirmed this, stating that if there was a nonconforming use that wanted to expand, the function of the nonconformity was that you cannot expand.

Ms. Firehock said that was probably causing concern amongst people who had uses that would now become nonconforming.

Ms. Riley stated that it was important to understand what the definition of "expansion" was, as in the case of someone wanting to put in new lighting or parking but not a new structure, and she asked Mr. Fritz to provide some examples of expansion.

Mr. Fritz responded that putting in additional parking would be an expansion of the nonconforming use and putting in lighting would not be an expansion unless the nonconformity was not complying with the lighting provisions. He said that Section 6 dealt specifically with nonconforming uses, and the zoning administrator looked to see whether you were expanding that use -- and if you were expanding it, you need to come into compliance

Ms. Spain asked about the technicality regarding the difference between a public hearing and work session and asked why they were doing a public hearing instead of a work session -- as the public could

comment at work sessions. She asked if this public hearing meant that the timing was important in terms of coming to closure on this part of the ZTA amendment.

Mr. Fritz responded that they scheduled things for public hearing when something had a fairly narrow scope, as in this case, and it was not uncommon to forego holding a work session -- and the Commission and public could provide comments that would be provided to the Board of Supervisors. He added that if they felt it was appropriate to refer it back to the Commission for additional analysis or a work session, they could do so or hold their own work session.

Ms. Spain noted that she was having trouble understanding when closure would occur.

Mr. Fritz explained that with this ZTA, closure would hopefully occur when it went to the Board of Supervisors, and then when the larger analysis of properties was finished, it would involve roundtables, a work session or two, and a public hearing with the Commission and Board. He said that at that time, hopefully the 400-gallon use issue would be resolved.

Ms. Spain said that the piecemeal approach would go into effect as it was passed by the Board.

Mr. Fritz confirmed this.

Mr. Keller asked if a Commissioner was ready to make a motion.

Ms. Firehock said that ideally, they would take the four uses -- eating establishments, fast food, automobile service station, and convenience stores -- and spend the time to try to break out the criteria under which they would need to have an SP in terms of setting, situation, access, and surrounding uses. She stated that his example of a convenience store on Route 250 versus other locations was relevant, as they varied based on where they were situated, and different criteria could apply. She asked if it was too difficult to break them down depending on setting and by-right use versus SP.

Mr. Fritz responded that this was being considered for the comprehensive analysis and for this particular ZTA they did that because they were looking at country stores in the rural areas, which looked very similar to these four uses. He said they tried to come up with a way to use a designation that would match two properties located adjacent to each other -- but water was the only tool they had to do that. Mr. Fritz noted that one rural property designated in the Comprehensive Plan with a convenience store applied for a special use permit; a property zoned commercially but was located in the rural areas in the Comprehensive Plan could potentially do it by right. He emphasized that they still had to address the water issue because it was in the ordinance, so those properties would be treated similarly if they were in a similar setting.

Ms. Firehock commented that she understood that they were trying to avoid overusing aquifers, which have not been mapped and did not have capacity information, but there was a lot of difference between the water use of a convenience store and eating establishment. She added that Restore 'N Station did not get close to the water limit, and she did not see how they were in the same category as eating establishments.

Mr. Fritz explained that they were because of what was listed in Section 5 as what could go into a

country store, which was how the uses were picked up -- and food sales was a permitted use within a country store, up to 49%, with 51% having to be used for the store.

Mr. Bivins stated that he would certainly appreciate the opportunity to have the grandfathering clause included if they moved this forward to the Board.

Mr. Herrick responded that it was already part of the zoning ordinance -- Chapter 18, Section 30.6 -- but was not in the ZTA before them.

Mr. Fritz pointed out that what they were referring to was a little bit different, and he referenced the old proposed ordinance from August, noting that there was a clause proposed that essentially said if the building was existing as of the date of adoption of the ordinance, it would be able to make use of all the by-right uses within that building. He said that the ZTA referencing non-service by public water would not apply. He emphasized that what was in the current proposal was a reference to the nonconformity section of the ordinance that provided for continuance of use into perpetuity, unless it was discontinued for two years or more, and expansion would require a special use permit.

