Albemarle County Planning Commission
July 12, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, July 12, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Daphne Spain, Mac Lafferty, Karen Firehock, Vice Chair; Pam Riley and Tim Keller, Chair. Absent was Jennie More, Bruce Dotson and Bill Palmer, UVA Representative.

Other officials present were J.T. Newberry, Planner; Elaine Echols, Acting Chief of Planning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Committee Reports

Mr. Keller invited committee reports.

Karen Firehock reported the Water Resources Committee reconvened to reconsider recommending a storm water utility fee.

Daphne Spain reported on the following:
- The Places29 North CAC met and discussed Brookhill. The CAC had concerns about the development and about cut through at the Montgomery Ridge connection.
- The Pantops Community Advisory Committee met with a presentation by Gabe Silver who runs the Rivanna River Company.

Mac Lafferty reported that the Places29 Hydraulic Road Committee met and received a presentation on a proposed new hotel on Route 29.

There being no further reports, the meeting moved to the next agenda item.

Other Matters Not Listed on the Agenda from the Public:

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

Neil Williamson, with the Free Enterprise Forum, said he sincerely appreciates the committee reports since they are helpful; however, he thinks it would be equally helpful for the record to have a little bit of context to some of those.
- Mr. Williamson said Ms. Firehock underscored the challenges of the Water Resource Committee; it was a very slim majority when they thought the bill was much higher;

and, it will be interesting to see how that plays out. Mr. Williamson said the Free Enterprise Forum has been an advocate for not creating a utility and adding to the bureaucracy on that issue.
- Mr. Williamson said regarding Ms. Spain's comments on the cut through road, while we do not have a position on the Brookhill project, it is important to recognize that (construction of the) road is being mandated by the comprehensive plan and VDOT, which kind of provides some context to that discussion.
- Mr. Williamson said finally, in Mr. Lafferty's comment about another motel, he was thankful because we have a need for hotel space on weekends. He said although we have a little bit of a surplus during the week, on weekends it is next to impossible to book a large wedding here because there are not hotel rooms for those people; and, therefore this is a positive proposal since it will grow our tourism and tax base.

There being no further comments, the meeting moved to the next agenda item.

Public Hearing Items.

SP-2016-00012 Chestnut Grove Church – Additional Hours
MAGISTERIAL DISTRICT: White Hall
TAX MAP/PARCEL: 01900-00-00-01700
LOCATION: 554 Buck Mountain Road
PROPOSAL: Amend special use permit to increase operating hours of day care
PETITION: Day care centers under Section 10.2.2.7 of zoning ordinance. No dwelling units proposed.
ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
COMPREHENSIVE PLAN: Rural Area – preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)
(JT Newberry)

Mr. Newberry summarized the request for SP-2016-00012 Chestnut Grove Church - Additional Hours in a PowerPoint presentation.
- The request is to expand the hours of operation currently approved for Chestnut Grove Baptist Church. The 2003 special use permit limits the hours of operation from 9:00 A.M. - 12:30 P.M. for the pre-school and the request is to amend that special use permit to expand the hours to be from 7:00 A.M. - 6:00 P.M. The expanded hours would allow Chestnut Grove Preschool to offer before school and after-school care for the children that attend the pre-school.
- The area map shows the church is located at the corner of Buck Mountain Road and Simmons Gap Road in Earlysville. The previous special use permit request focused on the entrances on Simmons Gap and Buck Mountain.

With photographs of the site, Mr. Newberry pointed out the following:
- The historic church and a view of their main entrance and the expansion;
- The entrance on Simmons Gap and the sight distance;

- The view of the other side of the church and the entrance on Buck Mountain Road with some striped area in the middle of this entrance;
- A view of this entrance from across the street; and
- The exhibit provided by the applicant shows their plan to install channelized posts to improve the safety of the entrance along with a picture after the installation of those posts.

Mr. Newberry summarized the **factors favorable as**:

1. The request is consistent with the Comprehensive Plan.
2. The existing use has operated at this location without issues or impacts to adjacent properties.

Factors Unfavorable:

1. None.

Mr. Newberry noted the **Conditions of the Existing Special Use Permit (SP-2003-00063)**

1. The outside play area activities shall be limited to take place during daylight hours. The lighting of the play area shall not be permitted.
2. Enrollment shall be limited to 50 children, or the limit approved by the Health Department, whichever is less;
3. The hours of operation shall be limited to 9 A.M. to 12:30 P.M. The days of operation shall be limited to five days per week (Monday-Friday) or the limit approved by the Health Department, whichever is less; and
4. The entrance onto Route 664 shall be improved to current standards for sight distance or closed except for emergency purposes. VDOT approval of the entrance on Route 664 shall be required prior to the issuance of a certificate of occupancy. Notwithstanding this requirement, if the entrance is not approved to these standards, enrollment may still be up to twenty (20) children, or the limit approved by the Health Department, whichever is less.

The **Recommended Conditions** are as follows:

1. The outside play area activities shall be limited to take place during daylight hours. Lighting of the play area shall not be permitted.
2. Enrollment shall be limited to **up to** 50 children, or the limit approved by the Health Department, whichever is less;
3. The hours of operation shall be limited from **7:00 A.M. to 6:00 P.M**. The days of operation shall be limited to five days per week (Monday-Friday) or the limit approved by the Health Department, whichever is less, except that occasional school-related events may occur after 6:00 P.M.

Mr. Newberry said that the site already complies with the fourth condition and therefore that condition should be removed. The language as highlighted in yellow on the slide reflect the request before the Commission tonight as well as attempts to improve the existing language.

Staff recommends approval with the conditions outlined in the presentation. Mr. Newberry said he would answer any questions.

Mr. Keller pointed out one question called to his attention by several folks who have called is we seem to be moving towards encouraging applicants of this type for churches to extend their hours or to think about a longer time period for drop off and pick up at end of the day. He asked if staff could think of a way to make a change that could occur for all churches so that people would not have to come in with a special use permit just to change hours.

