

**Albemarle County Planning Commission
Final Minutes April 26, 2022
Work Session – Setback and Land Uses**

The Albemarle County Planning Commission held a work session on Tuesday, April 26, 2022, at 4:00 p.m.

Members attending were: Karen Firehock, Chair; Corey Clayborne, Vice-Chair; Julian Bivins; Fred Missel; Daniel Bailey; and Luis Carrazana.

Members absent: None.

Other officials present were: Charles Rapp, Deputy Director, Operations; Candice Perkins, Planning Director; Bill Fritz; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Ms. Firehock said opportunities for the public to access and participate in the hybrid meeting were posted on the County's website on Planning Commission's homepage and on the County Calendar when available. She said participation would include the opportunity to comment on those matters from which comments from the public would be received.

Ms. Shaffer called the roll.

Ms. Firehock established a quorum.

Work Session – Setback and Land Uses

Mr. Bill Fritz, Development Process Manager, said the Board of Supervisors had tasked the Community Development Department (CDD) with updating and modernizing the zoning ordinance. He said the zoning ordinance was originally adopted in 1980 and had been amended over the years. He said some of the ordinance was disjointed and there were dated sections. He said the modernization would make it more user friendly.

Mr. Fritz said it was a multistep project. He said the Board had funded the hiring of a consultant to do the work. He said the process began with the setbacks, step backs, and land uses. He said the Berkeley Group had been hired, and two representatives were present: Mr. Chris Musso and Ms. Rebecca Cobb. He said the firm had experience working with localities in Virginia and had written ordinances for a number of localities, surveying other localities to determine the best practices.

Mr. Fritz said the purpose of the work session was to discuss the step backs, setbacks, and land uses. He said the language had not been finalized. He said step backs required the upper floors to become stepped back, which created a weird architectural engineering problem on the location of the bearing walls. He said step backs were the subject of numerous and repeated special exceptions, and he was not aware of any special exception being denied. He noted if special exceptions were routinely granted, then it was likely time to amend the ordinance. He said it was recommended that the step back regulation be eliminated.

Mr. Fritz said the infill regulations were difficult—the dwelling locations had to be determined within 500 feet in every direction and the averages had to be figured out, and the existing development had to be determined to match it with the new development. He said there was potentially an easier way to do that process. He said developers could use either the setback regulations that were in effect when the building permit was applied for, or the setback regulations that were shown on the subdivision plat that approved the subdivision. He said if the development proceeded the recordation of an approved subdivision plat, they could apply for a special exception. He said it would be an easier process and match the development that had already occurred.

Mr. Fritz said the concept for each of the districts was to graduate the setbacks based on lot size and density, as other jurisdictions have done. He said there were no proposed changes in the rural areas, Monticello Historic District, Village Residential District, or the DCD district. He said in the R1, R2, and R4 districts, there was a proposed change to increase the front side and rear set back. He said the information was in the packet provided to the Board.

Mr. Fritz said in the R6 district, there was a recommended increase in the front set back. He said there was no change in the R10 and R15 districts. He said in the commercial districts, there was an increase in the front and rear setbacks, and in the industrial districts, there was an increase in the front, side, and rear setbacks. He said the commercial and industrial districts currently had and would maintain increased setbacks when adjacent to non-commercial and non-industrial properties.

Mr. Fritz said in the plan districts, it was recommended that there be setbacks. He said relief from the setbacks could be requested at the time of rezoning of the establishment of the plan district. He explained an essentially new zoning ordinance was written for every plan district that was created which was difficult to administer. He said the goal was to make the ordinance uniform.

Mr. Fritz reiterated the ordinance was originally adopted in 1980. He said there had been some work to bring it up to date, but there was still outdated land uses in the ordinance. He said some were overlapping and confusing. He said there were some uses that were not listed in the ordinance. He said a matrix concept was proposed, where the terms would be broadened, modernized, and consolidated, resulting in fewer total definitions.

Mr. Fritz said there would be a matrix, whereby looking at the list of uses, it would indicate the zoning district. He said currently, it was organized where each district listed the possible uses. He said there would have to be work to ensure the districts were matched and uses were not expanded. He said supplemental regulations would have to be changed as well to match the changes.

