Albemarle County Planning Commission
FINAL December 3, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, December 3, 2019, 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; Daphne Spain; Jennie More; Karen Firehock; Bruce Dotson; and Pam Riley and Luis Carrazana, UVA representative

Members absent: Julian Bivins, Vice-Chair.

Other officials present were David Benish, Planning Director; Carolyn Shaffer, Clerk to Planning Commission; Jodie Filardo; Tim Padalino; Margaret Maliszewski; Khris Taggart; and Andy Herrick.

Call to Order and Establish Quorum

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

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

Mr. Keller asked if there were any matters from the public not listed for public hearing on the agenda that anyone would like to speak to. Hearing none, he moved on to the Consent Agenda.

Consent Agenda

Mr. Keller asked if any Commissioners wished to pull an item from the Consent Agenda. Hearing none, he asked for a motion.

Ms. Firehock moved to approve the consent agenda.

Ms. Spain seconded the motion, which carried unanimously 5:0. (Mr. Bivins was absent from the vote.)

Public Hearing Items

SP201900008 The Miller School of Albemarle

Mr. Tim Padalino, Senior Planner with Community Development, presented the staff report as the Review Coordinator. He acknowledged Principal Planner Margaret Maliszewski and Planner Khris Taggart, who participated in the review as Resource Management specialists for the Planning Division.

Mr. Padalino said he would quickly move through the information about the subject property, provide an overview of the proposal for the Special Use Permit application, and provide a summary of staff analysis and recommendations.

Mr. Padalino said he would begin with information about the property's location and characteristics. He said the Miller School of Albemarle is located in the Rural Area within the Samuel Miller Magisterial District, south of Crozet and north of Batesville. He said it has frontage on Miller School Road, Dick Woods Road, and other public roads. He said it is a very large property, totaling over 1,000 acres.

Mr. Padalino said the property consists of three parcels of record, all on Tax Map 72, including Parcels 32, and two small parcels (32-D and 32-E). He presented a zoning map, explaining it showed that the subject property is zoned RA Rural Areas and would continue to be zoned RA with this proposal.

Mr. Padalino presented a map showing conservation easements in the vicinity. He said the subject property is subject to an existing conservation easement held by the Land Trust of Virginia. He noted this is a partial conservation easement.

Mr. Padalino said the Deed of Dedication of Gift of Conservation Easement specifies a 637-acre easement. He said per the terms of that existing easement, limited development may occur within four designated development envelopes, with an aggregate total of 155 acres within those development envelopes. He said the remaining 482 acres under easement may be used by the school, but are not to be developed and are to serve conservation, agricultural, forestal, and scenic purposes -- all of which is spelled out in the existing conservation easement, which is a private arrangement between the Miller School of Albemarle and the Land Trust of Virginia. He added that the subject property contains approximately 400 additional acres which are not subject to the existing conservation easement.

Mr. Padalino presented a map with a closer look of the entire subject property at a larger scale. He indicated on the map the critical resources on the subject property including the 100-year flood plain associated with the Mechums River, which cuts across the property. He said it also shows the WPO stream buffers along the tributaries to the Mechums River including Miller Branch, as well as critical slopes.

Mr. Padalino presented another map providing a closer look at the historic campus portion of the property. He noted he was providing this map for reference only and that they could return to this map later if there were any questions.

Mr. Padalino said the subject property contains three historic structures that are listed on the National Register of Historic Places, including Caton Hall. He said staff believes that among the other 40 existing structures on the property, there are additional historic structures that are likely eligible for listing on the Register. He noted that the original nomination form, however, only focused on those three listed structures which include Caton Hall, Old Main, and the Headmaster's House.

Mr. Padalino provided an overview of the applicant's proposal. He said the applicant is the Miller School of Albemarle, represented by Mr. Mike Drude (Head of School) as well as Mr. Daniel Hyer (with Line + Grade Civil Engineers). He said it is a Special Use Permit application for a private school use in the Rural Areas RA zoning district. He said this SP would authorize the continuation and extension of the historic private school use, which is currently a non-conforming use.

Mr. Padalino said the SP, if approved, would allow the following being proposed: the renovation and expansion of an existing dormitory (the Haden Hart Dorm); the increase in student enrollment from 195 to 225 students, maximum; and the future construction of additional structures and improvements, as proposed in detail throughout the application materials, a significant element of which is the Concept Plan (provided as Attachment 3 and as Sheet C1.1 of the application packet (Attachment 2)).

Mr. Padalino indicated on the plan to the Haden Hart Dorm, where the proposed addition and renovation would occur. He said the Concept Plan also shows other features, including proposed future new buildings. He said the plan also shows new and reconfigured parking lots and a slightly reconfigured transportation network, as well as new courtyard spaces and other outdoor amenities for the students and faculty.

Mr. Padalino presented an exhibit titled "Sheet C1.0" from the application packet. He said it shows the four development envelopes in relation to the boundaries of the entire subject property (all 1,000+ acres).

Mr. Padalino presented Sheet C1.4, which showed the same four development envelopes in more detail and in relation to the boundaries of the conservation easement (637 acres). He said this exhibit also identifies the locations and square footage of all 43 existing structures on the subject property.

Mr. Padalino said regarding staff's analysis and recommendations, he would provide a summary of factors favorable and unfavorable. He noted a detailed analysis of the proposal was provided in the staff report.

