Albemarle County Planning Commission
May 1, 2018

The Albemarle County Planning Commission held a public hearing on Tuesday, May 1, 2018, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Jennie More, Daphne Spain; Pam Riley, Vice-Chair; Karen Firehock and Bill Palmer, UVA representative. Absent was Bruce Dotson.

Other officials present were Tim Padalino, Senior Planner; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

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

The meeting moved to the next agenda item.

From the Public: Matters Not Listed for Public Hearing on the Agenda

Mr. Keller invited comment from the public on other matters not listed on the agenda. Hearing none, Mr. Keller said the meeting would move to the next item.

Regular Item.

ZMA-2017-00007 Hogwaller Farm
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL(S): 07700000002000
LOCATION: East side of Nassau Street near intersection with Florence Road; west side of Moores Creek across from Moores Creek Treatment Plant. Adjacent to properties within the City of Charlottesville.
PROPOSAL: Rezone property from Light Industrial (LI) to Rural Areas (RA).
PETITION: Rezone the 7.52-acre parcel from Light Industrial (LI), which allows industrial, office, and limited commercial uses (no residential uses), to Rural Areas (RA), which allows agricultural, forestal, and fishery uses as well as residential uses (maximum density of 0.5 unit/acre in development lots). The proposed uses are agriculture, forestry, and fishery uses except as otherwise expressly provided. No residential units are proposed.
OVERLAY DISTRICT(S): Entrance Corridor; Flood Hazard; Steep Slopes - Preserved
PROFFERS: Yes
COMPREHENSIVE PLAN: Parks and Green Systems – parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams.
POTENTIALLY IN MONTICELLO VIEWSHED: Yes (Tim Padalino)

Tim Padalino, Senior Planner with Community Development presented a PowerPoint presentation to summarize the staff report for ZMA-2017-00007 Hogwaller Farm. He said before the public hearing is

underway he will provide a very brief summary of the proposal itself, a look at the subject property and its characteristics and just a summary of staff analysis and recommendations for your consideration. He said we would be happy to try to answer questions before or after the hearing or both.

Mr. Padalino said the applicant is Mr. Justin Shimp who is with us tonight, the request in brief is just to rezone from Light Industrial to Rural Areas primarily because the Rural Areas District allows for agricultural uses by right, which is listed as agriculture, forestry, and fishery uses except as otherwise expressly provided. There are proffers being proposed with this request but he will circle back to that in more detail later in this presentation. Just to orient ourselves we are talking about property in the Development Areas in the Scottsville Magisterial District in what is known as Neighborhood 4 that is an area included in the Southern and Western Urban Neighborhoods Master Plan. It is an undeveloped property in the Hogwaller adjoining the City of Charlottesville. Actually, the western boundary of this property is adjoining the City and it has about 900 feet of frontage along Moore's Creek and is directly across from the RWSA Sewage Treatment Plant. It is identified by tax map and parcel as 77/20, the owner is listed as Franklin Street Land Trust 2, and the trustee is Dr. Hurt. This 7.52 property is zoned LI, Light Industrial and is situated on the edge of a larger industrial district in the Hogwaller along Moore's Creek kind of close to the Belmont and Woolen Mills Neighborhoods. In addition to being zoned LI the property is also within the Flood Hazard Overlay District.

Mr. Padalino said the staff report stated that there was no prior zoning map amendment applications or special use permits with this property. That is actually not correct. In digging a little bit deeper, it was noted that the correct property history is that there was a rezoning request made in 1969 to rezone a total of 28 acres. This was a proposal by the Albemarle Livestock Market and that was a proposal to rezone from M-1, Manufacturing to A-1, Agriculture and those 28 acres included the 7 ½ acres that has since become tax map 77, parcel 20. The applicant stated at that time that the request was made in order to lower their tax assessment. According to the minutes of the Board of Supervisors meeting, the Planning Commission made their recommendation based on an alleged error in the original zoning map, which was based on the operations that were taking place at the time. In any event the Board denied that rezoning request and there was no real details or further discussion captured in the meeting minutes for the Board meeting.

Ms. Spain asked if Light Industry now the equivalent of what Manufacturing was then.

Mr. Padalino replied that he was not sure it was a one to one direct correlation but it is similar.

