

**Albemarle County Planning Commission
FINAL Minutes December 17, 2019**

The Albemarle County Planning Commission held a public hearing on Tuesday, December 17, 2019, 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; Daphne Spain; Jennie More; Julian Bivins, Vice-Chair; Bruce Dotson; Pam Riley; and Luis Carrazana, UVA representative.

Members absent: Karen Firehock.

Other officials present were Jodie Filardo, Community Development Director, David Benish, Planning Director; Carolyn Shaffer, Clerk to Planning Commission; Cameron Langille; Mariah Gleason; Roger Johnson; J.T. Newberry; and Andy Herrick.

Call to Order and Establish Quorum

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

From the Public: Matters Not Listed for Public Hearing on the Agenda

Mr. Keller asked if there were any matters from the public not listed for public hearing on the agenda that anyone would like to speak to.

Mr. Sean Tubbs (Piedmont Environmental Council) said he didn't know if any of the Commissioners would not be there in a couple weeks. He said because he was not a reporter at that moment, he hadn't kept best track of who is where. He said that for those Commissioners who might be leaving or staying on that he wanted to thank them for their service. He said over the years, he had a chance to watch the Commission as a reporter and now, as an advocate.

Mr. Tubbs thanked the Commission for helping to fulfill Albemarle County Planning Commission's task of promoting the orderly development of the County. He said it takes long meetings and, at times, impassioned arguments, as well as a lot of patience.

Mr. Tubbs said that in doing some research for the Broadway Blueprint work session, he came across the minutes from the October 2016 joint City-County Planning Commission meeting. He said Mr. Peter Thompson of The Center (formerly The Senior Center) came to talk at that time about the relocation of that organization to Belvedere. He said this was now something that is four months away, and that Mr. Thompson has a concern. He said he wouldn't talk about that that evening because in the future, the Commission would be hearing a lot from him and others about the need to make sure that the City and County are working together better in the implementation of infrastructure that fulfills the Comprehensive Plan goals.

Mr. Tubbs said on that point, one of the Comprehensive Plan goals that's been in both jurisdictions' Comprehensive Plans for years is the goal of reducing single-occupant vehicles. He said this was something that, according to the American Community Survey data from the Census, really hasn't happened, but that there was a group of people and many pieces where they can get those things moving together.

Mr. Tubbs asked the Commissioners to mark their calendars for January 22, as the Center for Civic Innovations would be holding a forum to have people talk about what their obstacles are for why they continue to remain in a vehicle. He said this is something that he has personally been doing to try to make himself break the habit of driving, and that he wants to hear from others. He said there must be respect for what people do, and the idea is to reduce the numbers, not replace the system completely.

Mr. Tubbs pointed out an email that his colleague from PVCC, Mr. Peter Krebs, had sent the Commission regarding the Hyland Park amendment, specifically the proffer amendment. He said it may be in the Commissioners' email boxes and that Mr. Krebs could explain it much better than he could regarding their position about the Class A trails versus the Class B trails. He recommended taking a look at this and consider what that means.

Mr. Keller informed Mr. Tubbs that he would have an opportunity to speak to that at that point.

Mr. Tubbs said he was not sure he could speak in the detail Mr. Krebs did, and so he would refer the Commission to the letter.

Consent Agenda

There were no consent agenda items.

Public Hearing Items

ZMA201900007 Hyland Park

Ms. Mariah Gleason, Senior Planning with the Planning Division of the Community Development department, presented.

Ms. Gleason said the subject parcels are located in the Fontana subdivision in the Pantops development area. She said this area lies just west of the upper Cascadia development. She indicated on a map to Cascadia and Route 250. She said this is the last phase of development for Fontana.

Ms. Gleason said the Zoning Map Amendment request is to amend proffers previously approved with ZMA2014-18 and ZMA2011-01 on 21 parcels covering 10.88 acres of the Fontana subdivision. She said this request is proposing revision to 9 of the 10 approved proffers. She said four of those are substantive changes, three are clerical changes, and two of them are requested to be removed because they have been satisfied.