Mr. Padalino said in summary, staff identified three favorable factors, including: (1) the SP would bring an existing non-conforming use into permitted compliance with the zoning ordinance; (2) the concept plan and application would limit future development associated with the private school use to four envelope areas that are situated within an existing conservation easement; and (3) the continuation and limited expansion of the historic private school use is consistent with numerous recommendations in the rural area chapter of the Comprehensive Plan, as described in the staff report on page 7.

Mr. Padalino said regarding unfavorable factors, staff identified two, including the fact that new private school uses in the Rural Area are generally not compatible with the intent of the Rural Area's zoning district, or the Rural Area chapter of the Comprehensive Plan. He noted that this proposal before the Commission, however, was for the continuation and limited expansion of an existing use that has been in continuous operation for over 14 decades.

Mr. Padalino said the second factor unfavorable was that the proposal would generate additional vehicle trips on roads in the Rural Area surrounding the Miller School of Albemarle. He noted that the additional vehicle trips associated with this proposal, however, have been reviewed by the County's Transportation Planner and by VDOT, and there are no significant negative impacts anticipated with the relatively moderate increase from 195 students to 225.

Mr. Padalino said that based upon the findings described in the staff report and factors identified as favorable, staff recommends approval of the SP201900008 with conditions, as detailed in the staff report. He said he could provide an overview of those conditions and go into further detail on any of the six recommended conditions.

Mr. Padalino said the first condition is that development and use of the subject property for the private school Special Use shall be in general accord with the Concept Plan as determined by the Director of Planning and the Zoning Administrator. He explained that to be in general accord, the development and use of the subject property for the private school Special Use shall generally reflect the following major elements: the location of buildings and structures, the locations of parking areas, and the locations of roads and travel ways.

Mr. Padalino said the second condition is that subject to review and approval by the Director of Community Development or his/her designee, one or more additional permanent accessory structures not shown on the Concept Plan are permissible, provided they are determined to not be in conflict with other conditions, and provided that each such accessory structure and associated land disturbance is located entirely within those four development envelopes. He said this recommended condition, however, shall not prohibit or limit development or land disturbance for uses that are permissible by right anywhere on the subject property.

Mr. Padalino said the third condition is that maximum student enrollment is 225, which comes from the application.

Mr. Padalino said the fourth condition is that a minimum of 60% of the total student enrollment in any academic year shall be residential students. He said conversely, a maximum of 40% would be allowed to be commuting students.

Mr. Padalino said the fifth and sixth recommended conditions relate to historic preservation concerns and goals. He said the fifth condition is that the National Register of Historic Places nomination must be updated to address the entire subject property. He said the Virginia Board of Historic Resources and State Review Board approval of the updated nomination must be received prior to the next building permit approval following the Haden Hart addition. He said this was written so as to not prevent the near-future plans that the Miller School has for the addition to the Haden Hart Dorm.

Mr. Padalino said the above condition works in concert with the sixth recommended condition, which is that all additions, alterations, or renovations to existing structures that are listed, or are eligible to be listed, on the National Register, and to the Haden Hart building, shall meet the Secretary of the Interior's standards as determined by the Virginia Department of Historic Resources, or the Director of Planning or his/her designee.

Mr. Padalino concluded his staff report summary and offered to answer questions.

Ms. Spain asked if the Haden Hart Dorm had some potential for historic designation, noting that it sounded as if it did not, if the construction of the addition can go ahead before the designation.

Mr. Padalino replied that the dorm does have significant historic resources or attributes and would be eligible. He said as he worked in concert with other CDD staff, it seemed as if the fifth condition was written so that the condition can move forward without the nomination being updated, so long as the addition is found to be consistent with the Secretary's standards.

Mr. Dotson asked if Mr. Padalino could say a few sentences about the Secretary's standards.

Mr. Padalino deferred to Ms. Maliszewski.

Mr. Keller asked Ms. Maliszewski to also introduce the new staff member.

Ms. Maliszewski introduced Mr. Taggart. She said he will be working with both the ARB and with historic preservation issues.

Mr. Maliszewski said staff referenced the Secretary of the Interior's standards in the recommendation as standard criteria to judge alterations, renovations, and additions to historic resources. She said the County does not have its own historic preservation ordinance, so it does not have its own criteria or guidelines to use in this case. She said for this reason, the Secretary of the Interior's standards would be used.

Mr. Dotson asked if Ms. Maliszewski could give an example or two about the standards and if they were about materials or massing.

Ms. Maliszewski replied that there are different categories of standards, pointing out that she would focus on additions. She said for an addition, one criterion would be for the addition to be compatible with the historic resource but also easily distinguished from it. She explained that this meant they were not trying to replicate or confuse the historic significance or character, but are trying to maintain compatibility with separate character. She said this can be done with form, location (e.g. an addition on the back of a building rather than to the primary façade), compatibility of materials (e.g. continuation of brick).

Mr. Keller asked why they would not write this recommended condition as, "structures and landscapes." He said as they have seen recently with Birdwood, it seemed that in many ways, the campus grounds are more significant than individual buildings.

Ms. Maliszewski agreed that this was a good point. She said that this was why the fifth condition was so important as far as updating the National Register nomination. She said the one in existence was done in the 1970s and that they were not done the same way they currently are. She said the old one did not look at a comprehensive view of the entire property, but if the nomination were to be done now, it would look at the entire property and would determine if the landscape is important. She agreed that changes to the landscape should be considered.

Mr. Keller asked if Ms. Maliszewski would agree that the condition could be amended to say, "structures and landscape."

Ms. Maliszewski replied that this would be reasonable.

