Albemarle County Planning Commission
DRAFT PC MINUTES August 27, 2024

The Albemarle County Planning Commission held a public hearing on Tuesday, August 27, 2024, at 6:00 p.m.

Members attending were: Fred Missel, Chair; Luis Carrazana, Vice-Chair; Corey Clayborne; Karen Firehock; Julian Bivins; Lonnie Murray; and Nathan Moore.

Members absent: none

Other officials present were: Michael Barnes, Director of Planning; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order

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. Clayborne motioned to approve the Consent Agenda as presented. Mr. Carrazana seconded the motion which carried unanimously (7-0).

Items Requesting Deferral to a New Date

ZMA202300014 Archer North Development

Mr. Missel said that the applicant had requested deferral to November 12, 2024.

Mr. Clayborne motioned to defer the application to November 12, 2024. Ms. Firehock seconded the motion which carried unanimously (7-0).

Public Hearing

ZMA202300019 & SP202300022 Saigon Sandwiches and Boba Teas

Kevin McCollum, Senior Planner, said that the property was located at 2401 Northfield Road, at the intersections of Rio and Northfield-Hillsdale and Rio and Old Brook Road. He said that it was 1.2 acres, zoned R2 Residential, with an existing house and an approved homestay permit for rental of up to two bedrooms.

Mr. McCollum said that the surrounding neighborhoods included Raintree, Northfields, Glenwood Station, Abington Crossing Apartments, and commercial development to the north along Rio Road. He said that Fashion Square was about a third of a mile to the northwest. He said that the

map showed the subject property with a quarter-mile radius along Rio Road in both directions, with single-family detached houses, multifamily houses and apartments, churches, and commercial uses within a quarter mile.

Mr. McCollum said that Rio Road was an important vehicular corridor with a large mixture of uses along it. He said that the map showed the boundaries of the parcel, which was 1.20 acres and had an existing house. He said there were two driveway entrances, one onto Northfield Road and one onto Old Brook Road. He said that the zoning map indicated that the property was zoned R2 Residential, with surrounding areas mostly R2 Residential, R15, and some commercial zones to the north.

Mr. McCollum said that the property's development will be subject to review by the Architectural Review Board due to Rio Road being an entrance corridor. He said that the future land use designation was Neighborhood Density Residential, which promoted single-family residential units at a density of 3-6 units per acre. He said that secondary uses included retail, commercial, and office uses which supported the neighborhood, open space, and institutional uses. He said that secondary uses were encouraged to be located in centers, but they could be considered in other locations as long as they were accessible and compatible with the surrounding land uses.

Mr. McCollum said that the proposal was to add a 1,200 square foot small food store and deli to the property and increase the bedroom rentals from two to three. He said that the applicant proposed rezoning the property from residential to commercial along with a special use permit. He said that the existing house would remain and contain the three bedrooms, and the store would be adjacent to the house.

Mr. McCollum said that they had closed the two existing driveway entrances and proposed a one-way travel way with angled parking spots to address safety. He said that the traffic plans met zoning and ordinance requirements. He said that the applicant had proffered to restrict certain uses of the property that were not compatible or supportive of the surrounding area. He said that these included things like drive-thru windows, automobile service stations, manufacturing, processing, and assembly, and others.

Mr. McCollum said that the permitted uses include the uses they are proposing, a restaurant, a convenience store, dwellings, hotels, motels, and inns, and a few others that were consistent with the R2 zoning. He said that at this time, the applicant had not proffered the plan itself. He said that the two closely separated intersections were an ongoing safety concern for the County and VDOT. He said that in 2024, there had been six crashes at this location. He said that VDOT traffic volume data showed that approximately 30,000 vehicles pass through these intersections each day.

Mr. McCollum said that with this proposal, staff estimated that fewer than 100 daily trips will be added to the site. He said that while 100 trips compared to 30,000 was a small increase, staff acknowledged that there were existing safety concerns at this location. He said that the ongoing safety concerns and congestion were the primary reasons for the Rio Corridor study, which recommended improvements at this intersection. He said that the County had also applied for state funding through SmartScale to make these improvements. He said that the figure on the screen showed a conceptual design of these changes.

Mr. McCollum said that staff would know the status of this application by 2025, and if successful, it would likely not be completed until beyond 2030. He said that over the past few weeks, staff

had received many phone calls, emails, and petitions containing concerns and objections to this application. He said that concerns included added traffic, impacts to the already poor intersection, impacts a commercial business could have to the neighborhood, and many others. He said that staff provided a summary in the staff report and was happy to answer questions about these.

Mr. McCollum said that staff's concerns included that since the applicant at this time had not proffered the plan, they were not required to develop that commercial component of the property to the proposed 1,200 square feet. He said that because of this, other developments could be larger in scale and inconsistent with the character of the surrounding community. He said that staff believed that the proposed 1,200 square foot store and deli was compatible and supportive of the surrounding area, but without a proffered plan or limit on the square footage, there was no way to enforce what had been proposed. He said that the commercial use could potentially generate additional trips to the site which was located at an intersection with existing traffic safety issues.

Mr. McCollum said that the request was consistent with the comprehensive plan. He said that small scale, retail, and commercial uses were secondary uses in the Neighborhood Density Residential land use category. He said that the proposal was for a 1,200 square-foot store and deli, so it was compatible and supportive of the surrounding area, and it was below the 5,000 square-foot size recommended for commercial and retail space.

Mr. McCollum said that the request was consistent with the majority of the neighborhood model principles, and it provided a mixture of uses, including a live-work housing unit, a hotel-motel use, and a neighborhood-scale restaurant and store. He said that the proposal also closed two entrances, providing a one-way travel entrance and exit.