Mr. Bivins commented that this was different from what was included in August, which was more generous in its look at the building and history of the building.

Mr. Fritz said that the specific that the member of the public who spoke about the property in Earlysville was referencing meant that if a property was sold and intended for a new use, with the appropriate provision it would be permitted -- even though it wasn't served by public water, and the County could write such a provision.

Ms. Riley asked how it would read.

Mr. Fritz responded that he did not want to craft the exact language now, but it could be crafted such that it pertained to any existing building on the date of adoption of the ordinance.

Mr. Herrick said that he was looking at a document that was as draft of something in May 2018 and asked if it might work: "Uses permitted by right or by special use permit in the commercial C1, CO, and Highway Commercial HC districts, collectively general commercial uses as used in Section 26.3, not otherwise expressly authorized by this section either by right or by special use permit, within structure existing or vested on the date of adoption."

Mr. Fritz said that would be one technique, and another would be to add to the language "eating establishment served by public water or a central water system" the text "or located in a structure existing on" and have a specific date. He stated that there were several approaches and they wanted to work with the zoning administrator to see what read the easiest, with as few words as possible.

Ms. Firehock said that eating establishments could apply to all four of these and Mr. Fritz confirmed this.

Ms. Firehock stated that she would strongly support that, adding that she lives in Albemarle County's most southern point in the Samuel Miller District, where there are a number of rural stores. She said

that one had been for sale for four years and at some point the owners would want to retire, and she asked what would happen if it didn't continue for two or three years while they tried to sell it.

Mr. Fritz responded that this would take care of that.

Ms. Firehock said that she could think of another store that was currently empty but would be a great site for someone to open the business back up. She emphasized that it was a very tough real estate market in southern Albemarle, so the likelihood that a use would discontinue because it couldn't be sold was very high -- and that led to attrition of very vital rural services.

Mr. Keller asked if there was that provision in existence for the crossroads communities.

Mr. Fritz affirmed this, stating that the Comprehensive Plan addresses reuse of existing structures.

Mr. Keller said that could have gone out of use for more than two years, and he recalled that Mr. Kamptner had said that if someone did a deed search and found it, that could be an argument for instituting that use even if it was not showing on the map.

Mr. Andy Herrick clarified that in order to maintain a legal nonconforming use, it had to have not been abandoned for more than two years; he said that he was not familiar with the specifics of the case being referenced or what Mr. Kamptner had stated.

Mr. Keller responded that it pertained to country stores.

Mr. Herrick said that it would need to be a fact-specific determination by the zoning administrator as to whether the use had lapsed for a period of more than two years.

Mr. Fritz pointed out the country store provision pertained to country stores existing prior to 1965, and it became a Class A country store.

Mr. Keller asked if they could have the zoning administrator weigh in on this since she was present.

Ms. Amelia McCulley, Albemarle County Zoning Administrator, stated that a lot of what they were referencing would be zoned rural areas as opposed to commercial -- so they would be dealing with country stores instead of properties that would be impacted by the ZTA.

Mr. Keller said that was understood, but they were grappling with rural issues and there were extremely rural places that were affected, as well as extremely urban places adjacent or close to the development area. He stated that Ms. Firehock seemed to be referring to the extremely rural ones that were not served by public water, which comprised a subset of what they were discussing.

Mr. Fritz replied that they were probably not zoned commercially but were rural uses on RA property.

Ms. Firehock noted that they were convenience stores.

Mr. Fritz replied that he had done some quick research looking at all the country stores and found one country store that was on a piece of property zoned commercially that was not served by public water -

- and that was the one in Earlysville. He said that all the other country stores are on properties zoned RA, both Class A and Class B, and they were not affected by this at all.

Mr. Keller said that this was relevant on the one hand, but it was not relevant to this discussion because they were addressing commercially zoned properties from back in the 80s in the rural areas. He stated that regarding Mr. Bivins point, he was inclined to be supportive of the property owners they were talking about here, but he also felt that a compelling argument had been made by the public twice now about the adjoining property owners and the particular impact there. He said that his question was if this was going to go from special use to by right, what the mechanism would be for those adjoining property owners to be able to be notified and to weigh in on the appropriateness in a by-right situation. He asked if they were in effect losing that right through the changes made if the County accepted this resolution.

Mr. Fritz replied that in a word, no, because if a property currently was served by public water, then the 400-gallon issue was not in play and it was a by-right use, the applicant filed their site plan application and it was processed; the County would notify the abutting property owners, but it was a ministerial process. He said that this did not affect those properties at all, so if the zoning text amendment was approved, that property served by public water would still be a by-right use, and the piece of property not served by public water right may or may not need a special use permit because the 400-gallon analysis would be required now under the ordinance. He explained that under the proposed ordinance, it would need a special use permit, which meant the adjacent property owners would receive notice and be able to appear at the public hearings.

Mr. Keller said but if there was any by right, the adjacent property owners were not notified.

Mr. Fritz replied they were notified only of the site plan, and that was what would happen today and what would happen after this zoning text amendment was approved -- so it would have no impact on any property that was by right today, and it would be by right tomorrow also.

Mr. Keller asked if someone was prepared to make a motion on this and said that Mr. Bivins had an idea for a motion with a modification.

Mr. Bivins replied that he did but did not necessarily have the appropriate grandfather language. He said that if having Mr. Fritz provide that could be a caveat to move forward here, then he would move that they approve the proposed zoning text amendment as discussed and presented but with modification that language be inserted that treated existing properties the way they had intended at the August 2018 meeting. Mr. Bivins apologized that he did not have the exact language but said they may recall the struggle that took place around trying to have something put in to be helpful to those properties.

Ms. Firehock seconded the motion.

Mr. Keller invited further discussion.

Mr. Dotson said he questioned whether they would like to stipulate that before the Board of Supervisors public hearing, a wider public notice of properties would take place of those zoned commercially and designated rural in the manner that they were notified in the earlier ZTA matters.

Mr. Bivins accepted the modification.

Mr. Keller asked how the Commissioners felt about the adjacent property owners to those being notified.

Ms. Riley suggested that they keep it to the property owners because this was directly affecting those, and any future process if a property owner decided to go forward with a special use permit, at that point the adjacent owners would be notified -- but she would keep it to the property owners currently.

Mr. Keller said he would agree, but what they were doing with approval of this was suggesting that a lot were going to go from special use to by right, in which case they were not going to be notified.

Mr. Fritz pointed out that no one who by special use permit now was moving to by right -- and if you were by right now, it would be by right under what was proposed. He said if anything, there were some that potentially might be by right today that were moving into the special use permit category.

Ms. More said that knowing that not all of those from the list of properties provided before would be affected by this if they were to do notification, she felt that notifying other people adjacent to properties was important, as mentioned by a speaker from the public earlier. She emphasized that the last time they considered this, there was a lot of concern about those unnotified property owners versus those who had been affected and knew to come to the meetings. She reiterated that they were only notifying those who were perceived to have potential issues with it if it passed and not those who may see this as something helpful to their properties and values.

Mr. Dotson stated that when Commissioner Riley was speaking about this question, he agreed with her analysis that the abutting owners could be notified at such time that a special use permit application would come in -- and he felt it would be difficult to notify and the extent to go to potentially impacted properties.

Ms. More responded that this would only be the case if this passed through the Board, and if they only heard from people whose properties were directly affected, they were not hearing from citizens nearby. She said that she was willing to let it go and did understand the challenge of notifying those other owners, but she was concerned about those residents as well.

Mr. Keller said there was a motion and a second.

Mr. Dotson said he was proposing and asking the maker of the motion for the suggested amendment.

Mr. Bivins noted that he had accepted the modification to his motion that there would be a notice provision.

Mr. Dotson asked if staff had sufficient direction if that was approved.

Mr. Fritz replied what staff heard was that the Commission would like them to notify all the properties they could reasonably identify as being impacted by this zoning text amendment.

Mr. Keller asked for a roll call.

The motion passed unanimously by a vote of 7:0.

Mr. Keller thanked staff and the Commissioners and said that it would be interesting to watch this move through. He stated that the Commission would take a five-minute break.