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

Mr. Mike Drude (Head of School, Miller School of Albemarle) said the school has existed for 142 years. He said its mission is to provide opportunities for discovery and reflection to engage the minds, hands, and hearts of its students. He said they provide many hands-on opportunities utilizing the 1,000 acres of campus to engage the students and help them learn.

Mr. Drude said they opened their doors that fall with 192 students and that they have a modest plan to grow to 225, which is what they believe to be the ideal size. He said they currently have a ratio of 60% of students who live on campus, noting that these kids come from 17 different countries. He said 40% of the students are from Charlottesville and the surrounding areas. He said the school sees those percentages staying the same, as it is a good mix for the school.

Mr. Drude said the school wants to continue to be a good steward of the property, as they know how valuable and important it is. He said they are very lucky to live and work in such an amazing place. He said the easement that was put forth a couple years prior has protected the land in perpetuity. He said they want to be careful and deliberate with their plans going forward. He said he works in the Old Main building, which is the school's signature building. He remarked that it is a beautiful piece of architecture that the school wishes to preserve for future generations.

Mr. Drude said the school would like to grow to 225, which is their optimal number. He said he was before the Commission because in order to enact the plans for the students, they need to have a Special Use Permit. He said the school apparently predates the requirements for a Special Use Permit by 100 years or so and is ready to move the campus along appropriately to the next level so they can continue to do the great things they do for students both in Charlottesville and from across the world.

Mr. Daniel Hyer (Civil Engineer, Line + Grade) said the project started six months ago, when he met with the school to discuss dormitory expansion. He said they will have to get the Special Use Permit first, which was a surprise that they were non-conforming. He said they would discuss using the property as it has been used for the past 140 years.

Mr. Hyer said that 60% of the land already is in a conservation easement that the Miller School took upon themselves to put in place to help guide their future development, such as the proposed expansion, while at the same time to preserve the ecological, scenic, and historic resources of the campus. He said the entire document is very robust and gives detailed guidance on building size, height, the landscape architecture, and the use of the land in general.

Mr. Hyer reiterated that three of the buildings that are iconic, signature buildings are registered as historic places.

Mr. Hyer presented the Master Plan for the school, noting that his company did not develop it, though it did show up on their title block in the documentation. He said the Master Plan was developed by VMDO Architects and Water Street Studio. He said the campus Master Plan is very responsible and continues to grow and expand on the primary axes (north, south, east, and west). He said it is in concert with how the campus currently exists, and that the future plans continue to honor what the campus is and how it was arranged.

Mr. Hyer said he would talk about the conditions for the SP, as currently presented to the Commission. He said there were six in total, and the first four are largely expected and straight from the applicant's documentation (e.g. number of students, percentages). He said the Master Plan is what they want to guide the future of the campus, so all of this feels very appropriate and is in line with the applicant's understanding and expectations.

Mr. Hyer said they did want to revisit and discuss the understanding of integrating the historic component of the project. He said the applicant turned to the County's Comprehensive Plan to fill in their knowledge basis as they reviewed the comments from staff when they received them last week. He said the applicant is trying to hold in tension Conditions 5 and 6 with some of the language in the Comprehensive Plan.

Mr. Hyer said generally speaking, the applicant is very philosophically aligned with the Commission, staff, and the recommendations of honoring the historic nature of the campus and property. He said the Miller School is very aware that the nature of the historic campus is very much tied to their identity and who they are, and that this was evident in the way they have handled

the land thus far. He said they have, on their own accord, registered buildings with the Historic Registry in the past, acknowledging this was done in the 1970s and things have changed since then, but that it still reflected their values.

Mr. Hyer said going to the extent that they have to have developed the conservation easement on their own accord and put that land in a trust to preserve the ecology, scenic view, and landscape in general shows that they do honor and preserve the land. He said in many ways, the school has gone above and beyond. He said to take the language from Strategy 2-A, "To encourage landowners to pursue voluntary methods of preservation and conservation," this is what the school has done and has adopted this on their own accord. He said that to try to put into regulation what they are already doing feels somewhat paradoxically and perhaps out of place.

Mr. Hyer said the National Historic Registry is a voluntary program and is designed around certain incentives that come to the decision making of the landowners and how they want to use those incentives. He said it is designed to be a voluntary program, and to put it into a regulatory mandate seems to be counter to how the system was designed to begin with. He noted it is very costly and time consuming, and that there are many things that are tied to this that the Miller School has to account for in everything that they do going forward.

Mr. Hyer said they would like to talk and collectively think through what is appropriate for the Miller School, and for this Special Use Permit in particular. He said they currently feel like the nature of Conditions 5 and 6 are out of scale with what they are trying to accomplish.

Mr. Keller asked if there were members of the public who cared to speak on the matter.

Mr. Neil Williamson (Free Enterprise Forum) said that the FEF does not take positions on specific projects, but was attune to the concerns with the Conditions 5 and 6. He said he hoped that the County Attorney would speak to the legal nexus of the enforcing language ("must be updated") in the condition. He said the group there had much more knowledge than he does on historic resources, but that he knows what the Comprehensive Plan says because he helped write it. He said they worked very hard on that language and that "voluntary" was a big part of it.

Mr. Williamson said he has concerns when a voluntary program is mandated in order to get a Special Permit for something that already exists and is an expansion. He said this issue is precedent setting. He said every issue the Commission looks at is new, different, and has unique characteristics. He said the Comprehensive Plan is clear that historic preservation is voluntary. He asked the Commission to follow the Comprehensive Plan.

Mr. Keller invited the applicant to come forward again for questions from the Commission.