Mr. Fritz noted there were uses that were unique in character to Albemarle County and defined in the Comprehensive Plan, and these uses could not be altered. He said for example, "country stores" was a specifically defined use. He said "retail stores, eating establishment, automobile service stations not served by public water" was another specific use outlined in the Comprehensive Plan. He said the Monticello use could not be compared to other localities, so the Monticello Historic district was treated as its own unique district. He said he and the representatives from the Berkeley group were available for questions.

Mr. Bailey said that the County tried to keep a sense of "human scale" and balance the County's rural assets with development. He asked for more information about the five benchmark counties.

He said there was reference to a 12-story building. He said setbacks and step backs were to maintain human scale. He asked if there was a relationship between the set back and the size of the structures in the County.

Mr. Fritz said the staff determined which jurisdictions to evaluate by determining which jurisdictions had been used as benchmark jurisdictions previously, and which ones were known in the state for having good ordinances, and that had been done with a variety of things, from the health care program to the land uses.

Ms. Rebecca Cobb, Berkeley Group, said the benchmark localities had several districts to review. She said the intent statements for the districts were compared to the intent statements of the County. She said the lot sizes and densities of the benchmark districts were compared to the County as well. She said when both those criteria lined up, the setbacks were reviewed. She said the benchmarks were evaluated as a group as well. She said for some of the districts, the intent statements or the density could be different, but when the setbacks were compared to the other ones that were examined, the matching ones could be seen, and the areas where the County needed to adjust could be determined.

Mr. Bailey said he was trying to get a picture of the recommended sizes. He asked if an R6 district was the same in land use planning as a larger metropolitan area in the sense of the step down in massing. He noted R6 for Charlottesville and the County were different. He said R6 in the County was the higher density, so step backs should be considered differently for the size of a structure. He said he was not able to do the mapping from just the information in the document. He said he wanted to know the different densities and forms of the building needed to produce the desired fill and human scale.

Ms. Cobb said the 12-story building was pulled from a district different than R6. She said the building height related to an overlay district. She said the 12-story building was pulled as an example because of the context of the zoning. She said in all other terms, districts were selected that matched what Albemarle was trying to achieve.

Mr. Bailey wanted to know what the maximum building height was in the district with the 12-story building. He said understanding the height for the area would help understand the required setback for the other locality.

Ms. Cobb said the colleague could come up and discuss the various height requirements.

Mr. Bailey said he was just registering the question, and he did not want to go into detail. He said he was trying to make sense of the numbers. He said setbacks and step backs were to maintain a certain fill and human scale. He said while he understood why the references were selected—they were larger with larger staff and more funding. He said how could an apples-to-apples comparison be created. He said the County was trying to determine the right set back to achieve something. He said he was for making the ordinance easier to understand. He said he did not have enough information to determine what was the right set back.

Ms. Firehock said the role of the work session was as a first pass review of the information. She noted if there were items for which Commissioner's wanted more information, they should make note. She said it was also fine to express that the right approach was not being taken. She said staff needed the Commission's guidance to move on to complete the project. She said she had some concerns. She said it was not just to understand and move forward. She asked that

guidance be given so that they can get it as close as possible to what the Commission would like to see.

Mr. Missel said step backs had been used in the past to help with sun angles so that the street was not shaded. He encouraged the impacts on the shading of streets to be considered if it had not already been. He noted there was an additional setback for everyone foot of additional building height. He said building height translated into more capacity and density. He said the benchmarks were appropriate. He asked if the consultant were directly involved with the ordinances for the benchmark localities and if there were things they would have done differently.

Mr. Bivins noted the Monticello Historic District and how it was unique to the County. He said each one of the districts had historic homes and historic properties, and some had a greater inventory of historic properties than the Monticello district. He asked how the County's development efforts were allowed to be curtailed because a governmental oversight was given to a piece of property. He asked why a non-governmental entity was allowed to control how the land be developed.

Mr. Bivins said each one of the districts had historic properties, some older than the property on the hill. He said the Board did not want to increase the development area. He said by increasing the setbacks in the R1 through R6 districts, the amount of developable land was reduced. He said he did not support that. He said he struggled with reducing the developable land in the R1 through R6 districts. He noted that on [Page 2424], it stated "attached single-family dwellings, and semi-detached and attached single-family dwellings." He said the third attached dwelling had to be dropped or a new building type had to be provided.

