

**Albemarle County Planning Commission
FINAL Minutes July 21, 2020**

The Albemarle County Planning Commission held a public hearing on Tuesday, July 21, 2020 at 6:00 p.m.

Members attending were Julian Bivins, Chair; Karen Firehock, Vice-Chair; Tim Keller; Rick Randolph; Corey Clayborne; Daniel Bailey; and Jennie More.

Members absent: Luis Carrazana, UVA representative.

Other officials present were Tori Kanellopoulos; Kevin McCollum; David Benish; Daniel Butch; Kevin McDermott; Francis MacCall; Jodie Filardo; Amelia McCulley; Bart Svoboda; Charles Rapp, Planning Director; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Mr. Bivins called the regular electronic meeting to order at 6:00 p.m. and established a quorum. He said this meeting was held pursuant to and in compliance with Ordinance No. 20-A(6), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster."

Mr. Bivins said there were no Commissioners attending from the County Office Building, and that the Commissioners electronically present that evening were: Mr. Bivins, Mr. Randolph, Mr. Keller, Mr. Bailey, Ms. Firehock, Ms. More, and Mr. Clayborne.

Mr. Bivins said the public could access and participate in this electronic meeting by following the links available at www.albemarle.org/calendar, or by calling 877-853-5257.

Consent Agenda

There was no consent agenda.

Public Hearing

ZTA-2020-02: Landscape Contractors in Rural Areas

Mr. Kevin McCollum (Planner with the Zoning Department) said the purpose of the amendment is to define a landscape contractor and add it as a use permitted by Special Use Permit in the Rural Areas Zoning District.

Mr. McCollum said he would begin with some background information. He said the goal for the Rural Area in the Comprehensive Plan is to have thriving farms and forests, traditional crossroads communities, protected scenic areas, historic sites, and preserved natural resources. He said the Comprehensive Plan then goes on to describe several objectives that are intended to help the County achieve that goal.

Mr. McCollum said this amendment is described under Objective 1, which is, "To support a strong agricultural and forestal economy." He said specifically, Strategy 1-J states that the County should consider amending the Zoning Ordinance to allow landscape services and the storage of

landscape materials in the Rural Areas. He said this strategy mentions that these types of services are currently only in Development Areas' use, but they may be more appropriate in the Rural Areas because of the need to grow trees and shrubs, and the storage of landscaping materials and equipment.

Mr. McCollum said this amendment then became part of the Community Development Work Program for 2020, which was endorsed by the Board. He said a ROI for this project was adopted on April 15, which authorized an amendment to the Zoning Ordinance to allow landscape services and storage of landscaping materials in the Rural Areas Zoning District.

Mr. McCollum said after the ROI was approved, the first thing staff had to do was come up with a definition. He said the definition they are proposing reads, "Landscape Contractor. Landscape contractor means, 'an establishment providing landscaping services.' For the purposes of this definition, landscaping means, 'the modification of the landscape for an aesthetic or functional purpose.'"

Mr. McCollum said staff developed this definition after researching many other Virginia codes and contemplating what was the best fit for the purposes of this ZTA. He said since "landscape contractors" is being proposed as a Special Use Permit use, each application will have to go through the entire SP review process. He said the proposed language allows for a broad interpretation of what qualifies as a "landscape contractor" and thus, will allow a wide variety of businesses to potentially apply for the Special Use Permit and get vetted through that process.

Mr. McCollum said after staff developed their definition of "landscape contractors," they reached out to some stakeholders for any input. He said they received comment from two individuals. He said the first had questions about the definition and whether arborists would be included. He said staff ensured this stakeholder that their arborist business would indeed meet this definition because they are an establishment, and they work on modifying the landscape.

Mr. McCollum said the second comment they received (which came after the completion of the staff report) expressed strong support for the ZTA. He said this stakeholder expressed how it is extremely difficult to stay in business in the Development Areas because of high lease prices, and there are many landscapers looking for cheaper options. He said one quote from the stakeholder's email that stood out to him was, "We are landscapers. Making things beautiful is what we do. Vote yes on this and help me stay in business."

Mr. McCollum said Attachment F includes the information staff is recommending be submitted alongside an application for a landscape contractor SP. He said Section 33.33K enables staff to require this information and will ensure a comprehensive review of the impacts of each proposal. He said this list could grow or shrink over time, or even become the basis for supplemental regulations.