Ms. Firehock said she understood the applicant's heartburn over Conditions 5 and 6. She asked the applicant if they were requesting striking them entirely, or parts of them. She said, for instance, Condition 5 must be updated to address the entire subject property. She asked if they didn't like the entire condition, or the part that talks about "entire."

Mr. Hyer said this was a good question. He asked Mr. Padalino if he had the email he'd sent him about what would be good common-ground language. He said the applicant wants to work with the County and changed the language to be more of a recommendation instead of a "shall" mandate. He said another place of common ground or conciliation could be that instead of "entire subject property," there are certain additional buildings or landscape features that do become registered. He said the language he developed felt fair.

Ms. Firehock said she assumed the part of Condition 6 that states, "eligible to be listed" would be the other part of the language that the applicant would have heartburn with. She said she thinks it would be obvious that those structures that were currently listed would be remodeled in ways such that they are compliant with the Secretary of the Interior's rules and guidance. She said that on the other hand, perhaps the entire condition is superfluous if they already would be complying with things for already listed buildings.

Mr. Hyer said he would have Bob Pinneo come up to lean into this more, as his understanding was somewhat limited from the architectural perspective.

Mr. Pinneo (Design Develop Architects) noted that he was not a tax credit guru, but that he had reached out to many of his colleagues about this. He said he learned that there is a "carrot and stick" incentive program, and one is incentivized to follow the guidelines. He said if the guidelines are followed, there is a monetary benefit to that, as it is a lot of work to rehab an older buildings to those standards. He said it involves oversight, more architectural fees, and more time, which bears on the owner.

Mr. Pinneo said if someone wants to follow that path, they can get the incentive. He said if someone doesn't want to follow that path, they don't have to -- even with a building that is registered. He said it is all voluntary and is counting on the goodwill of the building owner, as well as on incentivizing the builder owner to do what they believe is the right thing, which is preserving the buildings.

Mr. Pinneo said that philosophically, the applicant and staff were on the same page. He said it is the part of taking a voluntary program and making it more mandated that is a different set of circumstances, and it puts a lot of pressure on the Miller School. He said it was not that they want to tear anything up, but that they need the latitude everyone else has to following their intuition and also have the capacity to anticipate the benefits.

Ms. Firehock asked if before ending the discussion, Mr. Padalino could share the email language with the Commission.

Mr. Hyer read the email exchange he had with Mr. Padalino the week prior. He read, "Here is the position we'd like to see represented, and in short, it would replace Conditions 5 and 6. And it reads, 'The County recommends all additions, alterations, or renovations to the existing structures or grounds be performed in general accordance with the Secretary of Interior standards, as determined by the Virginia Department of Historic Resources.'"

Mr. Keller asked for Counsel's take on those two approaches.

Mr. Andy Herrick (Deputy County Attorney) said that as the Commission was likely aware, conditions on Special Use Permits are designed to address impacts that are created by a certain use. He said it is within the prerogative of the Commission (and ultimately, the Board of Supervisors) to impose conditions on Special Use Permits to address the anticipated impacts. He said in the analysis, staff has laid out how historic resources were an important part of a Comprehensive Plan and what the relationship is between the conditions that staff has drafted and the historic resources that the Comprehensive Plan calls to be protected.

Mr. Herrick said he appreciated the applicant's desire and suggested language about making a recommendation. He said the conditions on a Special Use Permit, however, are mandatory. He said to the extent that the Commission wants to make a requirement, it should be a condition of the Special Use Permit. He said that to the extent the Commission is not making a requirement, it seemed that putting a recommendation as a condition defeats the purpose of the condition and that there is not a reason to include a recommendation as a condition of a Special Use Permit.

Mr. David Benish (Director of Planning) added that it would actually become confusing over time because a condition that is a recommendation is not enforceable.

Mr. Dotson said he was unclear as to whether the school's current enrollment is 185 or 195, but that in any case, the school was not seeking to go very far beyond that (to 225). He said there are a number of potential building footprints, however. He said he understood that if they have more students, they need more dormitory space. He asked what the other buildings would potentially be for.

Mr. Hyer replied that one of the buildings is a multi-purpose facility for athletics. He said there is currently one gymnasium that was built in the 1950s, and that because they have multiple basketball teams, they have no space for the athletic teams to practice during the spring and fall, and during inclement weather.

Mr. Hyer said there is additional space on the plan for additional dorm space. He said currently, there is Old Main (a multi-use facility), as well as classrooms, administrative offices, and the young men who live in the dormitories. He said in the future, it may be prudent to split this off somewhat and have them reside in a more modern dormitory space, adding that the building was built in 1883.

Mr. Dotson reflected that it was in part about keeping up with the times as well as keeping up with the slightly expanded numbers. He said since a great deal is made (both in the staff report and in the applicant's presentation) out of the fact that 60% of the property is under conservation easement, it would be nice to have a letter from the Virginia Land Trust stating that they are aware of the SP application and the conditions. He observed that the applicants were reaching for the letter.

Mr. Herrick said his understanding was that this letter solely addressed the Haden Hart Dormitory, but not the remainder of the development.

[Unknown man, away from the microphone] asked Mr. Dotson if he would like to see a letter for the entire property.

Mr. Dotson replied yes.

Mr. Hyer said this was his mistake -- that when he called to get the letter, he explained they were trying to expand a dorm when asked what it was for. He said he had no doubt, however, after having gone through the conservation easement that the work is in strict accordance with it. He expressed confidence in the Virginia Land Trust being able to provide a letter.

Mr. Dotson said that assuming this goes forward to the Board, it would be useful to have such a letter.

