Albemarle County Planning Commission
Draft Minutes April 23, 2024

The Albemarle County Planning Commission held a public hearing on Tuesday, April 23, 2024, at 6:00 p.m.

Members attending were: Fred Missel; Luis Carrazana; Julian Bivins; Karen Firehock; Nathan Moore; Lonnie Murray

Members absent: Corey Clayborne

Other officials present were: Michael Barnes, Director of Planning; Andy Herrick, County Attorney's Office; Syd Shoaf; Bill Fritz; Jodie Filardo; Bart Svoboda; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Ms. Shaffer called the roll.

Mr. Missel established a quorum.

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

Mr. Bivins motioned the Planning Commission adopt the consent agenda, which was seconded by Mr. Murray. The motion passed unanimously (6-0). (Mr. Clayborne was absent)

Public Hearings

SP202300018 Kappa Sigma International Headquarters

Syd Shoaf, Senior Planner, said that he would provide the staff report for the Special Use Permit SP202300018 Kappa Sigma International Headquarters. He said that it was a request to amend an existing special use permit to relocate and enlarge a previously approved building. He said that the subject property was approximately 6.14 acres and located south of the City of Charlottesville at 1610 Scottsville Road, zoned R1 Residential.

Mr. Shoaf said that the site had been home to the Kappa Sigma International Headquarters since 2004, and the comprehensive plan designated it as Urban Density Residential. He said that the existing building on the site was approximately 22,977 square feet in size and was three stories tall. He said that it was used for administration, meetings, the museum, and library space.

Mr. Shoaf said that the first special use permit to construct the existing building was approved in 2004 and another special use permit was approved in 2006 to expand the building and construct another building on the site. He said that currently, there was a major site plan amendment under review to construct the approved building expansion. He said that the surrounding properties were zoned Residential or Rural, and the property to the north was also owned by Scottsville Holdings,

LLC and zoned R1 Residential. He said that it contained a pavilion and overflow parking for the Kappa Sigma International Headquarters.

Mr. Shoaf said that additionally, to the north was the Galaxie Farms subdivision, which was zoned Planned Residential Development (PRD). He said that to the west and southwest was the Avinity Estates subdivision, which was also zoned Planned Residential Development. He said that lastly, to the south and southeast was Somerset Farm, which was zoned Rural Areas (RA). He said that the applicant had proposed to relocate an enlarged and approved building, shown with the highlighted label on the right of the slide. He said that the applicant was proposing to move the building from the parking lot to be adjacent with the property line of Avinity Estates townhomes.

Mr. Shoaf said that the proposed building was a one-story building approximately 8,790 square feet in size, with a maximum height of 27.5 feet to the center peak of the roofline. He said that it would be used to store archives and memorabilia associated with Kappa Sigma. He said that additionally, any building space may be used for meetings and support facilities such as research, classroom space, storage, and guest suites. He said that the previously approved building from SP200600021 was approved to be approximately 1,266 square feet with the same uses. He said that additionally, the applicant was proposing a new delivery area and accessway to the rear of the proposed building, as well as a new landscaped area between the existing building and the proposed building.

Mr. Shoaf said that the next slide depicted a cross-section of the proposal. He said that to the left were the Avinity Estates townhomes, and in between the townhomes was an existing 6-foot privacy fence and roughly 12-foot open space parcel owned by the Avinity Estates HOA, which contains existing vegetation. He said that on the Kappa Sigma property, there was a 20-foot use buffer that consists of existing vegetation, and the building was set back 50 feet, which meets the County setback requirement. He said that the finished floor elevation of the proposed building would be between 8 feet to 27 feet below the finished floor of the townhomes in Avinity Estates.

Mr. Shoaf said that the dashed gray line over the proposed building corresponds to the cupola heights in the image shown below, which showed proposed renderings of what the building could look like. He said that if approved, it would be subject to the Architectural Review Board's analysis to ensure compliance with entrance corridor guidelines. He said that the next slide showed a zoomed-in image of the cross-section from the previous slide. He said that the red dashed line was from the average height of eyesight of someone who was 5'7", and above the proposed building was the dashed gray line which corresponds to the maximum height of 27.5 feet of the cupola of the building.

Mr. Shoaf said that the special use permit application was reviewed under the factors of consideration as outlined during the zoning ordinance. He said that staff believes that the proposed special use permit will not be detrimental to adjacent parcels, will not change the character of the area, will continue to be in harmony with the R1 Residential zoning district, and is consistent with the comprehensive plan. He said that there were nine conditions drafted for this special use permit, which he would not review, but would state that they were carried over from the previously approved special use permit.

Mr. Shoaf said that condition one was modernized with new language, and staff added condition 1(c), 1(d), and 1(e) to address the new building. He said that in summary, there were two factors favorable, the first that it is consistent with the review criteria for special use permits contained in the zoning ordinance, and the second that the use is consistent with the Southern and Western

Neighborhoods Master Plan. He said that staff did not identify any factors unfavorable. He said that staff recommends approval with the conditions as recommended in the staff report and update to the concept plan to construct pedestrian improvements along Route 20.

Mr. Moore said that he did not have any questions about the building itself, but they had received a couple of emails from the public regarding potential sound and noise. He asked if County staff could explain the County's noise regulations for this particular type of zoning and what could be done if a neighbor felt that the use was too loud.

Bart Svoboda, Deputy Director of Community Development and Zoning Administrator, asked if Mr. Moore could repeat his question.

Mr. Moore asked if he could provide details on the County's rule about noise that hit the neighbors' property and what they could do if it was too noisy.