Ms. Gleason presented an image of the current site, indicating that parcels are a mix of developed, developing, and undeveloped parcels. She said the parcel on the far left has a primitive trail on it and is not expected to be developed. She said there are 19 parcels in a cul-de-sac area that have been platted and graded, with one Certificate of Occupancy (CO) having been issued and 11 Building Permits having been issued there so far.

Ms. Gleason said development is underway, and that there is one parcel in a corner lot that is currently under review by staff for the platting of the final 15 lots in the rezoning amendment to culminate at 34 dwelling units that were approved with the rezoning plan in 2004.

Ms. Gleason said she would be touching base on the four substantive changes. She said they could also review the clerical changes and the omission if members of the Commission would like. She said the first

substantive change was to Proffer #5, which the Commissioners may have received an email about. She said she provided the existing proffer language on the top and the proposed language on the bottom of the slide, with language changes represented in red.

Ms. Gleason said the items changing in that proffer amendment are to revise the language to include more generalized language to allow flexibility in where the final placement of the paths are; changing the construction type of the paths from Class A Type 1 (being an asphalt construction) to Class B Type 1 (being constructed of earth, mulch, or stone dust); and to change the timing of the installation from the ninth building permit to when 50% of the dwellings are complete.

Ms. Gleason presented a picture of the trails that will be affected by the revision, for reference. She said they are located on the corner lot that is yet to be developed and is currently being reviewed by staff. She said in terms of development standards, there were differences between the Class A Type 1 and the Class B Type 1. She said there is also a design element that informs the grading that is allowed, with one being a 20% grade allowed while the other having a 10% grade. She said thus, these are allowed to be slightly steeper with Class B than Class A would allow.

Ms. Gleason presented an image that came from the approved road plan. She said that while the road plans do not carry any weight on what the subdivision does, they were approved by Engineering.

Ms. Gleason said the revision to the sixth proffer addresses the cash proffers. She said the applicant is seeking a by-right use credit, which is relief from the obligation to pay proffers on development that would have been allowed on the property prior to the original rezoning. She said revisions to the proffer also remove the earmarking of the proffers to be used exclusively for improvements for schools, libraries, public safety, parks, and transportation as identified in the County's Capital Improvements Program (CIP). She said this language is being removed.

Ms. Gleason said the cash proffers are now codified under the State legislation, and so the statement was no longer needed. She said the revised proffer actually improves the language because the County, under State code, is no longer able to accept cash proffers to fund libraries.

Ms. Gleason said clerical edits were also proposed to change the terminology of "residential units" and "units" to "dwelling units," which is consistent with the clerical changes across the rest of the proffers.

Ms. Gleason said Proffer 9 addresses the architectural standards and is requesting to expand the number of allowed façade colors. She said the representative from Monticello has confirmed that this revision satisfies the Monticello Viewshed's concerns. She added that staff has no concerns with this proffer change. She said there were also clerical edits with this.

Ms. Gleason said Proffer 7 is the only proffer that staff and the applicant could not reach agreement on. She said the applicant is requesting that the escalation date of the proffer be revised to start on January 1, 2019 as opposed to the original start date of January 1, 2008. She noted that the start date will affect cash contributions associated with the cash proffers of Proffer 6, as well as the affordable housing proffers contributions of Proffer 3.

Ms. Gleason presented a chart of the similar proffer agreements that the County has considered up to that point. She noted what stood out was that the Planning Commission and Board of Supervisors have recommended denial in all of the previous requests that have been similar, in reducing cash proffers or changing the escalation date (to staffs knowledge),

Ms. Gleason said there had been one request in Avon Park in which the Board did approve the application request, but the request for the cash proffer reduction was removed per the Planning Commission's recommendation. She said with that request, however, the start date adjustment is visible in the final proffer statement, and the adjustment was not discussed by the Board nor mentioned in the staff report. She said that change was likely missed by staff and approved in the final proffer statement.