Ms. Riley said she would expand this request to specifically include some sort of explanation as to how that easement prevents or restricts land disturbance in the construction. She acknowledged that they did not have any topographical maps or conservation easement documentation and expressed the need for clarity about there not being critical slopes that are graded or any other kind of disturbance of land in those envelopes.

Mr. Hyer said that interestingly enough, whoever did the building envelopes did a good job, especially with the campus. He noted that all their work focuses within the campus area building envelope and that they haven't provided a Concept Plan for Farm Building Envelope 2, for example, as there was no intention there. He indicated on a map to the campus area building envelope, then presented another map showing how the areas align, pointing out that it was one of the best buildable areas in the topography. He said the critical slopes are mostly not in play. He said there will always likely be some in play but that for the most part, the Master Plan shows that the only critical slopes would be in corner, where there are no planned improvements. He said for the most part, it is very responsibly handled.

Mr. Keller closed the public hearing. He said he was comfortable with staff's approach, if landscape is added to it. He encouraged the applicant, if they didn't have them already, to have two other pieces of work done internally, as it would lay the groundwork for changes in the future. He said this would include a Historic Structures Report that would include all historic structures on the property, as well as a Cultural Landscape Report. He said these are standard first steps when there is a property of this significance and scale.

Mr. Keller said there are some great models for campus landscapes, noting that the Getty Museum puts a great deal of effort into building and landscape conservation and that they have a program that UVA and Washington Lee, for instance, took advantage of to consider campus landscapes. He said the Miller School's campus landscape is a very significant, early one.

Mr. Keller said he was not, in any way, questioning the approach that the applicant was going forward with, nor their commitment to the historic resources. He said he did believe there could be a framework that would come forward from that that would answer some of the questions. He said they were all aware of the tax credits (both state and federal) and how they can be sold for a potential financial incentive that goes with working the historic resources. He said he was sure that there was an interest in both regular and historic preservation staff being aware of those things.

Ms. Firehock asked if Mr. Keller was suggesting that he would like to keep staff Condition 6, but that he wanted to add the words, "and landscape" after "existing structures."

Mr. Keller asked for Conditions 5 and 6 to be presented on the screen again. He said he preferred the condition to read, "All additions, alterations, or renovations to existing structures and landscapes are eligible." He said this has been part of the National Register program since the mid-1980s.

Ms. Firehock said she made this notation during the conversation, noting that she had some sympathy with the notion that the Commission would also be putting those restrictions on structures that are eligible to be listed. She expressed her belief that this was overreach and is a potential disincentive to other landowners.

Mr. Keller disagreed, explaining that "eligible" carries the same power in the legislation as something that is "listed." He said "listed" and "eligible for listing" are actually one in the same when one is involved in this process. He said what staff is suggesting, and what he thought he had heard from the applicant, is that in the future, the National Register nomination will be updated, and once it is updated, those eligible elements then will become listed elements.

Ms. Firehock asked if the applicant plans to apply for all potentially eligible properties to be listed. She said she did not hear them say this.

Ms. More said she didn't think they had said this.

Mr. Keller said it becomes a historic district, at that point. He said the way the campuses are being handled within the National Register (as with the Birdwood site) is that all elements become a part of it. He acknowledged that changes can happen, and there are times when there is opportunity for dealing with that because there are times when something has to go away to allow for a new, equal-to and better element to fit into the landscape for that district.

Ms. More expressed that she perhaps misunderstood this, to Ms. Firehock's point about the applicant not pursuing that route. She said it wasn't a question of whether they would or would not do this, but to have it be a requirement was something that the applicant wasn't comfortable with.

Mr. Keller said he would go back to Counsel's point that it seemed that this was a Special Use Permit and an area where today, one wouldn't be able to place a new school. He said the school has an amazing cultural and historic resource and if the Commission agrees to the opportunity for expansion in this environment, there was nothing the matter with asking the applicant to deal with the historic resources that are on the property.

Ms. Firehock expressed that she wished the applicants had the maps they had at the community meeting, as those maps were clearer in showing that they were staying within the envelope, as well as which areas are conservation easements, and which are not.

Ms. More said she found it interesting that she was in the position of her opinion, as historic preservation is important to her. She said regarding impacts, what she saw was that the intention was to put an addition on a building and increase the student number by a small amount. She said it seemed like this was an impact, but there was the question as to whether this is an overreach. She expressed her feeling that this is an opportunity that staff has identified with the conditions, but that the conditions were an overreach. She said she thought this was the applicant's thought process around putting in the addition and increasing the enrollment, and perhaps one or both of these were the triggers for the SP process.

Ms. More said she was having trouble with the nexus of Conditions 5 and 6 and the impact and that though she saw it as an opportunity, she felt it was a stretch to make it a requirement when it is supposed to be voluntary. She said that in keeping with what the Commission has seen with the conservation easement that is in place, and the registry that is there, she did see it as a benefit to have a more comprehensive look at the nomination, as it was done so long ago. She noted that she didn't think, however, it was her place to tell the applicant to do that. She said it would be interesting to pull in the landscape and include it in the register, but that she didn't feel comfortable putting this in the condition. She expressed that she couldn't believe she was saying this, but that she did feel this way.

Ms. Firehock asked Ms. More if she was referring to Condition 6 only, or both 5 and 6.

Ms. More replied that she was referring to both conditions. She said there could be a way to reword it, but that to Mr. Benish's point, rewording it as a suggestion or recommendation would make it confusing.

Ms. Spain asked if Ms. More was suggesting removing Conditions 5 and 6. She said her own question was about the language in the Comprehensive Plan regarding the term, "voluntary." She asked if this applied only to Special Use Permit requests.

Mr. Benish replied that it is a broader recommendation to pursue voluntary activities and doesn't necessarily foreclose on addressing impacts of development to valued resources (such as historic resources) by pursuing those conditions. He said it stands as an effort to try to encourage voluntary activities across the board.

Ms. More noted the Haden Hart building is currently on the National Register.

Ms. Riley said it would be useful if they could more specifically detail out Ms. Firehock's possible suggestion of a compromise in changing the language of Condition 6 by removing "or eligible to be listed." She said it would be useful to detail the three structures that are currently listed, and if they included the language "or eligible to be listed," the additional buildings that would include. She said looking at the report on page 7, her understanding was that the current three that are listed are Old Main, the Headmaster's House, and Canton Hall. She asked if they would then identify which additional buildings would be included if they kept the language, "or eligible to be listed" in Condition 6.

Ms. Maliszewski asked Ms. Riley if she was asking if staff could list what they think the additional eligible structures would be.

Ms. Riley replied yes.

Ms. Maliszewski said she would hesitate to do this. She suggested doing Condition 5 so that they can do the comprehensive study of the property, which would give them the answer.

Ms. Riley asked that if the language, "or eligible to be listed" were to be removed, then Condition 6 would really only apply to the three currently listed properties.

Ms. Maliszewski replied that the language would only apply to the three currently listed properties if they did not do Condition 5.

Mr. Keller added this was true if they also did not add in "landscapes."

Ms. Maliszewski agreed.

Mr. Benish responded to Ms. More's comment about the nexus of non-conforming use. He said this was a matter of bringing the entire site into compliance with the Special Use Permit and that this was staff's logic in the conditions.

Mr. Keller followed up on this by saying that this was an opportunity, because of the situation, to call a historic resource what a historic resource is. He said the owners of the property can elect to do this, or not, based on how they deal with changes in the future. He said the school has a

track record of showing that they have sensitivity to this resource, and they have shown this to the Commission through the conservation easement and the maintenance of these, and other, eligible structures through time.

Ms. More asked what Mr. Keller meant by saying they could elect to do it, or not to do it. She said the conditions state they have to go through the process, but she understood that once they are through the process, they can choose.

Mr. Keller said this is what he was saying – that the applicant needs to go through the process.

Ms. More pointed out that the process is costly and time-consuming.

Mr. Keller explained that if Albemarle had a County-wide historic resource and district designation like most comparable counties have, this would be a foregone conclusion and policy. He said the Comprehensive Plan says this is an interest, but that the County has not instituted that legislation. He said this application is an opportunity, because of the fact that an entity is coming in for a Special Use Permit, for the Commission to direct them in a matter that would be comparable to the way historic resources are called for in the Comprehensive Plan that are not supported through legislation.

Ms. Firehock stated that, in her opinion, this is a non-conforming use and, therefore, it needs a Special Use Permit. She said it existed before zoning, explaining that Samuel Miller bequeathed this property for a school and that it has been operating as a school (and a good steward of the landscape) for a very long time. She said this is why she had expressed her regret that the applicant didn't bring the better illustrations they had brought to the community meeting because they clearly showed how much buffer there is around the non-conforming "impact" (as it had been called that evening). She said she didn't think that what they were talking about with Conditions 5 and 6 was getting at the impact because when considering the buildings the applicant is putting in, where they are putting them, and how they are designed (noting this was covered in greater detail at the community meeting than it was in the packet), it is a very small impact.

Ms. Firehock agreed that the County does need a historic preservation ordinance, adding that she was happy to go on the record saying this. She said she didn't agree, however, that it was the Commission's purview to legislate a piecemeal solution to that by putting an undue burden on the applicant. She added that it puts a chilling effect on the County's future ability to get a preservation ordinance by going about things this way. She said the Miller School is a good steward of the landscape and that the Commission could recommend, in the language, that they do what they say in Condition 5, but that they should not require it. She said rather, they could make a recommendation that they pursue and look at the entire system of buildings and landscape as a cohesive, historic campus. She said she did not feel comfortable with requiring Conditions 5 and 6 because they were not getting at an impact that was caused by the actual application.

Ms. More said it sounded as if she and Ms. Firehock agreed. She addressed Mr. Padalino's comment, noting that although she agreed with components of it, she agreed with the way Ms. Firehock had articulated the impact. She expressed that although more than anything, she wanted there to be more historic preservation and more robust requirements, these conditions made her feel as if the Commission was taking advantage of the applicant's situation. She pointed out the school's long-standing use and that it existed before there was even the idea of being "non-conforming." She said she didn't think the conditions were the right way to go about it, even though she supported the goals that were outlined and appreciated the perspective as to why.

Ms. Spain concurred with Ms. Firehock and Ms. More. She said the school has proven to be a good steward and that it would continue to try to do this. She said the Commission didn't have the authority to require Conditions 5 and 6 in the same way that they do with other conditions of the application.

Mr. Keller asked if Mr. Padalino could read aloud the proposed alternative from the applicant.

Mr. Padalino said he recalled that it was a recommendation. He asked if it was possible, as a method of the Commission making a recommendation, not to address historic resources as a recommended condition of approval of the permit, but to provide recommended conditions of approval in relation to the Special Use Permit application and then additionally recommended the applicant's suggestion as a separate recommendation to the Board.

Mr. Padalino said the position the applicants would like to see represented would replace both Conditions 5 and 6. He read the position aloud: "The County recommends all additions, alterations, or renovations to existing structures or grounds be performed in general accordance with the Secretary of the Interior's standards, as determined by the Virginia Department of Historic Resources."

Mr. Padalino said he had a question for the Commission and perhaps for Mr. Herrick.

Mr. Keller asked if the Commission could hear Ms. Maliszewski's take on this, or whether Conditions 5 and 6 could be removed and go in another portion.

Ms. Maliszewski replied that since she recommended Conditions 5 and 6, she would recommend that they stay. She said as a recommendation, it was not enforceable. She said the other potential issue she saw with it is that if it is not a tax credit project, the County cannot ensure that DHR will review the proposal and comment on that because they cannot make them do that.

Mr. Keller asked Mr. Padalino what his question was.

Mr. Padalino replied that it had just been reiterated, but to further articulate Mr. Benish's point, he was wondering if instead of recommending a recommendation in the condition of approval, if the Commission could take an action on the proposal on this particular application and also say, "In addition, we recommend that the historic structures and cultural landscape reports be conducted voluntarily." He explained his point was more of a zoning issue than historic preservation, and that it was a matter of mechanics and the enforceability of it.

Mr. Herrick said if the Commission was so inclined to not include Conditions 5 and 6 as required conditions, the cleaner approach would be to not include a recommendation as a condition. He said to Mr. Padalino's question, if the Commission is so inclined to do that, the better approach would be to recommend approval of the Special Use Permit with Conditions 1-4 and to also recommend that the applicant seek the historic protections that were listed, but to make this not part of the Special Use Permit, if that is the consensus of the Commission.

Ms. Riley commented that she was trying to recall when the Commission, in the past, has provided a recommendation when they decided it was not an appropriate condition on the SP.

Mr. Herrick pointed out that this would be a recommendation outside of a condition to the Special Use Permit.

Ms. Firehock suggested they could have a motion with the various staff conditions, and then also include a recommendation to be part of the record.

Mr. Keller said that three of the commissioners were not comfortable with Conditions 5 and 6. He asked if the remaining commissioners could express where they were so they could perhaps move on to the proposed modifications.

Mr. Dotson said he favored the annex recommendation, not as one of the conditions. He asked Mr. Benish if the reason that in the past, when recommendations have been included as a condition, is that it is not clear whether that is a requirement or not.

Mr. Benish replied that a recommendation is not a requirement, but then it sits in the status of a condition of approval. He said the question, then, is how the applicant will satisfy the recommendation because there is no requirement to satisfy it. He said overtime, as a result, it becomes a useless condition, so it is better not to have it.

Mr. Benish said they have done this in the past, and have been advised against it because to have something without substance or standing creates confusion about what the requirements are of that development.

Mr. Dotson said he could see an advantage of making something along those lines a condition of the SP because it will not get lost or be forgotten about six months later. He said the concern about the annex recommendation was that everyone in the room would remember it later, but others may not in the future. He asked Mr. Herrick if there was a way to literally annex this to the conditions of approval so that anyone who pulls the file and conditions of approval would also see the recommendation, which could be a useful conversation starter (while not a requirement).

Mr. Herrick replied that the approved motions of the Commission are reflected in both the action memo and the minutes. He said to the extent that the Commission is looking for some documentation of what its recommendations are, to the extent that they are only recommendations and not conditions, they would be reflected in the Commission's minutes.

Mr. Dotson pointed out that no one would go digging for the minutes.

Ms. Riley said she supported removing Conditions 5 and 6 as conditions for the reasons that have been stated. She said Ms. Firehock had articulated the argument very well. She said she shared the concern that a recommendation is only that, and that it may or may not be followed by the applicant. She expressed that it was appropriate, however, in this case.

Mr. Keller expressed his disappointment with his fellow Commissioners on the matter. He said that rather forcing them through two votes, they should simply make a motion to drop Conditions 5 and 6.

Ms. Firehock said she was prepared to make the motion.

Mr. Dotson said that before they do this, he wanted to express another concern that could result in an added set of language in the SP conditions. He said the Virginia Land Trust holds the easement, and the County building and zoning officials do not enforce it because the easement is a private agreement. He said it is a special kind of private agreement because it has tax benefits, which is a public dimension. He said it is not strictly private and there is a public interest

in good coordination between the easement holder and the County.

Mr. Dotson said that under Condition 2, there is a statement for information. He said, however, that Condition 2 states, "...shall not prohibit or limit development or land disturbances for uses permissible by right anywhere on the subject property." He said this is a clarifying statement and that he believed it to be a useful one. He said it was not a condition that could be satisfied but that it was useful to put it there as a marker.

Mr. Dotson said he wondered, as a reminder to all parties, if they might not put another marker there that would state something similar to the following: "Nothing in this Special Permit shall be less restrictive, or supersede, the conservation easement held by the Virginia Land Trust on portions of this property." He said this would serve as a reminder (similar to the "however" statement) to coordinate between those two groups, but that it would not be a requirement.

Mr. Herrick said he appreciated the thought behind this and that he agreed that the conservation easement is a valuable tool. He said as Mr. Dotson alluded to, it is not enforced or enforceable by the County. He said that the current proviso at the end of Condition 2 relates back to the existing zoning laws -- in other words, with any use that they already have under the zoning ordinance by right, the Special Use Permit will not be any more restrictive than that.

Mr. Herrick said that as to whether the zoning ordinance is more or less restrictive than the conservation easement, the zoning ordinance does not depend on the conservation easement, and the conservation easement also does not depend on the zoning ordinance, as they are two independent sets of restrictions that are enforced by separate bodies. He said he would be reluctant to link them in the conditions of the Special Use Permit.

Mr. Dotson said he believed the County does have a process of notifying easement holders when there is an application filed on the property subject to that easement. He said he supposed that this will achieve the purpose he had in mind, and that it was very important to have coordination. He said the County does not often receive a development proposal on land that is also under an easement and that it was very important to have coordination. He said given Mr. Herrick's comments, he would rely on the existing process that is in place.

Mr. Herrick said Mr. Dotson's concern was well taken and as he had alluded to, there is the process and automated system in place that notifies the easement holders when development applications come in. He said he trusted this was done in this case as well.

Mr. Benish said there is a flag layer that flags this and provides the information to easement holders.

Ms. More said there was a letter in the Commissioners' packet, even though it was specific to one building. She said it was always in the applicant's best interest to ensure they are in conformance with the conservation easement they've held. She said Mr. Dotson's point was a good one.

Mr. Dotson said there were examples where building permits have been issued that are in contravention to a conservation easement.

Ms. Firehock moved to recommend approval of the Special Use Permit SP201900008 with the following conditions: 1, 2, 3, and 4 of the staff report.

Ms. More seconded the motion, which carried by a vote of 5:1, with Mr. Keller dissenting. (Mr.

Bivins was absent.)

Mr. Keller explained he voted "no" because he supports the staff recommendations for Conditions 5 and 6, with the inclusion of landscapes as well as structures.

Mr. Keller noted that the application would be proceeding to the Board of Supervisors, and expressed his appreciation for the property being a valuable part of the County's resources.

Ms. Spain said Condition 2 refers to not being in conflict with Conditions 1, 5, or 6. She said Conditions 5 and 6 now have to come out, and so an edit was needed.

Mr. Padalino said this was a good catch.

Mr. Dotson asked if the Commission had not yet made the additional recommendation.

Mr. Keller replied this was correct.

Ms. Firehock said this was intended to be a clean motion but that they could still say some more.

Mr. Keller asked if they needed a motion for this.

Mr. Dotson said he didn't have the wording and perhaps Mr. Herrick had it.

Mr. Herrick replied that he did not have the wording and that perhaps the suggested language in the email could be adapted to read, "I move that the Planning Commission recommends that…" and follow up with the language in the email.

Ms. Firehock recommended that the Commission recommends that all additions, alterations, or renovations to existing structures or grounds be performed in general accordance with the Secretary of the Interior's standards, as determined by the Virginia Department of Historic Resources.

Ms. More seconded the motion, which carried unanimously (6:0). (Mr. Bivins was absent.)

Committee Reports

There were no committee reports.

Review of November 20 Board of Supervisors Meeting

Mr. Benish said that for the November 20 meeting, there were no public hearing items. He said ZMA201900003 Royal Fern was deferred by the Board and referred back to the Planning Commission for review. He explained that the applicant is proposing modifications to that plan, and this meeting has not been scheduled as yet as those modifications are being reviewed. He said this was the only item on the agenda that the Commission had been involved with previously.

Old Business

There was no old business.

New Business

2020 Planning Commission meeting schedule

Mr. Benish said he included the proposed meeting dates for 2020 in the Commissioners' packets. He said the Commission will take action on those in the new year, with potentially new Commissioners. He said the schedule was simply to serve as an early heads-up and that it was good to know in advance if the Commissioners had any thoughts or issues with the schedule.

Mr. Benish said the schedule discussion would likely be scheduled for the first meeting in January.

Mr. Keller asked Mr. Benish if it would be helpful to look at the dates in advance and give him feedback.

Mr. Benish replied yes.

Mr. Keller pointed out that March 3 is Super Tuesday (the Democratic Primary) and a major event.

Mr. Benish said this could be adjusted.

Ms. Spain said she would check for Rosh Hashana and Hanukkah.

Mr. Benish pointed out that December 8 is a Buddhist holiday (Enlightenment Day). He asked the Commission to please double-check for all holiday dates.

Mr. Benish said next week, he would provide the Commissioners with the committee memberships so that they have this in advance of the January meeting.

Mr. Keller said the first Board of Supervisors meeting is the first January of Wednesday, and the hope was that the changes with new commissioners would be made that day so that there will not be a Planning Commission meeting in the first week of January.

Mr. Benish said there was no Commission meeting scheduled on January 7. He said the first meeting is scheduled for January 14, which is when they would normally address the meeting schedule and committee memberships, pending that there is a full Commission. He said if a Commissioner selection was pending at that time, they may move the date later, which is why it wasn't listed on the tentative schedule in January.

Mr. Herrick echoed that the first Board of Supervisors meeting of the new year is January 8, with the first Planning Commission meeting on January 14. He said any new appointments could hopefully be seated on the Commission in time for the Commission's organizational meeting on January 14.

Mr. Benish said he had asked for the December and January schedules to be sent to the Commissioners. He pointed out that for the January 14 date, the Commissioners wouldn't see the organizational part of it, as he was waiting to make sure that they would have the full appointments and would be included later.

Mr. Benish said that on December 17, there will be a presentation to the Commission of the Broadway Blueprint work to date. He said this had been internally listed as a work session, but technically, it was not. He said this was a presentation and status update, rather than a discussion, to keep the Commission informed. He said he would make this correction.

Adjournment

At 7:22 p.m., the Commission adjourned to December 10, 2019 Albemarle County Planning Commission meeting, 6:00 p.m., Lane Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

David Benish, Interim Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards and transcribed by Golden Transcription Services)

Approved by Planning Commission
Date: 01/14/2020
Initials: CSS