He said looking at a base map of the property gives us a general sense of the existing conditions including the 900' along Moore's Creek. It is an undeveloped property with riparian forest land cover and you can see the linear area that is kind of devoid of trees, which is a RWSA sewer line for a 36" main located within a 30' sewer easement. On-site water resources include an existing drainage ditch that delivers concentrated storm runoff that is gathered from upstream properties in the City that dumps on this floodplain property. He said the applicant will expand upon this but you will note that it does not just sort of continue its way down straight to the creek, based on the lay of the land, the floodplain. It turns and joins another feeder stream that ends up joining Moore's Creek at the edge of the property boundary with the former livestock market.

Mr. Padalino pointed out that the entirety of the project is within the 100-year floodplain and actually goes up and across Nassau Street in the City's properties and it is not really differentiated very clearly, but a portion of the property is actually in the regulatory floodway. He said everything on the river side

is floodway and everything on the City side is floodplain. The map also shows the existing 100' stream buffer or the WPO buffer. Just a brief note if the property is rezoned from LI to RA and if agricultural operations are conducted that agricultural use of the property would be exempt from WPO stream buffer regulations, which as you saw in the report is one of the details that is part of the staff analysis.

Mr. Padalino said in looking at the future land use plan for this property it is designated as Parks and Green Systems in the Southern and Western Urban Neighborhoods Master Plan. He said that pages 4 and 5 of the staff report contain detailed analysis. But, in summary the Parks and Green Systems designation along Moore's Creek is intended to help keep critical environmental features intact and to minimize further degradation to Moore's Creek which is impaired for recreation and for aquatic life. Adding to that, in general, agriculture could be appropriate in areas with this future land use designation but only if that use were to be conducted in ways that do not compromise the natural riparian zone or its sensitive ecological and hydrological resources and functions.

Mr. Padalino said just zooming back out you can see the subject property highlighted and see its future land use designation as Parks and Green System in context of other properties along Moore's Creek. He pointed out where it joins the Rivanna River just downstream from the old dam site.

Mr. Padalino said to circle back to the details of the proposal there is a preliminary proffer statement provided with this application and he would show this in graphic form on the concept plan. He said this was included in the staff report and for the purpose of the presentation, he would zoom in. He pointed out Moore's Creek, portions of the project that are subject to the City's jurisdiction and review, it shows access coming in off Nassau Street, a small parking lot and series of farm sheds here for storage. He pointed out the existing drainage ditch of coming in and bending to the northeast.

Mr. Padalino said to articulate this the hatched area is the location of one of the proffers which would be an undisturbed riparian buffer extending 35' from the top of the bank of Moore's Creek. To help graphically depict this the green area is what the second portion of the proffer captures, which is to limit the uses in this area to only horticultural practices or a tree farm/nursery. This area is defined in this location the 100' distance off the top of the bank and then it picks up the edge of the floodway here, as it is greater than 100' from the top of the bank. He pointed out this is the whole area that is being proffered as a limited use as just a tree nursery.

Mr. Padalino said to provide a summary of staff analysis there are some favorable factors to this proposal.

1. The proposal would provide an opportunity for low-intensity use of this subject property, which presently has few permissible uses (by right) due to the base zoning (LI Light Industrial) and zoning overlay (Flood Hazard).
2. The proposed use would be expected to create relatively few impacts with regards to public infrastructure, and would require relatively few County services.

Mr. Padalino said also as pointed out in the applicant's project narrative the overall urban farm residential development concept is an intriguing multi-jurisdictional proposal and it would help advance one of the goals in the Development Area's chapter of our Comprehensive Plan about trying to find opportunities for urban agriculture. However, there is a bit of a disagreement about the location of urban agriculture on this particular property that leads me to some of the factors unfavorable. Staff has identified the following factors, which are unfavorable to this request concerning these four main issues:

1. Few limitations are proposed for use of the property: there is no proffered plan, and no commitments to limit the by-right uses that would be permissible on the subject property if zoned to RA.
2. The applicant proposes to remove vegetation from a currently vegetated stream buffer and floodplain along an impaired stream.
3. A proposed "undisturbed riparian buffer" is insufficient in width. To be consistent with buffer requirements in the Development Areas the proposed buffer should (at minimum) be 100' in width rather than 35' in width.
4. The applicant is proposing to have farming activities within the regulatory Floodway which is not recommended for environmental and safety reasons.