Ms. Gleason said that based on staff's evaluation, staff believes that based on the Board's previous denial of similar requests, the subdivision construction and proffer payments for the development have commenced, and by resetting the escalation date, the resulting proffer amounts for cash proffers and affordable housing proffers will be reduced. She said staff does not support the requested revisions to Proffer #7 and recommends that this request be omitted from the proposal prior to the Board's consideration. She concluded staff's presentation.

Ms. Spain asked Ms. Gleason if she had said that the grade on the paths would be 20% rather than 10%, or if it was the other way around.

Ms. Gleason replied that they would be allowed to be up to 20%.

Ms. Spain asked if this would still be ADA-compliant.

Ms. Gleason replied no.

Ms. Spain asked if 10% was ADA-compliant.

Mr. Benish replied that a 5% grade was ADA-compliant.

Mr. Keller opened the public hearing to hear from the applicant.

Ms. Ashley Davies (Riverbend Development) thanked the Commission for their consideration of their request for a proffer amendment. She extended her gratitude to staff, noting they had been excellent to work with. She said Ms. Gleason covered the extent of what the applicant was asking from the Commission.

Ms. Davies said when she inherited the project a couple years before, it was simply one step in the long process that has been the very last phase of Fontana known as Fontana 4C. She said as Ms. Gleason mentioned, this request originally came into the County in 2004, and this was about the same time she was finishing graduate school and learning about essential nexus and proportionality, as they relate to the discussion.

Ms. Davies said there was one interesting thing about the applicant's request versus the other requests that have been considered in the past. She said staff mentioned that this was the same as the other requests, and that she disagreed with this point because in the research she has done on all the other cash proffer requests indicated that those requests were to make those proffers consistent with the CRIM (the County's fiscal impact model) and FIAC numbers (Fiscal Impact Assessment Committee). She said this was a very significant reduction in the cash proffers, versus *the* applicant's request, which is to simply reset the escalation date of the proffers.

Ms. Davies said this mainly has to do with the timing of the application. She explained that when the application came in in 2004, the applicant came forward with a \$3,000 proffer per unit that was consistent with other proffers at that time. She said even up to just months before the project approval, there was still the \$3,000 proffer in place, but in 2007, the County adopted the new proffer policy. She said the final

approval of the project was in March of 2008, which was just after the passing of the new policy. She said that therefore, they were hit with the larger proffer numbers and interestingly, even at that time, the developer had suggested the by-right credit, which had been removed before the final approval.

Ms. Davies said that policies change and now, the applicant is grateful that the County has been approving the by-right credits. She said she also thinks their request is different in that with the March 2008 approval, this was right before the financial crisis of 2008 (or "Great Recession") hit, and so there were all these factors at play that were working against the development. She said the developer passed away a few years later, and her firm came to acquire the property.

Ms. Davies noted that the property already has the \$17,500 in proffers per unit, which the applicant believes is reasonable and is 2-3 times the amount that would be required if they were looking at the FIAC numbers. She said it was more than fair that the applicant is addressing any impacts associated with the development. She said considering the fact that it did sit for several years, planning-wise, the County's big policy is protecting the rural areas and promoting development in the growth areas. She said the request makes a big difference to the applicant because every couple thousand dollars either has to be eaten or passed on to the buyers. She said the applicant thinks the proposal is fair.

Ms. Davies said regarding the trail system, most of the trails at Fontana were put in with the previous subdivision plats and rezonings. She said their trail just has a couple of very small sections that primarily tie into the trails of Hyland Ridge that are primitive trails. She said much of the area that had previously been shown in trails in the rezoning, through the applicant's redesign, is actually handled through streets and sidewalks to carry the pedestrians. She said the applicant feels that if they are connecting in with the primitive trails, this makes the most sense.

Ms. Davies said the reason behind the timing was that the trail was initially set with the rezoning. She said she assumed that the cul-de-sac piece was originally going to be done first as the first phase, but that the applicant has changed that, and so 15-20 years later, a lot of redesign had to be done. She said this was their Phase 2, and that there was no way they would be able to get those trails in by the ninth CO. She said the idea was that they would put all the infrastructure of Phase 2 in at the same time.