Mr. Svoboda said that they had two types of noise; one was a nuisance noise, and one was a land-use noise. He said that land use noise had a decibel rating and time that was allowed. He said that nuisance noise was frequently from parties or other events, and was an audible issue determined by the police department. He said that events for R1 Residential zoning were allowed to have 60 decibels per the zoning ordinance. He said that for land use noise, zoning staff would investigate it and enforce the zoning regulation, and if it was a nuisance noise through the County code, the Albemarle County Police Department would investigate that and proceed accordingly.

Mr. Moore asked if there was a well-established process in case things got noisy.

Mr. Svoboda said yes.

Ms. Firehock said that in order for the applicant to get the building below the sightlines of the people at Avinity, they would have to cut into the slope. She asked if it was a steep slope at all.

Mr. Shoaf said that it was not a steep slope. He said that there were steep and managed slopes on the site, but those were in a different location from the proposed building.

Ms. Firehock asked how deep of a cut they were making into the hillside.

Mr. Shoaf said that it was between 8 and 27 feet, but the applicant could provide further details.

Mr. Bivins said that it was mentioned in the process that there was going to be group guestrooms. He asked if the County had a specific process for guestrooms in these types of constructions. He said that it would not be an AirBnB, but he would like to know if there were additional processes that must be followed in order for them to have a hotel.

Mr. Shoaf said that he was unaware of any specific regulations. He said that the previous SPU had approved eight guest bedrooms, so this approval had already been given for eight guest bedrooms.

Mr. Bivins asked if this was within the eight.

Mr. Shoaf said yes, this was within the eight.

Mr. Missel opened the public hearing. He asked if the applicant had a presentation.

Amy George said that she was with Roudabush and Gale, serving as a consultant for Kappa Sigma fraternity. She thanked Mr. Shoaf for his detailed explanation of the project. She said that the project site contained an existing building consisting of a central portion and a wing. She said that they were working on a site plan amendment for the western wing of the northern side of the property.

Ms. George said that as Mr. Shoaf mentioned, the initial proposal involved constructing a new building in the middle of the property adjacent to the parking lot. She said that however, they had decided to move and rotate it up along the border to create more lawn space and emulate the Jeffersonian style between the two structures. She said that they took Mr. Bivins' concerns about maintaining guest rooms into consideration, incorporating them as part of the original SP while carrying those uses forward.

Ms. George said that the primary functions of the building would be for archival memorabilia storage, classroom spaces, and potential meeting spaces. She said that they had collaborated closely with the architect to create an accurate rendering of the building and took into account the concerns of neighboring property owners regarding their views of Carter Mountain.

Ms. George said that the proposed building would be 8 to 27 feet below the Avinity property level; this was not an indication of the amount of cut on their property. She said that the maximum cut on their land would likely be around six feet. She said that they planned to grade the area back up to the existing vegetation level and install a retaining wall if necessary. She said that there would also be a loading area behind the building for caterer access and connection to the building itself.

Ms. George said that the building elevation was limited by the parking lot's elevation, as they could not set the structure too far away from the parking lot due to accessibility concerns. She said that the elevation shown on the plan represented the relative elevation it should have. She said that she would be glad to address any questions the Planning Commission had.

Mr. Missel asked if the Commissioners had questions for the applicant.

Ms. Firehock said that she was still grappling with the image, as when examining both the picture and the scale, the diagonal land appeared to extend from the bottom where the trees were, up to what seemed like the top of the first story. She said that this raised a question regarding the six-foot height, as it would imply that from the tip of the line to the roofline, there was only one story's distance.

Ms. George said that it would have an average cut of six feet. She said that the cross-section was a slice across the middle of the site.

Ms. Firehock asked if that would be the deeper cross-section of the site they were looking at.

Ms. George said yes.

Ms. Firehock said that she knew how to use a scale ruler, so she could see that it did not make sense.

Mr. Carrazana said that he had a question along those same lines. He said that he was trying to reconcile the information in Section 4.3 with the site plan, as there appeared to be a retaining wall situated behind the structure. He asked if this was accurate.

Ms. George said that there was a three-to-one slope at that point. She said that there may be a retaining wall, but they had not confirmed yet if it was necessary. She said that the rough grading plan suggested she could implement a three-to-one tieback slope in addition to a two-to-one grade in front of the existing trees.

Mr. Carrazana asked if they could achieve that section cut without a retaining wall.

Ms. George said that at certain sections, yes.

Mr. Carrazana said that he saw that there was not a retaining wall indicated on the site plan. He said that it might be located where the driveway entered the area.

Ms. George said that there will be a slight retaining wall where the driveway is.

Mr. Carrazana said that the cross-section showed that it was through the center of the building.

Ms. George said yes. She said that it was not at the loading area.

Mr. Carrazana said that clearly, they had a little vertical wall behind the building, so there was some kind of space for patios or something and a little brick wall. He said that he assumed this was a retaining wall.

Ms. George said that there might be a retaining wall in some portions along that area; however, at that point, she was capable of grading down from the existing slope and in front of their pre-existing evergreen trees to the patio, leaving a ditch and ascending to their patios behind the building with a three-to-one slope. She said that as mentioned earlier, this was rough grading, and she did not expect a large retaining wall for this project.

Mr. Missel said that it should be pointed out that it was a vertical and horizontal exaggeration; it was two-to-one vertical to horizontal.

Ms. George said that yes, it was very exaggerated.

Ms. Firehock said that it was not to actual scale.

Mr. Carrazana said that it could be a bit confusing, particularly considering the similarity in scale between the building's vertical elements and the retaining wall. He said that that was the same scale.

Mr. Murray asked if Ms. George knew what kinds of trees and what kind of vegetation would be planted there.

Ms. George said that the existing vegetation within the 20-foot buffer consisted of a mix of pine and deciduous trees, along with some junipers. She said that a pair of staggered rows of evergreen trees, specifically Leland cypress, were planted in front of the 20-foot buffer.