Mr. Padalino said in conclusion, and in consideration of the unfavorable factors identified in the staff report and summarized in the presentation, staff cannot recommend approval of ZMA-2017-00007 Hogwaller Farm as proposed. However, staff could recommend approval if the proposal were revised in a way that limited the uses and the arrangement of uses shown on the Concept Plan and if there was a commitment to establish and maintain a permanent undisturbed riparian buffer along Moore's Creek which has a minimum width of 100' (as measured from top of stream bank) or which extends to the Floodway boundary (as identified by FEMA on the applicable FIRM), whichever is greater. Mr. Padalino said he was happy to answer questions.

Mr. Keller invited questions from the Commission for staff.

Ms. Spain said she had the impression from a small business owner that the ability to find Light Industrial zoning is difficult in the county and in the city. She asked what is the approximate total acreage of Light Industrial in the county and if it is hundreds of acres and this is 7 acres.

Mr. Padalino replied that he did not know in terms of acreage or number of parcels, but he knows there has been a sensitivity to industrial properties for the reason you mention which is availability and supply. He said Economic Development staff did look at this and weighed in early on and he thinks this speaks to one of the wrinkles of this situation is that the property is not highly usable in its current form because of the overlay – both a Floodway, which is the most sensitive portion of the overlay, and then the Floodplain, which has its own restrictions – so they did not have objections to what would potentially be a reduction in the industrial supply.

Mr. Keller opened the public hearing and asked the applicant to come forward.

Justin Shimp said he was the engineer, applicant and hopefully the owner at some point of this property just to clarify that Dr. Hurt is not in the farming business and I am trying to get into it. He said we are developing the front piece; the multi-family is in the City and hope to rezone this to agriculture to effectively create the opportunity for more jobs for small business than the property has currently. Mr. Shimp said that you can process food in a Light Industrial and have a farmer's market but he cannot grow it. He said that is one of the wrinkles of why we are doing this in the first place.

Mr. Shimp in his PowerPoint presentation pointed out on the city map the mix of R-2 and the highway zone and we are trying to rezone the city portion to highway because that is practically the only zoning that allows a greenhouse to exist and then we will have a special use permit for the multi-family units in

that zone. As staff mentioned there are a few uses you can do in the Flood Overlay and in the Light Industrial, but there are not many and not that great since he had an interest in seeing something farming related. Mr. Shimp said he had been working on the whole development for about 2 ½ years. He pointed out that Habitat for Humanity and Thomas Jefferson Community Land Trust are building owner occupied affordable units here. Mr. Shimp said he had a contract signed with the Land Trust to build and then rent 8 units as affordable units here. He said those were 3- and 4-bedroom kind of larger units and then the rezoned end piece would be 1- and 2-bedroom units that would be sort of the entrance to the farm. He pointed out there would be a retail shop/farm store and a greenhouse. They have a concept for the farm piece but we do not know exactly how it is going to be laid out and he hopes that everybody can appreciate here that this is a real effort. He said that he has heard a criticism from one resident that oh they are just trying to use this as an excuse for getting residential density, but if that were the case he would not be here arguing over an acre of land since that really is what the difference between the staff and myself is on this. He said you might have a different opinion but it is important to me to make this viable. He said it is tough to make these sort or projects viable and the land is not free. He said that he does not expect the people who are living here and operating the community gardens to have a ton of money to pay in rent; it is not really the business model. Mr. Shimp said if I could get enough land to do some passive tree farming and things as if that he thinks he can make it economically viable and sustainable. So that is the goal of this to make it a sustainable community for basically farmers in the city so people can do this as a living or supplement their income in a job that they like and enjoy doing.

Mr. Shimp said the wrinkle on this site is sort of unusual in the low land is actually in the middle so when we talk about the stream buffer the typical consideration is that is the area where uphill is draining through the downhill side and that is where we want to protect what enters the waterway. He said in our particular case that really is not applicable. He said we have a cross section of the front where our apartments are so we have our residential and our farm stand and there is the floodplain area and everything drains down to a center sort of drain point that goes out towards the livestock yard as Mr. Padalino mentioned. He pointed out the site is the same land cover all throughout and the drainage map drives home the point as why I feel we should do something different about the buffer. Therefore, we have got about 20 acres on this side that drains through and comes across and about 7 or 8 acres here and then there are about 80 acres that drains down here. It does not go through our site but goes around the site. He said this whole area along the top of that 35' zone is flat and actually slopes back down towards the middle and so our contention has been at least in my mind is not anything different about this piece of land on this side of the floodway and that piece on the other side since they all drain to the same place and drain out. Therefore, we want to keep a buffer along the edge of the creek for stabilization. He said a couple other points that need to be made are this site is actually in the backwater zone of the floodplain. What that means is that in a flood occurrence it is actually water from the Rivanna backing up and not water from Moore's Creek coming down in the flood study. This is not an area where we necessarily have water moving through during a flood, it would pond so we don't see the same way as say putting structures in a floodway that might impede the carry and capacity because the water is actually moving upstream and barely moving at all effectively.