Mr. Bivins asked what the Commission was supposed to do with the proposed uses and definitions. He said it could be a work session all on its own. He said the Commission spent weeks discussing definitions. He asked why the definitions were not being discussed.

Mr. Fritz said the question staff wanted the Commission to answer was whether they believed there was value in trying to consolidate and reduce the total number of definitions and move to a matrix concept versus the exact language in any particular definition.

Mr. Bivins said he thought there was value. He noted that when the performance standards were examined, he could not figure out how to apply a land-use matrix.

Mr. Fritz said it became difficult to understand, so they tried to consolidate it. He said staff could examine what the densities had been with the County's different setbacks. He said noted that reduced setbacks were not changing the density, they allowed larger structures and greater floor-area ratios. He said the increased setbacks did not reduce density but provided for smaller houses. He said the density was the same but would mean a single-story house would need to be two stories in some scenarios.

Mr. Bivins said the code should not determine how a house should be built. He said it was market decision. He said there was an article in the *Wall Street Journal* that stated people were making specific decisions about how they wanted their houses to be because they were not returning to offices and had to accommodate a different lifestyle. He said Albemarle was a place that people wanted to gather. He said before he would increase the setbacks, he would let the market make the decision. He said as the community became a place where people aged out, they might want to have a garden and a large or small house. He said the market should determine the size of homes because lifestyles were changing, and people desired different types of houses depending

on their needs. He said a setback signaled to the development community that the square footage was restricted. He said the development community and mortgage rates should make the decision as opposed to the ordinances.

Ms. Firehock suggested that for time management purposes, if a commissioner disagreed with the statement of another Commissioner or wanted to clarify a point made that they speak up so that they did not have to summarize the statements.

Mr. Carrazana said he appreciated how Mr. Fritz put together such a comprehensible document. He said he shared much of the same concerns, so he would not reiterate those, but would bring up a few others and highlight those that he thought were critical. He said the first item he would like to discuss was on Page 2.

Mr. Fritz asked Mr. Carrazana which document he was referring to.

Mr. Carrazana said he was referring to the phase one diagnostic report. He said that structure was mentioned, and there were challenges with their current structure. He said the way it was mentioned was that it was not part of their initial phase, but that it was important. He said he assumed it was being addressed, but he wanted to confirm that the structure was being addressed.

Mr. Fritz said yes.

Mr. Carrazana said that was a positive, because there were some challenges when going through it, but it was very user-friendly. He said it was not user-friendly in way the recommendations seemed to him.

Mr. Fritz said they may not be able to get to it towards the end, but yes, they had an eye towards doing that.

Mr. Carrazana said that was great. He said going back to the issue Commissioner Bivins was raising, once the setbacks were increased for R1 through R6, although R6 was 15, and there was no maximum, they were limiting it to some degree. He said the question he had was what they were seeing as the benefit for that increase. He asked if there was a driver that got them to why they went from 5 to 35.

Mr. Fritz said there were a few things there. He said one thing they were looking at was the location of the driveway overhangs because they had a great deal of trouble with that interfering with sidewalks. He said there was the reduction, which was bringing everything closer to the street and losing some of the street scale they were looking at. He said they were also looking at what the Climate Action Plan talked about in terms of heat island effect and the stormwater impacts of having that large floor area ratio, and by having an increase in setbacks, they were going to have that benefit also of more green area within the development area.

Mr. Carrazana said some of that would be important to have in here.

Mr. Fritz said they would consider it and add it.

Mr. Carrazana said it would be helpful to have some of that context of why.

Mr. Fritz said this was given without context, and they should have given that.

Mr. Carrazana said he had a similar question about the counties they were using as their benchmark, and again, he said what he was missing there was the context. He said he thought Commissioner Bailey was alluding to that, and when they looked at it, they were different than a lot of these counties in many ways, but it was hard for them to understand why that was without understanding the other parameters that were involved in those counties. He said so, that would be very important in how they looked at this and understood it. He said the stepback issue was another one that he agreed with Commissioner Missel on. He said there were some challenges with that.