Mr. Murray said that a primary concern was the potential harm to the tree roots if the slope was excavated. He said that given that the trees would be situated above the proposed construction, it was crucial to maintain their health, as any tree falling could result in significant damage to the building.

Ms. George said that it would definitely be addressed during the site plan stage. She said that the evergreen trees currently present, standing around six to eight feet tall, had not yet reached full maturity.

Mr. Bivins asked who owned the wooden security fence that ran across the property line.

Ms. George said that she believed that it belonged to Avinity Estates.

Mr. Bivins said that there was the fence near the property line as well as a section of trees.

Ms. George said that the trees were located on her property.

Mr. Bivins said that after visiting both sites yesterday to assess the visibility, it was difficult to determine that unless standing on the second floor of one of the four homes there, individuals from the Avinity side would not be able to see over the fence.

Ms. George said that one resident shared the provided photo of the view from their patio during a community meeting.

Mr. Bivins asked if the view was from the ground floor.

Ms. George said yes, it was the view from their patio.

Mr. Bivins asked if the new building would have a lower height compared to the existing main building and would not quite reach halfway.

Ms. George said that the main objective was to align the central portion of the building with the main roof line, which would determine the maximum height for the main roof. She said this referred to the center portion between the peaks.

Mr. Bivins said that when descending, it would be approximately 10 feet from the boundary of the existing trees. He said that it was a lovely site, which he visited the other day. He said that it was neoclassical architecture, which everyone knew his thoughts on. He said that he would be restraint in his comments about that, given that Thomas Jefferson had anticipated an evolution with neoclassic.

Mr. Bivins said that regardless, the building was well-constructed, and it seemed unlikely that any proposed additions would be inferior. He said that the focus would likely continue to transition. He said that his primary concern was not whether those behind the structures could see the mountain, because he believed they would, but rather how to connect the back of the parking lot to the new building without making the back of the existing building decay or be subject to, as Mr. Murray mentioned, the land in that area deteriorating after being disturbed.

Ms. George said that there were 30 feet between the back of the building and that area. She said that this distance was due to the existence of a 50-foot setback, which included a 20-foot buffer. She said that the 30 feet in question comprised the tie slope, the ditch, and the patios.

Ms. Firehock said that she had another question, and it was not about the grade. She said that she wanted to understand more about why a new building was necessary. She said that she had reviewed their application, which mentioned memorabilia and classes. She said that they initially considered a half-sized structure sufficient, but now they were requesting double the size. She said that she was curious about any changes in planning or demand that led to this increase in square footage.

Ms. George said that the originally proposed building at the middle of the site was more than 8,000 square feet and was a two-story building.

Ms. Firehock asked if they were making it wider with this new proposal.

Ms. George said yes. She said that they were flattening it out.

Ms. Firehock asked if Ms. George could explain why they chose to do that. She said that they came before the Planning Commission to change their already-approved plan and she struggled to understand why.

Ms. George said that the intention appeared to be creating a more formal space between the two buildings, adhering to the neoclassical Jeffersonian style already present on the lawn. She said that this was particularly relevant because Kappa Sigma was founded at UVA, directly connecting it to the Jeffersonian history.

Ms. Firehock said that she was aiming for a specific architectural style, rather than primarily focusing on adding more programming space.

Ms. George said that it would have the same amount of space.

Ms. Firehock said that she had misunderstood staff's statement earlier. She said that the footprint had doubled in size.

Ms. George said yes.

Mr. Missel said that the application mentioned "grass pave," which was a carryover statement that said that all grass parking areas must be grass paved unless product is deemed equivalent. He asked if the applicant could please specify where the grass pave would be.

Ms. George said that they proposed that the fire entry, or rather the fire access section, be situated in front of the building. She said that this would be grass-paved to allow for access from both the front and rear.

Mr. Missel asked if it would be something like stabilized turf.

Ms. George said yes.

Mr. Missel asked if they would be making any amendments or changes to the stormwater plan.

Ms. George said that the stormwater management plan was being updated due to the building wing addition. She said they would consider the proposed information presented, the proposed wing, and make any necessary adjustments to the pond to ensure compliance with current requirements.

Mr. Missel asked if Ms. George was referring to the existing pond.

Mr. Missel said yes.

Mr. Missel asked if there were any members of the public who wished to speak on this item.

Sammy Barnes said that he lived at 3421 Montague, the lot in the center of where the new building was proposed. He said that he had taken the photograph mentioned earlier. He said that the fence's downward slope allowed them to see over it despite its eight-foot height. He said that their house was a significant investment, which they bought with the intent of it being their final home, and the views of Carter Mountain were a priority for them.

Mr. Barnes said that he wanted to address two concerns related to the previous description. He asked if could they provide the side view picture. He said that another neighbor, who could not attend, also inquired about this. He said that they were uncertain if soil tests or boring tests were conducted to verify the feasibility of excavations.

Mr. Barnes said that it was crucial for them to ensure that the ground floor could remain at 527 feet as per the new plan, without any future alterations due to an excessive amount of rock. He said that secondly, regarding the retaining wall, they were concerned about both their trees and foundations. He said that they sought assurance that the extensive excavation would not pose a threat to their foundations' stability in the future.

Sarah Haddon said that she also resided on Montague Street, situated directly behind the proposed loading area. She said that like her neighbors, including Mr. Barnes, and others in Avinity, she was grateful for the improvements Kappa Sigma had suggested to benefit residents. She said that although the issue of noise had been acknowledged, it remained a significant concern. She said that while it was reassuring to know that they could contact law enforcement, they preferred fostering better relations with their neighbors rather than reporting them.

