Albemarle County Planning Commission
December 18, 2018

The Albemarle County Planning Commission held a public hearing on Tuesday, December 18, 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; Bruce Dotson, Pam Riley, Vice-Chair and Karen Firehock. Absent was Luis Carrazana, UVA representative.

Other officials present were Leah Brumfield, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Megan Nedostup, Principal Planner; Bill Fritz, Manager of Special Projects; Andrew Gast-Bray, Assistant Director of Community Development/Director of Planning; Sharon Taylor, Clerk to Planning Commission and Andy Herrick, 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.

Deferred Item

WORK SESSION

ZTA-2017-00011 Section 3 Rules of Construction and Definitions

This work session provided information regarding potential changes to Section 3 of the ordinance, including the addition of Rules of Construction for interpretation of the ordinance and term and definition changes. These term and definition changes include: non-substantive formatting, capitalization, and ordering changes; moving terms and definitions throughout Chapter 18 into Section 3; removal of outdated terms or terms unused in the Zoning Ordinance; definition or term changes intended to clarify standing practice of ordinance interpretations; addition of terms used in the Zoning Ordinance but not currently defined; replacing outdated or confusing terms with modern, consistent terms; and combining two terms for consistency and clarity or codifying long-standing current practice.
(Lea Brumfield)

Leah Brumfield presented the staff report, stating that she is a Senior Planner in Zoning and is presenting a text amendment on Section 3 of the zoning ordinance, which contains the ordinance's definitions and rules of construction. She said that this work session was postponed from December 11, and she appreciated everyone's attention and time -- as the packet distributed had more than 250 definitions on 18 pages of the chart with very small font.

Ms. Brumfield stated that the purpose of this work session is to give the Commission a firm grasp on the proposed changes and help them confirm that the changes staff is proposing fall within the bounds of the resolution of intent. She said that while the draft ordinance provided to the Commission seems like a lot of pages, the draft ordinance that will eventually come to public hearing will be the majority of the zoning ordinance because they are changing the terms, which must be done throughout. She stated that this was a lot to handle, but it would be nonsubstantive and would focus on just the ordinance changes with the definitions in the packets.

Ms. Brumfield said that she wished to address something that could be confusing -- the title of the ZTA, "Discussing Rules of Construction." She explained that "rules of construction" is a legal term that stems from the word "construe," meaning interpreting, not "constructing" as in building with nails and boards. She stated that rules of construction are the rules by which legal documents are interpreted and noting throughout the ordinance all references to director of community development include his or her designees is a rule of construction. She noted that there are rules of construction in Chapter One of the County Code that provide guidance on interpreting the entire code, but the rules proposed and adjusted in this ordinance amendment are only addressing the rules of construction for Chapter 18, the zoning ordinance.

Ms. Brumfield explained that the history, stating that on April 5, 2017, the Board adopted a resolution of intent to update Section 3, in preparation for recodification. She said that the stated purpose of this amendment, which pulls directly from the resolution of intent enabling it, is to consolidate existing definitions and rules of construction, clarify existing definitions, add new definitions, delete obsolete definitions, and amend the existing rules of construction.

Ms. Brumfield noted that throughout this process -- particularly when bringing all definitions used throughout the ordinance into one section -- they are aiming to make searching for terms more predictable, to make applying them more consistent, and to make the entire process more efficient for both the staff and the public. She pointed out that this resolution of intent did not empower staff to make any substantive changes to the ordinance, and it was only making changes for efficiency and consistency.

Ms. Brumfield stated that there are seven different change types: consistency, consolidation of terms from other parts of the ordinance into the Chapter 4 definitions, removal of outdated terms, clarification of terms and definitions, addition of new and replacement terms, and modifying terms and definitions. She mentioned that some of the changes fall under two types of changes but are only listed once in the document before the Commission.

Ms. Brumfield said that the first type of change they are addressing is consistency changes, which begin on the bottom of page 2 and continue through page 5. She stated that there are 50 changes, which are almost entirely related to rewording the words or phrases or making up a term. Ms. Brumfield said that the ordinance currently includes:

- "Garage, public," which is reworded into "public garage," which means it is alphabetized differently. This is intended to make sections easier to find the definitions, particularly for a layperson who may not be looking for something like "administrator, zoning."

Ms. Brumfield reported that the second type of changes were consolidation, reflecting 133 separate term and definition changes -- beginning on page 5 and going through page 14. She said that the zoning ordinance currently has definitions throughout, and the definitions related to signs are listed in the sign ordinance; the definitions for lighting are in the lighting ordinance; and so forth. She explained that this text amendment pulls all them from the various sections into one section, and they were also being pulled from the outdoor lighting regulations, noise ordinance, rural preservation regulations, and airport overlay, and flood hazard overlay regulations. She commented that it's easier to find something if it's in one large definition section and it's more predictable for the layperson and staff.

Ms. Brumfield stated that the third type of change is removing terms -- particularly outdated and inapplicable terms in the ordinance -- with 43 term removals, beginning on page 15 and ending on page 17. She said that most of them are terms that have been updated in the ordinance but haven't been reflected in the Definitions chapter, such as "automobile laundry," which is now referred to as a "carwash." She stated that "apartment house" is now called "multi-family dwelling," which has been replaced throughout the ordinance and needed to be updated in the Definitions section.

Ms. Brumfield stated that some of the terms have been replaced that are now redundant, so they have multiple uses, such as "professional office," which is still a defined term and a use allowed in R-10, R-15, PRD, C1, CO and HC. She said that it was listed separately as office, but the definition of "professional office" says "see office."

Ms. Brumfield commented that having these redundancies makes it confusing for both applicants and newer permit reviewers who have no idea what the definition of a professional office is. She stated that "patio house" is a lovely-sounding family dwelling with a landscaped courtyard, partially or completely surrounded by living areas, but it is not regulated any differently from a house and is a single-family dwelling.

Ms. Brumfield noted that there are a number of terms that are not regulated at all that are in this list as removed terms, and they were repealed and removed -- with the current ordinance having them struck through, so this just deletes those struck-through terms. She stated that the clarification changes are intended to clarify and give a better understanding of current interpretations and standing practice, and there are a few updates per changes to the Code of Virginia. She said there are 17 clarification changes, found on pages 1 and 2.

Ms. Brumfield stated that one example is "group home," which the County defines as "facilities for no more than 8 individuals with mental illness, intellectual disabilities, or developmental disabilities," but the Virginia Code refers to a group home as "a residential facility in which no more than 8 aged, infirmed, or disabled persons reside." She said that the County has added the phrase, "shall include aged or infirmed persons" to make up for that difference. She pointed out that this was not a change in the interpretation of the ordinance, but it clarifies and reflects the Code of Virginia language.

Ms. Brumfield stated that the County's definition of "public use" previously read, "funded, owned, or operated by local, state, or federal agencies" -- but this didn't specify how much of an operating budget needed to be provided by those local agencies. She explained that it has been the County's practice and regular interpretation to only consider organizations that received most of their funding from governmental agencies as a public use, and for example, the Board could not decide to donate money to someone and they suddenly become a public use.

Ms. Brumfield stated that the fifth type of change is new terms, which are found on pages 14 and 15, with 15 new terms -- which primarily have already been regulated and have requirements attached to them in the zoning ordinance, but they are not defined and may have some confusion around their definitions. She cited the example of "caregiver" and "mentally or physically impaired person," explaining that they were added because the Board had previously approved regulations regarding temporary family healthcare structures, which were approved on August 9. Ms. Brumfield noted that the County did not have a definition of some of the terms used in those regulations added to the ordinance.

Ms. Brumfield reported that other terms that had been in the ordinance for a long time were "crematorium," "lodge," "nearby lots," which have all been used in practice and have regulations attached to them but have not yet been defined. She noted that when the County added a definition, they were pulled primarily from a planner's dictionary from the American Planning Association. She mentioned the term "boat livery," which is not currently in the ordinance but will replace the terms "boat landing and canoe livery," as staff feels it is a more accurate representation of what the service actually provides. She added that the boat liveries currently approved in the County, which are approved under the old term, have canoes, kayaks, standup paddleboards, etc. -- which encompass all kinds of watercraft, not just canoes.

Ms. Brumfield also pointed out the term "use buffer," stating that there is the concept of a "buffer zone" in the ordinance, which says it is required between commercial and industrial uses and rural or residential properties, so wherever those two meet up at a boundary is when a use buffer is needed. She said that it is currently referred to as a "buffer zone," but the "use buffer" terminology is more in keeping with the term "stream buffer," and it does not change any regulations attached to it.

Ms. Brumfield reported that the sixth type of change is replacing terms, and some of these have already been changed in the regulations but not in the definition section. She stated that there are three such changes, found on pages 17 and 18 -- "daycare center," to be replaced by "childcare center," "light warehousing," to be replaced by "self-service storage facility," and "travel trailer" to be replaced by "recreational vehicle."

Ms. Brumfield explained that "daycare center" as currently applied in the ordinance, under all of the regulations and current definition, is for the care of children -- but staff recognizes that there are other types of popular daycare now, including doggy daycare and adult daycare, which should not all be treated the same. She added that they also want to remove the confusion that comes from "light warehousing," which is a very misleading and confusing term, as it is actually a "self-storage facility." She stated that the term "travel trailer" needs to be updated because there are other types used now, such as fifth wheels, motor homes, truck campers, etc.

Ms. Brumfield reported that the last type of change is the category of minor changes, and there are two, both on page 14 -- and they are changes minor enough that they don't constitute a substantive change or a different application of existing regulations, but they codify staff or the original enabling legislation's intention for the regulations. She said the first change replaces the existing definition of "convent or monastery," replacing it with the definition from the American Planners Dictionary from the American Planning Association, which specifies that "a convent or monastery is intended to serve as a long-term housing facility for bona fide members of religious order -- not intended to serve as a

temporary religious retreat." She said they have not had any applications for this in her time with the County, but this has come up in other counties and staff wants to make it clear those regulations are approved for bona fide religious members.

Ms. Brumfield reported that the second change, which adds "vehicular" to the definition of "street" is in keeping with current application and understanding of the regulations. She said that currently, the definitions of "private street," "alley," and "driveway," the reference is solely for vehicular access -- and the definition of "street" refers only to access. She said that while the Comprehensive Plan encourages increased pedestrian access throughout the County and staff believes there is a growing need for regulations that apply to pedestrian or multi-modal streets, all current regulations are aimed at vehicular streets. She cited the example of sign regulations, which give stores sign allowances based on their street frontage, which is assuming that the sign needs to be read from a moving vehicle.

Ms. Brumfield said that these, in combination for County engineering standards for streets that would be supporting vehicle, are sidewalk requirements -- and if there is a walking street, you don't need a sidewalk. She noted that staff envisions future regulations that would incorporate standards for walking streets or multi-modal streets, but currently they need to address that the regulations are meant for vehicles, and hopefully address the other changes more comprehensively in another ZTA.

Ms. Brumfield concluded her presentation and asked that the Commission raise any concern with the format of the changes or any presentation materials and address any questions regarding change types and individual changes -- either now or at a later public hearing.

Mr. Bivins stated that there were several things he wanted to ask, and said that under clarification of "group home," there was a different definition in the Virginia Code in the Child and Family Services Manual that had "group home" as a much broader definition, which did not focus on the presence of an illness, intellectual disability, or developmental disability. He stated that it also applied to foster care in the case of an emancipated minor, so before going to complete emancipation, you can be determined for placement in a group home under Virginia Code Section 6.15.

Ms. Riley said that he was saying it would provide a broader definition for various populations.

Mr. Bivins confirmed that this was his intent, stating that if he were to see that but was intending to build a group home for emancipated minors, this definition would not apply to that -- and he could see where it would cause some confusion.