Mr. McCollum said in conclusion, staff is proposing two changes to the Zoning Ordinance. He said they propose to amend Section 3.1 to define a landscape contractor, and amend Section 10.22 to add landscape contractors as a use permitted by Special Use Permit in the Rural Areas. He said they also recommend that each applicant submit the information listed in Attachment F alongside their application.

Mr. McCollum presented proposed motions for the Commission and offered to answer questions.

Mr. Bivins asked if the Commission was also voting on the criteria, or if they were assuming this was procedural.

Mr. Andy Herrick (County Attorney's Office) explained that all the Commission will be voting on is a motion to either recommend or not recommend the amendments.

Mr. Bivins said the other piece (Attachment F), then, was for information only and not included in what the Commission was doing.

Mr. Herrick said this was correct.

Mr. Keller said he was asking his question to get it on the record for the public. He asked how this works with a home occupation.

Mr. McCollum said that in terms of a home occupation that someone applies for, there are multiple ones for landscape contractors. He said currently, for a home occupation for a landscape contractor, all they can do is have a vehicle or trailer (one truck, one trailer) in many of the areas. He said there is some limited storage of materials for a Class A, but that it is more the equipment they are addressing here as far as the yard, where there will be larger amounts of storage materials and larger pieces of equipment (e.g. a boom truck for arborists to cut trees). He said the difference is the intensity, which will likely pick up with the size and amount of equipment that a particular contractor might accumulate and want to put together. He said this is the idea and what is envisioned here.

Mr. McCollum said they would still permit a home office, as that is really what the home occupations do. He said they have a truck and a trailer, but they go to different places, and they are not actually large operations with large amounts of equipment.

Mr. Keller asked Mr. McCollum if he thought there was a need to clarify that scale because of these two different approaches. He said historically, in the Rural Areas, they would have a small contractor who was doing it as a home occupation and then, they tend to grow to the scale that Mr. McCollum is talking about. He said he was wondering about people qualifying through the home occupation and then, over time, adding personnel and equipment. He asked where the transition point is and if it needs to be addressed so that they do not have frustrated small business owners who are out of compliance, but who began in compliance.

Mr. McCollum replied that this involves communicating at the beginning of an application or when an applicant makes a request to do a home occupation. He said staff discusses with them, usually face to face, and emphasize the scale. He said there was currently not an option for them to do that in the Rural Area, so this would be part of the conversation now, if someone did want to start small. He said if it gets out of control, the County has to deal with that on a complaint basis. He said the impacts would be addressed during the larger review of a Special Use Permit, but that staff did not expect to see this.

Mr. McCollum said he was not aware of many complaints they receive about the landscape contractors. He said when they do, it is usually about there being too many trucks and then, those have to be addressed. He said it is a matter of having the conversation with those individuals making the request to operate these businesses.

Mr. Keller said they all know that this is an important issue, and have heard from people in the Development Area about this kind of equipment being parked in residential areas, with the contractors' point being that they cannot afford or cannot find the property in the Development Areas for it. He said he thinks it is a very positive step forward.

Mr. Keller said he was a little concerned about this issue of the transition of scale and size, and that in other arenas, there seems to be a frustration on the part of the small business that grows in feeling that they have been tamped back in what they can do. He said he wondered if there was some way to put a clarification in either the public materials on the County's website, at a minimum, or define in this and in the home occupation where the breakpoint is where one needs to go from a home occupation to a Special Use Permit.

Mr. Herrick said he would address the question. He said one of the benefits of this particular ordinance is that it clearly moves out of the home occupation classification into a Special Use Permit classification for the landscape contractor. He said as they were having this discussion, he was looking through the home occupation regulations, and anything that requires a Special Use Permit under this code section is actually exempted or excluded from the home occupation criteria. He said it is mutually exclusive -- either one would come in under a home occupation application, or one would come in for a Special Use Permit.

Mr. Herrick said one of the benefits of this ordinance would be that it would move it from the realm of home occupation into a Special Use Permit where the Planning Commission and the Board of Supervisors could consider what would be the reasonable conditions that would be placed on this particular use.

Mr. Keller said he totally understood, supported, and agreed with what Mr. Herrick was saying, but he was thinking about the transition that they encountered, and the history of land use change at Yancey Mill. He said while it is an entirely different topic, it is about the issue of people coming in through one area, and then things changing, with the question of if there is a mechanism to catch or trigger that change other than a public complaint.