Mr. Carrazana said he did not quite follow the code or architectural structure issue. He said with post and beam construction, there were no bearing walls when they were going up, so that went away. He said he thought it was an architectural issue when they had all their buildings looking like a ziggurat. He said at some point, they wanted to minimize that, however, it was one strategy that they could use to minimize scale and provide a more human scale to some of these areas. He said that had been said and he would not dwell on it, but he thought it was something they should look at further. He said he also did not understand the tradeoff in setback. He said he thought the one-for one could have a result of an unpleasant streetscape because if every building were off by two, three, or four feet in height, they would be off two, three, or four feet in their setbacks. He said to think about what the ramifications might be a little bit more.

Mr. Carrazana said his last point was about special districts. He said he was trying to reconcile and think about their form-based code and form-based planning approach for Rio-29. He asked how something like that worked with these setbacks. He said Crozet had been pointed out as separate, and he wondered if they were going to wind up with a bunch of little separate districts.

Mr. Fritz said they were still experimenting with the form-based code like a lot of jurisdictions, so it was really going to have to be its own thing very much like the DCD was.

Mr. Carrazana said he wondered what the implications of that were to what they were doing here now.

Mr. Fritz said they would have to pull it in.

Mr. Clayborne said Mr. Carrazana had spoken to his point about the Rio-29 form-based code and how those things coordinated, so he would not repeat that.

Mr. Fritz said to clarify, the DCD was started as a form-based code many years ago, and they learned some things there, so he thought the form-based code would have to go the same route as the DCD.

Mr. Clayborne said he also agreed about the stepback piece as he thought about the setback for C1 which was 10 feet, and HC was 10 feet, and as he thought about walking down West Main Street in Charlottesville where they had hotels and large buildings against the front of the street with similar setbacks, taking away the stepback did not feel good initially, so he would like there to be more thought with those tighter setbacks they had. He said he did not think it was the best approach to eliminate the stepback altogether.

Mr. Fritz said this was the feedback they needed.

Ms. Firehock said that was one of her comments as well. She said Mr. Fritz mentioned that there were a number of stepbacks the Planning Commission recently granted a waiver for. She said she recalled the last three, and in one or more cases it was a hotel, so they would lose rooms on one side, but it was also because of the context of where they sat. She said none of them were sitting up against a pedestrian sidewalk where that cavernous feeling would be experienced. She said none of them were challenged by the problems of light and air. She said that was why, and while she knew it was hard, that was why they had the consultants to figure out which cases they had to retain those stepbacks, because she agreed that they were trying to look for a more urban form in their development area, and in reading this, it felt like they were going back to a more suburban model at the same time they were trying to do this urban ring.

Ms. Firehock said they had the form-based code at Rio and at Crozet, and she felt that ever since she had joined this commission that there was a lot lacking in their code, because they were building a city around a city, but they were a County, and there were some things they could not do that cities could do. She said there was a lot more that needed to be done to recognize that they were trying to create more of an urban form, so she was not in favor of some of those expanded setbacks from the road. She said she grew up in a community with front porches on houses that were close enough for people to be able to hear each other if they spoke from the road to the porch, and that sort of community spirit where people could see and be a part of the neighborhood, whereas neighborhoods where some of the houses were set very far back and people did not talk to their neighbors while they walked their dog because they could not tell who it was were not appropriate for what they were trying to build in the urban ring, so she did not find the comparisons of the counties they were looking at necessarily provided the best model.

Ms. Firehock said an example from a recent webinar hosted yesterday about rural roads and how great they were was that she considered Albemarle County a leader in rural roads, and the convener of that talked to the people who would be teaching the course and said that Albemarle was the first example they used. She said in this case tonight, they may want to be a bit more out of the box and do a few things that were not being done by some of the more suburban counties. She said she actually looked at some cities and towns for some of that informing. She said when there was a neighborhood that had all the same setbacks, it could be somewhat boring, so it could be good to not only vary the road curvature but also to vary the distances of the yards. She said she an outlier of this memo a little bit, but not so much on this commission.

Ms. Firehock said she wanted to bring up another point that had been touched on in terms of floor area ratio and lot coverage. She said instead of being concerned with how far back a structure was from its sidewalk in a residential or commercial district, for residential districts they could think about maximum lot coverage. She said they saw that happening a lot up in Fairfax County where there was nothing left of the yard because the houses were 5,000 or 6,000 square feet and domineering over the neighbors, and maybe even more importantly than that social dominance feeling was the fact that they were trying to deal with stormwater, so if there was a residential lot and they were improving the size of the house, they did not have a stormwater utility field because that did not go forward, but they were trying to deal with all this stormwater runoff. She said they may need to think about preserving some form of green space, so maybe maximum lot coverage, and to the point of people wanting to build different houses for different reasons, someone may want to have a large lot to have a garden or build another house for a family member.

Ms. Firehock said she would like to not get rid of the stepbacks, and she would like it to be contextual to where the building is. She said she understood from staff that as they moved through a rewrite of the zoning ordinance, they would be looking at requiring massing from the development community when they had certain applications. She said right now they were just looking at blocks, so it was hard to make judgements on the arrangement of those structures. She said she believed the definitions should be condensed, but that could be addressed in its own work session. She said she was glad to see they pulled out "campgrounds" versus "camps," because there was a lot of confusion around the length of stay that people would be taking at these sites.

Mr. Fritz said there were a lot of things like that in there.

Ms. Firehock said even in their County, she learned from her brother that there were Hip Camps, which were like AirBnB's but for camping. She said there were a number of them where they were renting out the side of their river on a public road, and people were paying to camp there for an extended amount of time, and she thought those were going under the radar with their conversations about AirBnB's and lodging-for-hire, and she would venture to say the County did not even know where they all were.

Mr. Fritz said that the zoning administrator could provide further input.

Ms. Firehock said she thought there was definitely a need for addressing some of those, because they were sort of operating campsites with no zoning and no tax collection.

Mr. Missel said under the heading of increasing the setbacks, he thought of light industrial and heavy industrial capacities the County had and how careful they were to watch over that capacity because it was relatively limited, and the changes in the setbacks were drastic from 10 to 30, 0 to 20, and so on. He said the introduction of the light industrial there and the rationale for why those setbacks changed did not make a lot of sense to him, because if they were concentrating their light industrial or heavy industrial in a certain area, they probably would want to make it as dense as possible with an understanding of proximities. He asked if this would become part of the comprehensive plan.

Mr. Fritz said this would be ultimately a zoning text amendment to the zoning ordinance.

Ms. Firehock said it would be a regulation.

Mr. Fritz asked Mr. Missel to continue, and he could explain what the next steps were.

Mr. Missel said he was just thinking about the forward-thinking piece of this. He said it was right now a snapshot in time, and he was sure that Mr. Fritz was thinking about 10 or 15 years down the road, and he would be very curious to see how these patterns of development were being influenced by the setbacks were forward-thinking. He asked if there had been any thought to changing setbacks at adjoining property lines if adjoining parcels had the same owner.

Mr. Fritz said that question had come up before, and the answer historically had always been no, because there was nothing to prevent those properties from then being sold to two separate individuals.

Mr. Missel said that made sense.

Mr. Fritz said if they wanted to combine them or do a boundary line adjustment, that could be done to alter where the buildings could go. He said that had been a consistent answer.

Ms. Firehock said a conversation the Planning Commission had several years ago was about crossroads communities. She said there was a number of formal general stores that were still sitting out there but no longer functioned as stores and could not go back to that original purpose. She said perhaps on this Planning Commission there was some interest in looking into opportunities for those to be re-upped if someone wanted to create a shop in that type of space.

Mr. Fritz said they had a book of all the country stores that had existed, and it was a fairly large book with Class A and Class B. He said they had discussed going to a combined definition, in which case they would tweak the supplemental regulations to still have that country store use. He said there were Class A and Class B country stores and a sort of Class C when there was gas involved. He said for those older ones that had changed their use could revert to Class A country store was not that difficult to do. He said they wrote it in such a way to minimize the impact of VDOT and parking regulations so that they could reopen without having to completely destroy the property or require additional property.

Ms. Firehock said there were rural churches sitting empty and would not meet modern standards for parking requirements, so they could not reopen, and she was curious about that.