Mr. Shimp said from this perspective we think there are other ways and are open to other means to make sure that the water quality of Moore's Creek is protected. He said as a side note it would be terrific if that could be an amenity of this as well because you could go fishing there for example, but you can't because he did not think fish can live in that water. He said that is something that he does not think this project changes if anything we have an opportunity to improve some of these things. One of the benefits of this site from the standpoint of the tree farm is we have lots of runoff coming through

that we can divert with irrigation ditches to our trees. He said we are going to take the water from the city, route it through our farm, and use that to our advantage rather than having to use wells for irrigation we can use what untreated flows from the city as part of our project. From that standpoint in being able to use that land and being able to divert the runoff from the middle of the site through there I thinks is an improvement compared to the existing conditions.

Mr. Shimp said one of the things we have talked about doing and this could be an item we would be happy to proffer is where the channel leaves. He said all the site's runoff leaves this one location and there is a natural sort of sediment settling area now and we would be happy to proffer some type of agricultural BMP in that location that would take up some space and would capture our runoff because there is a concern about that. Mr. Shimp said practically the tree farm/nursery is low impact and when we first started this there was some discussion if we had planted all of those Loblollies, went in there, and harvested it that would make a mess. He said if we were just outside the development area and had a RA chunk of land he could go get a forestry permit and be 30' to 35' off the stream buffer you could cut it all. Mr. Shimp said we have no intention of doing that we proffered a low impact type of use there but those are some of the reasons that we feel like giving up that extra acre and change of land hurts the viability of our project and does not actually benefit water quality.

Mr. Shimp said we propose about an acre of land, the 35' actually came from the NRCS standards for buffers and then the additional 100' WPO adds about another acre and then we may pick up a little more from the floodway. Therefore, it is an acre to an acre and a half at stake over this buffering issue. He said the development has a combination of affordable and market rate units that will be a part of this community. If we can get approval for the RA zone we hope to get about 3,000 plants in the ground and the idea is that we can then sell those to local developers when we do a site plan can say oh we can provide your trees as well. He said that is another job opportunity and that is low impact. He said the trees would be set and acclimated to the zone so their chances of survival will be better as well. He said there are a number of reasons that use makes a lot of sense. He said we have the opportunity for the community farming for vegetable gardens, maybe some chickens, grow tomatoes, and sell them at the farm stand there on Nassau Street. Therefore, those are the two uses and I think from the staff's standpoint we have not received a lot of push back on the sort of more active community uses it is more about the area along the floodway and what we are going to do there.

Mr. Shimp said we are amendable to some compromise and I have not heard a compelling reason to say oh well we need to protect all of that land since I think there could be properties or circumstances that would be appropriate. He said this just happens to not be one because of the drainage patterns and there are better ways to provide that protection than just arbitrarily knocking off a chunk of land that we can use. He said that is the purpose, we would be entering from Nassau and we hope to get this going and provide opportunity for people who want to be part of the eat local culture to have a little small business, work in the city live in the city or work in the county and live in the city and be part of that economy. He said it is a good opportunity for folks and I am excited about the prospects of it and hope you will support it. He said I am happy to answer questions.

Mr. Keller Invited public comment. Hearing none, he invited Mr. Shimp to come back up for rebuttal.

Ms. Firehock asked have you done any wetland delineation work down in this floodplain.

Mr. Shimp replied we have not but have walked it in the wintertime and there are probably little pockets of wetlands here and there. He said we have not done a delineation or anything of that nature.

Ms. Firehock pointed out I was curious because you mentioned that the land was sort of concave behind the buffer and implying that there perhaps is lower land there and standing water and I could not tell.
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Mr. Shimp replied yes, that probably after heavy rains there probably is some standing water in places. He said whoever developed Nassau Street years ago took a little pipe and dumped them right out in the flat area and the water has found its way over time. However, the main drainage path runs pretty much right down the center and it about one-half way between the property line at the city, the floodway line where the drainage goes now, and the wet area. He said the driest land is actually up by Moore’s Creek.

Ms. More asked Mr. Shimp to go back to the list of uses slide. Therefore, in the staff report there was a list of uses that could happen on the property with the LI designation and are these also uses that are allowed for industrial offices and temporary construction headquarters even though it is in the Flood Overlay.

Mr. Shimp replied that he did not know about the structure because you would have to get a special use permit for fill and elevate a structure. He said so it could be done for that and he thinks the most simplest is the storage yard can happen in the floodway fringe. He said that would be the simplest alternative use, which he is not very excited about having behind my neighborhood necessarily but that would be the potential other use of the site.

Ms. Riley said you described pretty clearly to us your concept for a tree farm but she was a little less clear about what the intensity of the uses would be for the community farming and in particular you are referring things that would be tourist oriented and there would be potentially events. She asked Mr. Shrimp to give a description of what the intensity and the uses would be.

Mr. Shimp replied that I am from Nelson and we have a big culture of farmer’s market and things out there and it is interesting that I have run across a lot of sort of linear type people around Charlottesville who actually think this is a great idea and they would rather go and raise chickens and do other things which I think is great. He said the concept is really what you can produce and sell on site there so vegetables; we could not allow hogs, cattle or anything like that because there is not enough land. He said the vision is you have a group of a dozen people who work these 3 acres as sort of high intensity vegetable gardens the things that you could do seasonally and bring to the farmer’s market or bring to the farm store if we get enough use to create that. He said that is part of essentially a business that they would operate. He said it is funny that the RA zone opens up all these agro-tourism type things like 200 people coming; but the only events he could image if we were successful and a group of people who wanted the same thing for some other county maybe come in on a bus and say this is a cool operation. However, certainly, we cannot build a winery or any of the structures because of the floodplain so even though we would be zoned RA I could not start a brewery or winery there. He said from the practical standpoint there is no intention of having events and things there unless they were related to operate our farm. He said it is not the kind of place you go to drink beer and soak in the Mountain View it is just a simple kind of working farm.

Mr. Spain said this is the most intriguing projects that has come before me in two and half years and you are to be congratulated on your ambition and the willingness to work with the city and the county and thinks it is a terrific idea. Ms. Spain said I have a question about the people who would supposedly live there if you cannot find enough residents who want to work in the farm then I assume it is open to other residents of the city and the county that you do not have to live in the apartments.

Mr. Shimp replied it would be apartments in the city but would be a mix of apartments, duplexes and owner occupied units. He said the business theory is I don't think everyone who lives there is going to want to do this. He said the idea is that if you do want to have this you have an opportunity to go somewhere in the city that is convenient to live, don't have to have a car even though public transportation is not great there but it is not like living down Scottsville Road or something like that. He said there would be a mix of people there and we would be open that if you do not live there I do not see why you could not be part of the group operating the farm.

Ms. Spain pointed out that I think about the student's gardens for example and students come and go and depending on the dedication and the timeframe that particular students have the gardens prosper or decline and so you would have to count on some sort of turnover among your residents. She said in an ideal world the people who move there the people who move there would want to stay for a number of years, but she thinks that would be one reason it would be smart to leave it open to participation by other residents as well and not just those on the property.

Mr. Shimp said we want to maximize the chance for success and I do think in this business what I have found that the world we live in makes starting a small business difficult if you don't have lots of money. He said it was sort of an interesting opportunity to say oh, here is a thing if you want to be an entrepreneur you can go out and have a go with an investment of a hoe and seeds. He said that people would not necessarily make a ton of money with this, but there are a number of people who are interested in this concept and we will be open to whoever wants to be part of it.

Ms. More said that she likes the concept but it is and it is not in the right location because of different reasons in my mind. She said the description of your plan and idea of the concept is solid with the tree farm and then this community garden. However, with staff having that as an unfavorable factor because there is not a proffered plan and no commitment has been made to that being the use that she does not understand.

Mr. Shimp replied that the proffered plan did not really come up as he saw it until the staff report that was clear that was even a concern; but, we looked at it as the only use being agriculture if it is zoned RA. He said what I hesitate to get into is if I start to proffer there will be between 7 and 14 people working and what if I have a single operator. He said you can get detailed in these things and it has unintended consequences down the road. He said the only concerns I can think of would be like, for example, if we took that community garden space and converted it into a hog pen that would probably have some adverse impacts. He said we would happy to proffer out those intensive livestock like cattle and hogs. However, then otherwise what is left is gardening – we can grow corn, tomatoes, cucumbers, eggplant and there really is not a lot else we can do. He said I did not see that in my mind as necessarily a big issue because there weren't a lot of other options, but then we are happy to if the Planning Commission feels like to move this forward there should be some commitment to restricting that further to a level matching what I said then I have no problem with that. He said I do not want to get off that I am dealing with a zoning inspector later saying well your farm road is in the wrong place and these kind of things so I expect this sort of thing will evolve somewhat organically in many ways for the community gardens. He said the people who are operating will have a better idea than I do maybe on how to layout certain things with the drainage and I want to give them maximum flexibility on that

Mr. Bivins asked Mr. Shimp to go back to the context plan in order to get some clarity. He asked what the four structures would be used for on the right.

Mr. Shimp replied those are going to be duplexes, two-family attached or owner occupied that Habitat of Humanity and Land Trust is building to sell.

Mr. Bivins asked about the ones next to it.

Mr. Shimp replied those are duplexes that are for rent with two units on the same parcel. He noted the contract right now is not done yet but the principle is going to be that the Land Trust is going to buy that property and I am going to build units on it for them and rent them as affordable units.

Mr. Bivins asked to go to the ones beginning at the asphalt where the parking lot is located.

Mr. Shimp said those were along Nassau Street 18 one-bedroom apartments and then behind the parking lot 12 two-bedroom apartments. He said those were not designated affordable and designed to be practically affordable but won't be rent restricted.

Mr. Bivins asked Mr. Shimp to describe where the garden will take place because he was having a hard time looking at a piece of land that is going to hold 3,000 trees and then it is going to have some kind of seasonal gardening unless you are saying you are going to put in a greenhouse there that will produce in the winter. He said so I am trying to figure out where is all of this going to coexist on this piece of property.

Mr. Shimp replied that the colored map gives you an idea showing in blue the 35' buffer, the yellow is the 100' buffer and in the area up to the green is the tree farm area proposed between the green line and the blue line. He said everything beyond the blue line is a do not touch zone that was the tree farm with 3,000 shrubs.

Mr. Bivins asked if there would be no large industrial greenhouse, and Mr. Shimp replied no.

Mr. Keller closed the public hearing to bring the matter back before the Commission for discussion and action.

Mr. Keller asked staff if the houses would be in the RA zone.

Mr. Padalino replied no those would be in the city parcels and the only structures being discussed and proposed with this proposal would be 8 or 10 farm sheds for storage purposes for the actual gardens and tree farm.

Mr. Keller noted that I wanted the clarification for the record because it has been unclear. He asked for comments from the Commissioners.

Mr. Bivins said I am uncomfortable with anything less than 100' on Moore's Creek and hopeful that some parts of Moore's Creek seem to be coming back alive and if we could get this piece to come back alive and have it flow out into the James and distribute into the Rivanna that I think we could actually change the way people have interacted with nature. He said so I am uncomfortable saying we are going to have even if they are baby trees, 3,000 trees and some shrubs and then we are going to have oils being changed up above and all the various things that happen in apartment communities and how all of that interacts in a place that feel vulnerable to me and I am feeling really uncomfortable about that.

Ms. Spain said I would be more comfortable with the 100' buffer and believe that the factors unfavorable number 1 about limitations for the use of property Mr. Shimp has said he would be willing to proffer those and make a commitment to limit the types of uses. She said that is very much what we talked about last week with the SPCA when we asked them to make a commitment only to have the acceptable types of uses and only those that we were approving at the time and they did agree with that. She said so I would see the consistency between this number 1 and in what we did last week.

Ms. Riley said I have many concerns about this type of activity at this location and as Mr. Bivins said, it is the vulnerability of this particular land and allowing a rezoning to agriculture actually does potentially open up the possibility for more intensive uses. She said it is currently Parks and Green Systems and I think it is designated that way in the Master Plan in the district because of all of the issues with this land and she would concur that it should at least be the 100' floodplain but just has to say I have concerns about the uses proposed for agriculture at this site.

Ms. Firehock said the logic that was presented to us this evening by Mr. Shimp and he is using sound engineering logic in saying that the runoff from the city comes into pipes and their pipes are channeled through the site and dumped into the creek. She said his argument is essentially that the buffer is not doing much work to buffer the runoff from the city because it is being piped. She said if we follow that logic on that would mean that there is no point at all to Charlottesville's 100' buffer, which I actually co-wrote that ordinance when I was on the planning commission in Charlottesville and personally walked every inch of the creeks in the city and worked on that. She said so the riparian buffer has other values besides simply treating sheet flow, it also provides habitat and cools the water. She said I have actually monitored Moore's Creek about 15 different times to take samples and it is not dead and in fact, it has been getting better in recent years. She said it is not a dead urban creek; it is impaired and so I would not be in favor of doing anything that would further affect it vulnerability and so I could support urban agriculture but I cannot support anything that would encroach into the 100' buffer. She said I understand there is a sewer line running through there that is already encroached but I have not heard a compelling argument or financial argument for why this 100' needs to be disturbed and I think you can still have some gardening with some of the land that you have left. Again, if I was going to establish a tree farm in the county this is not the spot that I would pick and it is in an active floodplain. She said the 100-year floodplain is a 1% chance of a flood of a certain volume happening at any time and this area does flood and I don't think that I would put a tree farm in a floodplain either. She said for all of those reasons and the reasons outlined in the staff report I cannot support this.

Ms. More said I agree with other Commissioners statement that the 100' is important. She said in looking at staff's fourth unfavorable factor proposing that having the farming activities within the regulatory floodplain is not recommended for environmental and safety reasons and on the map that is the line exactly where that activity would take place. She said that is just another growing concern over I like the idea but I do not think this is the right place for many reasons that staff have outlined here.

Mr. Keller said it is a fascinating proposal and thinks this is the sort of thing that we want to see and hear more of where the development community is thinking outside of the box so I really applauds the efforts of the applicant on that. However, I have to agree with a number of my fellow commissioners that this is not the proper site for it. He said I also have concerns that in the wisdom of our legislature in the Commonwealth of Virginia there are certain privileges that come from the Right to Farm Act and I am not sure those privileges are appropriate if they were utilized. He said even though I believe with our applicant that there is an interest we can't plan for future ownership. He said the floodplain has

been mentioned as one where we would be in effect giving away some of the controls we have. He said another one if we think to issues that have been between the city and county with the Moore's Creek Treatment Plant and the odors from that there is the potential even though this applicant has said that there wouldn't be hog farming and that sort of thing that there could be odor issues that would derive from that. He said the private nuisance component would be lost through this rezoning as well, which could affect that residential neighborhood that is in association. Mr. Keller said for those reasons he cannot support this rezoning and to add a final piece that Ms. Spain addressed in the beginning with a question that we know that there are limited Light Industrial zones in the county especially next to residential areas where people could indeed work and walk from home to work and back. He said so I think this is better to remain in its Light Industrial current zoning.

Mr. Keller invited further discussion. Hearing none, he asked if there was a motion.

Ms. Firehock moved to recommend that ZMA-2017-00007 Hogwaller Farm be denied for all of the reasons stated in the staff report and also to protect the ecological functionality of the 100' buffer that is currently in our County Water Protection Ordinance.

Ms. More seconded the motion.

Mr. Keller invited discussion. Hearing none, he asked for a roll call.

The motion passed by a vote of 5:1 (Spain nay) (Dotson absent).

Ms. Spain voted nay because I would like to acknowledge the value of a project like this and regrettably acknowledge that this may not be the right place for it but would like to thank you for working on this type of project in trying to bring the county and city together in that way.

Mr. Keller noted the request would go forward to the Board of Supervisors at a date to be determined with a recommendation for denial.

The meeting moved to the next item on the agenda.

Committee Reports

Mr. Keller invited committee reports.

Daphne Spain reported the Pantops CAC met and discussed two new developments, traffic issues, how much traffic controls are within the preview of the county and updating the master plan.

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

Old Business

Mr. Keller invited old business.

Discussion held with request for the breakdown concerning the inventory of Light Industrial land in the county and Ms. More requested that information.

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

New Business

Mr. Keller invited new business.

- The next meeting will be on Tuesday, May 8 in Auditorium at 6:00 p.m.

There being no further new business, the meeting moved to new business.

Item for follow-up.

There being no items for follow-up, the meeting moved to adjournment.

Adjournment

There being no further business, the meeting adjourned at 6:58 p.m.

Andrew Gast-Bray, Secretary

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

Approved by Planning Commission
Date: 8-14-2018
Initials: sct