Mr. Benish replied the fastest and quickest approach would standardized conditions and less conservative about restricting the hours of the 7 a.m. to 6 p.m. standard. Then as staff looks at individual requests if there are unique circumstances you could adjust those, which would still allow a legislative discretionary review each time, but there would be a standard. It could also be established in the supplemental regulations as well, which could be waived during the special use permit review, and be the easiest and quickest approach to allow the Commission and the Board some discretion on a case by case basis to adjust it. However, hours of operation like 7:00 a.m. or 7:30 a.m. to 6:00 p.m. are probably reasonable for most situations and staff can start looking at that moving forward. He suggested Mr. Kamptner might want to provide input.

Mr. Kamptner pointed out another solution, if there was an agreement as to a standard and the Board and the Commission were no longer desiring to have these considered on a case by case basis, would be to adopt a regulation that establishes hours of operation for private schools and daycare centers. Those are probably the two classes. He suggested to start a “not earlier than” and a “not later than” and just be done with it.

Mr. Benish noted if there were supplementary regulations that would still allow for a waiver for some unique circumstance or change, but it would still standardize that.

Mr. Kamptner agreed.

Mr. Lafferty pointed out there was a fair amount of emphasis put on the entrances. He pointed out in previous discussions the Commission talked about traffic and the safety of the entrance; however, he did not know how staff could incorporate that in an administrative type of negotiation.

Mr. Benish replied that would still be part of the legislative review in whether the intersections function properly with VDOT input on whether upgrades are necessary, which might be a circumstance where the Commission would want to change that standardized condition. If there were three daycares right next to each other and there is a desire to stagger traffic impacts in an intersection the Commission might actually want to set some timing difference. Those would probably be more the exception of the rule and as long as there are legislative reviews in each case, you would have an opportunity to look at those unique circumstances. As Mr. Kamptner indicated with that standard

condition everyone would be working from the same page and as a rule be able to address those exceptions.

Mr. Keller asked if that was something staff could think about and let the Commission know separate from this request.

Mr. Benish replied staff would put item on the list for a zoning text amendment. He pointed out the zoning text amendment team meets this Thursday and he will put this item on the big laundry list. He said that also staff could take a more thoughtful approach in just assuming longer hours of operation with each legislative review in the meantime, which has been what the Commission has been doing lately in making those adjustments. The Commission did it at Broadus Memorial Church and one of the uses on Old Garth Road.

Mr. Keller opened the public hearing for public comment and invited the applicant to address the Commission.

Barbara Edwards, Minister to Children and Families at Chestnut Grove Church, said she appreciates the Commission's consideration of this recommendation because it is their goal to be a blessing to the community and being pretty far out in the county and the only Christian daycare we have had many requests to have longer hours. Parents that work cannot use our daycare because it is 9 a.m. to 12:30 p.m. and that just does not work for working parents. Our goal is just to be able to provide beautiful childcare for families so that parents can work and still accommodate their hours. She appreciates the Commission's consideration and thinks they have checked off all of the things that they needed to do. She had one other request since it seems like the Commission was working in the direction of making this an easier process. Since they open right after Labor Day the earlier they can possibly have this approved would be so helpful in hiring teachers and making sure parents know they are able to provide this service.

Mr. Keller invited questions for the applicant.

Ms. Spain applauded their efforts here since she certainly understands that there is a need for childcare. She asked does this mean that your church is able to afford it in terms of hiring more teachers and providing for more children for longer hours.

Ms. Edwards replied yes, they are on a zero based budget and their budget is balanced as far as how many children there are and how many people go. That is what our attendance is. Then we have scholarships for those that cannot and our church funds those. Therefore, it works out as a balanced budget in how many children and teachers we have and the hours that we operate.

Ms. Spain congratulated the church.

Mr. Keller thanked Ms. Edwards and invited public comment.

Kelly Myles said she was actually here to talk about Avon Park II and did not know this request was coming up. However, she just wanted to applaud the effort since she does data for early childhood education and hired by one client to help expand pre-school in Albemarle County. Their estimate is 160 to 250 children who cannot attend Pre-K because of limited hours and parents not being able to juggle that. Therefore, there is a community wide effort to increase pre-school capacity and these kind of efforts are a huge help. Thanks.

Mr. Keller asked if the applicant cares to speak for rebuttal. There being no rebuttal, the public hearing was closed and the matter before the Planning Commission.

Mr. Kamptner said a few minutes ago he sent Mr. Newberry an email with a revised condition 3 regarding the hours of operation, which is consistent with the language used for the past year or so. He provided comments to staff on a recent request; however, it may have been another request.

Mr. Keller asked Mr. Kamptner to read the condition so the applicant could make sure that she is comfortable with the wording.

Mr. Kamptner read the revised third condition: “The hours of operation for the school shall not begin earlier than 7:00 a.m**.** and shall not end later than 6:00 p.m., each day, Monday through Friday, except that occasional school-related events may occur after 6:00 p.m., or the more restrictive hours of operation required by the Health Department."
Mr. Kamptner pointed out he would take that to be a water or septic limitation.

Mr. Newberry noted that portion of the condition exists from the two previous ones and Mr. Kamptner agreed and noted that piece he carried over to this condition

Mr. Keller asked if staff was comfortable with that wording, and Mr. Newberry agreed with the wording.

Mr. Keller invited further discussion.

Ms. Firehock said she had no objections to changing the operating hours because it is wonderful when people provide more early childhood education. She pointed out the only comment she had was the channelized posts proposed were quite unattractive and questioned who thinks they are attractive. She understands the point was to try to provide safety in as an inexpensive a way as possible. However, even if it were less safe she would rather see yellow cross striping. She pointed out the triangle is there telling you which way in and out; but, it is just faded. She understands it would be expensive to put in a T-bone or something concrete to try to direct traffic. However, planting anything would be better than orange channelized posts that eventually would be run over and bent. Since it is an attractive rural road, she does not think that is the right solution for that spot. Ms. Firehock pointed out she was not the traffic engineer, but would hope they can do something else particularly because Mr. Benish said they actually did not require the channelized posts for partially that reason. She said Mr. Benish pointed out VDOT

thought it would be a safety improvement, but this provides for some flexibility to deal with that.