Mr. Charles Rapp (Director of Planning) said he believed he heard what Mr. Keller was saying, and while he didn't know if they had a specific mechanism, he knows that they have quite a good bit of materials that staff provide people when they submit an application for various permits. He said it sounded like they could provide some additional clarification on some of those guidance documents when someone does apply for a home occupation permit, any type of landscaping business, or something in that category that would at least alert them to be aware of these changes that would need to happen if they bring their business to the point of storing large equipment that is more than the specified amount of one truck/one trailer that Mr. McCollum mentioned earlier, so that it is clear up front as soon as they start the process.

Mr. Keller said he supports the ZTA if this is part of the agreement between the Commission and staff, if not part of the motion, that this information will be passed onto the Supervisors and will, indeed, be part of the upgraded website that the County is all looking forward to the rollout of.

Mr. Rapp said staff could do that, adding that they have a Forms Team in house where they are currently reviewing all forms, applications, and guidance documents as they have been more virtual anyway. He said it is a great opportunity to loop this into that and make sure they address this in coordination with the ordinance.

Mr. Clayborne said his question might be for Mr. Herrick, and that it circled back to Mr. Bivins' comment about Attachment F. He asked if there was something the Commission wanted their colleagues to consider perhaps adding in their future discussions that night, if it was off limits, in light of what Mr. Herrick was saying.

Mr. Herrick replied no. He said they would certainly welcome any discussion that the Commission has. He said it is that the anticipated motion would be whether or not the Commission recommends the ordinance. He said if the Commission has specific recommendations about Attachment F, staff would love to hear them.

Ms. Firehock said her comments were along the same lines as those of Mr. Clayborne. She said she was looking at Attachment F, and it struck her that the need for screening is something that should also be considered. She said she works with a lot of landscapers, and they can have some very large pieces of equipment. She said she understood that tonight, they were only really concerned with whether there should be an ordinance. She said she agreed that they should, and that it is appropriate to have such uses in the Rural Area. She said she supposed they could work on the checklist at another time.

Mr. Randolph said he would propose a hypothetical question, alluding to Trojan horses. He said to suppose he is the president of Leopard Landscaping, and he is a wholly owned subsidiary of a local fuel company. He asked if, as the president of Leopard Landscaping in applying for a Special Use Permit, he would be able to build onsite a fueling capability for his trucks.

Mr. Herrick said this would be a question for the Zoning Administrator to determine what uses were occurring on the property. He said it would be within the province of the Zoning Administrator to make a determination as to what uses were occurring, and to the extent that the use that was actually occurring on the property was exceeding landscape contractor, the Zoning Administrator could fine them in violation of the Zoning Ordinance. He said it would be a fact-specific determination for the Zoning Administrator whether this was just fueling of that company's vehicles for their landscaping business, whether it was customarily incidental to the landscaping business, or whether it was an entirely different use that was in violation of the Zoning Ordinance.

Mr. Randolph said that once he, as Leopard Landscaping, has established that he has fuel stored on the site, one can see over a number of 4-5 years that it makes it much easier to make an argument that that operation could potentially be enlarged and expanded. He said he was just raising a hypothetical.

Mr. Herrick said again, it would be a fact-specific determination for the Zoning Administrator whether it was in support of the landscaping business. He said he would imagine that the Zoning Administrator would find that fuel sales to the public were not part of the landscaping business, but that it would depend on the facts.

Mr. Randolph said he understands that in all likelihood, it would require another Special Use Permit. He said he had another related question, and to suppose that on this particular property that he owns as president of Leopard Landscaping, part of the property is Highway Commercial and the other part is Rural Area. He said he would really be putting the bulk of the nursery in the Rural Area. He said in the Highway Commercial area, he is just proposing that he might be able to have (consistent with the zoning) somewhat of a retail-oriented business on the front portion. He asked if this would be acceptable.

Mr. Herrick said in this hypothetical, because there would be split zoning, they would have to take each part of the property separately and evaluate the permitted use on the commercial parts, and the permitted uses on the Rural Areas part. He said this particular ordinance would allow a landscape contractor to be established by Special Use Permit only in the Rural Areas. He said it would not allow that landscape contractor to be a permitted use in the commercial areas. He said they would take each part of the property in this split zoning hypothetical and analyze it separately.