Ms. Haddon said that she was curious about whether the fraternity headquarters might consider reducing the decibel levels. She said that last year's party, held nearby, had forced her to leave her home due to the noise. She said that she requested reconsideration of the time music stopped, currently stated as between 9:00 p.m. and 10:00 p.m.. She said that their neighborhood had many young children and medical professionals who needed to commute early in the morning. She said that she and other neighbors had a concern regarding the potential rental of the meeting space to others, as it seemed inconsistent with residential zoning ordinance.

Mike Davis said that he resided at 3431 Montague Street. He said that the proposed change appeared so radically different from what he initially saw when he purchased his house in 2020, that he likely would have been much more cautious about investing $500,000 dollars into a property that was going to turn into a construction site. He said that he was very concerned that the developer's plans oversimplified the situation and did not adequately consider the various landscaping features present.

Mr. Davis said that he was also concerned that over time, changes would be made which may mitigate the views of Carter Mountain, which frankly was the only reason he selected this unit. He said that the illustrations in the plans did not accurately depict the trees' height; they were not eight feet tall as shown but rather small brush. He said that he was concerned that the trees that would be planted would also interfere with the view of Carter Mountain. He said that he shared the concern expressed by a previous member of the public regarding noise, stating that if this project proceeded, it was reasonable to expect an increase in attendance, which would inevitably lead to more noise.

Mr. Davis said that this development was very close to their residences on Montague Street, and he feared it would significantly detract from the reasons they initially chose to buy properties in this area. He said that in conclusion, he believed this was not an application for a minor change but a significant transformation that likely would have caused many of them at Montague Street to reconsider their decisions had they known these alterations were going to happen.

Mr. Missel asked if the applicant had a response to any of the comments from the public.

Ms. George said that she understood that one of the comments addressed the possibility of others using the space for rent. She said that the response was an emphatic no. She said that only Kappa Sigma would utilize the building, as it would not be rented out. She said that regarding the trees present, they were beyond the existing vegetation and consisted of a double staggered row of evergreen trees. She said that these Leland cypress trees stood at approximately six to eight feet tall. She said that after construction, they would remain in place. She said that they were committed to preserving them. She said that if necessary, they would add a retaining wall to protect the trees.

Mr. Missel asked if Ms. George could also address the question concerning the height, excavation, and risk of rock.

Ms. George said that they had not conducted any soil testing or assessed the rock depth at that specific location.

Chad Gephardt said that he served as the Executive Vice President for Kappa Sigma. He said that above the back area, French drains had been constructed during the first pass, which drained into the pond below. He said there were already tubes underground, so they already knew it could go down, but he did not know how far.

Mr. Missel closed the public hearing and the matter rested with the Commission.

Mr. Bivins would be valuable to ascertain whether the small pavilion on the right-hand side adjacent to Galaxie Farms traditionally hosted outdoor events. He said that it was Galaxie Farms under development nearby that would be the closest, and there would be a good amount of space over there. He said that he would challenge architects to think innovatively about reinterpreting neoclassic architecture, but that this was his personal perspective. He said that he was comfortable with the current situation and supported it.

Mr. Bivins said that there would be a site review process where people could discuss this matter. He said that hopefully, the executive director could maintain communication with the four neighbors directly behind them, fostering dialogue similar to their homestay protocols. He said

that the person on call should be known instead of contacting police. He said that if the Kappa Sigma executive director participated in these discussions, he would fully support this new, revised plan.

Ms. Firehock said that she was not in support of this application for a couple of reasons. She said that one, she had not heard a compelling argument for doubling the amount of impervious surface. She said that she preferred that they opted for a taller design rather than a wider one. She said that despite their efforts to lower the elevation, the current design seemed more impactful to her. She said that she was also concerned about the cut and fill plan. She said that she had insufficient details to fully understand it. She said that although this was not a site plan review, she had witnessed some slopes in their area become unstable, even with retaining walls.

Ms. Firehock said that she empathized with the neighbors as well. She said that if they had purchased a townhome in the area and looked at the approved plan, they would see the proposed building was not in their backyard. She said that because there was no compelling reason shown to her, it had not been demonstrated that the building cannot be placed elsewhere on the site. She said that it could be at the original location, maintaining the same size structure and function. She said that the primary argument for changing the design seemed to be based on aesthetic preferences, which she found insufficient to move the use closer to neighbors and double the impervious surface of the site.

Mr. Missel said that he had the same thoughts, which was why he had asked about the stormwater management system. He said that considering the substantial stormwater management facilities located at the front of the site, he would ask if that did not offset the additional impervious surface in Ms. Firehock's view.

Ms. Firehock said that unfortunately, the majority of her career has been in stormwater management, and they had not been able to design systems that perfectly replicated the pre-existing conditions. She said that in developed areas, even if there was a stormwater pond with all the calculations and correct curve numbers, which they could discuss extensively regarding their generation and accuracy, there would still be impacts to the receiving waters. She said that although it would be ideal to achieve 100% offset of these effects through increased stormwater management, unfortunately, their capabilities were not yet advanced enough to perfectly achieve that.

Mr. Missel said that he understood her perspective on this matter; he was familiar with stormwater management as well. He asked whether this approach did not, in reality, affect any development within the County since it was evident that even with mitigation measures, new developments struggled to achieve 100%.

Ms. Firehock said that it was correct, but they already had an approved plan to meet their needs for space. She said that she had not heard a compelling reason for changing the plan that was already approved. She said that the design aesthetic of the building would be prettier in the one-story, spread-out format, but that was not enough to justify the change. She said that it seemed like it did not function better, and she not been convinced otherwise. She said that ultimately, it was up to the applicant to make a strong case for the change. She said that if they did not succeed in convincing her, they might need to come up with a more compelling argument when presenting to the Board of Supervisors.

Mr. Carrazana said that he had concerns regarding the building's location. He said that he recognized the efforts made to collaborate with neighbors and lower the elevations. He said that he found it challenging to comprehend how the nine-foot difference would be addressed in the design. He said that the presentation did not demonstrate how the entrance to the building, slab location, and the edge of the planting area would be integrated considering this gap.

Mr. Carrazana said that significant work must be done to ensure stability when presenting this plan to the Board of Supervisors and site plan review. He said that there was a risk that the soil may become unstable, and nothing had been presented about how they would stabilize it. He said that [41:17 Flave Homes?] is a good firm and he was surprised at the materials they were looking at.

Mr. Moore said that despite his colleagues raising some points, this particular proposal did not bother him. He said that providing additional space for the fraternity's business seemed acceptable to him. He said that he agreed with Mr. Bivins regarding being mindful and having an on-site representative to address neighbors during noise incidents. He said that he was just looking at the last grand conclave's agenda, and multiple nights of loud parties could be quite painful for people's ears. He said that this was more about how the space was used rather than its construction, so he was ready to move forward with it.

Mr. Murray said that he would like to share his concerns regarding the slope in the back and its ability to handle the potential risk of collapse.

Mr. Carrazana said that he was unsure of who the civil engineer was that [42:44 Flave?] had subcontracted. He said that at minimum, a geotechnical report should have been conducted prior to the proposal.

Mr. Missel said that the firm was Roudabush. He said that to Mr. Carrazana's point, it was unclear as to whether it was done.

Mr. Carrazana said that the applicant had said there was no field technical report done.

Mr. Missel said that was correct.

Mr. Murray said that he also thought the sound was an issue, but he did not think there was anything they could do in regard to that other than the suggestions already provided.

Mr. Missel said that regarding stormwater impacts and impervious surfaces, his understanding was that the site plan review process, along with water quality considerations, was sufficient for stormwater management. He said that concerning the retaining wall, they relied on the applicant's assurance that it had been graded to achieve a three-to-one slope and that drainage had been installed at the back, along with a French drain or another type of drain. He said that unfortunately, the materials provided made it difficult to visualize this clearly, possibly due to a vertical to horizontal scale discrepancy.

Mr. Missel said that at a recent CAC meeting he attended, they emphasized the need for an accurate cross-section illustration to address community concerns about visibility. He said that this section did not convey that information clearly to him. He said that if they proceeded with the site plan and building permit, there were code requirements in place to address water quality issues and ensure setbacks and stability. He said that wall requirements and engineering

specifications were currently being discussed, focusing on a six-foot requirement. He said that considering this context, he believed there was a set of guidelines in place to address potential issues they might anticipate, so he leaned towards support of this proposal.

He said that regarding the 527-foot lower ground floor elevation, as depicted on all drawings, the recommendation stated that development must align with the conceptual plan and related criteria. He said that if an obstacle prevented adherence to the 527-foot elevation, he would like to know if the developers would be required to return for approval or if they could they adjust it at the site plan stage. He said that the approved project heavily relied on this finished floor elevation's compliance.

Mr. Shoaf said that they could work with the County Attorney to create a suitable wording aligned with the concern. He said that if it got approved in its current form and this approach failed, they would have to return and amend the special use permit.

Mr. Missel asked if that was not given in the language in the staff report already.

Mr. Shoaf said no, it was not as specific.

Mr. Herrick said that that was correct. He said that if the base elevation were a concern, it needed to be added as a condition to the existing conditions listed. He said that the current conditions focused on the location and height of buildings; however, they did not specify the base elevation upon which the building would be constructed.

Mr. Missel asked if the attached materials were not sufficient to provide that.

Mr. Herrick said that the base elevation was not called out in the existing conditions as an essential element of the plan. In order for the base elevation to become an essential element, it would need to be specifically listed in the conditions, if the Board or Commission deemed it worth recommending.

Mr. Missel asked if Attachment 4 was the conceptual plan.

Mr. Shoaf said yes.

Mr. Missel asked if they needed something more specific than it being in general accordance with the conceptual plan attached.

Mr. Herrick said that the base elevation would need to be called out as an essential element on that essential elements list.

Ms. Firehock said that she would like to reiterate that her objection to the construction was not solely due to stormwater concerns. She said that primarily, she was concerned about the chosen location.

Mr. Bivins motioned that the Planning Commission recommend approval of SP202300018 Kappa Sigma International Headquarters with both the conditions stated in the staff report and an additional condition to require a base elevation of 527 feet, and to update the Concept Plan to provide pedestrian improvements along Route 20. The motion was seconded by Mr. Moore and passed (5-1). (Ms. Firehock opposed and Mr. Clayborne was absent)

ZTA202300008 Grading Standards and Steep Slope Standards

Bill Fritz, Development Process Manager, said that in the current ordinance, a 10-foot maximum retaining wall height was applicable across the entire County. He said that however, in the steep slopes overlay district, which is within development areas only, the maximum retaining wall height was reduced to 6 feet. He said that this regulation led to situations where property owners with managed steep slopes and areas outside of steep slopes had different allowed wall heights.

Mr. Fritz said that the 6-foot limit was initially chosen without a specific engineering purpose and was later replaced by a 10-foot limit for the rest of the County based on engineering considerations. He said that despite these height differences, both types of walls could still be required to have screening due to their objectionable nature. He said that before moving on to the proposed ordinance, he asked if there were any questions regarding the existing regulations.

Mr. Carrazana asked if it was only in the development areas where the 6 feet versus 10 feet became a difference.

Mr. Fritz said that was correct, because steep slopes only exist within the development areas. He said that when moving into the rural areas, they had critical slopes, and they could not build on critical slopes unless they got a special exception. He said that if allowed by a special exception, they could build a 10-foot wall.

Mr. Missel asked if that was the current process.

Mr. Fritz said yes. He said that if someone was outside the development area on critical slopes and wanted to put a retaining wall in, they would need a special exception first in order to build anything. He said that the proposed ordinance did not change that but raised the height of retaining walls on steep slopes to 10 feet, ensuring uniformity in their design and administration.

Mr. Fritz said that the current ordinance limited wall heights to either 10 or 6 feet without any option for an increase. He said that the proposal was that special exceptions be permitted, which could be granted for improvements requiring corridors like roads, trails, and paths. He said that these exceptions must be tied to the comprehensive plan and provide a public benefit. He said that they could not be used as a pretext for personal gain, such as constructing a taller wall for individual convenience or cost-saving purposes.

Mr. Fritz said that when considering special exceptions, the Board of Supervisors must evaluate how the proposed development impacts other features in the area, such as pedestrian infrastructure and the view from adjoining properties. He said that the focus of the amendment was that the height increase of retaining walls would only be considered if necessary for a public purpose, such as operating the facility or if rerouting the road or trail proves too costly in terms of land acquisition. He said that this amendment specifically targeted special exceptions, and that was all that it did. He said that it was pretty narrow in terms of zoning text amendments.

Mr. Murray said that he was still struggling with the concept of public purpose, which can indeed be quite broad. He said that when considering roads and trails as examples, one might question whether providing access to a subdivision through easier roadways or constructing a higher wall serves a public purpose.

Mr. Fritz said that when examining the special exceptions, it discussed that it would not be consistent with the prudent use of public funds because there were no public funds. He said that if it would require rerouting or redesigning improvements to an extent that they would not serve their intended purpose, then maybe. He said that however, they should consider previous language regarding significant increases in maintenance costs and unsafe designs for users and maintenance personnel. He said that the Board of Supervisors had the flexibility to allow improvements based on these factors.

Mr. Fritz said that the text was intentionally written in a narrow manner to provide the Board of Supervisors with the necessary flexibility. He said that they anticipated situations where a project involved an improvement not owned by the public but still desirable by the County. He said that for instance, the road connecting 5th Street and Avon, which Wegmans constructed without a 10-foot retaining wall that is present in the city. He said that in this case, if the retaining wall had been within the County, they must assess how it affected the road. He said that the County had really wanted a connection between there. He said that the Board could take this into account during their deliberation process.

Ms. Firehock said that she had a question regarding a situation she observed in Virginia. She said that in cases where someone constructs a structure in a floodplain, they may remove the floodplain by backfilling and building a high retaining wall. She said that consequently, the area was no longer considered a floodplain. She asked if someone arguing that their lot cannot be developed unless they elevate it out of the floodplain, whether this action aligned with serving a public purpose or merely involved eliminating the floodplain by backfilling and constructing a retaining wall.

Mr. Fritz said that it would be very difficult to establish a finding for that under the special exception criteria. He said he was not sure how one could achieve this, but he also struggled to understand how a special use permit in the floodplain could be bypassed. He said that as a result, there were two significant hurdles there.

Ms. Firehock said that she appreciated the County's commendable approach towards prohibiting development in floodplains, where it was not a good place to build. She said that she wanted to confirm that the proposed changes would not affect that at all.

Mr. Fritz said that considering a hypothetical scenario and taking into account the language used in this context, as someone with experience in reviewing special exceptions, it would prove challenging for staff members to establish the necessary findings.

Mr. Moore said that for clarification if one was located in a rural area and possessed both a critical slope and a preserved slope on their property, it was necessary to obtain special permission before constructing any retaining walls within the development area.
Mr. Moore said that for clarification, if one was located in a rural area, and had a critical slope, or in the development area and had a preserved slope on their property, it was necessary to obtain special permission before constructing any retaining walls.

Mr. Fritz said that in the development area, one would not even be able to come in; a rezoning request would be necessary to change the designation from preserved to managed or to remove it entirely, and in the rural areas they would need a special exception.

Mr. Moore said that currently, in the development area, one could construct a retaining wall by right on a managed steep slope.

Mr. Fritz said that that was correct.

Mr. Missel, said that he assumed that the code requirements for railings, considering potential walkways behind those walls, would remain unchanged.

Mr. Fritz said that that was correct. He said that none of the other standards for retaining walls would be changed. He said that they maintained, for instance, the existing reverse slope and steps between walls. He said that any wall over two feet in height required a building permit. He said that it was during the building permit review process that one would determine if railings or other safety measures were necessary.

Mr. Missel opened the public hearing. He asked if any members of the public wished to speak on this item. Seeing none, he asked the Clerk if there were any speakers signed up online.

Ms. Shaffer said that there were none.

Mr. Missel closed the public hearing and the matter rested with the Planning Commission.

Mr. Murray said that he had some concerns, particularly with the mention of 5th Street Station, as he understood from that comment that the reason for the large wall there was due to Charlottesville. He said that it would be unfortunate to see such an occurrence in Albemarle County. He said that certainly, there exists a situation where growth areas can become canyonized, especially since they do not protect or account for intermittent streams within those areas; these often get filled and covered with pipes.

Mr. Murray said that an important point to consider was the distinction between preserved and managed slopes. He said that when this concept was initially proposed, it aimed to differentiate between areas already impacted or possibly unnatural, so they had differing standards for them. He said that he almost wished he had brought a slide presentation because it felt necessary.

Mr. Murray said that if they have a natural slope like the one in question, removing part of it results in a steeper slope on one side. He said that the fill is then removed or shifted here, creating potentially two new managed slopes on either side of the original. He said that the question arises: when they permitted development within these managed slopes, which were likely once natural slopes, were they exacerbating the situation or improving it?