Mr. Keller asked from that would the wording reflect that flexibility, and Mr. Benish replied that there was no condition requiring it so they have flexibility.

Ms. Firehock suggested the Planning Commission request that they not use that particular technique since she would hardly single out VDOT as the authority on attractive design necessarily for that. Their mission is safety, but she thinks there are other ways to achieve safety.

Mr. Benish said he was not clear about what might be a cheaper successful approach that is a physical barrier. However, they are not compelled to leave the channelized posts up since there is no requirement.

Ms. Firehock pointed out in her experience they tend to stay up and suggested taking that triangle, stripe it in orange to tell people not to drive there and just once a year repaint it, which would be preferable for the attractiveness of that rural landscape. Again, part of the reason that we are here, not to blow this out of proportion, is a change in use in a rural area that has a certain aesthetic quality and she did not think that those things that she usually sees in the middle of a highway are appropriate at the entrance to this location. That is all that she is questioning and would ask that the record show that since she is not sitting here saying that she is now going to get out a pen and design the landscaped island or tell you how to do it. However, she recommended against using that particular technique rather than just saying nobody was mandating it.

Mr. Lafferty said the Commission might be overstepping our grounds in trying to design a project. He understands what Ms. Firehock is saying; but it is not a condition of their approval. He would like to see the Commission go ahead and approve this project the way it stands and it is an expansion of the hours.

Ms. Firehock suggested strongly a different approach for indicating traffic ingress and egress.

Mr. Lafferty pointed out that Ms. Firehock had done that and they do not need to do it in this document.

Mr. Keller asked for a motion.

Motion: Mr. Lafferty moved and Ms. Riley seconded to recommend approval of SP-2016-00012 Chestnut Grove Baptist Church – Additional Hours with conditions as outlined by the staff and amended by the county attorney.

With no further discussion, Mr. Keller asked for a roll call.

By a vote of 5:0:2 (Dotson/More, absent) the motion for approval passed.

Mr. Keller said a recommendation for approval would be forwarded to the Board of Supervisors for SP-2016-00012 Chestnut Grove Baptist Church – Additional Hours. He noted the applicant asked if staff has any sense about how quickly this will move to the Board of Supervisors for their action.

Mr. Benish replied that staff does not control the Board's schedule; but understands that there has been a request to move it up; however, the request is tentatively scheduled for September and staff has to work with the Board of Supervisors.

Mr. Keller thanked the applicants; and, again said the Commission applauds these kind of efforts in the community.

The meeting moved to the next public hearing.

ZMA-2014-00006 Avon Park II
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL: 09000-00-00-03100
LOCATION: 1960 and 1968 Avon Street Extended. Approximately 1,000 feet north of the intersection of Avon Street Extended and Route 20, south of existing Avon Court.
PROPOSAL: To amend the proffers and application plan for approved ZMA201200004. 32 maximum residential units remain unchanged for a density of 6 units/acre.
PETITION: Request to amend proffers, and the application plan on 5.262 acres on property zoned PRD (Planned Residential Development) which allows residential uses with limited commercial uses at a density of 3 - 34 units/acre. No new dwellings proposed.
ENTRANCE CORRIDOR: Yes
PROFFERS: Yes
COMPREHENSIVE PLAN: Neighborhood Density Residential-residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses.
(Rachel Falkenstein)

Ms. Echols, in the absence of Rachel Falkenstein, summarized the staff report for ZMA-2014-00006 Avon Park II in a PowerPoint presentation. She made the following points:

- This is the third significant rezoning on the property from the residential development standpoint. Ms. Echols said Avon Park II was approved previously a couple of times; and she was going to show them a couple of those plans. The property is located on Route 20 and Avon Street right before Avon connects with Route 20, Scottsville Road. Ms. Echols noted showed a slide with an image of the property located at 1960 and 1968 Avon Street Extended. Ms. Echols said the property is south of Avon Park I; the current zoning is Planned Residential Development (PRD); and it is in the Entrance Corridor (EC).
  Ms. Echols said that ZMA-2007-05 initially rezoned the property from R-1 to R-6 with a proffered plan. In the graphic of the proffered plan, Ms. Echols showed the progression of the plan. Ms. Echols said when this was zoned for 31 units there were

some changes needed. Those changes occurred in 2012 with the rezoning from R-6 to PRD for a little change in the unit types. The area currently under review was mainly this not shown for any kind of development and then it became a storm water detention area with some landscaping.

In 2014, the applicant prepared a site plan for review and approval; however, our fire rescue division said it needed to have an emergency access point so the applicant changed the application plan for the PRD and provided an emergency access area at the rear of the lot. The main access to this development is from Avon Park I on Hathaway Street. Ms. Echols pointed to the prior approved plan showing two hammerheads at the end of the streets, the town house location, and a location for on-street parking. Ms. Echols said when the site plan could not be approved the applicant had to request a rezoning. With this rezoning, the applicants are creating a cul-de-sac street. She pointed out the beginning and end of the public street noting the location of the private street down the road in this direction. She said the proposed plan shows a rearrangement of where the townhouses are located, which is now at the end of the street next to an area of additional parking.

Ms. Echols pointed out the landscape plan in this area on the application plan had significantly more screening provided on both borders and especially the area near Avon Street. Ms. Echols said that it is important to note that our comprehensive plan does not recommend screening between similar uses, especially not residential uses of the same type. However, the residents next door were requesting this landscaping and the applicant decided to offer it. Ms. Echols pointed out that is the reason why we are seeing such an extensive landscaping plan with the rezoning plan. Normally we would not see something quite that extensive. Therefore, the changes to the application plan mostly consist of reconfiguration of some of the lots, moving the townhouse units closer to Avon Street, and adding a parking area in this location.