Mr. Randolph thanked Mr. Herrick for the answers.

Mr. Bailey echoed Ms. Firehock's statement, and said he wasn't sure if this was in Attachment F. He said driving down Hillsdale and by the chiropractor office, before getting to Whole Foods, there is a lot of laydown brick stacked that the landscapers used over time. He said this was the type of thing he wasn't sure that he saw directly in Attachment F, which is where the screening is for the laydown yard of where a contractor typically puts excess material and other things. He said those can just accumulate, and can be seen in other places driving up Route 29 that get left there for many years, and then weeds can grow there and become unsightly.

Mr. Bailey said while the attachment does address setbacks, he didn't know if this matter were covered in the Special Use Permit process, but spelling it out in Attachment F clearly would be helpful. He said understanding the laydown yard and screening locations would probably be of help to the landscape contractor.

Mr. McCollum said there seemed to be comments about the attachment. He said the attachment is administrative and can grow or shrink. He said he was happy to hear comments of things to add or subtract. He said for the purposes of this ZTA and motion, he wondered if the Commission could possibly email him comments so he could adjust the attachment appropriately before the Board meeting.

Mr. Bivins suggested seeing if there were any public comments, since they were going to public hearing. He said when they come back from that, if some of the Commissioners have an item or two to offer, this may be appropriate.

Mr. Bivins opened the public hearing. Hearing no comments, he closed the public hearing and brought the matter back to the Commission.

Mr. Bivins said for Commissioners who have a comment or two about Attachment F, this was an appropriate time to make those comments.

Mr. Clayborne said Attachment F was very inclusive, so he would not recommend subtracting anything. He said he would like to perhaps consider from a planning standpoint, in the Rural Areas, that he would suspect that most properties are run off a well, and with the definition being so wide and sweeping, that perhaps for things that have storage areas, consider requesting whether or not they know it is going to be a combustible or noncombustible type of construction; and whether or not, based off of what they are storing, if they anticipate fire sprinkler or fire suppression systems, which all have a heightened awareness in the Rural Areas running off of wells.

Mr. Clayborne said based on the definitions presented, he thought it was great that staff had such a collection and did their research. He said it seems like it would probably include hardscapes, such as walking paths and like. He asked staff if they think there is any value or clarity in perhaps

adding the words “natural” or “manmade” landscapes. He said reading the definition as written, if he were just a regular layman, he would not think of manmade landscapes when he reads it.

Ms. Firehock reiterated her earlier comment about the potential need for screening, based on the size and amount of equipment stored onsite. She said she would echo Mr. Clayborne’s comments about the storage of hazardous materials, as there are potentially some noxious materials used. She said she is also concerned about the size of the storage yard itself. She said she didn’t know how to write that as something to look at, and that staff noted falling with materials but that at some point, they have to get at the square footage of the area that this would take up.

Ms. Firehock said she thinks the majority of the landscaping contractor businesses would probably be relatively small in scale, but that they have the potential to get quite large. She said she wanted to find a way to somehow capture that, as she was not exactly sure how to do that.

Mr. Randolph said that Mr. Bailey’s and Mr. Clayborne’s comments were good catches.

Mr. Bivins said at some point, they will be looking at performance metrics. He asked if this is something that would be done internally, or if it would come before the Commission at some point, with his assumption being that it would be done internally, and that this will be how the analysis is done when staff does bring a Special Use Permit forward.

Mr. Herrick said he thinks that if this follows the process that they were anticipating, this would simply go to the Board as a Zoning Text Amendment, and that staff would work internally on the forms and the information that was required to be submitted by the applicant. He said the nature of Attachment F is the information that staff would request or require of applicants. He said if the Commission is prepared to move recommendation of the ordinance, it would be staff’s anticipation that this would not formally come back to the Commission, although staff was open to any suggestions the Commission has that they would like to have put on the form.

Mr. Bivins asked if the Commission would see an SP that would come forward under this particular ordinance.

Mr. Herrick said this was correct.

Mr. Keller said Mr. Randolph’s hypothetical, and Mr. Bailey’s issue about storage of vegetative materials, made him wonder if there is a clear line definition between the difference of that storage on a large scale with a nursery.

Mr. Herrick said the ordinance, as written, does not specify the size or scale. He said it would be up to the Commission and the Board to put reasonable conditions on the use to keep the size and scale appropriate. He said in terms of there being a hard and fast bright line in the ordinance, the ordinance does not include such a standard.

