

Ms. Banton called the roll.

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

Mr. Keller thanked the applicant and said the item would be moving on to the Board of Supervisors.

**ZMA201600022 Moss (2511 Avinity Drive)**

Ms. Megan Nedostup introduced herself and said she would be going through the staff report. She said that with the exception of Mr. Bivins, all other Commissioners had been present at the last Planning Commission meeting where this proposal had been discussed. She said her presentation would be short and if Commissioners had any additional questions to cover, she would have extra slides at the end of the presentation to go through.

Ms. Nedostup said the proposal was one to rezone from R-1 to Planned Residential Development (PRD) and that a public hearing was held on September 26, 2017 and was deferred by the applicant at that time to address nine issues that were identified in the staff report.

Ms. Nedostup showed an image to orient the Commission on the location, which was located along Avon Street Extended next to Avinity and by Cale Elementary School. She then displayed the plan that had been submitted and reviewed at the last Planning Commission meeting in September 2017. She said that not a lot had changed in terms of design. Ms. Nedostup said the two buildings and the parking area were roughly in the same location. She said there had been added additional pedestrian facilities and the parking had been modified and the courtyard had been extended.

Ms. Nedostup said the applicant had addressed several of the issues that were identified at the last planning Commission meeting to staff's satisfaction, as was outlined in the staff report. She said that one of the significant issues identified and addressed included access to the site from Avinity Drive. Ms. Nedostup said at the last Planning Commission meeting, the developer had not demonstrated that they had adequate access but since then they had worked with the adjacent property owner and obtained access. She said there had been a lack of information and justification provided at the last meeting for the reduction request for the Planned Resident Development. She stated there was a minimum of three acres and the developer wanted to reduce that to 0.9 acres. Ms. Nedostup said the developer had submitted additional information that demonstrated 25 percent open space onsite, including the courtyard and pedestrian circulations throughout the site. She said staff was satisfied and could support that request.

Ms. Nedostup said another issue had been the lack of detail regarding affordable housing. She said the applicant did provide language on the application plan to address the concern of 20 percent, and staff had found that the language met the policy in the Comprehensive Plan.

Ms. Nedostup said that due to the applicant's response and ability to address the issues, staff was recommending approval of the rezoning and in addition to the rezoning request, there was a request for a special exception for the reduction in the required PRD acreage from 3 acres to 0.9 acres. She said a detailed analysis of this request was provided in Attachment D.

Ms. Nedostup offered to answer questions.

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

Mr. Justin Shimp introduced himself as the engineer for the project. He noted that some time had passed since the application was last before the Planning Commission, when all Commissioners except one had been present. He said he would give a quick run-through of the application to highlight changes and would report on the interactions with the neighbors.

Mr. Shimp displayed an image of the subject house and noted that the built Avinity neighborhood was in the background. He then displayed an aerial photo that showed the scale of the development relative what had been built, pointing out that a lot of the development that had been built was phase 2.

Mr. Shimp said the adjacent lot was owned by Mr. Jason Moss, who was present at the meeting. Mr. Shimp said Mr. Moss had lived for about 30 years in a house that was displayed on the screen. Mr. Shimp said it was an interesting situation where the development had happened all around them and the Mosses had come back with their own piece to redevelop. Mr. Shimp said this was one of the rare times this had happened in his career.

Mr. Shimp showed another image, which he said depicted an attempt to show the buildings were being made at scale that was similar to what had been built around it. He said the difference was that the newer buildings were multifamily buildings so there would be more people in smaller spaces, but the size of the buildings was equivalent to a three-unit townhouse and a seven-unit townhouse if it were built to what was normally within Avinity.

Mr. Shimp said the property was about one acre and had an existing house in the middle. He said there was a driveway that was built as part of the Avinity neighborhood. He said this driveway was the main reason why it had taken the application 18 months to get back to the Planning Commission. He noted that the driveway was due to foresight from a prior Planning Commission in 2006 that had put a condition on the application plan for Avinity that inter-parcel connections be provided, and it ultimately ended up happening with the easement.

Mr. Shimp said someone had been thinking ahead because the Avinity driveway used to be in one location and there was an easement. However, he said when a new entrance was built to

the approved PRD, there was a lack of coordination on the site plan but it had been caught by the Planning Commission and had been attached to the zoning, and that had made it a legally binding requirement so that was how access to the subject property had been granted.