Mr. Murray said that the primary concern that needed to be addressed was how they could improve the situation to avoid future issues, such as erosion, safety hazards, and canyonizing the growth area. He said that preserving the sense of place in the Piedmont should also be a priority, as flattening the landscape can lead to retaining walls and loss of topography. He said that he was concerned about any policy that incentivized this flattening, as it might exacerbate existing problems. He said that while they discussed exceptions for higher retaining walls, the stream protection ordinance had yet to be revisited. He said that it was concerning that they could devote multiple meetings to this issue but had not resolved it in over ten years.

Mr. Bivins said that he would aim to strike a balance between Mr. Murray's concerns and the need to address the 5% of County land in question. He said that he appreciated the emphasis on

preserving the Piedmont topography on one side of the Blue Ridge but also highlighted the importance of considering the 95% of rolling hills in the County. He said that while he acknowledged the significance of stream protection, he pointed out that farmers and the community faced challenges when implementing such measures.

Mr. Bivins said that during his tenure on the Commission, any attempts to advance the conversation about stream protection had been met with strong opposition from a capable lobbying group. He said that they argued that they could not be good farmers and adhere to stringent stream protection rules simultaneously. He said that he understood the resistance but believed they should consider adopting the Chesapeake Bay Act. He said that this would provide a set of ordinances and rules that could help them make significant strides in stream protection.

Mr. Bivins said that, however, he reminded everyone that they were discussing only 5% of the land owned by their fellow citizens. He said that every time they tried to make progress on this issue, there was an outcry. He said that he had refrained from mentioning it earlier that day because he wanted to be diplomatic, but the Avinity project in 2017 illustrated this point.

Mr. Bivins said that a family sought permission to build a modest multifamily development adjacent to Avinity and requested using a nearby street as an emergency access point. He said that they must strike a balance between preserving their natural resources and accommodating the needs of their community members. He said that adopting the Chesapeake Bay Act could help them achieve this goal while addressing stream protection concerns in a more comprehensive manner.

Mr. Bivins said that he had advocated for preservation but advised people to purchase the property if they truly wanted to control the development of it. He said that they had the opportunity to build a modest, family-owned multi-family complex, but Avinity declined because they did not want to share their road. He said that this project was different, and he understood its uniqueness. He said that to see a high retaining wall, they should see behind Berkmar Drive.

Mr. Bivins said that the walls were constructed there to accommodate more houses, as the land was valuable for development. He said that despite his concerns about the wall's safety, he acknowledged that it was well-built and expensive. He said that the main point was that this policy applied only to 5% of the County, while 95% retained its gently rolling hills. He said that they still would not address stream protection due to a powerful lobbying group in their County that refused to let that go forward.

Mr. Missel said that he would like to expand on the previous point as it relates to the height of the wall. He said that considering the same scenario, he thought about the aesthetic impact of a higher wall. He said that specifically, if they increase the wall's height by four feet, as opposed to the alternative of six feet and then four feet behind, they can potentially plant in front of the four-foot step. He said that however, he also realized that increasing the wall's height provides more development area, as mentioned in the staff report.

Mr. Missel said that despite the minor aesthetic impact due to the low percentage of walls seen, focusing on the entrance corridor, there is a possibility that the ARB may suggest modifications if an unappealing 10-foot wall appears. He said that they might recommend screening or stepbacks, for example. He said that they have addressed the concerns from an entrance corridor perspective.

Ms. Firehock said that it was not by right. She said that they still have to come in and approve a public purpose and ask for permission, which could be denied.

Mr. Fritz said that going beyond 10 feet would require special permission.

Mr. Fritz said that going beyond 10 feet would require special permission. He said that regarding the entrance corridor, one of the factors to be considered when drawing up whether an area was preserved or managed was whether or not it was within an entrance corridor and important to that entrance corridor. He said that the areas where slopes were important to the entrance corridor were placed into preserved slopes and cannot have walls built on them at any point.

Mr. Bivins said that at one point, staff mentioned a project examining preserved slopes across the County. He said that they now had access to new technology for more efficient assessments. He said that when creating the new map and overlays, it would be beneficial to utilize this technology intentionally. He said that this would help them understand the steep slope overlay in today's context.

Mr. Bivins said that considering Mr. Murray's remarks, the Berkmar Drive construction was performed when VDOT made that road because they created those slopes by moving the dirt to those locations. He said that they did not know at that time that they would create housing over there, so it had unintentionally impacted those residents. He said that it remained unclear how they could communicate these concerns to VDOT.

Mr. Murray said that they ended up putting a lot of trails through riparian areas, and that had negative consequences. He said that the retaining walls could exacerbate the issue by making the trails inaccessible. He said that he acknowledged Mr. Bivins' comment regarding the 5% and agreed that they should prioritize development within the growth area. He said that however, it was crucial to maintain a livable environment as well. He said that overemphasis on retaining walls and landscape modification could render the growth area uninhabitable, which he would hate to see.

Mr. Moore motioned that the Planning Commission recommend approval of ZTA202300008 Grading Standards and Steep Slope Standards, which was seconded by Mr. Carrazana. The motion passed (5-1). (Mr. Murray opposed and Mr. Clayborne was absent)

Committee Reports

Mr. Moore said that the Metropolitan Planning Organization Citizens Transportation Advisory Committee (MPOCTAC) held a special meeting for April. He said that he arrived 5 minutes late, which was 25% of the meeting, because it was very short. He said that during this meeting, h the attendees received a quick overview of the recently published "Moving Toward 2050" transportation plan. He said that the document was available for those who wanted to see it.