Mr. Fritz said they also changed the religious assembly area based on the RLUPA regulations, and the agricultural limits for farm wineries. He said if an assembly of 200 people were allowed at a winery, they had to allow an assembly of 200 people for a religious purpose, and if they did not regulate the winery assembly, they could not regulate the religious assembly. He said those small places out there could be reestablished and even expand in many cases. He said all they needed for that was a building permit. He said they had a number of them done.

Mr. Carrazana said this could apply to the setback, setback, or other factors they had discussed. He said this was that they should consider providing mitigation options. He recalled that one of the options for the setback was to get rid of the setback and create more setback. He said instead of switching one-for-one, they could provide mitigations options. He said several things could be done to mitigate the issue, but first they must address what the issue was, which was why he thought the context was important, what it was they were trying to address with some of these changes, and if there were ways they could build in flexibility. He said perhaps if someone wanted, instead of the setback, they could create more setbacks or provide landscape that mitigated the height. He said Chair Firehock mentioned that those exceptions were all because some had significant setbacks, which they did not think was an issue with the height.

Ms. Firehock said that was right.

Mr. Carrazana said thinking about it in those terms instead of just switching one regulation for another, they all had some significant unintended consequences, and if they could provide some variety to their options, they would have a richer built environment.

Mr. Fritz said that was all helpful.

Mr. Bivins said he could just whisper what those three new replacement words were at the end when they had a break, so they knew what the editorial piece on that was. He said when they

were doing the form-based code and the opportunity that was perhaps going to occur up 29 where the Lidl was, they had a lot of discussion about how to create a place with both setbacks and stepbacks. He said one of their previous Commissioners was trying to get a sense of the view from up there and being able to have both that interesting place and a place that took advantage of the topography. He said he thought what Mr. Carrazana was saying was that as they were doing this, many of the communities referenced were what he would describe as flatland places. He said very few of them had the backdrop of the mountains, so thinking about the visual setting they were trying to create in this new place of being would be helpful for himself and probably for developers as they envisioned how they would place that piece of construction in this particular location.

Ms. Firehock said they did spend a lot of time talking about that with Rio and being able to see through, so that they would not be only surrounded by buildings in that area and not see the mountains, air, and light.

Mr. Bailey said that was the viewshed. He said they had so much to see, and where Rio and 29 was actually sat up higher, so a lot could be seen. He said being able to make sense of something being a little bit lower and they did not need as big of a setback, but then to trade off to have a stepback that gave a view of the mountains from a different elevation in a place would be a good tradeoff for their viewsheds. He said if they eliminated stepbacks and maximally increased the setbacks, they lost that flexibility. He said in general, they were creating this urban ring, but it was a distinctive urban ring in Albemarle County. He asked how that could be provided for in this so they could facilitate the Rio form-based code and the Crozet one, which was a different fill.

Ms. Firehock said that was very helpful. She said when writing code, they had to be as precise as possible, but one of the exceptions they granted was due to the fact that a building was actually slightly downslope, so that the view was not of a four-story building and looked like more of a three-story building. She said they were taking topography into context, so she thought there was a way they could put into code that there were situations in which exceptions could be granted so that they could get at that topography question, because they did not have flat land.

Mr. Bivins said they were not flatlanders.

Ms. Firehock asked if there was any further discussion before the meeting was adjourned.

Mr. Bivins said he would spend time with a document if he could read through it, and any document that he did not write notes on meant that he did not invest in it.

Mr. Bailey thanked staff, because it was a difficult problem, and he hoped his earlier comments were not taken harshly.

Ms. Firehock said they understood this was difficult, and they sat on the side of the dais that got confused often. She said when this was before the Commission again, she would ask if they could have at least two weeks to go through it, because she personally had been busy and needed more time, especially if they wanted to ask staff questions ahead of the meeting so that staff could answer those context questions or reference questions.

Mr. Fritz said they could do that.

Ms. Firehock said okay.

Mr. Fritz said this was very helpful. He said he did not know how he would answer some of these questions, but they were helpful.

Ms. Firehock said she understood this was not fun, but she appreciated their work.

Adjournment

At 5:00 p.m., the Commission adjourned to April 26, 2022, Albemarle County Planning Commission meeting, 6:00 p.m. in Lane Auditorium.



Charles Rapp, Deputy Director, Operations

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

Approved by Planning Commission
Date: 05/24/2022
Initials: CSS