Ms. Davies offered to answer any questions about the request, reiterating that they had spent a lot of time with staff getting the application organized.

Mr. Mike Depoteto (605 Fontana Drive) said his property abuts the Hyland Park development. He said he actually purchased the original developer's home. He said he did not have much to say about the cash proffers, but if for some reason the Commission were to deny them, he would encourage them to consider offering some sort of a community beautification that would be a compromise for the developer.

Mr. Depoteto said as far as the paint color, as an abutter, he found it to be agreeable. He said regarding the trails, he would suggest that they do connect to all the primitive trails there, adding that they were very nicely done. He asked the Commission to consider that they be wide trails to be in conformity with the existing Hyland Ridge trails. He also asked the Commission to require that, if they are not going to require the Class A Type 1 (which he didn't think was appropriate in blending with the character of the community), they keep with the character of the community by having a combination of gravel and stone dust, when needed, and have a nice packing done of that to be in conformity with the rest of the development.

Mr. Depoteto said so far, the applicant is doing a great job in regard to building homes there, noting they are good quality homes and that it will be a nice development in the community.

Mr. Keller invited the applicant to come forward again.

Mr. Bivins asked for clarity on the correspondence around the paths. He said in his reading of the original proffers, it appeared that the paths were to be Class A, Type 1. He said later, in reading the staff report, what has been installed throughout the community is Class B. He said he was trying to reconcile the proffer for Class A with the fact that Class B was allowed. He asked what the County's sense was on this.

Ms. Gleason replied that the proffer statement was written for Fontana Phase 4C, and those were proffered with the construction type of Class A. She said the rest of the Fontana development has been that they were constructed to a Class B. She said this is cohesive and consistent with the rest of the pedestrian trails provided in the subdivision.

Mr. Bivins said this was interesting because he noticed that, in Ms. Elaine Echols' correspondence with the previous developer, there was some tension in the correspondence about the developer perhaps extending his interpretation of what took place at the Commission. He said that in any proffer among the documents shared with the Commission over the past week, there was an acquiescence to a Class B, except a noting that by tradition, Class Bs were constructed, when in fact the proffer looked to refer to Class A. He said he was trying to understand where a decision was made that Class B was deemed to be fine. He asked how to have input or impact on what type of Class B they would be willing to go with, since they are being asked to go with Class B.

Ms. Gleason replied she was not sure.

Mr. Benish said the proffers actually contain two proffers related to paths. He said one is to the 4C area, and one is to the other areas. He said the other area refers to an application plan that was actually sited as drafted by Mr. Glen Brooks, who was a County Engineer at the time. He said this plan actually differentiates between Class A and Class B. He said it met the requirements of the proffer through that plan, which is why other sections were built that were not Class A. He said these were approved over different times over different sections, with "C" being added later on.

Mr. Benish said that at the time, the Class C came in with a desire for those to be asphalt paths. He said what has happened since that time is that the County has road requirements that allow them to require sidewalks so now, there are sidewalks on the road where, when Fontana was originally approved, they could not get that. He said this is what he believed happened over time and which is why the Commission sees the older part of the development having a trail system. He said for better or worse, this is what was agreed to and could be something less than a Class A. He said the sections came in for asphalt and subsequently, the County was able to require sidewalks along the roads.

Mr. Benish said staff's position is that the trails now become a secondary set of trails and more recreationally oriented, now that there are sidewalks on the streets. He said they tie into the existing Class B trails. He explained that the map on the screen showed the sections that connect to what is the existing set of Class B trails. He acknowledged it was confusing.

Ms. More said her questions were along those lines, and that there were some comments from the community meeting that some residents expressed about the current trails needing maintenance. She said based on the map shown on the screen, they could see that the Class B, Type 2 is a higher-maintenance trail. She asked if there is a plan for maintaining the trails.

Ms. Davies replied that trails in general are a huge issue in the Fontana neighborhood. She said they have spoken to the board members and the group that manages the HOA about the trails that will be part of 4C which, compared to the rest of the trail network, make up very small sections of trails. She said the HOA group feels comfortable with that. She said Ms. More was correct in that the trails are currently a huge topic of debate within the neighborhood. She said that because they are on such steep slopes, they experience many erosion issues and do require a great deal of maintenance.

Ms. Davies said it is her understanding that there are some residents within the neighborhood that really value the trails and some who would rather not pay the huge maintenance cost every year. She said there may be more discussions with the County soon about what to do with the overall trail system in Fontana and if there are any partnership opportunities there.

Mr. Benish said the Pantops Master Plan identifies a couple of neighborhood connecting trails, one of which is nearby the area, but not involving the particular trails subject to the review.

Ms. Spain said another issue that came up at the community meeting is the issue of liability. She said when Mr. Dan Mahon spoke with residents about making the trails public, to interconnect down to the river, one of the concerns was who would be liable for it. She said Mr. Mahon told the CAC members that the County would then have responsibility for it, as well as for maintenance. She asked if this was correct.

Mr. Benish replied that if there are public access easements or a dedication, the County would. He said otherwise, if it is private property, it is the responsibility of the homeowners.

Ms. Spain noted that this was a "sticking point" and that there were some people who did not want the interconnectedness and did not want other people coming onto the paths other than immediate neighbors.

Mr. Benish said that these sections of trails were not seen as the ones that might be subject to that partnership. He said these sections were more of ending, connecting points to existing systems that connect to other private trails.

Ms. Gleason replied to Ms. Spain stating she thought this would be an ongoing discussion.

Ms. Spain replied she assumed so. She also asked if it was now preferable to have the trails be a more natural, permeable surface rather than impermeable. She said she assumed the asphalt would be something the County would not be something they would want to promote now, compared with ten years before.

Mr. Benish replied that it depends, and that the preference is for them not to be paved. He said with joggers, there is more wear and tear on hard surfaces. He said the maintenance could extend longer, depending on grades and where they are located, but that the costs for maintenance is much more expensive. He said there is much debate in flood plain areas whether it is better to replace the rock as opposed to having asphalt break off. He said he was not a trails expert, but that he knew the bias for those types of trails is more primitive, impervious, and softer to walk on.

Ms. Davies said the applicant did have Mr. Mahon out to the site, and that he walked all the existing trails to confirm they had been installed. She said they looked at the potential pathways of the new trails, and that Mr. Mahon agreed that that the primitive pathway was the way to go with those because of the connections they were making.

Mr. Keller said that it would be helpful for the Commission, in the future, to have that information in their packet. He said in making their decision, it would be helpful to have the trails person weigh in on the matter.

Mr. Dotson said one of his questions had to do with the map that was presented, and the extent of the trails that the Commission was being asked to make a decision about that evening. He said his understanding was that it was not about the whole development, but was about a fairly small increment. He said he imagined it was likely 2-4% of the total trail system in the neighborhood and made up a small portion of it.

Ms. Gleason replied that she had not measured it out, but that being on the site, the trail sections are less than a mile, and perhaps were between 0.25-0.5 mile.

Mr. Dotson said there appeared to be a portion along a street. He asked if this was an area where there is no sidewalk and, therefore, there is a trail.

Ms. Gleason replied yes. She presented a picture of the existing condition, noting that there are no sidewalks on that road presently. She said staff viewed primitive paths as a harmonious addition that would provide pedestrian facilities that are buffered and away from the street. She said staff's opinion on that was that it would actually be an improvement to services offered whereas, since this is a newer development, redevelopment is not expected to occur very soon.

Mr. Dotson asked Ms. Gleason to pull up the map again. He said with the other two trails, one is off a cul-de-sac, and that this trail is simply to connect the new development to an existing non-asphalt trail.

Ms. Gleason said this was correct.

Mr. Dotson asked if the piece at the bottom of the map falls under the same scenario in that it simply serves as a link to a non-asphalt trail.

Ms. Gleason replied this was correct.

Mr. Dotson said that as *he* was reading about Proffer #7, he read the language, "Annual adjustment of cash proffers," and thought that this may have to do with inflation or the like. He said it sounded it was an oblique way of saying to stick with the existing proffer, or go with the fiscal impact level of proffer. He asked if this was what it came down to.

Mr. Herrick replied that it comes down to what the initial start date is for the indexing. He said there is a comparative copy (Attachment 7) that shows a red line and the full proffers. He said the current wording is that it is adjusted annually based on the Marshall and Swift Building Cost Index, with a start date (for adjustment purposes) of January 1, 2008. He said the applicant is essentially requesting that the indexing date be moved up to January 1, 2019 and to allow those 11 years of increases in the Marshall and Swift Building Cost index to be waved in terms of adjustment of the proffer amount.

Mr. Dotson said he would attempt to repeat this. He said the original proffer was about \$17,000 and that this proffer escalates each year based on inflation.

Mr. Herrick replied that it is based on the Marshall and Swift Building Cost Index.

Mr. Dotson said what the applicant is requesting is that the clock not start in 2008, but start currently.

Mr. Herrick said this was correct, and that he noticed a slide that might address what this translates into in terms of actual values.

Mr. Dotson said the difference is that the request is saying, "Save us about \$4,000 per unit. Let's make the \$17,000 the 2019 number rather than \$21,000 being the 2019 number."

Mr. Herrick said this was essentially correct.

Mr. Dotson said this was a new understanding for him.

Ms. Riley added that the applicant suggested that this request was different than the previous requests that have come before the Commission in the past to reduce the proffers, and that she had made her explanation clearly. She said this adjustment request for essentially the removal of the adjusted appreciation may be a different request, but that it still has the same effect of what previous requests have been before the Commission, which is to reduce the contribution. She said the numbers may be different but that, in principle, she would argue that it is fairly similar to previous requests for reductions in proffer amounts by applicants. She said she would love to hear if the staff sees it differently.

Mr. Banish said some of the requests for the modifications of the actual cash proffer have included this adjustment as well, but that it was just not as focused in as much. He said there has been action, at least on some, specifically about this as well. He said staff views it the same way as Ms. Riley.

Mr. Bivins asked if they could discuss Attachment 3 on page 4, regarding Proffer #7. He asked to push him to a place where the document is, vis-à-vis what is before the Commission, because he said he gets wound up when it says, "In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers." He said this reads to him like a contract, and that his role as a Commissioner is that this was a contract that was entered into between the Board of Supervisors and this particular applicant, and so he was not going to take it on himself to change it. He said he would push it to the Board and allow them to change it.

Mr. Bivins said when he sees language like this in Attachment 3, page 4, on the fourth line down, perhaps he is looking at a proffer that is not relevant to the request.

Ms. Gleason replied no, stating that Proffer #7 still holds true presently.

Mr. Bivins said that, given the reading of that, this doesn't provide him the liberty of changing it since the structure of the contract between the Board of Supervisors and the applicant (Mr. Nichols). He said this was the defining principle of it, in his interpretation.

Ms. Davies clarified that the applicant is not asking for a contribution that is less than the amount initially established by the proffers. She said they are asking for the same amount that was initially established by the proffers. She said this is her entire point that makes the applicant's request different than any of the others -- that they were looking to bring the proffers down to match the CRIM numbers that were established. She said the applicant is simply asking to honor the initial amounts that were requested and agreed upon in the proffers, and feels very sincerely that they more than address any of the impacts of the development.

Mr. Bivins said it would perhaps be helpful, at least for him, to have Ms. Gleason walk the Commission through her slide. He said that where he should say that the cash contribution isn't of value (and that for him, it is not the \$17,500 or the \$28,809) but that at some point, there was some large amount, and over how many years are they going to arrive at that amount. He said if they will get to \$100,000 in two years, and this means they will make a \$50,000 annual payment, he is fine with this -- unless they are saying that they are not going to do \$100,000 but they only want to do \$75,000, which he would not be okay with doing.

Ms. Davies said the clock will still *be* ticking, and there will still be room for escalation with the proffers in a way that would have been more similar to a project not being approved right before the biggest recession since the Great Depression. She said the line in the proffer statement is to say that the proffers can never be reduced, but they will likely escalate in the future. She said the purpose of that line is to say it will never go down below the \$17,500 number, which was the contract.

Ms. Gleason said that to add to staff's evaluation of this, there is essentially one reduction with the approval of this, and that is in the by-right credit. She said once they allow the first nine residential units that would have been approved with the rezoning (with the by-right credit being consistent with decisions the Board has made previously), and once those are taken out of the mix, there are less cash contributions to be made, and there is a reduction (in that sense) of the total amount.

Ms. Gleason said the property is already being platted and developed, with one CO already issued. She said it is truly for the Planning Commission to decide whether this is consistent with previous actions, or if they are going to set a new precedent as far as an escalation point. She said this was something to consider and that it was up to the Commission.

Mr. Keller closed the public hearing.

Mr. Keller addressed someone who was in the audience, stating that this was not the proper format, as the public had already had a chance to speak in the public hearing. He explained the public had a chance to speak after the applicant's first presentation and before her second one. He said he had to close the public hearing.

Mr. Keller said that the Commissioners had all been addressing the trails, sidewalks, and proffer escalation issue. He asked if they should address the trails first.

Ms. Spain said she didn't have any problems with the trails being Class B instead of Class A. She said the permeable surface is preferable to the asphalt and, as noted from the map, it is a fairly small amount of trail to connect with the other trails.

Ms. Riley agreed with Ms. Spain and supported staff's recommendation of the trails.

Mr. Keller said he did as well, in light of hearing that the trails person has weighed in. He reiterated that in the future, it would be helpful to have this documented.

Mr. Bivins said he supported it, but he was struggling with whether or not it should be Type 1 or Type 2 (high maintenance). He said the red line from the applicant has it as a Type 1 (primitive) as opposed to Type 2 (high). He deferred to staff to see if they are in concurrence with Class B, Type 1 (primitive), as there was little discussion on whether or not it was the primitive or high-maintenance. He said referring back to the correspondence, there was a request for a trail that had a bit more staying power to it, given the bike riders and activities that tend to disturb. He said this was his only concern. He said though he was fine with it, he wanted to know if it would be Type 1 or Type 2.

Ms. Gleason asked if Mr. Bivins could repeat his question regarding Type 1 and Type 2.

Mr. Bivins said in the red line from the applicant, they identify a desire to have a Class B, Type 1 primitive nature trail. He said in the discussion, the conversation about a primitive trail has been generic in type and not necessarily specific, given it's a term of art. He said he wondered whether or not staff had a recommendation about using the term "primitive" as a term of art (informative).

Ms. Gleason replied that during the discussion with the applicant, Parks and Recreation weighed in, and staff asked for the applicant to clarify what class they had wanted. She said that in previous revisions, the applicant had been asking for a primitive path, and staff nailed down (through revisions) that it would be Class B, Type 1 as the definition and standard to hold to.

Ms. Gleason said she likely was not clear in the staff report that Parks and Recreation had weighed in, and that it was brought to the applicant's attention that both classes of trail would still require maintenance, though not to the amount the asphalt would. She said since this is a secondary recreation trail and not a commuter access way, staff was fine with it being a cohesive development pattern.

Mr. Benish added that staff has standards for Class B.

Ms. More said Ms. Gleason's clarification somewhat confused her. She asked if the trail type will be what is already in the existing development, or if it would be more primitive.

Ms. Gleason replied that it would be the same, if not slightly more designed. She said it would have a higher performance standard, but perhaps it was a question of the maintenance that is currently there. She said in reviewing the existing trail, there was some differentiation on the width and how much gravel or stone dust was used in some areas, which speaks back to the comment raised about the concerns about the wear and tear on the paths and how they are currently being maintained. She said with the installation, it would look somewhat nicer than what is there currently, but that this may just be a maintenance issue.