Mr. Murray said that the Crozet Community Advisory Committee (CAC) meeting at Brownsville was a larger event with increased outreach and discussions on various topics. He said that these ranged from updates on core systems modernization with the County to Eastern Avenue expectations. He said that staff explored ways to move forward on Eastern Avenue, including the idea of a public-private partnership. He said that he was eager to learn more about this proposal as there was significant public interest in the details.

Mr. Murray said that discussions also took place regarding Crozet Square. He said that the plan was to replace the current stoplight, which allowed only right or left turns, with a setup that permitted right-in and right-out movement. He said that this change made sense, so one would need to go around the library to make a left turn at that intersection.

Mr. Bivins asked if they were going to fix the road there.

Mr. Murray said yes; the idea was that they would fix the whole plaza. He said that there was a whole project for that area.

Mr. Murray said that this discussion was primarily related to the School Board, but it encompassed various concerns regarding teachers, such as layoffs and insufficient compensation. He said that the conversation also touched upon the general infrastructure gap within Crozet, including the need for sidewalks. He said that it was mentioned that one can view the County's transportation improvement priorities, which include sidewalk projects, on their website. He said that he had not known about this previously.

Mr. Bivins asked if they had discussed ending the inflammatory postcards being mailed out.

Mr. Murray said that he did not mention the inflammatory postcards. He said that an important point to note is that he received a communication from a member of Crozet. He said that they sent him a recording featuring Dennis Rooker and Sally Thomas, who were in Crozet at the time. He said that the discussion was about West Hall and proved to be quite interesting.

Mr. Murray said that he would be happy to share it with anyone who wishes to listen. He said that it was intriguing how many of the issues discussed back then have remained relevant today, such as the lack of infrastructure and the challenges posed by by-right development. He said that despite the passage of time, they were still struggling with these same issues.

Mr. Carrazana said that the MPO Technical Committee met as well but had the same agenda as the MPOTAC that Mr. Moore had previously reported on. He said that the report from the meeting was available online.

Mr. Moore said that they did not receive much citizen contribution in their MPO meetings.

Mr. Carrazana said that he could not recall receiving any, although the meetings were open to the public.

Mr. Barnes said that they may have someone attend every once in a while.

Ms. Firehock said that she attended the 5th and Avon CAC meeting regarding Tandem School's request to increase enrollment. She said that this item discussed was expanding the student population from 250 to 400 students. She said that the campus, spanning approximately 24.5 acres, currently had no plans for immediate dramatic growth. She said that they aimed to accommodate around 25 additional students in the near future. She said that Tandem School intended to expand the school's size over time.

Ms. Firehock said that during the meetings, discussions revolved around potential traffic impacts resulting from increased enrollment and student release times. She said that Tandem School had already implemented staggered arrival and departure times to mitigate traffic conflicts. She said

that while there may not be a significant conflict at present, this aspect was considered during the meeting. She said that concerns were minimal, and the decision would be further evaluated by the Planning Commission, which will receive an application related to the matter at a later date.

Mr. Missel said that he had reviewed Tandem's application and noted that they had eight special use permit applications over the years. He said that they mentioned that the specific application SP2015-21 involved the addition of a middle school, which they had not built yet. He said that they would build this middle school to accommodate the additional students in the future.

Ms. Firehock said that yes, at some point they needed to build more buildings. She said that they were not presented with any sketch or site plan to better understand.

Mr. Missel said that the special use permit to expand the buildings was approved back in 2015.

Ms. Firehock said that the current application was just about the enrollment. She said that she had tried to bring up the information to better understand it, but her tablet was not allowing her to view the County website properly.

Review of Board of Supervisors Meeting: April 17, 2024

Mr. Barnes said that on April 17, the Board held a meeting during which multiple homestay issues were discussed. He said there were two public hearings besides the one related to the budget. He said that one concerned Cornerstone Church's rezoning request on Route 20 North in Pantops. He said that the Board approved this rezoning. He said that the second land use-related hearing involved Woodbrook Apartments, a 244-unit complex located between Berkmar and Woodburn near Agnor-Hurt. He said that this proposal was also approved by the Board.

AC44 Update

Mr. Barnes said that the process had been interesting as they had spent a considerable amount of time working on goals and objectives. He said that their plan was to present the action steps soon. He said that senior management in the County had been reviewing their work, seeking to ensure a holistic and contextual approach to the project. He said that initially, the material presented consisted of eight chapters, each with its own set of goals and objectives. He said that however, there was a desire to provide a section of broader context for the reader, including an overview of the County's policies, objectives, and intended outcomes.

Mr. Barnes said that staff had stepped back to revise the content, aiming to create a more comprehensive introduction that would precede the chapters. He said that they were currently working on refining the schedule for this project. He said that they were diligently working towards meeting their goals and objectives in an efficient manner. He said he was unsure about the exact schedule outcome for this matter but aimed to present something at the next meeting or possibly the one following.

Mr. Barnes said that their efforts focused on developing the AC44 plan rather than the AC46 plan. He said that as they revisited this, he believed it presented a valuable opportunity to improve the document. He said that recent discussions should refine their direction and further build upon the work completed thus far. He said that this required some flexibility.

Old Business

There was none.

New Business

Mr. Bivins asked if Commissioners should still notify staff and the Chair of any planned absences.

Mr. Missel said yes.

Items for follow-up

Mr. Murray asked if there was any information about when the water protection ordinance or the riparian buffer overlay district would be coming back to the Commission for review.

Mr. Barnes said that due to staff turnover, it would not be coming back to the Planning Commission in the near term. He said that staff was working to ensure that Agricultural Forestal District work was dealt with this year.

Adjournment

At 7:30 p.m., the Commission adjourned to April 23, 2024, Albemarle County Planning Commission meeting, 6:00 p.m. in Lane Auditorium.

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Michael Barnes, Director of Planning

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

Approved by Planning Commission
Date:
Initials: