Albemarle County Planning Commission
August 13, 2013

The Albemarle County Planning Commission held a regular meeting on Tuesday, August 13, 2013, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Ed Smith, Thomas Loach, Bruce Dotson, Richard Randolph, Don Franco, Calvin Morris, Chair; and Russell (Mac) Lafferty, Vice Chair. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Bill Fritz, Sharon Taylor, Clerk to Planning Commission; Wayne Cilimberg, Director of Planning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Other Matters Not Listed on the Agenda from the Public:

Mr. Morris invited comment from the public on other matters not listed on the agenda.

The following individuals spoke:

- Sarah Rhodes, MPO Coordinator for the Charlottesville-Albemarle MPO, invited the Commission to the first public input session for the Long Range Transportation Plan on August 28 from 5-7 p.m. at the Water Street Center at 407 East Water Street. They will be going through the process and remaining steps for the Long Range Transportation Plan. She encouraged the Commissioners to attend. Also, tonight they are launching the long range transportation website. It is www.tjpdc.org/lrtp. There is a lot of information about how this process took place. From the June 25 meeting with the Commission there were a lot of concerns that this process was not clear. So they took a lot of those comments to heart and she has done what they can to make sure that it is more accessible to the public. She encouraged the Commission to take a look at the website. Flyers were submitted to the Clerk. (Attachment A)
- Linda O'Connell spoke regarding the Avon Park II rezoning. She read the Comp Plan is before the Board of Supervisors and by September the master plan for the Southern District would be before them. Two months ago she and her husband came before the Commission to talk about Avon Park II and to give them maps, pictures and things of that nature to show that they did not have all the information when they made the decision at that particular time. At that point she believed the Commission decided there was nothing they could do because they expected the Comp Plan to be heard after the Avon Park II rezoning. However, the Avon Park II rezoning has been deferred to September. She requested the Commission to provide some comments along with the master draft if only to say they did not have a lot of the information.

There being no further public comment, the meeting moved to the next item.

Consent Agenda:

Approval of Minutes: April 9, 2013

Mr. Morris asked if any Commissioner wanted to pull an item from the consent agenda.

Motion: Mr. Lafferty moved and Mr. Randolph seconded for acceptance of the consent agenda.

The motion carried by a vote of 7:0.

Mr. Morris noted the consent agenda item was approved.

Work Session

ZTA-2012-00012 Critical Slopes
Discussion on proposed amendments to the Critical Slopes regulations.
(Bill Fritz)

Bill Fritz presented a PowerPoint presentation to provide information and recommendations for ZTA-2012-000012 Critical Slopes Section. (See PowerPoint presentation)

There are some changes to the ordinance already identified that include some typos and clerical errors, as well as the following:

- Section 30.7.2.a.2 has permitted uses on managed slopes. As written use 2 is in conflict with use 1. Therefore, use 2 needs to be eliminated.
- Section 30.7.2.b.1 allows expansion of existing structures. That should only apply to single-family attached and detached. So if they have a commercial structure they can't automatically expand that into a preserved area. In those cases where a waiver was granted previously staff would not have marked those as preserved, but as managed so that the expansion can occur. But, in cases where a waiver may have been granted and an area on the site plan was shown not to be disturbed as part of that waiver they mark those as preserved. The permitted expansion would only apply to single-family detached and attached residential development.
- Section 30.7.3 says that grading must be setback from the property line, which makes it impossible for developments that had multiple properties. Staff needs to replace that with a clause that says "unless an easement or permission is granted from the abutting property owner." If they have a large development with multiple properties they are going to be grading across property lines. This provision must be amended to allow grading to be closer to or cross property lines with approval of the adjacent property owner. This is necessary to allow for developments that involve multiple properties.

- There are some other typographical or clarifying changes that do not change the intent or the purpose of the ordinance.

Staff recommends that the Planning Commission review the proposed amendment and provide staff with direction on possible revisions prior to scheduling a public hearing.

Mr. Morris invited questions for staff.

Ms. Monteith asked when will staff review the public comments received at the open house and at what point will it be provided to the Commission. *Staff indicated there were no comments received during the open house that required any revisions.*

Mr. Randolph questioned if any other localities have a points system in place for looking at criteria for preserved critical slopes. *Staff indicated that they found no other locality that has managed and preserved critical slopes. They investigated the points system and found it was unworkable and they were unable to develop a system to do that.*

Mr. Morris opened the work session and invited public comment.