Ms. Echols noted there are proffer changes that have also occurred with this rezoning request. The applicant originally proposed 15% affordable units (6 of 32); and they are still doing that; but, they are also adding in the cash in lieu option at the discretion of the Housing Director. There is still a provision for overlot grading and additional erosion and sediment control measures and silt fencing. Ms. Echols said the original cash proffers made were at the higher figures as shown on the slide and now the applicant is requesting a reduction to much lower figures as shown (on the presentation slide) and in the proffers provided with your plan.

Ms. Echols said proffers would include landscaping easements to the adjacent properties; recreational amenities used in cooperation with Avon Park I; and a temporary fence to screen the site during construction.

Ms. Spain questioned if the single-family detached and single-family attached are reversed in the third bullet under the first category.

Ms. Echols agreed the detached and attached single-family are reversed; the single-family detached is higher, and thanked Ms. Spain for pointing that out.

Ms. Echols pointed out the cash proffer change is the one that has elicited a lot of conversation today and questions that some of the members of the Planning Commission have asked both staff and the county attorney. The county attorney sent out an email earlier today talking about the effects of the cash proffer policy changes. Ms. Echols noted that Mr. Kamptner has advised that the Commission should consider the evidence to support the request; and, not merely the argument that the applicant should be able to make this particular change in the reduction without providing some background information or some support for it. In addition, Mr. Kamptner has noted that the prior proffer statement included a statement by the applicant affirming that the proffers were voluntarily made, reasonable, have not been challenged in court; and staff has correctly applied the new Code provisions that are effective on the first of July.

Ms. Echols explained that the Commission has some options here in how to deal with the cash proffer itself. She said the other proffers are pretty much what staff recommends with little minor technical changes as well as the changes to the application plan. Ms. Echols said if the Commission was inclined to recommend a reduction in the cash proffer, the per unit cash contribution, then you should either recommend the amount that is in the proposed proffers or if you want a different figure ask the applicant to defer to allow time for further study. The applicant has the option to go ahead and ask the Commission to take action tonight and not defer; but that really is up to the applicant. However, if the Commission does not believe the reduction is appropriate and the original offer made should stand, then you should not recommend approval of this particular proffer. Ms. Echols noted the Commission can recommend approval of the development subject to a change in the proffer amount; recommend disapproval citing the reason you want to do that; or, you can make a blend as shown in the presentation slide.

Ms. Echols pointed out the numbers staff provided in the staff report were the only numbers we had and using the new FIAC numbers we did not do any new analysis; but, they were using what our capital costs were at the time. She pointed out that Mr. Greg Kamptner is the author of the email the Commission received if there are any specific questions about that.

Ms. Echols provided the **Factors Favorable** as:
1. The revised application plan provides for a second point of ingress and egress that satisfies the Fire Division.
2. The request remains consistent with the Comprehensive Plan and the Neighborhood Model Principles.
3. The use is consistent with the uses permitted under the existing PRD zoning district.

Factor Unfavorable are:
1. A minor technical revision is needed to the proffers/application plan.

Ms. Echols noted staff recommends approval of ZMA-2014-06 Avon Park II with proffers provided the technical revisions be made to the proffers with the slight change to the application plan as described in the staff report prior to the Board of Supervisors meeting. If the Commission wants to recommend approval, a suggested motion is shown on the screen. If the Commission wants to recommend denial, there is a suggested motion and the Commission needs to state the reasons for denial. In addition, the Commission also has the option to mix and match.

Mr. Keller thanked staff and invited questions for staff.

Mr. Lafferty asked, "If the Commission disagrees with part of the proposal, do we disagree with the whole thing?"

Ms. Echols replied no, and asked Mr. Kamptner to comment.

Mr. Keller pointed out staff said mix and match.

Mr. Kamptner replied that the Commission is not required to recommend approval of the changes to the application plan or the proffers; or, not required to accept and recommend approval of all of the proffer amendments.

Mr. Lafferty said that is somewhat spelled out in the motion; however, that is fine.

Ms. Riley asked for more explanation on why there is both a public road and a private road in the development. She said she assumes the Homeowner's Association (HOA) is going to become responsible for the private road in terms of maintenance, snow plowing and that kind of thing. Ms. Riley asked Ms. Echols to describe that.

Ms. Echols said the reason for the difference in the two roads is that we have attached units and a parking area down at the hammerhead that cannot meet public road standards. She pointed out the hammerhead is not allowed by VDOT She said there are also some grinder pump lines for a couple of these lots and VDOT will not allow any of those lines in their right-of-way. Ms. Echols said that what is proposed is very similar to what was previously approved. After the rezoning, Fire/Rescue said we need to have a second point of ingress and egress and on-street parking would not be allowed, which caused them to need to put a parking lot in this location. She said that alternatively they could have reduced the density. However, the applicant chose to do redesign the project in this way and staff thinks it is an appropriate way to deal with the situation, given the fact that the Fire/Rescue regulations were new.

Mr. Keller opened the public hearing and invited the applicant to speak.

Mr. Bo Dickerson, with Dickerson Homes and Development, said they are the hopeful developer of this property. The process has been going on for a very long time for this project that needs to happen in the County. Mr. Dickerson said they have collaborated with Habitat to get affordable homes through the urban ring in the county. He pointed out

every time he puts together a proposal of a development project it is always to put in the best product as affordably as possible. He said that, at this point, they are four years into this project; but the need for the access road came to us at the last minute. . Fire and Rescue's requirement for a secondary access blew everything out of the water, adding another year and a half to the process. He said they have been working on the project so that they could get Habitat lots so that we could provide homes. What we have done here is good development; but not great development because, for the lack of a better phrase, VDOT is the tail that wags the dog. Mr. Dickerson said he would love to tell the Commission that this is a perfect plan; but there is no such thing. However, it is a good plan. He said the homes can get to the market at a fairly affordable price especially with Habitat coming in for the townhomes; but, it has been a long time coming, since the project has been approved actually three times.

Mr. Dickerson said if he had known that they would need a whole rezoning to put the townhomes in a better location, where the neighborhood wanted them to go, he would have told the neighborhood they were sorry. They would have to go with this plan and then Fire/Rescue and everybody would have been out the door. He said that would not have been good for anybody and would have been a mess for everybody. Mr. Dickerson said they have worked very hard with the neighborhood by meeting with the HOA and putting together a plan they all have accepted and agreed to. Mr. Dickerson said that since they have bent over backwards for staff, he would really encourage the Planning Commission to take that next step and approve this plan.

Ms. Firehock, Vice Chair, invited public comment noting the first person signed up to speak is Gary Brooks followed by Kelly Myles.

Gary Brooks said he lives to the south side of the proposed project and his brother, son, and he own the properties and have three concerns. The first concern is the road frontage down at the bottom (of the hill) where we are going to pull out of our driveway. The additional green planting puts us in sort of a ravine. Leaving the property, in looking left up the road to check for traffic coming, we are looking over the top of an embankment and so when that grass gets a foot high, our vision will be blocked. He said they do not want to see anything go in where we cannot get out of our driveway or see oncoming traffic. In addition, there has been a school bus stop down there for some years. He pointed out this year it will not be there because everybody has grown up; however, in two more years he had a granddaughter who will be getting on the bus down there again. Mr. Brooks said he and his family are very concerned that they will not be able to get in and out of that driveway without having their vision blocked. He asked that his family's concerns to be taken under heavy consideration when the applicant starts putting shrubs in and how far it gets down to the road.

Mr. Gary Brooks said they appreciate the screening along the farm fence; however, that farm fence had is a wire fence intended to keep dogs and animals off their property. Instead, people are letting their dogs run over to the Brooks' property and use their woods. Mr. Brooks said that, even with what little woods we have, it creates a park and a concern.

People let their dogs exercise or run across that property. Mr. Brooks said that his family are retired and want to live the rest of their lives out there as normal as possible.

The third part is there was a water line that was supposed to have been right at the back of lot 210, and then stubbed off there. Mr. Brooks questioned the effects of removal of all of the greens and the trees and how it would affect how much water that ground absorbs since his family all have wells. Mr. Brooks said his well produces 3 gallons per minute and if the well loses its ability to be replenished, and then his family loses water. He said he did not know if that would actually happen when the developer takes all of these trees down and puts in asphalt. He said he and his family do not have anything saying the development will not affect their wells. Therefore, if we lose any more of that water in those wells or the groundwater our wells will suffer and our ability to have water becomes very rare for us and it would make it very difficult. We do not want to have to battle somebody over the point of extending a water line or getting property rights to get water to our property.

Kelly Myles thanked Chairman Keller and the members of the Commission as well as the County because she was kind of late in the game. She just bought a townhome that abuts the proposed development site and she was not aware of the development. Ms. Myles applauded all the efforts made to consider the current residents in terms of the new development and the HOA as well in working with everyone. She thanked the applicant for the setbacks, evergreen screening proposed and all those measures they were taking. She also thanked the county for being very transparent when she asked for information. She said she wanted to talk about the ripple effect of the development as Mr. Brooks had. She said her townhome backs right up to the proposed development as do a few other townhomes and single detached homes. On this side of the border are some very mature trees. She used to own property in Vermont, had a crash course on logging and clear cutting, and learned about the disruption to roots of tree systems. Ms. Myles suggested the County consider measures if they clear-cut the large trees behind her townhouse such as an arborist doing an assessment of the jeopardy to the tall trees when just a few random very tall trees 50', 75' trees are left with nothing around them. Thank you.

Don Franco, on behalf of Habitat for Humanity, said having worked for Habitat he wants to let them know that yes, they have an agreement and a letter of intent to work with Dickerson Homes to partner to build the affordable units in this project. He said it is great since most of the work Habitat has been doing has been in the city. Mr. Franco said that Habitat has a large county project coming on board so Avon Park II is going to help provide some of the lots that Habitat needs into part of next year. Therefore, it is important that this move forward from Habitat's perspective. In addition, he thinks it is a great opportunity because it gets Habitat out into the different developments and keeps the affordable units from being consolidated within the city. He said that when they find a developer that is willing to work with Habitat by discounting the lots dramatically to something Habitat can afford; then, we think it is a great project. Thank you.

Ms. Firehock invited further public comment. She said if not, the developer has an opportunity to come back and make additional comments.

There being none, Mr. Keller closed the public hearing to bring the matter before the Commission for discussion.

Mr. Lafferty asked Mr. Dickerson if he had any figures substantiating why he wanted to reduce the proffer amount.

Mr. Dickerson replied that it was for a number of reasons. He said that when he started looking at this project back in 2009, he saw the first Avon development, and development does not pay for itself. It takes 20 years for it to pay for itself. When Avon Park was first developed, they paid an exuberant amount in proffers. The most expensive part of development is when the first home, fire hydrant and water goes in. After that, it gets cheaper for every home. He said that with Avon Park II being only 32 total units, they are not adding to capacity or to road damage. Actually, the people who are going to the library will be going downtown. He said this is because there is no library on this side of town, He asked what is a valuable number, when it comes to cash proffers. He said that in doing more research, he saw Bill Fritz came out with the number and it seemed reasonable for $100,000 in cash proffers to be provided instead of paying $500,000 in cash proffers. He suggested paying $100,000 in cash proffers, discounting $75,000 lots (that could be sold on the open market) and bringing them down to $40,000 would allow the developer to sell to Habitat so they could have homes and get people in. He said their goal was to get people in the development that could not afford a home or lot otherwise and give them an opportunity for wealth generation. Mr. Dickerson noted that they are doing the same thing at Belmont Cottages with Habitat, which was a long answer to that question.

Ms. Firehock asked Mr. Dickerson if the affordable housing was with Habitat in the first application or if this is a new addition.

Mr. Dickerson replied that Weatherhill Homes, who is no longer in business, made the first application. With the first application, Vito Cetta took it, did another application and sold the property. Mr. Dickerson said he bought the property, which made him the third person.

Mr. Lafferty asked if in the original one was not there a proffer of 15%.

Mr. Dickerson replied yes, there were affordable housing proffers for market rate townhomes with apartments. He does not believe that anyone thinks that the apartments in the townhomes is affordable housing. He pointed out that townhomes with apartments puts a roof over somebody's heads, but that is not affordable housing.