Mr. Keller said his concern, again, was the small operation growing into the large operation. He said it is not that he thinks they need to put a scale on the SP, but again, he wonders about that transition point of a small operation and if there is a way to get around there having to be a complaint from the citizens about what is happening.

Mr. Herrick said ideally, for a business that started out small and incrementally grew, the conditions would be placed on them in such a size that they would have to come back if they were

expanding beyond the scope of what was permitted under the initial Special Use Permit. He said they would be in a position where they would have to come back and request an amendment, and they could grow incrementally to where, periodically as they grew and came up to the cap of what was allowed under their existing permit, they would have to come back to the Commission and the Board for approval to go to the next level.

Mr. Keller said he understood, and was sorry to be going on about this. He said he was concerned with the person who is the home occupation who grows in scale. He said he thinks there are many examples of that in businesses in the County and throughout the nation. He said there is a feeling that the individual that starts small has a number of rights that they accrue from having done that, and that he still has this concern in the transition from the by right of a home occupation to the point at which they would normally be asking for an SP if someone was coming in fresh.

Mr. Keller said he thinks this is really where it is going to cause conflicts in Rural Areas -- not on the large parcels, but in the more densely-populated collections of 5-6 houses where someone has a 2-acre or 5-acre lot in amongst those other houses, and their business continues to grow in scale.

Mr. Herrick asked Mr. Keller if his concern was of expectation setting, where someone might come and get an SP that is at a certain size and then may think to themselves that because they have the SP, they do not need to come back again, and that they may feel entitled to go beyond the scope of the SP.

Mr. Keller said it was not about the SP at all. He said it was about the person who is coming in as a home occupation, the scale is growing and growing, and the County does not have a mechanism because the owner came in as a home occupation. He said he was sorry to go on about this, but that he thinks they have seen this happen in other categories.

Mr. McCollum said staff does their best to work with an applicant to have them understand that the home occupation is an accessory use to their dwelling. He said beyond that, if they decide to do something with the County's permission (e.g. expanding or getting more vehicles), the only option he knows of is the complaint option that they have to work with to be able to address this. He said communication is big with staff as far as making those conversations and information as clear as they can to an applicant when they are proposing something.

Mr. Keller said it might be something that is worth sending out to all home occupations that are, indeed, landscapers once this ordinance goes into place -- that they be aware, on the positive side, that there is an opportunity for them to grow through an SP on that site. He said by sending that, they would also possibly be sending the message that if the businesses will be growing to a certain scale, the County expects them to come back for an SP.

Mr. McCollum said this is certainly something staff can look into.

Ms. More said she shared Mr. Keller's concern. She said although she would very much like to move forward on this, these situations could be happening now under existing conditions. She said it would be complaint-driven for it to come to the County's attention that someone is keeping equipment out in the Rural Area where they cannot currently do that. She said they would now have this mechanism if they move forward with the Special Use Permit.

Ms. More said this wasn't to minimize the issue, as she thinks Mr. Keller's concern is valid, but currently this is essentially what could be happening -- that a small business or home occupation could have grown outside of a scale that people had anticipated. She said if they didn't have a neighbor complain, the County would not know. She said it is frustrating that so many things are complaint-driven, but this is often the reality with many things they consider.

Mr. Bivins said ideally, if they had integrated systems during the personal property tax bills, if they saw large deltas in those taxes over a certain amount of time, they would be flagged for someone to take a look at the business to see whether or not the business had grown to a certain level. He said this is the kind of exception reporting that staff might be able to build into a system. He said they would look for key factors such as significant changes that would trigger an action. He said they do not have those kinds of integrated systems at the moment, however.

Mr. Keller moved to recommend approval of ZTA2020-02 as shown in the draft zoning ordinance in Attachment D of the staff report.

Ms. Firehock seconded the motion, which carried unanimously (7:0).

Mr. Bivins informed Mr. McCollum that he may be receiving comments from the Commissioners about Attachment F, and asked him to please be responsive to those.

Mr. McCollum said he would do so.

Adjournment

At 8:12 p.m., the Commission adjourned to August 4, 2020, Albemarle County Planning Commission meeting, 6:00 p.m. via electronic meeting.



Charles Rapp, Director of Planning

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

Approved by Planning Commission
Date: 08/04/2020
Initials: CSS