Mr. McCollum said that for the special use permit, the proposal was to increase the number of rooms at the existing homestay from two to three bedrooms. He said that no other changes to the house were proposed. He said that staff did not identify any concerns. He said that the positive aspects were that it was consistent with the comprehensive plan. He said that no impacts to joining neighbors were anticipated, and the hotel owner and caretaker will live in the basement on the premises. He said that the bedrooms will be rented as a group.

Mr. McCollum said that for the hotel, motel, and inn use, staff had identified some conditions. He said that the first was to ensure the development was in general accord with that concept plan the second and third was for a maximum number of bedrooms and that they should be rented together as a group, and the last was a condition consistent with the homestay regulations, that the owner or approved resident manager must live on the property. He said that these conditions only applied to the hotel, motel, and inn use, not the rezoning.

Mr. McCollum said that for the commercial development component to be developed in accord with that plan as proposed, it would need to be proffered. He said that if the rezoning application was approved, commercial use buffers would then apply along that eastern residential property line. He said that the applicant has requested to reduce the buffer from 20 feet to 7 feet. He said that staff was recommending a condition that they maintain at least 7 feet of landscaping screening buffer, as demonstrated on the plan.

Mr. McCollum said that the Planning Commission was not required to make a recommendation on this, but if they chose to provide comments, they would be included in the report to the Board. He said that staff recommended approval of the rezoning and special use permit.

Mr. Moore asked what information they had regarding commercial storefront vacancy rates. He said that he could find information for the City but not the County.

Mr. Barnes said that he did not have any information available off the top of his head.

Mr. Moore said that he also wanted to know the vacancy rates for Albemarle Square. He said that one consideration was whether they needed more commercial space. He said that this could be informed by current storefront vacancy rates. He said that he was curious if they had information about hotel vacancy rates for existing inns and small hotels. He said that his guiding principle was to understand people's needs. He said that if there was a need, he would like to know. He said that he was wondering if they had any hotel vacancy rate information from the economic office.

Mr. Barnes said that they have obtained some of that information, and it appeared that they were back to the five-year running average of hotel vacancy rates. He said that although there was a significant downturn during the pandemic, they were now back to that average, around 70%.

Mr. Moore said that he also wondered if they had any information about prior zoning compliance or violations for the parcel.

Mr. McCollum said that there had been one previous violation on the property related to the homestay. He said that they had received homestay approval in November or late 2022. He said that in March, there was a violation reported that they were essentially advertising three bedrooms on Airbnb instead of two. He said that within a week of staff receiving that complaint, it was taken down and abated. He said that this occurred in March of 2023. He said that was the only violation that staff found on this property related to the homestay use or any other uses on the property.

Mr. Moore asked how the proposed peanut roundabout SmartScale project would impact the development if the roundabout were approved.

Mr. McCollum said that if they considered the conceptual design that was proposed, the roundabout would result in a significant amount of taking from the property. He said that the front corners of the property would be impacted, and the proposed entrances would be positioned further back towards the property line.

Mr. Bivins asked whether another dwelling could be constructed by-right on the property.

Mr. McCollum said that theoretically, they could potentially build two units on this property due to zoning density. He said that the existing house already had a basement unit, which could be considered an accessory unit to the main dwelling. He said that the homestay arrangement involved the resident manager living in the basement unit and renting two bedrooms on the main floor of the house. He said that the request was to allow for three bedrooms in the house, although there were already three or more bedrooms.

Mr. Bivins asked for more information about the traffic concerns related to the intersection.

Mr. McCollum said that it was related to the distance between the intersections.

Mr. Bivins said that he was interested in the characteristics of the problems and how many accidents were occurring.

Kevin McDermott, Deputy Director of Planning, said that they had not delved deeply into the crash history, but according to the staff report, the crash rates at these intersections were much higher than expected for a similar type intersection. He said that it was ranked the fourth worst intersection in the Culpeper District from 2014 to 2018. He said that although it was not ranked since then, severe and fatal accidents continued to occur, including a fatality in the current year and another in 2022.

Mr. McDermott said that they had analyzed the intersection multiple times to understand what might be happening. He said that the proximity of two signals might cause confusion, leading to people trying to beat the light and causing accidents. He said that high speeds on the corridor also contributed to the issues. He said that the proposed peanut roundabout was considered through the Rio Corridor Study, but it was contingent on funding. He said that they would continue to look for ways to make improvements if it was not funded.

Mr. Bivins asked for clarification about the number of anticipated traffic trips and the current trip generation.

Mr. McDermott said that according to the International Transportation Engineer trip generation model, which they use to estimate trip generation, the small convenience store/deli's size and service type, including the use of Airbnb, suggested an average of under 100 new trips per day. He said that it was a challenging estimate due to the store's small size and the variability of the trip generation model for similar use types.

Mr. Bivins asked if the current trip generation was about eight per day.

Mr. McDermott said that was correct.

Mr. Bivins said that whatever the anticipated trip generation, it would be a significant change from the current conditions. He asked if the property was included in the Rio 29 Small Area Plan.

Mr. McCollum said that it was at the edge of the small area plan.

Mr. Murray said that it was mentioned that with the addition of commercial, there was some concern about the scope and scale of the commercial. He said that he was wondering if commercial was approved for that, what kind of constraints would they be allowed to place on that.