Public Comment

The following individuals made comments and recommendations:

Marcia Joseph, representative for Blake Hurt regarding Tax Map 32, parcels 22 and 22M, voiced concern that her email was not received by all Commissioners. All of the comments in the email pertain to the referenced property. She asked the Commission to consider her email comments and the following while reviewing the proposal for amending the ordinance as it speaks to the treatment of critical slopes. (Attachment B – Email to Planning Commission dated 8-12-13 from Marcia Joseph - See Attachments on file with the printed minutes in the office of the clerk)

- The map accompanying the ordinance needs to be changed to be more accurate. The WPO overlay needs to be removed.
- the land available for development will be reduced,
- the water flow will be concentrated,
- the benches created will certainly not reflect the existing character in Albemarle County,
- Allowing the county engineer discretion to require additional drainage features does not allow developers to know what the design standards are. It would be good if the developers knew what the design standards were.
- Please consider some sort of mitigation with vegetation.
- Allow 10 foot retaining walls instead of 6 feet
- Remove setback requirements between commercial and industrial property.

Valeria Long, attorney with Williams Mullen, said she has been monitoring this fairly closely and talking with lots of their clients about the proposal and how it would impact their projects. She said on the whole the ordinance proposal is very positive because it definitely achieves the goal of trying to streamline the process and provide some certainty to landowners and applicants about what is expected, what could be approved and what would not be. However, she had a few suggestions about how it could be improved, as follows.

- It would be helpful to clarify any property that is the subject of an approved rezoning application plan, any type of a proffered plan, or something approved as part of a special use permit. Any slope disturbance that is shown on that plan should be respected and should be permitted regardless of whether it subsequently shows up on the maps as a preserved slope. It would be helpful to the landowners and development community that it is very clear that those types of plans are approved.
- Suggested a more simple process for correcting any errors or technical issues that are discovered after the ordinance is approved assuming it is approved. In lieu of requiring a rezoning she would suggest that a field survey stamped and sealed by a licensed professional should be more than adequate to correct any of those technical errors. Likewise, if you have slopes that are shown on the maps as preserved when the staff could agree that they should have been managed slopes all along for whatever reason that should be something that is an administrative process, which would save time and resources.
- Similarly there is a list of things that require a special use permit if there are private facilities and a preserved slope. There is a pretty small list of things that are even permitted. She suggested that category could be expanded or at least say that it includes "things such as". Also, that process should be simpler and not require a special use permit.
- The default should be that if the critical slopes were shown for disturbance on an application plan, then they should be permitted for disturbance.

Ms. Long pointed out she has already uncovered a couple of areas just in her review where slopes are shown for disturbance on an approved application plan but then shown as preserved on the maps. That is where she would have some real concerns because so much time and energy went into the rezoning process not just from the applicant's side, but the County's side. It would be very difficult if all of a sudden those plans were hindered because of this change. She thinks that should be clear since it was intended. There is a clause that talks about County approvals or County actions. It would be really helpful to the landowners and development community that it be very clear that those types of plans are approved.

Ms. Long suggested a more simple process for correcting any errors or technical issues that are discovered after the ordinance is approved assuming it is approved. If she understands the text correctly if they discover after the fact either that your property has slopes or is shown as having slopes on the map but you can show with a field survey that actually it was not critical slopes that even if the staff agrees you have to go through the rezoning process to do that. She would suggest that a field survey stamped and sealed by a licensed professional should be more than adequate to correct any of those technical errors. Likewise, if you have slopes that are shown on the maps as preserved

when the staff could agree that they should have been managed slopes all along for whatever reason that should be something that is an administrative process. If she understands it correctly, it is not an administrative process. If everybody agrees that it is a man-made slope and it was accidentally shown in purple on the map why make the applicant go through a rezoning process to correct that. To the extent that it has to do with the fact that it is an overlay zoning district and because of the St. Clair decision or other reasons it has to be a rezoning she might suggest they then take a whole new look at whether the overlay district concept is appropriate. She would hate to think about the number of technical corrections that would have to come before the Commission or the Board and the amount of resources that would be required to address those types of problems.

Mr. Randolph requested to follow up with Ms. Long with a question. He asked Ms. Long to cite an example of the approved rezoning plan properties she was talking about.

Ms. Long replied she was not comfortable citing a particular project right now until she has had a chance to talk to the staff about it. There are a couple examples she has found already that are on approved rezoning plans where buildings are shown on an application plan and the slope is shown as preserved when technically not only should it be but it is a man-made slope. There is a man-made slope there already and it was proposed for a building to be located there, but those slopes are shown in purple. In one case it is because it is somewhat near a body of water. So it may have been the default reason. She thinks Mr. Fritz acknowledged that the scale of this mapping process is significant and they certainly appreciate that. Her point was the default should be that if they were shown for disturbance on an application plan they should be permitted for disturbance. Many of the cases a critical slopes waiver was granted as part of a rezoning, but that does not always happen. Not all applicants know to do that at the time of a rezoning. Her fear is that you could get caught where you are not protected, but yet you are required to build a road or something through there that is not otherwise permitted.

Mr. Fritz pointed out in the conversations staff has had with 350 people he has told people and mentioned it to Ms. Long and anyone else that that was the first crack at the mapping and they welcome comments if people believe that an area should be managed or preserved or changed. Staff would be more than happy to take another look at that.

Neil Williamson, with Free Enterprise Forum, made the following comments:

- There is a clerical issue on Section 30.7.3.f where there is a sentence seeking a verb for whatever the mission is.
- Clarify the intent on some things he has heard such as if he wanted to build the first house of 4,000 square foot on a parcel, which would require the disturbance of critical slope, and a 2,000 square foot home would not, would he be allowed to build a 4,000 square foot home.
- Concerned with the language in the intent session regarding what he considers being subjective judgment. For example, hill systems or significantly impact the Entrance Corridor.

- Raised several questions about whether the State Code for erosion and sediment control, the regulations that follow and the performance standards that now exist make the critical slopes ordinance obsolete and if it is time to consider taking it out.

Morgan Butler, with Southern Environmental Law Center, said the concept is workable; but, needs to take into consideration several areas of concern, as follows.

- Need to keep in mind that the Development Areas are where many of our most impaired streams are located. While they may desire to make it easier to build they also need to be mindful that the protections they are putting into place for managed slopes are adequate to protect the streams from further degradation.
- Need to be mindful of the exceptions and the exemptions they are building into the ordinance. The by right exemptions for preserved slopes, specifically the exemption for public facilities, need to be tightened up and all alternatives need to be considered.
- If they are considering exempting roads under this new ordinance, again, they want to be sure that they are tightening up the situations where that is allowed. He has given some specific suggestions to Mr. Fritz and would wait until there is a revised version to go through those with the Commission.
- Concern with clause that says accessory uses on existing dwellings are being allowed by right even on preserved slopes. As pointed out this is not allowed under the current critical slopes ordinance. They are now classifying slopes and have this group called preserved slopes that are supposed to be even more valuable, more ecologically important and yet they are now allowing accessory uses to occur by right on those. That is a concern because one of the accessory uses mentioned was driveways. If they have an existing dwelling presumably there is already a driveway there. So are they talking about being able to build now a new driveway? This particular exemption seems to be problematic.
- Questioned the exemption for making all slopes managed slopes in all circumstances where there has been a rezoning or approved application plan.

Mr. Butler further noted that tonight he has a new question that relates to a point that Ms. Long brought up. Ms. Long is advocating the idea that if a rezoning has been approved with an application plan showing a disturbance on the slope, then it should just be assumed that slope is presumed to be a managed slope as opposed to a preserved slope. One concern he has with that is he believed that several rezoning have been approved in the past knowing that development would still need to get at one point a critical slope waiver and more reasonably a special exemption to disturb critical slopes. So he did not know that there is automatically an assumption that the approval of a rezoning understood either explicit or implicit by the Board of Supervisors that any slopes on that rezoned parcels were fair game. So he was not sure that exemption for making all those slopes managed slopes in all circumstances where there has been a rezoning.

There being no further public comment, Mr. Morris closed the public comment to bring the matter before the Planning Commission for additional discussion.

Mr. Franco said he had a couple of questions. Can a particular area of land be both a critical slope and be a stream buffer. Does that mean if you came in and wanted to do a disturbance you would need a special use permit for the stream buffer?

Mr. Fritz replied that he could have critical slope and floodplain and would need a special use permit to do activity in the floodplain and permission to disturb the critical slopes.

Mr. Franco said when the purple goes away there will be some slopes that are more evident that were in the purple area.

Mr. Fritz replied yes because it would be easier to see the areas.

Mr. Franco asked the answer to the 4,000 square foot house versus the 2,000 square foot house question that was asked.

Mr. Fritz replied they could build a 2,000 square foot house under the current ordinance and the proposed ordinance if you can build a 2,000 square foot house. However, they could not disturb the critical slopes. If you can build the house outside of the critical slopes, then that is where you build it.

Mr. Franco said the same thing would apply to a 5,000 square foot house. He asked how you determine the size.

Mr. Fritz replied obviously at some point there would have to be a determination of whether or not that is a reasonable size for a dwelling. That is how the existing ordinance works.

Mr. Franco asked what if they have a non residential lot and it is the first structure that is being built on it.

Mr. Fritz replied there were two things. One, in developing the maps they purposely paid attention to that with an eye towards not creating any unbuildable lots. The other option would be is that they still have the variance route open to them that there is no reasonable use of the property. So they still have the variance route available to them if the slopes are marked as preserved.

Mr. Dotson said he had a number of brief comments to consider. The first comment would be that just in the staff report where talking about the purposes they say to add predictability and to reduce costs. The reason he is interested in this is because of making it easier to actually develop in the development area. He thinks in presenting this that needs to be presented in that context.

Mr. Fritz noted that he did not include the resolution of intent. That is actually in the resolution of intent. However, it is a good point for the staff report.

Mr. Dotson said going to the draft text he gets confused on some of the definitions. It says critical slopes are slopes other than managed and preserved slopes. Yet they are calling this a critical slope overlay district.

Mr. Fritz replied if he had a better term staff would be happy to use it. The reason they did that is because they have to remember that this only applies in the Development Areas. So the rural areas will still have their critical slopes. So they needed to have a definition where they could back out the managed and preserved so they are not also called critical slopes and then they have two odd sets of regulations applying.

Mr. Dotson said not to wordsmith, but suggested to simply say "all critical slopes urban and rural are critical slopes, but there are subcategories within the urban area." He asked staff to consider it.

Mr. Fritz replied that staff would see what they could do.

Mr. Dotson said that it just seemed to conflict there.

Mr. Dotson said in the purpose and intent they suddenly start talking about steep slopes and it seems like they should go back and talk about critical slopes because they never define steep slopes. He found that confusing. In addition, on the bulleted criteria he understands these are sort of explaining the basis of mapping. However, some of them seem to trump others. Like the slopes shown to be preserved by a prior County action. That seems to trump all the other criteria. So maybe just some tweaking of how those are described so if there are sort of priorities or how conflicts are resolved maybe that could be explained a little better. On the maps he gave the preserved and managed to acreages. He added them up and for curiosity it was 27% is managed and 73% percent is preserved. So it seems like this is not revolutionary. It is changing things on 27%.

Mr. Fritz said he has not actually added all the acreages together for all the neighborhoods. He has done it per neighborhood, but not all of them together. That does not sound like an out of line number.

Mr. Dotson commented that he was surprised that it was only 27%.

Mr. Fritz noted the numbers were all there and it can be done.

Mr. Dotson noted he had a couple of other last comments.

- In the section talking about public facilities he understands the importance of public facilities that are linear being able to cross the areas of critical slope. He mentioned that in item 5 he sort of borrowed some language from a variance. His question was shouldn't that apply to other uses, too. For example, like this house where there is not enough land left to build what they would recognize as a house. It seems like some variance like procedure would be appropriate there, too.
- Would they still have the possibility of somebody applying for a waiver or a special exception or does this do away with that process. If somebody says yes, they see the map it says preserved and here is my site development plan and

there are lots of good reasons why he should not preserve it and he is going to apply for a waiver or special exception the way he always have. He asked can they still do that.

Mr. Fritz replied the options they would have available to them would be to apply for a variance where they would then apply the variance criteria, which is a very high standard. Or, they could apply for a rezoning to in essence to say they misapplied the categories and this should not be preserved and they should be managed and this is why. That is why the purpose and intent in the ordinance so they can be referred to when somebody was making that application. It would be a much higher standard of review over and above the existing special exception process. It would need to be either a variance or a rezoning.

Mr. Dotson echoed Ms. Long's comment about technical corrections and some means of administrative approval in order to handle those because he thinks they will come up. That is just a couple of small points. He thinks the overall work is good work. He was amazed they have been working on it as long as they have.

Mr. Fritz noted they took a bit of a break with staff reductions.

Mr. Smith said permitted uses/managed slopes does not have a page attachment H, says provided that such plat has not expired. A plan can expire, but can a plat expire.

Mr. Fritz replied yes, a plat can expire just like a plan.

Mr. Franco noted that a preliminary plat could expire. A final plat would expire if it has not been recorded.

Mr. Fritz agreed that a preliminary plat could expire. A final plat could expire in a year if it was signed but not recorded.

Mr. Loach echoed Mr. Dotson's comment about developing a policy and procedure for handling the requests of changes. Ms. Joseph also had a number of suggestions today. He did not know what Mr. Fritz got out of the 350 phone calls, but he was sure there was nothing there. There needs to be a procedure or way that people can address issues that they may have and they get resolved in a timely manner.

Mr. Lafferty said it was a nice job for a tough subject.

In summary, the Planning Commission asked the following questions or provided these comments:

- As this moves forward, not necessarily with this change, consider driveway grades and road grades and how those things interact in potentially required disturbances into critical slopes or into the slope areas.
- On the first page of attachment H in the definition or purpose and intent clarify that in the end they will have a map and the map will be what defines the area.

- Supported idea of working on the approved application plans and slope waivers to identify areas of critical slopes that were approved as part of the plan in working on the map.
- Clarify retaining wall height being 6' visible or 4.5'. Supported 6' visible retaining wall.
- Questioned how proposed ordinance would determine the size of the house allowed when there is limited area.
- In the staff report where talking about the purposes they need to add predictability and to reduce costs.
- Clarify definitions. It says critical slopes are slopes other than managed and preserved slopes, yet they are calling this a critical slope overlay district.
- Consider adding the following wording, "all critical slopes urban and rural are critical slopes, but there are subcategories within the urban area."
- In the purpose and intent they suddenly start talking about steep slopes and it seems like they should go back and talk about critical slopes because they never define steep slopes. It was confusing.
- Tweak bulleted criteria description to better explain if there are priorities or how conflicts are resolved.
- In the section talking about public facilities the importance of public facilities that are linear being able to cross the areas of critical slope is understood. In item 5 language was borrowed from a variance. Questioned if that should apply to other uses, too. For example, like this house where there is not enough land left to build what they would recognize as a house. It seems like some variance like procedure would be appropriate there, too.
- Would they still have the possibility of somebody applying for a waiver or a special exception or does this do away with that process.
- Echoed Ms. Long's comment about technical corrections and some means of administrative approval in order to handle those
- Develop procedure for requested changes so there is a way people can address issues that they may have and they get resolved in a timely manner.

Mr. Morris asked Mr. Fritz if he had enough to go on, and Mr. Fritz replied that he did.

Mr. Morris apologized to Ms. Joseph that the email that she took time to send yesterday was not in their possession. She did everything right, but unfortunately the Commission did not have the time to look at it.

Mr. Loach suggested if there were substantial changes made from today's comments that the Commission gets an update.

Next Steps in the Zoning Text Amendment Process

Mr. Fritz pointed out staff will take into consideration all comments received from the Planning Commission and the public, including the Open House, to craft changes or revisions to the draft ordinance. The changes will be brought back for review. If there are no substantial changes, staff will schedule the public hearing.

Old Business:

Mr. Morris asked if there was any old business. There being none, the meeting moved to the next item.

New Business

Mr. Morris asked if there was any new business.

- The next Planning Commission meeting will be held on Tuesday, August 20, 2013.

Adjournment:

With no further items, the meeting adjourned at 7:05 p.m. to the Tuesday, August 20, 2013 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room #241, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)