Ms. Spain asked Mr. Dickerson to clarify that his company was not the one who made the original proffer, and Mr. Dickerson replied that is correct.

Mr. Lafferty said he believes one of the options is to reassess the proffer which may in fact make it go up or down which would require more time on the applicant's part. He did not know whether the applicant would be amendable to that or not.

Mr. Dickerson replied without being at all rude, he has no more time in any way, shape, or form since, this project has been ongoing for four years and cost $200,000, and he has borrowed every penny of that $200,000 at this point. He replied no that he could not wait.

Ms. Firehock noted she had a question for the County Attorney related to proffers. She said she wanted to know if the proposed proffers would have to be evaluated under the new proffer regulations where the impacts would have to be directly attributed. If so, it sets a much higher bar.

Mr. Kamptner replied no, the new proffer legislation would not apply to this application.

Ms. Firehock asked if that was the case because the project had previously been approved and Mr. Kamptner replied that was right.

Ms. Riley said this request is pretty much the same as all the other cash proffer reduction requests the Commission has been reviewing since the cash proffer was offered at the time. She said the cash proffer is needed and it was reasonable and voluntarily offered. As the representative of the district, Ms. Riley said clearly there are impacts from traffic and children going to the schools that need to be paid for and these proffers are needed; therefore, she cannot support a reduction in cash proffer.

Mr. Lafferty concurred.

Mr. Keller asked if Mr. Lafferty wanted to separate the proffer discussion from the physical component of the project, and Mr. Lafferty replied yes.

Mr. Keller asked if everyone concurred and if so, should the Commission take a vote on this particular portion and then move to the physical form?

Mr. Lafferty said he thinks that would make it clearer.

Ms. Spain asked Mr. Dickerson if he would be able to take the issues into consideration that Ms. Myles raised about having an arborist or taking care of the trees that are immediately next to the development.

Mr. Dickerson replied that he was going to give her a long version of this as quickly as possible since he wants to save as many trees as possible. He explained it is very expensive to take out trees; but this site is so tight there will not be any of those big trees left. It is just not possible to save them. He pointed out since there are a number of utilities behind many of the lots, there will not be any need for an arborist.

Ms. Spain asked if there would be any trees left, and Mr. Dickerson said no and noted that is why we are planting many trees.

Mr. Lafferty said he thinks Ms. Spain was concerned about the edge effect created from taking out trees and replacing them with new trees. He suggested clearing up the proffers first and then getting into the other part.

Mr. Keller asked if Mr. Lafferty could put that in the form of a motion.

Mr. Kamptner asked first that the Commission reach a consensus on the issue with respect to the proffers because the motion will be the final action that sends a series of recommendations to the Board.

Mr. Keller said that he knows how Mr. Lafferty and Ms. Riley view this, and asked his other colleagues for their opinions.

Ms. Firehock said that she did not know. At this moment she was on the fence because she was very encouraged by the provision of affordable housing; she was very sympathetic to the fact that he is not the original developer; however, she also did not buy the argument that the impacts would be minimal and that $100,000 would necessarily be adequate. Therefore, she was not sure she could tell you exactly how she is going to vote in the next 30 seconds.

Ms. Spain noted that she shared the same opinions.

Mr. Keller agreed and asked the Commission to move to the discussion of the other portion and then they can come back. Since the Commission has heard from two sets of adjoining property owners, he wondered if staff could respond to the water issues, the connection issue, and the tree issue.

Ms. Echols said that water lines will be extended in the direction of these particular adjoining property owners; one of the water lines will actually get to the adjoining property line; but the water line stops in the parking lot for the property owner closer to Avon Street it stops. We believe that the Service Authority will require that easements be provided that extend to the property line. If the adjoining owner should they ever want to hook, he can use the easement and extend the line to his property it works engineering wise. Therefore, staff thinks that extension of water will be taken care of.

Ms. Echols said that it is not clear to her that there is a commitment being made to a three-board fence with mesh to keep animals off the adjoining property; but, maybe the applicant can speak to that and suggest whether or not that is what they are planning on doing.

Regarding sight distance for the neighbor's driveway, Ms. Echols said that VDOT would make sure that there is adequate sight distance. If there is a desire to ensure that this issue is worked out before the zoning is approved, the Commission can make a comment

to that effect and staff can work with the applicant between now and the Board of Supervisors meeting to work it out.

With regards to the trees next to Avon Park I, Ms. Echols said that staff could require a conservation plan to accurately show the extent of clearing work that might affect the adjoining properties. Ms. Echols said she would have to look into this situation further because she is not aware of this issue. With regard to saving any trees on the site, she understands from the professionals that if there is compact development proposed it is best to remove existing trees and replant so that the trees are stronger. However, as far as the impacts on the adjoining property Ms. Echols said staff would have to look into that a little further.

Mr. Keller asked to for a follow-up on the water and possible connection. He asked if there is a precedent and if there are examples where an original resident becomes somewhat landlocked because of development around it in the growth areas. He asked whether it is then the responsibility of that property owner to pay the connection fees if they need to do that for water in the future or whether sometimes the developer provides some ability for that connection other than at the original resident's expense.

Ms. Echols replied she was not aware of any and asked Mr. Benish.

Mr. Benish replied that he believed it is the responsibility of the subsequent property owner to extend the water line and pay for the physical connection; but the right-of-way is required by the Service Authority to enable the adjacent property to achieve the access to move the water line down. However, he said he believes that the cost for the water line is usually borne by that next property owner making the physical connection.

Mr. Keller asked if staff knows the distance for extending the line because from his experience the distance can be costlier than the connection fee. If it is a long distance, it could be quite expensive. If it is a short distance, it is not as expensive.

Mr. Benish replied that the distance is 30' to 40'.

Mr. Lafferty asked Ms. Myles if the drip line of her trees crosses the property line.

Ms. Myles replied that it is not entirely clear because there was not a pink stake right behind her property. However, she believed the drip line would span both properties. She asked Mr. Lafferty to rephrase his question.

Mr. Lafferty said the drip line is generally the canopy; and, the Commission could require that no construction be done in the drip line.

Ms. Myles said she has not gotten permission from the other adjoining townhomes to walk through their backyard. But, from a bird's eye view, if she is looking at it correctly from the pink stakes she can see without trespassing, it looks like the dripline for the oak behind her house is probably on both sides of the property and there are maybe two or three

other trees on the adjoining townhomes where that would be the situation as well. She said there are trees below her property that would hit the water tower that was designed for Biscuit Run if they fell. However, those trees could be affected as well.

Mr. Lafferty thanked Ms. Myles.

Mr. Keller pointed out to staff that he still was not clear whether the tree is on the developable piece of property or whether it is on adjacent properties; and, since the public hearing is closed, the Commission should be asking staff for the answer.

Mr. Benish noted that staff is trying to figure that out, too.

Mr. Keller said just so the public knows, staff is pinch-hitting for a staff member who is away for a family funeral.

Ms. Riley said that the HOA has actively worked to try to remove impacts of the new development on the existing homes and she thinks they have done a very good job and she applauds them as well as the developer for trying to come up with some solutions in terms of the screening and the vegetation. She said she was still a little unclear about the water issue for the property to the south. She said that Mr. Brooks said he had an issue with the groundwater and his well but now she hears him talking about the connection to the water line.

Mr. Firehock asked Mr. Brooks to come to the microphone to speak since the County is recording the proceedings.

Mr. Brooks said that when you take all this vegetation down and you put in parking lots, the ground is no longer absorbing the amount of water that it used to. So therefore, he says he has concerns that it would affect their wells. He said that they do not have any research that would indicate that the development would or it would not affect the wells. However, he believes that there would be an effect because their well is so fragile and there is such a small yield of water --3 gallons per minute at the most. He said that they get down sometimes to a gallon and a half in a drought. He said that they have a reservoir so they drill their wells extra deep so that little bit of water coming in there overnight furnishes the water the next day. He said this should explain why they believe any impact on groundwater may affect him. If it does, then the only thing they are asking for is the ability to get water back to his property so they may continue to exist on that property.

Mr. Keller asked if he was referring to a County water connection and Mr. Brooks replied yes.

Ms. Firehock pointed out the challenge for the County is that the County does not have good groundwater data. Therefore, we do not know a great deal of information about the extent of our groundwater nor do we have the ability to get that anytime in the near future that she knows of. So unfortunately, it is a bit of a guessing game and she did not know

if there is any way to require that if a neighbor is well dries up, the County can provide that water.

Ms. Echols noted that in the designated development areas the County has an expectation that people will be connecting to public water and sewer. So the opportunity for the adjoining owner to actually extend that water line about 30' from the adjoining property exists. She said that we do not really have a precedent for providing water connection fees for someone else. There is an expectation in the Rural Area that groundwater will be used by residents, but in the Development Area, the County provides for water service.

Mr. Keller asked if staff has found answers to the other questions.

Ms. Echols pointed out staff does not know exactly where the tree is located on the adjoining property.

Mr. Benish pointed out the application plan does not pinpoint where Ms. Myles oak tree is located; however, he thinks the resident believes it is on her property. However, the dripline does extend over so that would mean the root system also extends over that potentially could be compromised by trying to save that tree. However, we could take an approach to have the applicant try to protect that tree to the greatest extent feasible. He pointed out the tightness of the development and the grading when you look at the site plan could probably compromise a long-term life of that tree. However, he said staff couldn't quite pinpoint the tree to answer Mr. Keller's question about exactly where it is located.

Mr. Keller asked if the Commission is going to follow the counsel's suggestion and say how they feel on this aspect of the application.

Ms. Firehock noted the question was if we are going to say how we feel about all the other physical aspects when we discuss the proffer reduction.

Mr. Keller replied yes, and asked Mr. Lafferty to respond.

Mr. Lafferty said given the concerns about the adjoining property owners he is inclined to recommend approval of the development if the developer will take into account the concerns about the adjoining property owners. If we need to, we can recommend restricting all construction to be outside the dripline of the tree.

Ms. Spain said she would second that.

Mr. Kamptner said that would be captured in a proffer proposed by the applicant, and that can be included as part of the Commission's recommendation.

Ms. Firehock said she would just add that she is not sure that based on the comments about how tight the development is that they can avoid the dripline of the tree. She said that from her knowledge of forestry the actual root structure could go out a third farther than what we are seeing as the dripline. Therefore, she would offer a friendly suggestion that if it is indeed impossible to protect Ms. Myles tree, perhaps the developer could provide a replacement tree, which would take another 50 years to provide the same values; but at least it would be a gesture. She was in support of the other requested changes to the plan.

Ms. Riley said she was supportive of the other requested physical changes and would probably agree with Commissioner Firehock's comments about a gesture of an alternative tree.

Mr. Keller noted that he would as well. He said the question of access to the county water if there is a well water problem in the future is just the access or the right-of-way.

Mr. Lafferty said he would like to readdress the proffers. The developer has given us no reason other than the cash proffer has gone down; however, if it was a viable project when Mr. Dickerson took it over it still should be a viable project since basically he sees it that the developer entered into a contract to do this development. He thinks it would cause a new precedent in this case to reduce the proffer, and he can think of many other developers who will come back immediately and ask the difference between their development and this one.

Ms. Firehock said she thought the developer said that before they were apartments and now they are actually for sale townhomes and two-family dwellings.

Mr. Lafferty pointed out he was talking about the affordable housing.

Ms. Firehock replied that was what she was talking about and where she was reading.

Mr. Lafferty said the affordable housing remains the same as it always was.

Ms. Firehock said she thought there was a proposed change in the form in which affordable housing is provided. She pointed out the developer made the statement that the existing zoning only accounted for accessory apartments. She asked for clarification.

Mr. Benish said the prior form of affordable housing offered was the accessory apartment, which he believed is the ground floor of a townhouse.

Ms. Firehock said the ground floor apartment of a townhouse was affordable housing before and now he is recommending a much better alternative, which is also costlier, and, therefore he is asking to reduce the proffers now. She noted the Commission does not have a spreadsheet showing what that cost is, which has been the problem with all of the requests for proffer reduction that have come without any financial explanation except that the market is not as good as it used to be recognizing the Commission has not yet

been given adequate information. She said the problem is we are not getting a strong financial picture on which to base the reduction or the change.

Mr. Lafferty said he would like a strong financial detail; but did not want to delay the applicant.

Mr. Keller asked counsel if the Commission can move this forward if there is consensus on the issue of the physical plan but consensus on the proffer portion and pass that responsibility on to the Board of Supervisors. He asked is there a mechanism so the Commission can do that.

Mr. Kamptner replied that the entire application should go on to the Board of Supervisors with recommendations related to the physical development and the proffers. Mr. Kamptner suggested with respect to the cash proffer, the Commission did not have sufficient information to justify whether or not the impacts are adequately addressed with the amounts proposed by the applicant.

Mr. Keller said that sounds like a reasonable approach; and asked what the Commissioners thought.

Ms. Firehock agreed.

Ms. Riley thanked Mr. Kamptner for that. She pointed out that Mr. Kamptner had laid that out in his memo that the Commission was just lacking the evidence to support the economic feasibility argument and she thinks that is the basis.

Mr. Keller noted that obviously the Commission wants to move this on because they do not want to be obstructive. and Mr. Lafferty agreed. He asked if the Commission wanted to take a shot at modifying the suggested motion with this other information. He asked Ms. Riley.

Ms. Riley asked Mr. Kamptner for some recommended language.

Ms. Firehock said just as a reminder there is also that correction or technical fix.

Mr. Kamptner asked which technical fix.

Ms. Firehock replied that note three on sheet 5 conflicts with the timing language of proffer 3a.

Mr. Keller pointed out another suggestion – that the trees and the well be dealt with as a proffer.

Mr. Benish asked if the Commission's desire is to recommend approval with conditions that these matters are addressed, and all Commissions agreed.

Mr. Kamptner suggested the motion would be to recommend approval of the application plan with the technical corrections with the recommended amendments to the proffers with the exception of proffer 2, which is the one pertaining to the cash proffer amounts, for the reason that there is insufficient information regarding whether or not the reduced proffer amount addresses the impacts of this rezoning and also because there was insufficient information about the applicant's claim of economic infeasibility; and with the recommendation that the applicant and staff work it out before it goes before the Board of Supervisors.

Mr. Benish asked if it should include ensuring access to water.

Mr. Kamptner replied yes, the motion should the recommendation that the applicant and staff before this goes to the Board of Supervisors ensure access to water and the tree issues that have been discussed. He pointed out if we are talking about access to public water, this applicant would be required under the Subdivision Ordinance to extend the public water line to the property line so that part will already be addressed by the ordinance.

Mr. Benish noted that staff thinks that is covered; however, if the Commission wants to make it a condition, then staff will ensure that it is covered.

Mr. Lafferty said he would second that.

Ms. Riley moved for approval of ZMA-2014-00006 Avon Park II with the language provided by Mr. Kamptner.

Mr. Lafferty seconded the motion.

There being no further discussion, Mr. Keller asked for a roll call.

By a vote of 5:0:2 (Dotson/More, absent) the motion carried.

Mr. Keller noted that a recommendation for approval would be forwarded to the Board of Supervisors to a date to be determined.

Other Comments from Public

Neil Williamson, with the Free Enterprise Forum, said this is the first time he has actually used this secondary comment period so he was very appreciative of it. He has no position on the application the Commission has just discussed, however, he has concerns that the Commission does not have enough information when it comes to proffers. The Board of Supervisors tasked a committee that a Commissioner served on that met for 18 times at an hour and a half each. The committee provided the Commission with a recommendation that provided the opportunity as the Board of Supervisors if they endorsed it to follow a 2013 law. He noted that came forward to the Commission; however, to date he has not seen it on an agenda. There is an opportunity for you to have something to address this

issue of proffers and what is right based on 18 meetings of the Fiscal Impact Advisory Committee. The inaction of this board bothers him when he sees one of the suggestions to be perhaps to delay the application until we get more information. He asked why not act on the information you have? He understands we have this weird twilight zone moment between applications filed before July 1 and after July 1; however, it would seem as though good planning practice would suggest that you deal with the fact that those applications can still come forward as amendments and perhaps have a manner to deal with them rather than throwing up your hands each time they come through and saying you don't have enough information. Thank you again for this opportunity to speak at the end of the meeting.

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

Old Business:

Mr. Keller asked if there was any old business.

Ms. Firehock said the Commission has talked about having an affordable housing work session, and due to the demands of our schedule, we have actually moved the date to September 20 and re-inviting the people.

Ms. Riley asked what the status is of hiring the new planning director.

Mr. Benish pointed out we are on our way to getting back up to full staff. He pointed out the director process has begun with interviews starting Thursday, but he cannot tell them the end date.

Mr. Keller asked if the Commissioners could see what the final job description is.

Mr. Benish replied that it is on line; however, he would make sure that he gets it. Mr. Benish pointed out Frank Pohl has been hired as the new County Engineer.

There being no further old business, the meeting moved to the next item.

New Business

Mr. Keller asked if there was any new business. Hearing none, Mr. Keller noted the following:

- Requested that new County Engineer come to a meeting for an introduction.
- Announced that there will not be a meeting on July 19, 2016.
- Announced the next regular meeting will be on Tuesday, July 26, 2016 at 6:00 p.m.
- Adjourn to Joint Meeting with Economic Development and Board of Supervisors on Monday, July 25, 2016, Room 241 from 4:00 p.m. to 6:00 p.m.

- The next Planning Commission meeting will be held on Monday, July 25, 2016.

Adjournment:

With no further items, the meeting adjourned at 7:24 p.m. to the Monday, July 25, 2016 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room #241, 401 McIntire Road, Charlottesville, Virginia.

David Benish, Acting Secretary

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

Approved by Planning Commission
Date: 4-18-2017 SCT