Mr. McCollum said that some of the constraints that came to mind included the size of the parcel, required setbacks, parking minimums, and so on. He said that the applicant had proposed proffers to not permit certain uses, meaning they were only permitted to do what they proposed in the proposals, which included a few different things. He said that theoretically, they did not need to keep the existing dwelling if it was zoned as commercial. He said that they could take it down and rebuild a site that was only commercial. He said that without a proffered plan, any permitted commercial use could be developed.

Mr. Clayborne asked for more information about the SmartScale process. He noted that they did not expect to see traffic safety improvements until the 2030s. He asked if that was the fastest schedule they anticipated.

Mr. McDermott said that there was always a bit of opportunity for accelerating projects. He said that every two years, VDOT accepted applications to fill the back two years of the six-year plan. He said that the state's standard was that funding received was not available for at least four years. He said that after four years, the funding became available, and they could hire a consultant for engineering, design, right-of-way, and construction processes, which typically took at least two years. He said that under the typical schedule, it was a six-year period. He said that the state had accelerated projects before, but those were usually for high-priority things that needed to be rushed.

Mr. Clayborne asked for more information about Condition 3 of the CUP. He asked how it would be enforced.

Mr. McCollum said that it could be enforced in a similar manner to how they currently enforce the number of bedrooms available for rent, based on listings on existing websites like Airbnb or VRBO. He said that three bedrooms might be rented as a whole for a family, while three individuals could rent the rooms separately. He said that there would be a minimum number of parking spaces based on the number of bedrooms. He said that if there were three separate stays, there could potentially be more people coming than if they were rented as a group.

Mr. Carrazana said that it was mentioned that there was a 15-foot electrical easement towards the lower right of the site. He asked if this could potentially impact the planting height.

Mr. McCollum said that it was possible that an applicant might have to collaborate with the owner of the easement. He said that the electrical company might have concerns about the height or size of the plants. He said that from a staff's perspective, if the property holder allowed it, they would aim to maximize landscaping and screening in that area.

Mr. Carrazana asked if there would be a height limitation.

Mr. McCollum said that there was an existing fence along the property line. He said that they did not rely on fences on other properties for screening. He said that considering the potential for screening, they could consider planting shrubs or tall structures that were as high as a fence to provide adequate screening between the properties.

Mr. Missel asked if it was an underground or overhead powerline. He said that he could ask the applicant.

Ms. Firehock asked if there was an estimate on the cost of the roundabout project.

Mr. McDermott said that they actually had a cost associated with this because it was submitted as a SmartScale project for the current round of SmartScale. He said that the conceptual level costs that they had to make the application for were $46 million.

Ms. Firehock said that she understood that SmartScale was highly competitive, and this project was considered competitive due to its location in an area with higher crash rates and safety concerns. She said that she was curious about the funding aspect. She said that if they were unable to secure government funding, which was essentially their tax dollars allocated to the state and federal government, and then returned to them, she wondered if the County had the capacity to fund such a project.

Mr. McDermott said that he did not think that the County was considering funding the full $46 million. He said that they were exploring other opportunities that could potentially lead to improvements at this intersection if the SmartScale application was not accepted. He said that they had engaged in discussions with VDOT to explore potential design changes that could be more cost-effective. He said that if this project did not move forward, they may consider revisiting this in the future with a revised, less expensive proposal.

Ms. Firehock asked for clarification about when the project would begin construction, if it would be complete by 2030 or start in 2030.

Mr. McDermott said that the SmartScale projects operated on a two-year cycle, so it was not likely to be completed until after 2030 if the current application was approved. He said that if submitted an application in two years, it would not likely begin construction until 2032.

Mr. Carrazana said that at an MPO Tech meeting, they had discussed alternative options for the intersection. He said that he got the impression that they were actively considering it now to potentially submit this in the next round.

Mr. McDermott said that they had already submitted for the 2024 round, so they were considering it for the 2026 round. He said that by the time they started considering new opportunities, it was too late to alter the design or create new designs, get cost estimates, and submit it in time. He said that if their application was unsuccessful, they would be looking to the next round, which was 2026.

Mr. Carrazana said that it was in the minds of VDOT and other authorities to address the intersection sooner rather than later.

Mr. McDermott said that he would also bring up the recent announcement about the public-private partnership they entered into with Home Depot at Fashion Square Mall. He said that this partnership included right-of-way that could potentially be dedicated to the County for a realignment of Hillsdale, which they believed could improve traffic and safety.

Mr. Missel asked what guarantees they had that the resident manager would reside and be present overnight on the subject parcel.

Mr. McCollum said that he believed it might be a question for zoning regarding the enforcement of the homestay requirement in residential districts. He said that they were complaint based, so if there was a concern, the County would have to investigate.

Mr. McCollum said that he wanted to provide information regarding the utility lines. He said that here there was a Google Street View from 2023, which showed what appears to be an overhead power line. He said that the adjacent property line with a fence was also visible. He said that fences were allowed up to the property line, so the fence may be on the property line.

Mr. Missel opened up the public hearing.

Luan Pham said that he was representing the property owner. He said that he had a few key points to touch on, including the owner's commitment to addressing all concerns raised by the neighbor, including traffic safety around the roundabout and potential impacts from the business on the surrounding neighborhood.

Mr. Pham said that the proposed use was a small deli to serve the community and surrounding area. He said that it would not cause any additional impacts besides the traffic going in and out of that area. He said that the business would not change and they would continue to operate as they had been doing. He said that they committed to specific operating hours. He said that they proposed a one-way entry and exit with parking at the back of the house to reduce traffic safety issues.

Mr. Bivins asked why the development plan was not proffered.

Tim Miller, Meridian Planning Group, said that the question of proffering the development plan was recently brought up. He said that the decision was made that the proffered reduced uses and permitted uses were sufficient to prevent other businesses from entering the area, so the owner was not completely opposed to proffering the plan but had not yet made a final decision.

Mr. Missel said that there was a concern that the current plan might not be acceptable to everyone. He said that he had a concern that when looking at the list of proposed uses, offices, convenience stores, restaurants, dwellings, public uses, or stormwater, even though there was a small parcel, the site could be torn down or sold, and one of the listed uses could be built.

Mr. Miller said that they were waiting to hear what would be brought up at the meeting before making a decision.

Mr. Missel said that he had a question regarding the buffer zone. He asked if they had any discussions with Dominion Energy about the 15-foot buffer that they were relying on and reducing to 7 feet.

Mr. Pham said no.

Mr. Missel opened the public hearing to comments from the public.

David Corbin said that he had been a homeowner in Northfield since 2006, and that there were over 270 people directly or indirectly opposing the rezoning. He said that many of his neighbors would address their safety concerns and other issues they had discussed. He said that he planned to focus on a critical issue raised with the Planning Commission's staff, which he felt had not received enough attention. He said that they had sent three legal documents to the staff, including the original Northfields deed and two Virginia court cases, one at the Supreme Court level, related to the rezoning.

Mr. Corbin said that if the rezoning moved forward, it would be going against Virginia law. He said that to understand this, one had to go back to 1959 when the subdivision was created, along with Carrsbrook, by Charles Hurt, who put a number of restrictive covenants in the deeds. He said that he was going to read from the first one, which stated, "No building of any kind shall be erected or maintained upon the lot herein conveyed, except one private dwelling, for the sole use of the occupants of the dwelling on the same lot. He said that one can also have a garage or stable.

Mr. Corbin said that the covenant was still in effect because it automatically renewed every 25 years. He said that Carrsbrook had a substantially equivalent set of restrictive covenants, including the residential one, and they were designed to preserve these residential communities. He said that in 1997, another developer wanted to commercialize four lots towards the entrance

of Carrsbrook, right off of Route 29 North. He said that the homeowners of Carrsbrook sued the developer in the Circuit Court to stop the development, and the court granted the request.

Mr. Corbin said that at the conclusion of the trial, the court entered a final decree declaring that the residential covenant was enforceable and enjoined that property owner and the locality to not allow that. He said that the issue of residential covenants had already been decided by the Virginia courts and they had the final say. He said that if they needed to go back to the courts, the same courts that created this law, the residents were willing to do that. He said that it would be very costly for the County and for the homeowner.

Donald Lion said that he was president of the Raintree HOA. He said that the Raintree HOA consisted of 170 homes. He said that the majority of residents in the HOA opposed the rezoning proposal. He said that rezoning the property would create a terrible precedent for the County. He asked what would prevent other property owners bordering main roads from rezoning their residential lots to commercial uses.

Mr. Lion said that the traffic safety of the intersection was a major concern. He said that over the past two years, two people had died in traffic accidents at the intersection, and it was one of the most dangerous intersections in the County. He said that they should consider the safety of their loved ones and the school buses that travelled through the intersection. He said that there was an early-childhood development school with an entrance directly across from the proposed development. He said that this would further exacerbate the traffic situation.

Mr. Lion said that if the business failed, which he believed was likely, they risked having another rundown vacant commercial space at the entrance to multiple neighborhoods, potentially negatively affecting property values. He said that there were many vacant commercial spaces within the immediate area where one could start a business now.

Mr. Lion said that the Board of Supervisors had previously disapproved a similar request directly adjacent to this site. He said that staff reported two factors against that request. He said that first, the request was residential and not recommended for commercial tourism development in the master plan. He said that second, the number of homestay rooms requested was not in character with the surrounding neighborhood.

Mr. Lion said that staff ultimately recommended the Board to deny the request because the increase in rooms could result in additional activity on the property that could impact abutting neighbors. He said that staff was concerned about noise, traffic, and outdoor activities. He said that there did not appear to be any difference between this request and the previous denial. He said that he questioned, if the zoning were to go through and things went south, how they would claw it back to residential.

Kathy Kildee said that she was representing the Northfield HOA. She said that she had lived in Northfield for 23 years, and she opposed the rezoning request. She said that since the application was presented to the Commission, the County had received dozens of letters opposed to the request. She said that responses had come from Northfield residents and adjacent communities. She said that the property was at a key entrance point to multiple neighborhoods.

Ms. Kildee said that the restrictive covenants had been in place since 1959, and they explicitly prohibited non-residential uses. She said that the restrictions were established to protect the character and integrity of the neighborhood, and allowing a commercial property would violate the

protections. She said that the rezoning action would not survive the litigation that would follow. She asked if the deed restrictions were considered in the County's review process.

Ms. Kildee said that she had made at least two complaints regarding the property because the listing was disingenuous on the Airbnb website. She said that it was originally portrayed as three but had been dialed back to two, but pictures of three bedrooms remained on the website.

Ms. Kildee said that she submitted a letter to the County on this matter that should be time stamped, and she could tell that five minutes before she submitted that, VRBO had shown pictures of three bedrooms in the property. She asked the Commission to deny the request.

Carol Hill said that she had been living on Northfields Road since 1970. She said that she would let her husband talk more about the issues.