Mr. Shimp displayed the site plan and said there had been a lot of details in the plan. Mr. Shimp said that PRD and Planned Unit Development applications normally spoke to a suburban construct, so the 25 percent open space requirement, some people might think that would mean preserved trees. However, Mr. Shimp asked what would be done with a 1-acre infill site. He said there was really not a good zoning ordinance for that in Albemarle, so the request was for a PRD with a request for a special exception to go from 3 acres to 1 acre. He said they had demonstrated via detail in the plan that there was sufficient amenity area for the residents. Mr. Shimp said that in this case, pretty much all of the 25 percent was usable space, whereas many times there would be trees that were nice but not an actual amenity area. Mr. Shimp said all of the space at Avinity was usable for different functions, with a courtyard with a landscaped lawn game area and another grass area to walk dogs.

Mr. Shimp showed an image of the street to give an idea of the missing piece in what was otherwise developed as an urban form. He showed a photo of the Sam Craig units being built along Avon Street. Mr. Shimp said his firm modeled the architectural requirements after those units. He said another of the confusing aspects of this had been that Avon Street used to be an entrance corridor. He said the developer had said they did not need to do an architectural proffer because the ARB would require a comparable design. However, Mr. Shimp said that had ceased to be the case, so his client had hired an architect to produce a rendering for the proffer which picked up the detail of the Craig units so that in construction they would look similar. He said that had been one of the questions from the staff and the neighbors. Mr. Shimp said this would be a different product from what was around, but he said he thought that they have demonstrated that the scale and design was compatible.

Mr. Shimp presented an illustration showing that the Craig units were three stories with a roof top, and he noted that the Avinity Moss units would be three stories with a low hip roof and a very similar look.

Mr. Shimp said he did not have traffic numbers but there was only a very minimal increase and that was determined to be adequate.

Mr. Shimp said that because the application had been deferred for so long, there had been a neighborhood meeting two and a half years ago. He said the neighborhood had changed and people had moved in and out. Mr. Shimp said they held another neighborhood meeting a few nights ago and he said he thought some people were relieved to see some of the architectural renderings and that there was compatibility. He said those were some of the questions that they answered.

Mr. Shimp said one small item was brought up at the neighborhood meeting that he was willing to address and keep working on between now and the Board of Supervisors meeting. He stated

that the plan had a required screening fence on the back of the property, which was required by the ordinance to be six feet.

Mr. Shimp said the adjacent neighbors had noted that at one point the PRD had been intended for higher intensity than the single house. He said that development would have required an eight-foot screening fence, and he had agreed to match that height -- which would be clarified in the final application plan.

Mr. Shimp pointed to an image of a house that he said would have the potential of light shining in from the parking lot. He said they would agree to provide a solid fence at that portion of the land to provide a little extra screening.

Mr. Shimp said another item that came up at the neighborhood meeting was the potential for people from this development to stroll over to Avinity and use their clubhouse, patio and dog park. He said because this development would be a rental community, the owner had offered to put in a condition that if residents were to go over and use those, that would be grounds to be removed. However, he said the preference was that this new development would join the Avinity Home Owners Association. Mr. Shimp said they would send them a letter.

Mr. Shimp said that had nothing to do with the zoning question, but he wanted the Planning Commission to know they would submit a letter offering a contribution to the maintenance of the road, which was currently free to the owner in exchange for an opportunity to buy into the HOA so that people who lived in the new development could use those amenities and it could be one community. He said that in the context of Avinity, a product that was really missing was small apartment buildings with 20 percent affordable units, and that would be five affordable units. He noted that this would fill in the piece.

Mr. Shimp said he felt remaining items could be resolved from a zoning and application plan standpoint, and a few minor tweaks with the fencing detail would move this forward.

Mr. Keller asked Commissioners if there were any questions for Mr. Shimp.

Ms. Riley stated that Mr. Shimp would match the eight feet and asked if there was any vegetation or any other screening beyond the fence.

Mr. Shimp responded that it would just be a fence on that side.

Ms. Riley asked how close the Avinity fence was to the fence. She asked if it were correct that they were not close.

Mr. Shimp responded that they were pretty close and that it would need coordination. He said that the site plan for the adjacent property required them to put a fence up, and now he was required to put up a fence, so there would be competing fences.

Ms. Riley asked how much space would be between the fences.

Mr. Shimp said it could be as little as a foot.

Mr. Keller asked Mr. Shimp if that was something he was hoping to work out with the HOA.

Mr. Shimp responded that he would work with staff on the fencing issue and tweak the application plan to clarify that. He said it was a neighbor to neighbor issue where the ordinance required one person to build a fence and the ordinance required another person to build a fence, and they just needed to do that in a reasonable way. He said it was a maintenance issue but that they didn't want there to be an odd space that got overgrown with weeds or wildlife.

Mr. Keller asked if there were any further questions.

Mr. Bivins asked if there were any members of the audience who wanted to speak to the issue.

Mr. Paul McArter of 2012 Avinity Loop introduced himself and said he had spoken to the Commission several times before. He said he had three things he wanted to state that were concerns on his behalf. He said one of them had already been alluded to working on, which was the spillover in to Avinity. He said some of Avinity's amenities like the clubhouse were behind lock and key and were not necessarily a concern -- but sidewalks, lawns, the dog park, doggie bags, a future playground and several things like that were concerns from both a wear-and-tear and liability perspective.

Mr. McArter said that one thing Mr. Dotson had mentioned last time was that you drive past the Avinity sign to get to this place, and obviously anything on the other side of that sign would be part of Avinity. Mr. McArter said they he was happy to hear they were discussing the possibility of joining the HOA. He said Avinity was developer run and that would mean some stuff was outside of the homeowner's control. He wanted to make sure those issues were brought up and that it was nice to hear there was something to work with.

Mr. McArter said the second item was the change to the entrance corridor rules. He said one of the concerns he had was that the developer for Avinity II made promises up front about what it would look like when done, but now the county had lost the oversight control as an Entrance Corridor. He said if there was a mechanism to make sure that this development was actually built like what they recommended, that would relieve some concerns for residents.

Mr. McArter said the third item was not specific to the project but was about Avon Street Extended as a whole. He said that Cale Elementary School was getting very overwhelmed by all of the new developments that were going in. He said that adding this with the two bedrooms, which would lend themselves to an additional child, added to concerns about Cale getting more people given to them in a very short period of time.

Ms. Cara Cavanaugh at 2144 Avinity Loop said that she appreciated the neighborhood meeting and that a lot of her questions and concerns had been answered. She said she just wanted to touch on a few things to make them public record. She said that Mr. McArter had mentioned the need for assurance that the design piece was what they would see when it was built. She said that based on the new changes, she appreciated the design cues that were taken from the Craig buildings. She said she hoped that along with the landscaping would actually be done. Ms. Cavanaugh said she could not say that on other developments within that property. She said she had been told that because one was residential, and one was site plan, but she was now being told that was not necessarily true and the oversight might not be there.

Ms. Cavanaugh said her second piece was the maintenance and the property management and the tenant management. She said she was all for affordable housing and apartments. She said she lived in apartments for 18 years. However, she said that in the residence that was currently on the property, there was a violent sex offender living right next to Cale Elementary School, and she was very concerned that there was no vetting process for tenants at this location. She said as someone who had to apply for apartments for 18 years, that was always part of it -- and she was hoping that there could be some sort of assurance with the owner that there could be something built in. She said the bus stop was right on the corner there, and the victim of the sex offender was 11 years old. Ms. Cavanaugh thanked Mr. Shimp for the work he had done to educate the neighbors.

Ms. Marty Power of 2084 Avinity Loop said she was the owner of the town home right next to the development. She said she appreciated what Shimp Engineering had done to come over and talk to the neighborhood. She said her biggest concern was the fence and she wanted to go on record to support what Mr. Shimp was proposing with an eight- or nine-foot fence that was closed so that headlights do not come into her house.

Ms. Power said the other concern she had was that the first time that they saw the proposal, a dumpster had been located next to her backyard. She said she wanted some assurances that the dumpster would stay where it was and would not be pulled over to the right next to her backyard. She said she was concerned about the odor and other things. Ms. Power said she welcomed the development and looked forward to the opportunities the new residents would have if they could be part of the HOA. She said having that kind of development in the neighborhood could definitely make a difference.

Mr. Keller asked the applicant back to answer questions.

Mr. Shimp said he had two clarification to make based on the comments. He said sheet 6 in the application plan was the rendering of the buildings. He said the way the staff had the application up; those renderings were proffered. He said even though the application was not within the ARB's jurisdiction, the developer had to build in accordance with the design that was in the record. He said the folks who had spoken to that issue could know that what had been presented to them was what the county will be required to enforce. He said zoning staff would make sure that the building was built that way.

Mr. Shimp said the other clarification related to the dumpster and said it was the same sort of issue. He said because there was connectivity with the road and the emergency access as a main function, the dumpster being where it was located would not be a lot of change. He said there was a lockdown with the application plan, which was a very specific application plan but a small site. He said for those two items, people could be assured they were locked down.

Ms. Riley asked about the offer made to build an eight-foot fence in the back portion adjacent to a homeowner's parcel and if it would be solid. Mr. Shimp said that would be something that could be added to the recommendations, and he would tweak the application before it went to the Board of Supervisors to explicitly state that.

Mr. Bivins asked Mr. Shimp to state the number of affordable units that would be considered at the development.

Mr. Shimp responded that it would be 5 units or 20 percent.

Mr. Bivins asked what that would be five units if there were 42 units.

Mr. Shimp said there were 24 units in the whole development.

Mr. Bivins said that given the desire for affordability, he wondered if there was flexibility to designate handicapped spaces or if that was locked in.

Mr. Shimp responded that there was a requirement for a number of accessible parking spaces based on Americans with Disabilities Act (ADA) codes, and there were two such spaces for this project. He said that the plans might not show them, but they were intended to be there. He said the requirement was one per 25 units, and regardless of what was shown on the plan, there would have to be two spaces.

Mr. Bivins asked Mr. Shimp if he would fix it.

Mr. Shimp responded he would.

Mr. Shimp said the county's system did not require all units on the first floor to be accessible units that were also affordable. He said it would be good practice to do so because people who received housing voucher assistance could get into those units, but it was not something that was required and was instead left up to the developer and the builder.

Ms. Riley asked for further clarification about the mix of units within the development and how long the term would be for a commitment to keeping the affordable units affordable.

Mr. Shimp said the mix would be 18 two-bedroom and six one-bedroom units, and the affordable units would likely follow that same ratio. He said there was a different price point set

for the affordable units so there would probably be a diversity of units as well, and the term of affordability would be 10 years.

Ms. Riley said she was assuming that was within the county's policy.

Ms. Nedostup confirmed this.

Mr. Dotson said that regarding the woman who lived in the unit directly opposite and closest to the parking lot who had talked about the wall, it seemed that Mr. Shimp was willing to build an eight-foot or nine-foot fence. He suggested that Mr. Shimp do a mock-up of the fence to show what eight feet would look like and what nine feet would like. He said that more was not necessarily better, and it could become something that instead of protecting would become an intrusion in its own right.

Mr. Shimp said the fence would be eight feet and would match the fence that was there. He said there was actually an eight-foot fence along there now and he wanted to make sure it matched. He said there was some coordination that had to happen but he would stay on top of it, and neighbors were happy with what that height. Mr. Shimp said he agreed that it could be intimidating if a neighbor did not know how it would be sitting next to the house.

Mr. Keller asked if there were any further questions for the applicant. Hearing none, he closed the public hearing and brought the matter back before the Commission for discussion and action.

Ms. Firehock commented that she was fine with a little less open space, but she did not want to set a precedent that sidewalks would count toward the open space calculation. She said she expected to see sidewalks in a quality development. She said she would like to have open space be something that actually had a different purpose than simply walking through the development, and the sidewalk was not a trail.

Ms. Riley said she had heard the applicant say he was amenable to doing an eight-foot fence with solid material and that Mr. Shimp had said they could make that a recommendation. She said sometimes the Commission made conditions and sometimes just made recommendations, and she asked Mr. Herrick if a recommendation would be binding.

Mr. Herrick said it would not be binding and that anything that would be binding would need to be made a condition of the recommendation.

Ms. Riley said she was struggling because there needed to be further discussion between the neighbors, and she did not want to bind them into an outcome that the neighbor and the applicant might want to change later because there was an improved design. She said the Commission had made recommendations in the past and generally felt that applicants would follow through on them and do the negotiations with those neighbors before an item went to



the Board of Supervisors. She said she was open to that process and wondered what other Commissioners thought.

Mr. Bivins said there were several things he thought the Commission was leaning toward. He said the applicant had said they would like to join the HOA, and HOAs typically had owners who would say yes or no at some point as to whether or not they could join. Mr. Bivins said it was in the applicant's interest to do what they said they would do -- otherwise the other half of the desire probably wouldn't get fulfilled. He said he did not think the applicant wanted to create an environment where there were harsh feelings, and he would help support the applicant's desire to join the HOA.

Mr. Keller said the Commission was interested in connectivity and asked if there was a mechanism whereby the redundant fence could still be required in case the other fence came down. He said it seemed like these should be resources that could be spent on something else rather than on a redundant fence.

Ms. Nedostup said if the fence was shown on the site plan and there was a desire to remove the fence because of the parking along the residential neighbor, the ordinance required screening of the parking.

Mr. Keller asked if that meant there could be a vegetative fence that could go next to the physical fence.

Ms. Nedostup responded that she did not know from the application plan where the existing fence was to determine if there was enough room to put in vegetation on one side or the other, and that might require an easement.

Mr. Keller pointed out that Ms. McCulley had kept a list of zoning items to fix and suggested it would be appropriate for Ms. Nedostup to add the fence to a similar list of items to fix if they started seeing more of these fences. He said there should be ways to come up with not doing something that was not necessary, but at the same time there could be a protection that if the other fence went away, this one would remain. He said if the HOA agreement were to fall apart in 10 years, there would still be a responsibility.

Ms. Nedostup said if the fence were a requirement of the site plan, it would be a site plan violation and they would need to replace the screening.

Mr. Keller said he was trying to find a way to take the redundancy out because the Commission was trying to align circulation. He said it seemed to him that they really didn't want to create a redundancy of dueling fences.

Mr. Herrick said he thought Mr. Keller's point was well taken, but it was an administrative site plan issue rather than a rezoning issue. He said there was a ZMA before the Commission, and

the fence issue was really something that would be addressed with a site plan regulation rather than a rezoning.

Mr. Keller said he was just asking if it could be something to put on the list for items to think about.

Mr. Herrick said he understood.

Mr. Keller said he had not heard of a double fence in the years he had been on the Commission and was wondering if it would come up again with more infill development. He said he was not suggesting the fence be addressed in the rezoning.

Ms. Nedostup said staff would take a closer look at the site plan if the neighbors were amenable to having vegetation instead of a fence because the regulations did allow that distinction.

Mr. Keller said that might be more effective in terms of the car lights.

Ms. Riley said she was prepared to make a motion.

Ms. Riley moved to recommend approval of ZMA-2016-22, 2511 Avinity Drive, for the reasons stated in the staff report, and she recommended that the applicant increase the fence height from six to eight feet on the eastern side of the parking lot and make the southernmost portion of the fence a solid material.

Mr. Bivins seconded the motion.

Mr. Keller asked Mr. Herrick if he was comfortable with the modification.

Mr. Herrick responded that he was if it was the will of the Planning Commission, adding that the Planning Commission spoke through approved motions.

Mr. Dotson noted that there was no reference to any of the attached exhibits and asked if they were needed.

Ms. Nedostup said the approval for the ZMA was with the application plan, so there was no need to make a reference.

Mr. Herrick said that was correct and it was a rezoning and not a special use permit.

Ms. More asked for clarification that the recommendation as it was presented in the motion would still allow for the possibility of a double wall to be reconsidered in the site plan process.

Mr. Herrick said if the motion were adopted, that would be the recommendation of the Planning Commission. However, he said that staff's review of the site plan would be governed by the site plan ordinance.

Mr. Keller said they had heard that the vegetative fence could be an alternative.

Mr. Keller said they had heard a second. He asked for further discussion. Hearing none, he called for the roll.

The motion was approved by a vote of 6:0 (Ms. Spain was absent from the meeting and the vote).

Mr. Keller thanked staff.

Ms. Nedostup said there was also a motion for the special exception.

Ms. Riley made a motion to recommend approval of the requested special exception to allow the minimum area required for the establishment of a Planned Residential Development from 3 acres to 0.9 acres for the reasons listed in the staff report.

Mr. Bivins seconded the motion.

The motion was approved by a vote of 6:0 (Ms. Spain was absent from the meeting and the vote).

Mr. Keller thanked staff and the applicant and said the project would move on to the Board of Supervisors.

#### **Regular Item - 2018 Planning Commission Annual Report**

Mr. Keller said they still had to hear the Planning Commission's annual report and an update on proffers from Mr. Herrick and asked the Commission if they were willing to proceed on both.

Ms. Firehock said she had a sick relative who was waiting to be picked up and taken home and thus would not be present for the proffer presentation, but she had previously done a lot of work on proffers.

Mr. Keller asked Mr. Herrick how long the proffer presentation would be.

Mr. Herrick responded that he would plan for no more than 10 minutes but was also happy to take questions.

Ms. Firehock withdrew her concern as long as the presentation didn't take an hour and a half.