Ms. More asked if it does address standards for the width, etc.

Ms. Gleason indicated yes.

Mr. Dotson said he was comfortable with the staff recommendation.

Mr. Keller said that the Commission had consensus on the trails that would help in making the official recommendation. He suggested moving on to the proffer escalation issue.

Mr. Bivins suggested first having some consideration of whether or not the Commission should allow the exclusion of the by-right units and bifurcate those two issues. He said it seemed that staff was recommending they were in support of the reduction of by-right, and that the Commission may have the ability to handle this.

Mr. Keller agreed that this was a good point.

Mr. Bivins said he would support a reduction in the amount, based on the by-right units which were there. He said he believed this was a reasonable solution and supported that modification.

Mr. Dotson said he was comfortable with this as well, and that it was consistent with a number of recent actions.

Ms. More agreed.

Mr. Keller agreed as well. He suggested moving on to the particular point about 2008 versus 2019.

Mr. Bivins said in 2008, someone came before the Commission and said they would develop, and everyone agreed, so they went forward with building. He said while he is sensitive to the fact that 2008 was a horrible year for everyone's portfolios, no one (except for those who went bankrupt, like Lehman and other bad actors) got out of their contracts. He said if someone wanted to get out of their contracts, there were ways to get out. He said 11 years later, he personally did not have a lot of empathy for the 2008 debacle. He asked why what happened in 2008 was being talked about in 2019, as this may be helpful in moving him towards a place where he would be more sensitive to it.

Mr. Bivins stated, however, that he wanted to declare upfront that he was not sensitive to abdicating 2008 to 2019.

Mr. Benish said staff agrees. He said the policy of the Board and decisions by the Board have been consistent in not changing the cash proffer amount. He said a number of those requests have also included a request for the same change. He said the applicant is not requesting a change in the cash proffer amount, but they are changing the timeframe for the adjustments. He said those had been part in parcel, and some of the other requests, such as Old Trail and Spring Hill, included the same change when they requested their cash proffer changes.

Mr. Benish said the Board has not agreed to a change to either the actual proffer amount, nor any of the operational inflation factors, accelerators, or components of that cash proffer even beyond the cash proffer amount. He said in order to be consistent with past actions, staff recommends keeping with this policy.

Ms. Spain, Ms. More, Mr. Keller, Mr. Bivins, Ms. Riley, and Mr. Dotson all agreed with the staff recommendation.

Ms. Spain moved to recommend denial of the proposed amendment to Proffer 7, and approval of the remainder of ZMA201900007 Hyland Park, both as recommended by staff for the reasons stated in the staff report.

Mr. Dotson seconded the motion, which carried unanimously (6:0). (Ms. Firehock was absent.)

Mr. Keller thanked staff and the applicant, informing them it would be moving on to the Board of Supervisors.

Mr. Bivins asked Mr. Benish to give him a reference point on the Monticello Viewshed. He asked if, at some point, Mr. Benish could direct him to some place where he might understand that position so that he has a fuller understanding of why Monticello has that ability to speak to those things.

Mr. Benish said he could do this later on under New Business, noting that during the Planning Commission's development of that Comprehensive Plan (which may have been prior to Mr. Bivins being on the Commission), there was an agreement as to how they approach Monticello's input into properties within the Monticello Viewshed that they essentially determine within their viewshed, and that the County encourages applicants, developers, and others to work directly with them. He said the staff becomes a sort of third party to ensure that communications take place and report their findings back.

Mr. Keller said Mr. Herrick could provide the specific point, but that it was advisory and not regulatory.

Mr. Benish added it was Comprehensive Plan-embedded and not ordinance-embedded.

Adjournment

At 8:27 p.m., the Commission adjourned to January 14, 2020 Albemarle County Planning Commission meeting, 6:00 p.m., Lane Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.



David Benish, Interim Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards and transcribed by Golden Transcription Services)

Approved by Planning Commission Date: 01/14/2020 Initials: CSS
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