James Hill, 2816 Northfield Road, said that he had been a resident since 2000. He said that he was president of the Northfield Homeowners Association for 15 years, where they encountered numerous challenges, the most significant of which was the need for recreational or open areas. He said that these required considerable time and financial investment. He said that despite being intended for owner use, these areas were not considered residential uses. He said that this issue had been a focus of their efforts for nearly 30 years.

Mr. Jim Salsini, Still Meadow HOA, said that he represented a 135-unit community at the rear of Northfields. He said that as a landscape architect, he would like to share some comments for the Commission. He said that on the site plan, he had noticed that part of the commercial development was within a variance area with a 30-foot building setback. He said that the corner of that building could set a precedent for the commercial corridor if this were to be rezoned into commercial.

Mr. Salsini said that the variance of the buffering from 20 feet to 7 feet could restrict the heights of planting materials and selections. He said that the engineering department set a 50-foot setback from the intersection, which dictated the new intersections for the parking lot and thoroughfare. He said that he was not aware of any business with dual access to dual roads with passthrough parking. He said that the Commission should consider precedence for other commercial uses along the corridor.

Mr. Salsini said that the Board of Directors of the Still Meadow Homeowners Association urged the Commission to reject the rezoning application of Saigon Sandwiches and Boba Tea. He said that Still Meadow was a community of 135 homes approximately one mile northeast of the property in question. He said that the homeowners greatly enjoyed the general peace and quiet in living in a residential area bordered by the Northfields community.

Mr. Salsini said that they were greatly concerned about commercial enterprises, the traffic flow concerns which were spoken to earlier. He said that they had nothing against the homeowners or applicants currently, but they felt that this site was not fit for this type of operation. He said that they felt without proffers and an actual site plan that would stick, this could set a precedent down the road for more commercial development in and around the area.

Sherry Ehler said that she had been a resident of Northfields since the early 1980s. She said that she wanted to bring up a traffic issue that had not been discussed yet. She said that the exit onto

Northfields Road, where there was a curve and a hill, would contribute to more traffic issues. She said that she supported all the other points that had been raised.

Jennifer Phillips said that she had lived in the Raintree subdivision since 2000. She said that it was not likely that people would understand how to navigate the proposed traffic patterns. She said that the lack of understanding would generate more traffic problems.

Judy Freeman said that she lived in the Fieldbrook subdivision. She said that she opposed the request because of the issues which had already been verbalized.

John Dean said that he lived in the Westmoreland subdivision, which was slightly further down from Fieldbrook. He said that he hoped the Commission would reject the request. He said that he had concerns about pedestrian traffic. He said that there were numerous apartment buildings just across the street from the proposed store, and he presumed that people would want to walk to it. He said that crossing the street would be difficult if the roundabout was installed because traffic would not stop.

Archie Hawkins asked if Saigon sandwich and tea shop was an eat-in establishment or a take-out service. He said that the parking shown was along the fence, and there was none shown for the sandwich shop. He said that this raised concerns about whether there would be adequate parking to support the business.

Mr. Missel said that the applicant had the chance for a rebuttal to public comment.

Mr. Miller said that the building and setbacks had a minimum and maximum setback requirement which they had to meet. He said that the one-way traffic decision was made after consulting with the transportation staff about the proposed roundabout. He said that they initially proposed a two-way entrance at Old Brook, but the circular rotation through the site was chosen as the safest option. He said that electric easements had not been considered at this point, but they could plant smaller trees or move the lines underground.

Mr. Missel closed the public hearing.

Mr. Bivins said that he had heard that there was no HOA for Northfield. He said that the Carrsbrook litigation had no standing for that community since there was no HOA.

Mr. Herrick said that private restrictive covenants and the zoning ordinance were separate tracks. He said that the County was responsible for enforcing the zoning ordinance, but that the County was not in a position to enforce private restrictive covenants. He said that if there was an alleged violation of a private restrictive covenant, it was up to the neighborhood to enforce the terms of its own restrictive covenants. He said that this distinction was made clear in the Carrsbrook case, and that the County was not a party to that litigation.

Mr. Bivins said that he had a clarification regarding a deed that was shared with the Commission. He said that the deed transferred a large amount of property on September 14, 1959, to French Slaughter. He said that Item 1 of the transfer said that no building of any kind shall be erected or maintained upon a lot herein conveyed except one private dwelling. He asked if this item had any relevance to the request.

Mr. Herrick said he was not aware if that deed applied to this property. He clarified that if it did, it would be a restrictive covenant that a neighbor , not the County, could potentially enforce. He said that the County was not a party to the covenants.

Mr. Bivins said that he was concerned that the applicant could sell the land, and a new owner could build something that was not in line with the community. He said that he did not know if there was a way to keep a reasonably sized activity in that location. He said that while the corridor may become more walkable, he did not think that would happen for at least 20 years. He said that he was concerned about the timeline for the roundabout. He said that once they built it, it would create a different kind of traffic atmosphere, but they were not there yet. He said that he was not supportive of the request.

Mr. Moore said that he had lived in the neighborhood for almost a decade. He said that when considering proposals, his guiding principle was whether the community needed it. He said that the need for more housing was clear, so he was generally supportive of such proposals. He said that converting a non-compliant homestay into a commercial inn may not be as compelling.

Mr. Moore said that often, when they received proposals for development, neighborhood residents expressed the same concerns—traffic, creating a slippery slope, and neighborhood character. He said that 19 times out of 20, he did not find the traffic argument convincing. He said that in this case, he did find the argument compelling. He said that the intersection was difficult. He said that they did have a project for the roundabout, and it may not be wise to approve development while they were waiting for the intersection improvements.

Mr. Moore said that 20 times out of 20, he did not find the neighborhood character argument compelling. He said that he lived in Raintree, Still Meadow, and Cobalt Ridge for 11 years. He said that he has neighbors in Raintree who he was still friends with. He said that when he lived there, the HOA was hands-off and handled trash removal. He said that he always wished that there was a third space in the neighborhood—and there was none except for the sidewalk on Old Brook Road. He said that there was no place for neighbors to gather—no coffeeshop or public park.

Mr. Moore said that if they were considering a request in the middle of Old Brook Road, the circumstances would be different. He said that in other countries, other cities in the US, and even Charlottesville, it was common to have residential zoning that included small-scale commercial use that supported the neighborhood. He said that such uses made it a more vibrant place.

Mr. Moore said that he wanted to consider the purpose of zoning with the residential designations. He said that he saw a comment once that the purpose of zoning was for neighbors to have a say in other people's property. He said that in the 20th century, zoning basically functioned to protect the comfortable and exclude people with low incomes.

Mr. Moore said that he had been part of HOAs and felt they often did more harm than good. He said that they were anti-democratic and functioned as a quasi-governmental layer that lacked transparency and accountability. He said that they were anti-freedom and aimed to maintain a status quo that was not just. He said that the restrictive covenants upheld this system should be thrown out. He said that they should consider how to approach zoning in a better way. He said that zoning should be used to encourage development that benefitted a community's health, economy, and social relationships.

Mr. Moore said that people had a need for social connections now more than ever. He said that the loneliness epidemic was growing, and young people were suffering. He said that the built environment was failing on that front. He said that the built environment they had created with the neighborhoods was a failure at keeping people connected. He said that he hoped staff considered this for the comprehensive plan. He said that he was not sure why the proposed development was really needed. He said that considering the traffic concerns as well, it made him inclined not to support the proposal.

Mr. Murray said that he appreciated Mr. Moore's comments. He said that he was supportive of commercial uses within neighborhoods. He said that the current approach of converting large areas of land into only residential use had led to a car-centric environment, which resulted in a lack of community gathering spaces and walkability. He said that the core criteria were whether the use was supportive of the community. He said that the orientation and the drive of the proposed development was not supportive of the community. He said that if a proposal like this were to be built in the middle of the neighborhood, he would have a different perspective. He said that unresolved traffic issues made the development untenable.

Mr. Clayborne said that he was concerned about the potential for a significant number of unintended consequences to arise. He said that these included permitted uses at the site if ownership changed. He said that traffic conditions and the timeline for improvements added to the negative impacts. He said that he was convinced that there was vacant commercial space within one mile of the site. He said that there were viable solutions to continue the business, but at a different location. He said that he was not in favor of the proposal.

Mr. Carrazana said that regardless of the outcome of the application, the applicant should be aware of the driveway that led directly into the intersection. He said that they should avoid using this driveway. He said that although they could not enforce this, he believed it would be prudent for them to consider this. He said that the existing driveway led directly into the intersection, which could be a dangerous situation.

Ms. Firehock said that she had four reasons why she was not supportive of the request. She said that the plan was not proffered. She said that there was no certainty that the presented layouts would be followed. She said that the reduced setbacks would not allow for adequate screening. She said that the property had potential to be sold, and one of the other enumerated uses could be constructed. She said that she had seen many instances where a property was rezoned, and soon it was sold.

Ms. Firehock said that neighbors purchased their homes with the expectation that they would not be next to a convenience store or deli. She said that they had the expectation that the site would be a residential lot. She said that the safety issues were a concern. She said that the roundabout project had a high cost. She said that it was not certain the project would be constructed or if it will solve the problems.

Mr. Missel said that from the pro's standpoint, it was commercial located on Rio Road which had established commercial activity on the north side. He said that the use could serve the community, but there might be walkability issues. He said that it fit within the land uses in the comprehensive plan, and relocating the driveway would create a safer environment.

Mr. Missel said that the challenges were a longer list, and the first was that the plan was not proffered. He said that he was not sure if proffering the plan would make him more likely to support

it. He said that traffic remained a significant concern, and it was one of the reasons why he was skeptical. He said that the site was not likely to be able to be buffered adequately, and the proposed use did not feel right for the site. He said that the anticipated vehicle trips would have negative impacts.

Mr. Bivins said that there was nothing behind the band of commercial on Rio Road North. He said that the area was currently commercial, but it did not have a cohesive community.

Mr. Moore motioned for the Planning Commission to recommend denial of ZMA202300019 Saigon Sandwiches and Boba Teas for the reasons stated during discussion. Mr. Clayborne seconded the motion, which carried unanimously (7-0).

Mr. Moore motioned for the Planning Commission to recommend denial of SP202300022 Saigon Sandwiches and Boba Teas for the reasons stated during discussion. Mr. Clayborne seconded the motion, which carried unanimously (7-0).

Committee Reports

Mr. Murray said that the Crozet CAC had a meeting, and they had a conversation about a report on affordable housing initiatives. He said that he found it very enlightening. He said that they discussed various topics, including the incentives that were coming forward, the number of units that were expected to come online, and the ability to match these units with potential users.

Mr. Missel asked what comments were made regarding the incentives.

Mr. Murray said that the discussion was more about how they could make this work and whether it would be enough to achieve the desired outcome.

Mr. Bivins said that the Hydraulic CAC met, and they received a tour of the Elysian Stonefield development. He said that it was a new level of apartments in their area. He said that it had a gym that rivaled ACAC. He said that the common spaces were functional and nicely designed. He said that it had a pool and a place to walk dogs indoors. He said that it had an indoor dog washing area. He said that rents ranged from $3,000 to $1,900 per month. He said that the people who would be moving into these apartments were making a decent amount of money. He said that there were affordable units with the same finished level. He said that the Commission made the right decision in raising the height limit. He said that if they had the chance to tour it, they should.

Mr. Moore said that the Places 29 CAC met, and there were no development proposals this time, but they did receive a comprehensive and very informative report from a representative of Rivanna Water and Sewer Authority regarding water and sewer operations.

Ms. Firehock said that the 5th and Avon CAC met, and they discussed an application for a church on a residential lot at 26 Pebble Drive. She said that the Charlottesville Community Church was seeking 55,000 square feet of space. She said that they planned to phase the construction over time, starting with a gym and facilities for kids after school. She said that it was an ambitious project that will come to them eventually. She said that she would share her notes with the Commission.

Ms. Firehock said that the Historic Preservation Committee met. She said that they were still working on figuring out topics they might have for two new County historic markers. She said that as she mentioned in the past, once they get the comprehensive plan going, then they can launch the community-driven historic marker program where people can nominate ideas. She said that they got one new member on the committee.

Ms. Firehock said that she tried to find the link on the County's website for how you apply to join the committee, and after 15 minutes, she still could not find it. She said that the search function did not help. She asked for the application to be sent to her, and she asked staff to look at making it easier to volunteer for the committees.

Mr. Carrazana said that the MPO Technical Committee met the previous week to discuss the Transportation Improvement Program and an update on Smart Scale. He said that they discussed the Barracks Road project, among other things. He said that the estimated cost for the roundabout project was updated to be over $80 million, which was significantly higher than the initial estimate.

Mr. Barnes said that they recently received the final numbers recently, which was $46 million.

Mr. Carrazana said that Barracks Road project was a high-priority area that would undergo multiple phases. He said that the diverging diamond intersection at 5th Street was also discussed as a main focus.

Ms. Firehock asked when the diverging diamond would be constructed.

Mr. Carrazana said that it was included in the current application.

Mr. Barnes said that many projects were delivered with a design-build schedule instead of a design-bid-build schedule. He said that the projects were being delivered more quickly with considerable cost-savings. He said that he was in favor of delivering more projects that way.

Mr. Bivins said that there were now no left turns from Hydraulic Road onto Route 29.

Mr. Moore said that they were starting traffic camera monitoring and ticketing in September on Hydraulic. He said that it would be a warning for the first six weeks followed by a ticket.

Mr. Bivins said that it was not the County which was ticketing. He said that the intersection was concerning because young people often crossed the street, and traffic was not aware. He said that he supported any traffic calming measures.

Mr. Barnes said that VDOT was trying to expedite the roundabout at Stonefield.

Review of Board of Supervisors Meeting – August 7, August 14, August 21

Mr. Barnes said that there had been three Board meetings since they last met. He said that the first was on October 7. He said that they considered the Flow Hyundai Outdoor Storage and Display and special exception, which passed. He said that the Granger ZMA was approved. He said that the ZTA for grading standards and retaining walls was considered.

Mr. Barnes said that the July 14 meeting was a joint meeting with the EDA. He said that they discussed an update on Rivanna Village and the economic development strategic plan.

Mr. Missel asked if they discussed Rivanna Village or Rivanna Futures.

Mr. Barnes said that he meant Rivanna Futures. He said that on August 21, the Board addressed the Kappa Sigma special use permit. He said that the project involved relocating the building. He said that staff did a lot of work to address elevation concerns, and the Board approved the request. He said that two other special use permits were approved: one for Crown Orchard, which included an acre and a half solar system to support agricultural use, and the Gray Restaurant, located on Shadwell off Route 22, which was a wine shop.

AC44 Update

Mr. Barnes said that staff continued to work on AC44, and they were preparing to come back before the Commission. He said that they had an all-CAC meeting set up for October 9 where they will be bringing a lot of the comprehensive plan to them. He said that staff would be coming to the Commission on October 8. He said that they were not going to provide the whole entire plan; they were going to bring it in more manageable chunks.

Mr. Barnes said that they will be addressing the growth management policy. He said that they were making that a fundamental aspect because it drove so much policy. He said that they would start with that, as well as rural area and development area land use. He said that they would explain new land use designations, the new land use map, and activity centers.

Mr. Barnes said that they will be talking a lot about making sure they had the policies right, and the Commission will also be seeing the proposed goals, objectives, and actions. He said that they would focus primarily on policy first. He said that they will probably have a fairly busy fall. He said that they were still working on some of the scheduling.

Mr. Missel asked when they anticipated AC44 being approved.

Mr. Barnes said that there was desire to have it approved this time next year. He said that it would be dependent on the community's discussions about various topics.

Old Business

Mr. Murray asked when the riparian buffer overlay district would be coming before the Commission.

Mr. Barnes said that the staff was preparing to bring something maybe in late October or early November. He said that staff would bring the solar ordinance, which was scheduled to be presented in late October or early November. He said that the staff's goal was to provide the Commission with several weeks' notice before presenting the ordinances, allowing ample time for review.

Mr. Bivins asked if they were expecting an analysis of the Agricultural-Forestal policy. He said that he was asking about an analysis of the districts, the funding mechanism, and the cost.

Mr. Barnes said that there was a study commissioned by the County from Weldon Cooper to investigate the cost of service provisions in the rural area.