Ms. Brumfield stated that the County's definition of "group home" was from another use, and she was not sure if they have any other use that would allow that -- unless it was possibly under "single-family residence."

Mr. Bivins said that under consistency, with the term "agritourism," he recalled that Supervisor Diantha McKeel had asked staff to come back with new, more rounded out definitions for this, so this may be refined by the Board.

Ms. Brumfield responded that this was on staff's list, although she wasn't sure of the timing, and this was something that came up after that meeting.

Mr. Bivins mentioned the delineation between “private garage” and “public garage,” stating that his understanding was that there could be storage of automobiles in a private garage, but there was nothing related to that under public garage.

Ms. Brumfield explained that this definition was basically a body shop or repair shop, specifically auto repair, and was not a parking structure -- which was what he was referring to.

Mr. Bivins said he was also thinking about public garages that allowed storage, but not a parking structure like the Water Street Garage.

Mr. Bivins stated that under consolidation under “habitable space,” masonry structures in the community were as prevalent as the other structures mentioned, which included walls composed of but not limited to drywall paneling, lath and plaster -- and he would suggest that the use of lath and plaster was waning, and masonry might be more relevant in this community. He also stated that under consolidation under “manufactured home,” this seemed to be another name for “mobile home,” but manufactured homes in the industry were a different and emerging kind of structure. He said that he did not see that they were looking at prefab homes, which would not always look like a mobile home.

Ms. Brumfield responded that staff had addressed this fairly recently with the manufactured home ZTA earlier in the year, and “manufactured home” is a federally regulated term, which do not always appear in the classic “mobile home” sense. She stated that they regulated it based on how they were constructed, and the ones that were technically manufactured homes come with a label on them that is approved by federal inspectors, and the building inspector does not have to do anything to inspect them. She added that there are modular homes that are put on the site and the building inspector does a different kind of inspection for those. Ms. Brumfield noted that the overall term is “industrialized building,” which is basically something that is built in a factory, but common parlance had not caught up with federal regulations yet.

Mr. Bivins responded that he was calling it a “manufactured home,” which was broader in its concept than a mobile home.

Ms. Brumfield stated that people use the terms interchangeably, but the term the County is regulating is only the kind that is stamped.

Mr. Keller noted that it came from HUD, and there were laws that did not allow states to put in higher standards -- but the industry was powerful enough to override it.

Mr. Bivins asked if the term “sound level meter” referred to an instrument or if it included smart devices that had apps that functioned in that capacity.

Ms. Brumfield explained that sound level meters were used primarily for measuring violations and could not be used with smart devices to measure because they have not been calibrated. She added that Lisa Green would likely have more information about this.

Mr. Bivins said that the “caretaker” definition in Virginia Code Section 63.2-2200 was also very different.

Ms. Spain thanked Ms. Brumfield for organizing this so well. She stated that under "amenity" in "group home," she did not like the term "residing" and preferred the word "live."

Ms. Spain asked for clarification of the term "temporary health care structure."

Ms. Brumfield explained that it was already defined under current definitions, and she confirmed that it was part of the accessory use.

Ms. Spain said that under consolidation, daytime was "the period from 7 a.m. until 10 p.m.," and she wondered if it was supposed to reflect daylight.

Ms. Brumfield responded that the definition was pulled from the sound ordinance and applied to the hours that decibel levels changed, which was at 10 p.m.

Ms. Spain asked about the "lumen" definition under consolidation, stating that it is a standard unit of measurement. She said that Ms. Brumfield had spoken earlier about having to revise night lighting to reflect LEDs and asked if it was replaced in here with lumens.

Ms. Brumfield replied that it was a carryover from that one because there were currently approved SPs that used lumens as a measurement.

Ms. Spain asked when LEDs could be added.

Ms. Brumfield responded that it would be something staff would need to devote a little more research time into in terms of looking at how to measure that, because electricity standards are different than that of normal illumination.

Ms. McCulley clarified that lumens are a key to the applicability of the lighting regulations, and 3,000 lumens or more was a threshold of compliance with the lighting ordinance. She said that lumens were still relevant, and staff had already added the language about LEDs -- regardless of lumens -- applied in certain cases, but they were not equivalently measured as other types of light sources are. She said that the language states that if LED lamps are proposed, with the 3,000 thresholds being applicable, "the applicant shall provide information from the manufacturer indicating the total lumens emitted by the fixture, and if the total lumens are 3,000 or more, it shall be a full cutoff fixture."

Ms. Spain asked if the LED would be a separate entry in the zoning.

Ms. McCulley responded that she had made that amendment in October 2017 to bring LEDs into compliance with the lighting regulations. She said that this particular document did not have a recommended change, and Ms. Brumfield confirmed that it did not.

Ms. Spain stated that under consolidation in consistency, there were the entities of commercial, governmental, and non-commercial speech, and asked if they were regulating speech.

Ms. Brumfield responded that this pulled from sign regulations, as the sign ordinance referred to a sign that had commercial versus non-commercial or governmental speech.

Ms. Spain asked about changing the word “speech” to “language.”

Ms. McCulley pointed out that the term “speech” is based on case law.

Mr. Herrick explained that the notion of commercial speech versus non-commercial was legal terminology and did not necessarily refer to oral speech but could also be printed on sign faces and other types of print.

Ms. Spain asked where “cul de sac” had gone.

Ms. Brumfield responded that the term was repealed a while ago, and the County had not been regulating it in the subdivision ordinance that way because they did not necessarily have different standards for a cul de sac -- but they do avoid them as policy.

Megan Nedostup stated that the subdivision ordinance requires extension of streets and interconnection, which is why cul de sacs are discouraged but not prohibited -- and the subdivision ordinance requires extension of streets to the property lines.

Ms. Spain pointed out that they were still in use.

Ms. Nedostup clarified that through the rezoning process, cul de sacs would be discouraged -- and the Neighborhood Model would include language referring to “interconnected streets.”

Ms. Firehock stated that “home occupation” was stricken everywhere and asked if it no longer needed to be defined.

Ms. Brumfield responded that it was the replacement of “Home Occupation, Class A” with “Class A Home Occupation,” and the same applied to Class B.

Ms. Firehock asked if the definition of “accessory structures” as 200 square feet maximum was just to meet existing code.

Ms. Brumfield responded that it was.

Ms. Firehock stated that she could not figure out what a noncommercial day camp was under “day camp.”

Ms. Brumfield clarified that it was religious day camps, or theoretically if the school system had a day camp -- so just a day camp that operated as a nonprofit.

Ms. Firehock asked about the tree line and reference tree, which is described as “either being the tallest or a shorter tree identified for screening purposes,” and said she was trying to figure out what this meant.

Ms. Brumfield stated that it was not a change from the existing reference tree item in the ordinance, explaining that when there is a plan for a wireless structure, the applicant will show all the existing trees and typically choose the tallest one as a reference tree.

Ms. Firehock said this was why she was confused by the "or," which seemed to refer to another tree to be used as screening.

Ms. Brumfield explained that it could be a shorter tree on a hill or referring something that is directly blocking an entrance corridor -- so that tree would be used to do a view.

Ms. Firehock commented that it did not seem very clear in the definition, but it probably is in the full regulations, so she was not going to worry about it.

Ms. More said that under 5, new terms, the "use buffer" is referenced and she wondered how it would relate to a residential property and RA property -- and the last paragraph explains that it is for RA and residentially zoned properties as a buffer for industrial and light industrial uses.

Ms. Brumfield stated that the "use buffer" as currently applied and in continuation with changing it from the buffer zone to use buffer is intended to separate completely incompatible uses -- so if you have a rural area or residential property that is abutting a commercial or industrial property, they should be separated by a heavily screened type of land as a buffer. She said that Ms. More's question related to two different kinds of residential and rural or residential, and since those uses are considered compatible, a use buffer is not required between them.

Ms. More asked about tennis and other court games being struck from "indoor athletic facilities" in favor of the term "racquet games," and she wanted to ensure that it did not preclude sports like basketball or indoor soccer.

Ms. Brumfield responded that it was not the intent, but it was a good point.

Ms. Riley added that pickleball should be added to the list of racquet sports, as it was the fastest growing sport in America.

Mr. Dotson stated that on page 2, others have asked about "accessory use, building, or structure," and he felt there was a conflict between the goal of clarification and consolidation because there were too many different things involved in the one definition. He said that he did not have a solution, but perhaps staff could look at it between this meeting and the next. He noted that on page 3 toward the bottom, the term "exploratory dwelling" should be "exploratory drilling."

Ms. Brumfield noted that the ordinance before them did have it correctly, so it was just a copy/paste error.

Mr. Dotson said that on page 4 and 5, there is a huge topic related to gross area and density, and he felt it would be useful to discuss density in the context of the Comprehensive Plan, and in the context of zoning. He stated that there was a lot of confusion debate about that, and he cited an example of "water area" as being included in the definition. He asked if it would be useful to spend 15 minutes or so looking at a chart with the Comprehensive Plan and zoning.

Ms. McCulley responded that they could do that, and staff had met earlier in the day to discuss the work program to present to the Commission in January and Board in February -- and one of the work program

items is to tackle the policy and implement whatever is decided to gross vs. net residential density issue. She noted that there were strong opinions on both sides, and she would be fine with Mr. Dotson's suggestion if they can do it without straying from this being a non-substantive resolution of intent.

Ms. Spain commented that for the term in the definitions for "historic county store building," "county" should be "country."

Mr. Dotson stated that also on page 5, there is a definition of single-family dwelling and a two-family dwelling, and he did not know that they needed to address carriage houses, but the question occurred to him. He asked staff to think about it and report back to the Commission, as there were attached and detached carriage houses -- and there would be a ZMA on Belvedere coming up shortly that would address some of that question.

Mr. Dotson stated that on page 16, "central water supply" was the term used, but in the ZTA they were referring to "central water systems," and that was a key term. He said that the ZTA talked about eating establishments and fast food restaurants, yet this would remove those. He said that he had asked Bill Fritz about it, and he responded that if the ZTA went through first, they would still use the old vocabulary and fix it by addressing the ZTA -- but they needed to coordinate that.

Mr. Keller said that his fellow Commissioners had covered most of his concerns but having heard the discussion he would suggest that LED lights can be evaluated in lumens, based on a quick internet search he had just done.

Ms. Brumfield responded that the difficulty with that is the lumens level is not printed on the box the way the incandescent lights are, so it's difficult for the end user to know how many lumens are coming out.

Mr. Keller agreed, but his sense was that the kind of standards they were talking about in parking lots always had a review in lumens -- so there would ultimately be a lumens test for that.

Mr. Keller stated that his second concern is related to tiny houses, and with all the interest in affordable housing and transient housing, there were other terms that needed to come in and the public needed to understand it -- so staff needed to think about it and address it. He said that he understood why carriage house in the new urbanism was a fun term to have, but they really referred to garages with an apartment over them. He said that he understood the use of a term in the development community of a credit towards affordable housing units, and that also needed to be addressed on a list.

Ms. Brumfield responded that dwelling types and different approaches were something they spent a lot of time on in zoning, and the ordinance had not yet been changed to reflect the different landscape people were living in now -- and staff agreed that it was something needing to go on the work program.

Mr. Keller said that it went back to what Mr. Bivins had raised regarding the difference between manufactured, modular, recreational vehicles, etc. -- and at least one person on staff was becoming an expert on this. He stated that given the wonderful job they had done organizing this whole set, there were several of these that needed a higher degree of analysis and organization, so they can get to the root and the public can understand what those pieces are.

Mr. Keller stated that he felt this had been a very positive process overall in the way that staff has organized it, put it forward, and took the Commission through it. He invited public comment.

Mr. Justin Shimp stated that his concerns based on what he heard were that the definition of street was going to be for vehicles only, yet there were several instances in which street frontage by the subdivision ordinance required it to be pedestrian only -- with parking in an alley or somewhere else. He said that several of these had been successful, and his concern was that limiting a street for vehicles only might prohibit the waivers that would allow it to be pedestrian. He asked for clarification on that.

Ms. Brumfield stated that they were addressing the way they handled street frontages and the developments Mr. Shimp was referring to were ones that were technically fronting on the alley. She suggested that staff could investigate that further and come back to the Commission with that in the public hearing.

There being no further public comment, Mr. Keller brought the matter back before the Commission and asked are we ready to make a recommendation to the Board. He said since it is a work session he asked if staff had received enough feedback.

Ms. Brumfield replied yes, it has been very helpful.

Ms. McCulley thanked the Commission.

The meeting moved to the next item.

Work Session

ZMA-2018-00012 Galaxia Farm
MAGISTERIAL DISTRICT: Scottsville
TAX MAP/PARCEL(S): 09100000000900; 09100000001500
LOCATION: 193 Galaxie Farm Lane
PROPOSAL: Rezone property from residential to a higher density residential development with a mixture of unit types.
PETITION: Rezone 13.36 acres from R1 Residential zoning district, which allows residential uses at a density of 1 unit per acre to Planned Residential Development (PRD) that allows residential (3 – 34 units/acre) with limited commercial uses. A maximum of 130 units are proposed for a gross density of approximately 9.7 units per acre and a net density of 11.5 units per acre.
OVERLAY DISTRICT(S): Entrance Corridor; Steep Slopes- Managed and Preserved; Scenic Byways
PROFFERS: Yes4
COMPREHENSIVE PLAN: Neighborhood Density Residential – residential (3-6 units/acre); supporting uses such as places of worship, schools, public and institutional uses and small-scale neighborhood serving retail and commercial; 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 in the Southern Neighborhood 4 within the Southern and Western Urban Area Master Plan.
MONTICELLO VIEWSHED: No
(Megan Nedostup)

Ms. Nedostup reported that this is a work session on the Galaxie Farm ZMA proposal, and she would go through four items: the location, the proposal for the rezoning request, the Comprehensive Plan designation, and the analysis of that. She referenced a map that showed the two properties proposed to be rezoned, which were highlighted in yellow, noting the location of Route 20 and Mill Creek Drive, as well as Cale Elementary School, Avinity, and the Monticello Fire Station. She mentioned that there were several county-owned properties adjacent to this proposal.

Ms. Nedostup stated that the applicant was proposing to rezone the properties from R-1 residential, which is one unit per acre, to PRD, with a maximum of 130 units -- including single-family attached, detached, and apartments. She said the current application plan includes two parcels totaling 13.36 acres, but the plan contemplates acquisition of county property. She noted that to date, a plan has not been submitted that shows how the property would develop if the County property were not included. She mentioned that the applicant is pursing a land swap with the County, which the Board would consider at a later date -- but that did not need to be considered by the Commission in terms of what was before them, because even if the land swap occurred, the request would still be over the recommended density within the Comprehensive Plan.

Ms. Nedostop reported that the Comprehensive Plan designates these properties as Neighborhood Density Residential, and she referenced a map from the land use map within the Comprehensive Plan and the Parks and Green Systems map. She said that Neighborhood Density Residential recommends a density of 3-6 units per acre, and the adjacent County-owned properties to the north are designated institutional; to the south are the Avinity and Kappa Sigma properties, which are designated Urban Density Residential -- a higher density between 6 and 34 units per acre.

Ms. Nedostup noted the proposed road location that runs through the property, stating that the applicant is proposing to realign it slightly -- with a connection to be made to Founders Place between Scottsville Road and Mill Creek Drive. She said that there is a multi-use trail planned that would go along Route 20 with the connector road, and the proposed application plan shows a portion of the connector road, which also includes bike lanes. She said that it was hard to see on this map, but there is a small buffer designation along Route 20, and in the text of the Southern and Western Master Plan, there is discussion of a Center designation and language stating that a collaborative community process is needed prior to a decision on the uses of County properties, resulting in a small area plan for this area.

Ms. Nedostup said that the main question is should the proposal follow the recommendations in the Comprehensive Plan, which are Neighborhood Density with 3-6 dwelling units per acre and although the property totals 13.36 acres, 11.34 is designated outside the environmental features, equating to 34 to 68 total units under the master plan designation. She stated that the applicant is requesting a maximum of 130, which would equate to approximately 11.46 units per acre, which is almost double the recommended density within the Comprehensive Plan. She said that staff's position is that approving a higher density could set a precedent for future applications, and both the master plan and Comprehensive Plan updates are public processes with some assurances for the community of how the County will develop -- so staff recommends that the proposal should follow the recommendations of the master plan for density.

Ms. Nedostup said that before the request came in, Engineering analyzed the stream located along Route 20 and determined it was an intermittent stream needing a buffer, so that has been added. She noted that the Commission had provided direction on two applications as mentioned in the staff report

about new environmental features since the master plan was adopted, using those environmental features and the density calculation, and she wanted confirmation on that direction

Ms. Firehock asked what the green square was on page 3.

Mr. Dotson clarified that it was page 3 of Attachment B.

Ms. Nedostup responded that it is the land use designation in the master plan.

Ms. Riley complimented the staff report and presentation. She stated that this work session is focused on density and the land use recommendations in the Comprehensive Plan, but she felt there were several other significant issues that needed to be aired to some extent. She said that the argument the applicant has made for increased density was linked to their provision of affordable housing, and she asked Ms. Nedostup if they had provided any specifics for what they mean -- either who would be served by it, per the AMI, or any other description.

Ms. Nedostup responded that they had not provided that as of this point, and they provided a proffer statement -- but the County cannot accept proffers for affordable housing.

Ms. Riley said that the land swap provision involves the County swapping land for a portion of a potential connector road with the applicant, and the master plan stipulates that for the center area, which is intended to have a civic purpose, there is a need to study whether there is a need for a connector road, whether or not a connector road is beneficial to the area or not, and what the land uses of public land would be. She stated that the master plan is very clear that there would be no designation of land uses until there is a community collaborative process -- and she wanted to make sure that was upheld.

Ms. Nicole Scro stated that she was a local land use attorney for several years and recently started a real estate land development company, Gallifrey Enterprises. She said that Justin Shimp and Kelsey Schlein of Shimp Engineering were present to answer questions, as well as a resident from Avinity. She said that they were before the Commission because they were recommending density higher than what was recommended in the Comprehensive Plan, and they believe there are benefits to analyzing the merits of each application individually.

Ms. Scro stated that the reasons are: by having higher density, they can accomplish and achieve other Comprehensive Plan goals; the property has a weird land use designation history; and they have done community engagement already through a CAC meeting, informal meetings with Avinity HOA representatives, and her personal conversations with people who lived in that area. She said that it was very rare to have support for density, and that was essential to their application. She stated that another benefit was that they were designing a project that would have the same impacts and feel as a low-density neighborhood, consistent with the Comprehensive Plan.

Ms. Scro reported that they are proposing to construct 70% of a 1,400-foot-long, 67-foot-wide connector road that will have street trees, parking, curb and gutter, and sidewalks -- asking the County to convey 2.77 acres of that, most of which would be the road itself. She stated that the process is that this goes to the property committee, they make a recommendation to the Board, which holds a public

hearing and vote. She stated that the property committee had recommended approval, and the Board held a closed session on December 12 to discuss it and would talk about it again on January 2.

Ms. Scro stated that the existing zoning is R-1 and the designation of the property is Neighborhood Density Residential, with 3-6 dwelling units per acre; the next highest is 6-34 as Urban Density Residential. She said that she is proposing a maximum of 130 units, and if all 16.13 acres, including the institutional land, it ends up being 8.06 dwelling units per acre -- and excluding the institutional land, it is 8.54 dwelling units per acre; including the 3 acres of environmentally sensitive area, the result is 10.65; excluding the County property, it is 11.46. She said that if they were not able to come to an agreement with the County, they would redesign the project and achieve the 10.65 dwelling units per acre.

Ms. Scro explained that to accomplish other goals of the Comprehensive Plan, she wants to build homes that are small and affordable, ranging from 850-1,500 square feet, at a cost of $300,000 or less. She stated that this has been done around the country and called a "cottage community" or "pocket neighborhood," and she referenced a slide showing the Black Apple community in Arkansas, which had 11 dwelling units per acre, with a common area, green area, and community space. She referenced a neighborhood in Washington State in which the developer built 8 smaller cottages on 4 single-family lots, with about 10.4 dwelling units per acre.

Ms. Scro presented a quote regarding the importance of smaller housing and higher density to make developments economically feasible, and she said there was a model ordinance suggested for Washington State that could be used as a guideline for the rezoning application in terms of performance standards that are typical of this kind of development. She presented a slide showing Belvedere homes, as that is the example in the land use map charts in the Comprehensive Plan for Neighborhood Density Residential -- and her project was trying to build under that designation that was inclusive.

Ms. Scro pointed out on the map where the cottages, townhomes, apartments, etc. would be -- and she noted the three acres of greenspace and mentioned the multi-use path along Route 20, which is in the Comprehensive Plan. She showed how the cluster of houses would fit into Block 1, with a one-acre park and additional greenspace. she said that the varied housing types would provide additional density and offer homes in various price ranges.

Ms. Scro stated that Riverside Village had done increased density in 2013, with an amendment in 2017, and the designation of Neighborhood Density was approved in 2013 for a net density of 7 dwelling units per acre above what was recommended in the Comprehensive Plan; in 2017, it was approved for 10.7 per acre. She said that she read the minutes regarding that decision and found that Riverside had a strange land use designation for the property; the benefits where it was walkable to commercial and employment areas, and there was neighborhood support.

Ms. Scro stated that she felt they also had it with this application, with the property previously designated as Urban Density. She said that she spoke with Elaine Echols and found out that most of the undeveloped land was designated Urban Density Residential, and there was not much, if any, Neighborhood Density Residential -- in an effort to try to create a greater mixture of units. She stated that the owners of the property and representative knew about the proposed change but did not come to the Commission meetings to speak out about it.

Ms. Scro said that the process began in July 2011 and went until March 2015, and one of the first community meetings for the master planning process for the Southern and Western Neighborhood took place on April 2, but it showed that the property had already changed to yellow -- so it seemed to be a staff push rather than a community push. She emphasized that the Service Authority property, Tandem, Kappa Sigma, the nursing home, and Somerset Farm were all non-residential properties, except for Avinity -- but there is a center already in existence, even though there are no residences nearby.

Ms. Scro stated that the community wanted a center designation here, and to fulfill it, she felt it was important to have some residences here. She said that this was why they felt they had community support, and she had met with the 5th and Avon CAC, the Avidity HOA, Somerset Farm, Kappa Sigma, the nursing home, etc. -- and would meet with Tandem Friends after the holidays.

Mr. Keller invited public comment.

Mr. Paul McCarter, an Avinity resident, stated that he is a realtor and said that Avinity residents seem to be supportive of this as long as there is not a connecting road for vehicles between Avinity and this neighborhood, as it would create a natural cut-through to get around the Cale traffic on Avon. She stated that Ms. Scro's current plans did not have that connection, but that has been a push by the County and it would create a major change in opinion.

Mr. McCarter commented that the County has a problem in providing affordable housing, and the increased density but also allowing this to have a small cottage would be embraced by realtors because there are new homebuyers who want a smaller house but still have a yard, as well as people wanting to downsize and cannot physically navigate stairs as in a townhouse. He said that increasing density to allow something like this would fill a very important need and want for buyers, and he sees more of a trend towards people not wanting gigantic houses.

Sean Tubbs of the Piedmont Environmental Council addressed the Commission and said that they were being asked to interpret the Comprehensive Plan on this item, but it was a matter of process. He said that it was crystal clear what plan calls for -- Neighborhood Density Residential at a scale of 3-6 units per acre. Mr. Tubbs said that there was a lot to think about with this, given the applicant's presentation, but staff is recommending that the Commission follow the Comprehensive Plan -- and the Piedmont Environmental Council supports that recommendation.

In their narrative, Mr. Tubbs said, the applicant argues that they would like this additional density, so they can build the variety of housing types and smaller units and hence bring the price points down, which is a laudable goal -- but it is important to respect the process that led to the current designation. Mr. Tubbs said that the Comprehensive Plan was last updated in 2015 for the 3-6 dwelling units, rather than the 6-24 units. He said that was a long process that involved many, many meetings -- and what is in the plan represents the will of the community. He stated that the applicant claims in their narrative on page 3 of Attachment B that there was very little community input, but there was a lot of discussion that happened outside the minutes.

Mr. Tubbs said that he had attended the meeting on April 24, and while there may not have been a discussion about this parcel, there were a lot of concerns about the density in this location. He stated that he looked up the minutes, but not all four years, and only Mr. Dotson was on the Commission at

that time, and he was not present. He said that Supervisor Rick Randolph was on the Commission at that time, and there had been a lot of staff turnover since them.

Mr. Tubbs stated that Somerset Farm development was active and alive at that time, and in the minutes for that, there was a record that two people did speak up, with community input about the overall area. He said they called for the areas around Route 20 to be rural in nature, and this was reflected in the plan. Mr. Tubbs said that the County would be updating its affordable housing policy in 2019, with a lot of commitment and a lot of work that would go into that issue. He emphasized that in this particular case, it was important to respect the Comprehensive Plan and the process that got them to this moment.

There being no further public comment, Mr. Keller invited the applicant back for a follow up.

Ms. Scro stated that she did not mean to suggest that there was no community input, she just did not think it was about this particular parcel -- and her impression was that they wanted a lower density feel. She said that this design was actually more in spirit with their desires, because there were smaller homes with less environmental impact and more greenspace.

Ms. Scro said that in the sample ordinance, it states that "A cottage development will likely have the same or fewer people than single family homes that could be built on the same site. She said that a cottage development that attracts a mix of singles and couples because a smaller family meant a smaller home and would also likely have more cars than a group of homes that is larger, especially one that attracts a big family with teenagers.

Ms. Scro stated that they are trying to accomplish something that has less impact and meets the spirit of the Comprehensive Plan. She also mentioned that they would put 15% of the development in affordable housing, according to the 80% AMI or lower, and it would be in the application plan -- not in the proffer statements.

Ms. Riley commented that the focus of the cottage community seemed to be in Block 1, and she had some questions on Attachment C, she had some questions about the proposal for the other blocks. She said that Block 5 shows the greatest density and maximum structure height, and she asked what the intentions were for that block.

Ms. Scro responded that it would be a multi-family structure, apartments, and they would cap it at three stories.

Ms. Riley asked how many units that would be.

Ms. Scro replied that it would probably be about 30 units, but thus far they have just focused on Block 1.

Ms. Riley said that the other blocks look to have single-family dwellings, both attached and detached, specifically in Block 8. She asked how it can be designated as a unit type of open space but have a maximum structure height of 35 feet.

Ms. Scro responded that they might put a clubhouse in.

Ms. Spain asked what kind of housing mix they could provide at 68 units total.

Ms. Scro replied that it would most likely be larger, single-family detached homes of a 3,000-square-foot size, which would mean a loss of density. She noted that to make it economically feasible, it would need to be either more dense or larger homes.

Mr. Bivins stated that he appreciated the enthusiasm but was struggling with why a cottage village couldn't be established in the plan put forth, understanding the internal rate of return, and if they are trying to explore and are committed to exploring a different way of creating community -- whether or not it's at the neighborhood density or urban density level -- the same esprit could be exhibited. He said that people were willing to pay a premium for finishes, more so than large space, and he didn't understand why that calculation would not work.

Ms. Scro responded that there were cottages being built in Lockland Hill that were going for about $400K, and they ranged from 1,500 to 1,700 square feet. She said that her cottages were on the 850+ square foot level, and she wanted to keep them affordable. Ms. Scro stated that they might be able to make that math work, but her goal was not to build high-end Lockland Hill cottages.

Mr. Keller stated that what the Commission was wrestling with was the second owner, so although she said they could have a lower price point with less finish, he did not know how it would be assured to stay in that same market -- because if someone ups the finish, the cost increases. He commented that the Charlottesville Housing Study was basically showing that, and they were waiting for the data from the regional housing study, and the middle was being lost along with the bottom, with the price points going to the top.

Ms. Riley said that if the intent was to provide affordable housing, they needed to focus on how it would be preserved either permanently or long term. She stated that from a policy standpoint, they were looking at proposals that include mechanisms for long-term affordability. She said that she would also ask what the amenities would be, because there were a lot of private amenities and land costs built into the proposal, as she read it. She said that if someone would qualify for a mortgage for a small home but still had a $200-400 a month HOA fee to pay for those amenities, she would not consider that affordable -- so the Commission needed to consider the long-term mechanism for keeping it affordable. Ms. Riley emphasized that it was their job to define good policy.

Ms. Firehock said that in general, she was in favor of more density -- but in terms of what would make a quality neighborhood, she favored more diversity of housing sizes. She stated that rather than a section of all cottages, they could diversify it, and it was nice to be able to move within a neighborhood into a larger home. She said that they could be more creative in the arrangement of the houses to create more park space and more pedestrian connectivity with elements like golf cart paths, and the proposal as it was presented seemed very separated and not cohesive, but she understood that this was just a work session.

Ms. Scro mentioned that 15% would be affordable per a specific definition, but the loose term would be for the missing middle. She stated that there were no new constructed homes in Albemarle for $300,000, so even getting that was an achievement.

Mr. Keller closed the public hearing and said that their charge was to focus on the density issue.

Ms. Riley stated that it not only was her district, but she attended almost every master plan meeting that was held. She said that there was very good attendance and discussion in the community, and general support for the land use categories designated in the plan. She emphasized that it was important to respect the community's desires and uphold the master plan.

Ms. More agreed, stating that it was important to respect the public process and not go back and make assumptions about what was intended at the time, because what exists are the master plans -- which are reflected in the Comprehensive Plan. She commented that in the applicant's statement on page 3, they talk about the County's newly instituted policy of excluding environmentally sensitive areas from the acreage used to calculate density, but to her knowledge, that was not a new policy and was with every rezoning if it's by right. She added that she supports that policy.

Mr. Dotson stated that there were a number of things he really liked about the proposal, including the fact that it consolidates land that is held by multiple owners. He said that the smaller size of 850 square feet was no guarantee but was a step in that direction because less house meant more affordable. He stated that he liked the experimental attitude and thinking outside the big box, and he interpreted that there may be less impact.

Mr. Dotson stated that a CPA was the appropriate approach, unless it was believed a mistake was made or circumstances had changed. He said that in terms of the County's "property committee," it consists of two Supervisors and the County Executive. He said that if the Board feels this is worthwhile, they should adopt a resolution of intent to amend the Comprehensive Plan, and in that they would be indicating how this was useful to the County because of the road constructed and the nature of the development.

Mr. Dotson said that in terms of the density specifically, he took the approach of a "rebuttable presumption" in the sense that they took the Comprehensive Plan designation, and if there was an environmental area, it did not have associated density and was presumed undevelopable. He stated that he would rely on that absent better data, but an applicant could demonstrate compliance with all regulations and still show that half the area is developable, and that would be convincing. He said that the bottom line for him is the need for a CPA, unless otherwise directed by the Board.

Ms. Spain stated that she echoed Mr. Dotson's enthusiasm for the project in general, but the Pantops Master Plan is being revised now and some of those residents are disappointed that there are things outside of the control of the CAC and Commission that are disrupting what they expected out of the plan. She said that when it happens by right, there is not much they can do -- but she hesitated to handle it by special use because it sends a signal that the County does not care about all the hours people invested in the process of deciding how they wanted their neighborhoods to emerge.

Mr. Bivins stated that he did support the density as set out in the Comprehensive Plan, and he struggled with the idea that affordable housing was becoming the cause celeb to put before the Commission and Board to change their minds. He said that there is no guarantee that those properties will remain accessible to people -- even on year one -- if it is a private developer, because there is no covenant that restricts the price points. He said that he was not feeling that affordable housing was a compelling argument for him to make the change, and he supported the density set forth in the Comprehensive Plan.

Ms. Firehock said that in terms of the comment made that there were no homes available in Albemarle for $300K, she went on Zillow and found 52 homes for sale under that price point -- although they are not located close in, as this development is. She said that the challenge is keeping the homes at the affordable level. She stated that she sees the Comprehensive Plan as her bible in terms of the maps, and she does not always agree with what she sees in the plan -- but she is respectful of what was decided. She emphasized that she would support the density in the plan and respect the map, notwithstanding the merits of this proposed development.

Mr. Keller stated that he supports staff's finding in terms of density, but he applauds Mr. Shimp and likes that developers are coming in with more creative ideas. He said that in their discussion, they did not mention historic resources on the site -- and the question was whether those could be worked into a scheme like this.

Mr. Keller said that in terms of the connector road, in light of Biscuit Run and significant changes in that area, there were questions as to whether that was the proper place and alignment -- and what the ramifications were for bringing that kind of traffic in. He stated that the potential to bring that many more people down to Route 20 and the intersection, as well as Avon Street Extended, was a factor.

Mr. Keller said that in the Commission's role to allow for positive change, the smaller house unit was important and warranted significant discussion. He noted that Ms. Brumfield had been involved with a work session for a prototype in Crozet, and it was time for them to figure out how to respond to these -- but there were ancillary pieces that needed to be worked out.

Committee Reports

Mr. Keller invited committee reports.

Mr. Bivins stated that the Hydraulic Road CAC had met the previous evening and had a presentation on the water around the development area, and his position is that even if they do develop a water bank, his preference would be that any credit derived from activity in the development area, it should stay in the development area. He said that he hoped a solution would be made within that part of the County, and that was under discussion.

Mr. Bivins stated that the CAC was also trying to determine a way not to change the Charlotte Humphris Park but instead help educate the public as to the fact the park is an accessible community space for everyone, not just those who live around it.

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

Review of Board of Supervisors Meeting – December 12, 2018

Mr. Gast-Bray presented a review of the Board of Supervisors meeting of December 12, 2018, stating that the Biscuit Run Master Plan was accepted; the Rio/29 CPA was accepted -- both as the Commission had recommended them.

Mr. Gast-Bray stated that the Commission had been invited to the Homestays roundtable discussion, and Commissioners indicated that they had responded.

Old Business

Mr. Keller invited old business.

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

New Business

Mr. Keller invited new business.

- No regular meeting on Tuesday, December 25, 2018, Tuesday, January 1, 2019 and Tuesday, January 8, 2018.
- January 8, 2018, Homestays roundtable discussion, Room 241.
- The next meeting will be on Tuesday, January 15, 2018 in Auditorium at 6:00 p.m.

There being no further new business, the meeting moved to items for follow-up.

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 8:07 p.m. to January 8, 2018, Homestays roundtable discussion, Room 241.

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Andrew Gast-Bray, Secretary

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

Approved by Planning Commission
Date: 3-5-2019
Initials: SLB