

Albemarle County Planning Commission
January 29, 2019

The Albemarle County Planning Commission held a meeting on Tuesday, January 29, 2019, at 6:00 p.m., at the Albemarle County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Bruce Dotson, Karen Firehock, Chair Tim Keller, Jennie More, Vice-Chair Julian Bivins, Pam Riley and Luis Carrazana, University of Virginia (UVA) representative. Absent was Daphne Spain.

Other officials present were Cameron Langille, Senior Planner; Andrew Gast-Bray, Assistant Director of CDD/Director of Planning, Sharon Taylor, Clerk to Planning Commission, David Benish, Chief of Zoning, Mark Graham, Director of Community Development and Andy Herrick, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public

Mr. Keller invited public comment on other matters not listed on the agenda from the public. Hearing none, the meeting moved to the next item.

Consent Agenda

Approval of Minutes: December 4, 2018 and December 11, 2018.

Mr. Keller asked if any Commissioner would like to pull an item off the consent agenda. Hearing none, he asked for a motion.

Ms. More moved, Mr. Bivins seconded for acceptance of the consent agenda; which was approved by a vote of 6:0 (Spain absent).

The meeting moved to the next item.

Public Hearing Items

ZMA-2018-00006 3223 Proffitt Road

MAGISTERIAL DISTRICT: Rivanna

TAX MAP/PARCEL: 032A0020000200

LOCATION: 3223 Profit Road

PROPOSAL: Rezone property to allow for a higher density residential development.

PETITION: Rezone 7.29 acres from the RA Rural Areas district, which allows for residential uses at a density of 0.5 units per acre, to the R-15 Residential zoning district which allows residential (15 units/acre). A maximum of 109 dwelling units is proposed at a gross and net density of 14.9 units/acre.

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

OVERLAY DISTRICT: AIA- Airport Impact Area; Managed Steep Slopes

PROFFERS: Yes

COMPREHENSIVE PLAN: Urban Density Residential - residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses in the Hollymead-Places 29 Master Plan.

Cameron Langille addressed the Commission and said he was the lead planner who had been reviewing the ZMA and would provide background information on the specifics of the proposal, an overview of how the application was consistent with the Comp Plan recommendations, and conclusion of the presentation with staff's recommendation.

Mr. Langille reported that ZMA 2018-0006 was focused on one parcel in the Places 29 Development Area known as 32A-02-2, and the property was currently occupied by one single-family detached structure and had an address of 3223 Proffit Road. He said the property measured 7.29 acres and was zoned RA, Rural Areas. He noted that the property lay within two overlay zoning districts, one being the AIA Airport Impact Overlay, and it also has an area of managed steep slopes.

Mr. Langille stated that the proposal with the ZMA application was to rezone the property to the R-15 residential zoning district, and the applicant had chosen to proffer a concept plan that showed the general block layout for the development, as well as the internal road network. He noted that they had also provided a written proffer statement that specifically called out a few of the items shown on the concept plan they wished to tie down as proffers.

Mr. Langille presented an aerial view of the property, stating that it was difficult to see the single-family detached structure, but it was just north of 649 or Proffit Road, and the property was primarily wooded with an intermittent stream near the back or north side of the property -- which was not a perennial stream subject to the county's water protection ordinance buffers. He noted that there was no 100-year floodplain or preserved steep slopes on the property, and the distance from this property to the intersection between Proffit Road and Route 29 was about 900 feet to the east.

Mr. Langille said that the property was adjacent to the Full Gospel Assembly of Charlottesville Church, which was the property that's due east of it; the property to the due west was the Southern States retail store and warehouse. He stated that across Proffit Road from this property on the south side, there was a preschool, a single standalone detached home, and another church property. He referenced a zoning map and said the property was zoned RA, Rural Area, and to the north was a large undeveloped area zoned Planned District Mixed Commercial (PDMC) -- which was where the Northpointe development would be going in one day. He noted that to the west of the property was HC and south of the property across Proffit Road was R-1 residential, and to the east was RA.

Mr. Langille presented the Places 29 future land use plan, which showed the recommended classifications of the property as well as its surroundings. He noted that the orange color designated urban density residential, which called for residential uses at densities between 6.01 and 34 dwelling units per acre -- including all types of residential uses: single-family detached, attached, and multi-family.

Mr. Langille said that generally properties that had the UDR classification were supposed to have more than one housing type, and in terms of the surroundings, further to the east on the other properties zoned RA were designated as Neighborhood Density Residential (NDR), which was a much lower density classification than UDR and called for 3-6 dwelling units per acre. He stated that to the east of the property was urban mixed-use, with the dashes meaning urban mixed use but directly around a center -- and the letters D, NS, and C were mixed-use centers that were actually called out as future land uses in the Places 29 Master Plan.

Mr. Langille presented one of the four sheets from the proposed proffered concept plan that the applicant had given with the application, with Block A being developable area where the applicant would like to have residential areas located; Block B measured about 2.1 acres and was proposed to be open space. He stated that one key item noted on the sheet was the hatched area on the bottom of the screen, and when reviewing the application, the applicant conducted a traffic impact analysis. He indicated that if the property were to be developed at the maximum density possible under the R-15 zoning district, which would be 109 multi-family dwelling units that the amount of vehicle trips that would be generated at peak PM travel hours that are heading eastbound along Proffit Road would require the installation of a new, striped, and dedicated left-turn lane into the development at its primary entrance. He noted that in Block A were the dashed black lines, and the one furthest right that ran north and south was the road that would be the primary entrance into the development if approved.

Mr. Langille stated that as part of the information learned from the traffic impact analysis, the applicant was proffering some road improvements along Proffit Road -- specifically the Places 29 Master Plan recommends a future cross-section of Proffit Road that had curb and gutter, which it currently did not have at all; a 10-foot-wide planting strip for street trees, and behind the strip it called for a six-foot sidewalk, with none out there currently. He said that the hatched area was a part of the property that would be reserved for dedication of future right of way, and it was wide enough to accommodate the new left-turn lane into the development if the rezoning is approved.

Mr. Langille presented a more detailed plan from the concept plan, noting the location of the internal road network, which was laid out in a grid fashion, and the sidewalk along Proffit Road and the primary entrance. He stated that there was a six-foot sidewalk along the proposed property line, and "Road C" was proposed, based on review comments received from the Department of Fire and Rescue, as a restricted access point into the development. He said there would be bollards installed along Proffit Road, which could be removed in the event that emergency vehicles needed to get into the development. He noted that if the development were approved under R-15 and they developed to the maximum number of units possible, they were supposed to have two points of access -- but ACFR staff have said that the second point would be enough to serve that role.

Mr. Langille mentioned that in the written proffer statement, which was Attachment D in the materials sent to the Commission, the applicants wanted to proffer two inter-parcel connections as part of the concept plan. He said the first was "Road D," which is the furthest road back and extends all the way to the adjacent property lines. He said that this would allow in the future, if either of the two adjacent properties redeveloped, for the potential for a new public road connection between all three parcels that would run parallel to Proffit and could potentially take vehicle trips off the road.

Mr. Langille said that the draft proffer statement had five proffers, entitled now as proffers A-E. He stated that Proffer 1 was the two street interconnections; Proffer 2 was the Proffit Road right-of-way reservation

and improvements; Proffer 3 related to the number of units they wanted to develop on this property. He said that with the UDR classification being six units per acre, based on the acreage of the parcel at 7.29 acres, that would mean 44 dwelling units to meet the minimum acreage at 6.03. He stated that the proffer was consistent with the Places 29 Master Plan's recommended density; Proffer 4 dealt with relegated parking and parking standards regarding screening off-street parking spaces that may be adjacent to Proffit Road, depending on if the property got developed as multi-family or townhouse development; and Proffer 5 related to affordable housing.

Mr. Langille reported that the staff recommendation for the ZMA was that they are recommending approval because it was consistent with the Comp Plan's recommended use types and residential densities based on the UDR future land use classification. He stated that the request was consistent with 9 of the 12 Neighborhood Model principles, and there was a full analysis in Attachment E of how this proposal was consistent with all principles of the model. He said that staff has suggested some revisions to the draft proffer statement, specifically Proffer 4, which relates to relegated parking, and Proffer 5. He noted that it would bring the proposal fully consistent with 11 of the 12 Neighborhood Model principles, and it also accomplished the Places 29 Master Plan's transportation recommendations for Proffit Road improvements.

Mr. Langille said that Attachment G had the staff-recommended language for the specific proffer revisions, and since the time the Planning Commission packets had been sent out, he had spoken with the applicant, who was willing to make the revisions to the proffer statement as suggested. He noted that this concluded the staff presentation on the proposal, and he referenced the recommended motions on the screen as shown.

Mr. Dotson asked about striking Proffer 5, as he found it unusual that an applicant was offering a proffer on something that was a problem clearly recognized by the county, yet the report was recommending striking that proffer. He said that he wondered when either the planning staff or legal staff could give the background and explanation for that.

Mr. Herrick stated that as the Commission may be aware, Virginia Code Section 15.2-2303.4, the proffer legislation that the General Assembly enacted in 2016, put constraints on the proffers that could be required or requested -- as well as those accepted or suggested on behalf of the locality. He said there were great limits on what could be accepted, and that statute defined the term "unreasonable proffer" as any proffer not specifically attributable to the proposed development. He noted that in this case, it was staff's opinion that affordable housing had not been shown to be specifically attributable to the point where it was not something that could be accepted without running afoul of the Code section 15.2-2303.4, and that was why staff recommended not accepting that proffer.

Mr. Dotson said that anticipating the applicant's statement, a question to them to consider would be absent that proffer, would they still intend to build a certain amount of affordable housing.

Mr. Bivins stated that he owned a piece of property in Alexandria and had been involved in receiving a special use permit application for a property in front of what he owns. He said he had shared with counsel what he found to be an unusual situation, as they were using a number of different methods in Alexandria to improve around art, affordable housing, streetscapes that was part of the SP process in Alexandria. Mr. Bivins stated that he would like the county to put forth an opportunity to study this and see if it was

applicable here, where they were using a number of special use conditions to achieve some of the things Mr. Dotson had mentioned.

Mr. Keller suggested hearing back from counsel on it, then hold -- based on his recommendation -- a discussion for new business that's aside from this particular application.

Mr. Herrick agreed that the best form to address that would be in a separate discussion not tied to any given proposal.

Mr. Don Franco with Roudabush and Gale, agent for the applicant, addressed the Commission and stated that they had been working with staff to come up with a plan that was acceptable to staff and met the ordinance requirements. He said that they felt they had presented a good plan, but he would try to address some of the concerns just raised. He stated that with respect to affordable housing, he was slightly confused and it would be nice to be able to proffer that. Mr. Franco noted that at the low end of the density, because the property owner was not sure what it would end up being, they were talking about losing six ADUs, assuming that the by right was taken away and the differential was removed -- making 15% of 41 units about 6 units. He said that to get to the 109 units would require density bonuses, and those density bonuses would likely include that affordable housing component. Mr. Franco said they were leaving some on the table, but not every unit was being lost.

Mr. Franco noted that there was a question as to whether the applicant still planned on creating affordable housing, and his client was the property owner and a number of different people had looked at it, with their intent to sell it. He pointed out that there was no way to know what the buyer was going to do, and the only guarantee he knew of was getting close to the 109 -- and they would have to invoke the affordable housing density bonus.

Mr. Keller invited public speakers.

Mr. Morgan Butler of the Southern Environmental Law Center addressed the Commission, stating that the SELC had provided some written comments to them and he would summarize them. Mr. Butler said there were several positive elements to this proposal and the SELC did not have any major concerns with it, and their comments were more in the interest of trying to get clarity and enforceability with one of the elements that has the potential to be positive -- the open space element. He said that this was a very important part of this project, and according to the staff report it was added in response to concerns raised at the community meeting as an effort to mitigate some of the impacts of the proposal and protect some of the environmental features, such as large existing trees and vegetation on the northern end of the site. He noted that a good portion of the intermittent stream on the site ran through that part of the property that had been shown as open space.

Mr. Butler stated that the SELC applauded the applicant for wanting to include an open space element in this project, but their concern was that the two enforceable items once the project was approved -- the proffers and the application plan -- left very unclear what could happen with open space and what parts of it would actually be preserved. He stated that in looking at the use table on page one of the development plans, the allowed uses listed for Block B, the area indicated as the open space element, were recreation, storm water management facilities, public utilities, and/or open space. He said that it was not clear what areas within Block B would actually be preserved or undisturbed, even though that was one of the main reasons for including it.

Mr. Butler emphasized that it needed to be clear in the development plans what extent of Block B actually would be preserved, including identifying the areas of trees and existing vegetation mentioned in the staff report that are supposed to be preserved. He said it also would be helpful to identify what other uses were likely to take place within the open space and where those would likely be located, so that the adequacy of the open space could be determined and judged. He stated that in addition to providing that information to provide some clear parameters on what open space would actually mean here, it made sense to specifically reference that open space element in the proffer as one of the major elements that had to be reflected in the actual development -- which would help make it a more enforceable part of the proposal.

Mr. Butler stated that the SELC had no major concerns and there were positive elements, with the open space element being one piece that had the potential to be very positive -- but at this point, it was still very loose as to what could actually occur there. He said that it seemed to have been proposed for specific purposes, and the SELC would like to see those fleshed out in more detail in the development plan and be referenced in the proffers so it becomes enforceable.

There being no further public speakers, Mr. Keller invited the applicant to return.

Ms. Firehock asked Mr. Franco if he wanted to make any comments related to what Mr. Butler had said about the open space and its specific uses not designated.

Mr. Franco responded that the specific uses were designated, and they just represented a broad range, which was what Mr. Butler's concern seemed to be. He stated that the first part was that it was not necessarily designed for preservation but was open space for that community. He said that depending on the ultimate density achieved, 44 was likely more single-family detached. Mr. Franco noted that the 109 was more townhouse-ish, and they would want to have a recreational component -- a series of trails with different stations or a number of different things.

Mr. Franco stated that their idea had never been to preserve it as untouched land, and there was one neighbor in the northeast corner with a tree she was very passionate about saving -- and she was not sure if it was on her property or the developer's, but he would be happy to create a proffer to say it would not be disturbed and that was the only tree mentioned in meetings with neighbors. He stated that they felt that leaving a bit of buffer and a recreational area were important components, but this was not designed to be preservation.

Ms. Firehock stated that that the open space had not been proffered, and this was a conceptual site plan -- not a legal document.

Mr. Franco responded that it was a proffered plan.

Ms. Firehock pointed out that a conceptual plan was not the same as a site plan, so they did not have the open space designated on this -- and it was totally unenforceable to say there was a section that was open space, and open space could be a paved playground or woods with a trail. She said that Mr. Franco had indicated he was the agent for the owner who would sell the property, so whatever would transfer with that sale would not necessarily designated exactly how the space would be used, nor its boundaries.

Mr. Franco commented that he was happy to work with staff, and the plan he had presented several iterations ago labeled that “open space.” He said they were asked instead to label it Block B, and in their proffered uses define the uses that couldn’t take place there -- which was why there were recreational and typical open space uses such as public utilities, etc. as uses allowed in that block. He emphasized that it was a tool that would guarantee that there wouldn’t be houses in there and that only the recreational devices went in, but something more intense if intense development occurred on the other side could go in that area.

Ms. Firehock asked if staff wanted to comment on Mr. Franco’s contention that staff had directed him to proceed in a certain way.

Mr. Langille clarified that the draft proffer statement specifically mentioned the concept plans, so letters A through E, items listed in those proffers as shown on the concept plans would be legally enforceable if this were to be approved.

Ms. Firehock responded that she understood that but didn’t see open space listed in the proffer statements.

Mr. Langille explained that there was a version of the plans initially that showed open space and potential lot lines, which the applicant wanted to retain as flexibility for all potential uses allowed under R-15. He said that staff told him that if you proffered and called out open space and a development proposal came in later that encroached into it, it would potentially have to result in an amendment to the ZMA application. He stated that instead what they saw with these types of things was a use table that called out by block the permitted uses, which was what was on the front page. He noted that it was not called out as a proffered item in the proffer statement.

Ms. Firehock commented that she had been a Commissioner for almost a decade and had seen concept plans where items were not included in the final because they weren’t actually enumerated as needing to be included. She stated that she understood that everyone wanted a flexible plan, but now that they don’t have the open space shown, it could be of any size.

Mr. Langille confirmed this and said that the applicant was correct in stating that if this was developed to maximum density, they would have to do bonus factors such as preservation of trees, provision of affordable housing, etc. He stated that ultimately there were recreation requirements that the zoning ordinance required if a certain number of residential units were developed, so there would most likely be some form of active recreation -- and that could possibly go in the open space area and include things like playgrounds, which may necessitate tree removal.

Ms. Firehock clarified that she was not calling for nothing to happen in that space, nor was she trying to demand a proffer from an applicant at the dais, but she was concerned that some of the narrative in the report stated that the community was happy the applicant had said they wouldn’t really disturb this area and that would be a buffer. She said that may end up happening, but she was wary because they didn’t have any way to control that.

Mr. Franco emphasized that they could not develop there except for open space uses, and lots could not transfer over there but something more intense like a playground could develop in that area -- but they were not talking about no open space. He said that a tot lot or something like that was still part of the

recreational open space, so the open space was guaranteed and was guaranteed to be in the two-acre size range because of the proffered plan and accompanying text. He added that there was no way they could come back and say they would put houses there, and that was not their intent.

Ms. Firehock asked if it was staff's understanding that there would be a two-acre open space.

Mr. Langille replied that he would like to consult with the County Attorney on that to clarify the status if it was shown on the concept plan but wasn't specifically called out in the proffer statement.

Mr. Herrick explained that the proffer statement said that "the property shall be developed in general accord with the plans," and the plans showed a certain area as being either open space or another designation.

Ms. Firehock stated that she did not see that on the plans.

Mr. Langille said that the first page called out Block B to be open space and states an acreage figure in some of the notes on the first sheet.

Ms. Firehock commented that she felt confused, as he had said they didn't want a hard line in the event they had to encroach into it. She asked for specific clarification as to whether it was a defined area or not.

Mr. Langille responded that it was 2.1 acres shown on the plan, and that was defined -- with a boundary line between the development.

Ms. Firehock stated that there was a hard line, and that would be the open space.

Mr. Franco said that "general accordance" meant it was a big, wide hard line. He said that in other words, there was some flexibility -- and general accordance to him meant that if they were at two, that was close enough to 2.1 as well as 2.2., and that line may wiggle instead of being a straight line. He added that this was the flexibility they were getting but would get approximately 2.1 acres of open space, not preservation space.

Mr. Langille pointed out a line representing the boundary between Block B open space area, with everything else being Block A where residential uses would take place.

Ms. Firehock said that the only remaining concern was what goes on in there, as it was not enumerated, which was her issue as well as Morgan Butler's.

Mr. Franco stated that he was happy to try to resolve her concern, and what went on in there was dictated by the allowed uses -- but the amount of uses, etc. was not. He said that perhaps specifying that within 100 feet of the back boundaries or some "no touch" buffer preservation area would resolve it.

Ms. Firehock responded that it would be helpful so the neighbors felt they had somewhat of a vegetative buffer, but there was also an intermittent stream and it wasn't falling under the water ordinance but was a drainage so it would be draining things away from that site. She said that to try to lessen the amount of disturbance, more detail would be useful. She added that she felt the applicant was on the same page with this.

There being no further questions for the applicant, Mr. Keller closed the public hearing.

Ms. Firehock stated that there was a comment about the school district demands and she wondered if Mr. Dotson had anything to add to that since he was on the long-range planning task force for the schools.

Mr. Dotson responded that the statement and the staff report were accurate.

Ms. More said that Ms. Firehock covered her own concerns well but said that as she read through the applicant's justification, the R-15 zoning would create a transition between the primary non-residential uses and the existing low-density residential. She stated that the transition zone if the property were to come in at the higher end of density was a bit of a stretch of the imagination for her, but she understood that this was the land use designation and that was the high end allowed and that didn't seem to be much of a transition between what was shown on the maps.

Mr. Bivins stated that there would be a nice piece of sidewalk that ends on the other side, but he was concerned about how to create a walkable area in this district with the housing that was below it, which he thought was Forest Lakes. He said that his concern was how to fashion a livable space so people can walk to the Food Lion, and this felt like a good first step. He added that he was worried about Block B because he felt there would be pressure on the north point, behind Block B, and how they make the transitions between this potentially exciting project and what was going on there -- and it was important that they retain the blended character of that area. Mr. Bivins said he was thankful that the applicant was looking at a way to keep Block B an open space.

Mr. Carrazana said that the intent was to sell the property and as it transitioned to a new owner, they would likely be looking at developing and it would probably not look exactly like this -- and he asked if any changes would be in the form of an amendment.

Mr. Langille responded that the street layout as shown in the image presented would be tied down and if they wanted to alter it, it would require an amendment -- but ultimately if it were approved, the developer would have to concentrate their actual uses in the area in Block A. He noted that if they wanted to change that, it would require an amendment that would have to go through the legislative approval process.

Ms. Riley commented that she did not have a problem with the uses outlined for Block B but did have concerns about some possibility for the staff to tie down the preservation of some of that buffer that the neighbors and Mr. Butler had concerns with.

Mr. Keller asked Mr. Gast-Bray if they had talked about having a presentation on connectivity, as he saw the merits of a six-foot sidewalk and wondered in the areas that were rural transitioning to suburban whether a wider sidewalk next to a roadway with higher speed traffic, at least further down. He stated that he was not convinced that something that had some separation of grade from the curb of the highway wasn't something staff should be considering, and he hoped staff could have that presentation soon so the Commission could understand what their rationale as a staff was for anticipating the connectivity Mr. Bivins was referencing and what the various solutions might be -- and whether there might need to be flexibility and thinking about what that connected way might be. He stated that in this kind of area, it may be that something that was more bicycle and pedestrian-related and therefore needed some separation from a higher speed vehicle would be better.

Mr. Gast-Bray stated that it would be best addressed under new business.

There being no further discussion, Mr. Keller asked if someone was prepared to make a motion.

Mr. Dotson said that he would make a motion and commented that he thought it was an excellent and well-presented staff report. He stated that he was disappointed about the situation with affordable housing – and they all know that building new market rate housing would generate the need for people to provide services to that housing that will not be able to afford market rates. He emphasized that those impacts emanate from the site, and by right they should be mitigated onsite. He said that he did not believe that they currently had the research available to indicate that they were specifically attributable to this particular site – but that was a broader problem than he hoped they could investigate in the future.

Mr. Dotson moved for approval of ZMA-2018-00006 3223 Proffit Road, with the recommendations and proffers as indicated in the staff report.

Mr. Bivins seconded the motion.

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

The motion was approved by a vote of 6:0 (Spain absent).

Mr. Keller thanked both the applicant and staff for a very clear report. He asked Mr. Franco if he had a question.

Mr. Franco asked if they had to come back and react to some of the discussion heard at this meeting, such as putting a preservation area in, etc.

Mr. Herrick replied that they would not, as long as the applicant understood that was not a suggestion of the locality – but if the applicant wished to change its proffers going forward, that was certainly something we could take a look at.

Mr. Franco asked for confirmation that they would not have to go before the Planning Commission again, and Mr. Herrick responded that this was correct.

Mr. Gast-Bray noted that he would bring back that information back before the Commission's edification.

Mr. Keller thanked them both.

The meeting moved to the next agenda item.