Mr. Bivins said that he was trying to convey the idea that there was a revenue loss due to the program, and they needed to understand the cost-benefit of this leakage, especially since the County was limited in raising revenues. He said that he recalled a time when staff was examining the current state of Agricultural-Forestal land and considering potential revisions. He said that he was concerned about the decreases since the last census. He said that he wanted to know if the reductions were offset with increased revenue.

Mr. Barnes said that he believed the Weldon-Cooper study was more about the cost of services relative to the area and related to the easement program. He said that their goal was to bring them up to speed with a common understanding of the issues faced in rural areas, the policies, and what they were working towards.

Mr. Bivins said that as they looked at zoning, they should consider the leakages. He said that they needed to consider all properties, including those that were under a different status and may require periodic reviews, such as every 10 years. He said that they also needed to address legacy properties that were not currently engaged in any activities.

Mr. Moore said that there were three main mechanisms through which rural landowners might claim a property tax reduction. He said that the first one was the use value tax deferral program. He said that the second one was the land use program.

Mr. Murray said that all of these things fell under land use, which included the authorizing for land use valuation. He said that Agricultural-Forestal districts were a special way to qualify for a land use valuation. He said that there were qualifications for agriculture, horticulture, and forestry. He said that the County had adopted all these different kinds of land use. He said that regarding the payment of revenue sharing to the City, there was a deficit in the revenue collected compared to property values because of land use valuation.

Mr. Murray said that when a property went under a conservation easement, the actual value of the property decreased, which reduced the amount of money paid in revenue sharing to the City. He said that it was worth considering the argument that land use was renting conservation with no guarantee that the property would be conserved, whereas a conservation easement was buying conservation, which saved a considerable amount of money.

Mr. Moore said that he would love to see the actual numbers of what they were leaving on the table in terms of property tax they were not collecting. He said that they should consider the cost of what it was costing them in addition, given the unique situation they had with the revenue sharing with the City.

Mr. Murray said that it also impacted them in the funding formula for schools and roads.

Mr. Bivins said that the big leverage in schools was personal income. He said that was why they did not benefit as much as places with more wealth, because their wealth was super wealth.

Mr. Murray said that they allocated a significant portion of their revenue to the City of Charlottesville, which was not considered in the formula. He said that a considerable amount of the money they paid the City was for properties that they were not actually collecting taxes on.

Mr. Bivins said that he was concerned about the process of assigning properties to districts. He said that they should involve someone from finance to discuss the results of this process. He said

that this could help them understand the impact on taxable income and tax flows to the County. He said that this way, they could be intentional about their land use decisions.

Mr. Moore said that this could be presented as a single-page summary. He said that seeing the data would be helpful because he had never seen data like that.

New Business

Mr. Barnes said that they would be holding a joint meeting with the City of Charlottesville on October 29 at 5:30. He said that the purpose of this meeting was to discuss a regional effort that was ongoing between UVA, the City, and the County on a resilient community effort called "Resilient Together." He said that the goal was to address climate change and build resiliency within their community.

Mr. Barnes said that staff was requesting to cancel the September 24 meeting because applicants had requested to pull their items.

Mr. Moore motioned for the Commission to cancel the September 24 meeting. Mr. Carrazana seconded the motion, which carried unanimously (7-0).

Mr. Missel congratulated Mr. Herrick for his appointment as Interim County Attorney. He asked if Mr. Herrick would continue to work with the Commission.

Mr. Herrick said that he would begin service as the Interim County Attorney on September 1. He said that during the interim period, his intention was to continue serving both the Planning Commission and Community Development. He said that once a permanent County Attorney was appointed, they would reassess the situation.

Mr. Moore said that there was an article in Charlottesville Tomorrow titled "Residents Are Being Kicked Out of One of the Area's Most Affordable Apartment Complexes to Make Way for Luxury Units." He said that it was located on Old Lynchburg Road at the Cavalier Crossing Complex, where approximately 500 people lived. He said that the average per bedroom rent was $525. He said that luxury units were planned, which would be double or more in cost. He said that current residents had received non-renewal notices on their leases.

Mr. Moore said that this issue warranted their attention and discussion, as it related to social housing, where the County was the developer. He said that such developments created housing for mixed incomes. He said that this approach had been implemented in various places, not just in the US but globally. He said that if they started thinking about how County resources could be directed towards public goods, such as enabling UVA healthcare workers to afford living in the community, it would be a step forward in creating a community where people were not displaced.

Mr. Missel said that they could schedule a discussion and also have Dr. Pethia present any findings or considerations regarding social housing.

Mr. Bivins said that he wanted some kind of demonstration of the new regional housing dashboard, which may assist in leading into that discussion. He asked if the Board had finalized developer incentives.

Mr. Barnes said that the housing policy was adopted in April. He said that it was targeted towards rental properties. He said that it required 20% affordable at 60% AMI.

Mr. Moore clarified that it was for developments of 10 units or more. He asked if it was for all redevelopments or only those that required a ZMA or SUP.

Mr. Barnes said that it was an incentive program that anyone could take advantage of.

Jodie Filardo, Director of Community Development, said that the Board had adopted a rental incentive program. She said that it provided that if developers supply 20% of the units at 60% AMI, they received a 15% tax increment reduction over a 10-year period over the entire project. She said that this program was specific for rental units. She said that the Housing Authority and Finance Department CFO were interested in engaging developers regarding affordable housing incentives.

Mr. Missel said that one of the big changes was increasing the period of required affordability, from 10 years to 30 years.

Items for Follow-up

There were none.

Adjournment

At 8:20 p.m., the Commission adjourned to September 10, 2024, Albemarle County Planning Commission meeting, 6:00 p.m.

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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: