

**Albemarle County Planning Commission**  
**May 21, 2019**

The Albemarle County Planning Commission held a public hearing on Tuesday, May 21, 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, Vice-Chair, Jennie More, Daphne Spain; Bruce Dotson, Pam Riley. Absent was Commissioner Karen Firehock and Luis Carrazana, UVA representative.

Other officials present were Scott Clark, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Interim Director of Planning; Rebecca Ragsdale, Senior Planner; Kevin McCollum, Planner; Andy Reitelbach, Senior Planner; Carolyn Shaffer, 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. He stated there was one change on the agenda: because of an advertising error, ZMA201800013 would be a work session rather than a public hearing. He said there would be an opportunity for the public to speak during the work session.

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.

**Consent Agenda**

There was only one item on the consent agenda – the minutes for the April 9, 2019 meeting. Mr. Dotson moved for approval of the item. Ms. More seconded and the motion passed 6:0.

**Public Hearing Items**

SP201500028 Blue Ridge Swim Club – Day Camp, Boarding Camp

SP201500029 Blue Ridge Swim Club

Mr. Scott Clark said these two items were both special use permits amendments for existing permits. He said that SP201500028 is a request to amend an existing day camp special use permit to change the boundaries to create an adjacent lot. He said that SP201500029 is a request to amend the boundaries for the swimming club. He also that 15-28 has a request to remove an expiration date for the day camp. Mr. Clark said the site had been operated as a swim club for over 100 years. He said it became a non-conforming use with the adoption of a swimming ordinance in Albemarle. He said the Board of Supervisors approved two special use permits for the site which were the day camp permit allowing up to 100 campers with two overnight stays per week. The Board at the time imposed an expiration date of April 6, 2021 to allow for potential concerns about noise and other impacts to adjacent properties. The other

permit, SP201000041, brought the existing swim club into compliance and permitted the club and associated events.

Mr. Clark said the owner and applicant requested in 2015 permission to build a home on the site and that the conceptual plan for the special use permits did not show a dwelling on the site. He said the home could not be built under the existing approval and the change was requested to allow a home on the site. Mr. Clark said the site is north of Ivy Road along Owensville Road, which is west of the site. He displayed photographs of the swimming pool and a slope which would be next to the proposed lot on which the home would be built.

Mr. Clark said in summary, this request would reduce the area that currently applies to the special use permit area and would remove the area from where the camp could operate. He said county staff felt there would be no significant change to the local context of the area. He said the owner had argued that having a dwelling on site would allow for monitoring of the site during the hours when the club and camp was closed to prevent unauthorized access to the site. Mr. Clark said removing of the camp's expiration date was appropriate because there have been no complaints about the camp since the special use permits were approved.

Mr. Clark said this site was listed on the National Register of Historic Places and was noted for its wooded location and setting. He said there was some concern from staff that building up to the slope would impinge on the wooded character of the historic site by having a dwelling visible. He said staff had requested the applicant add screening to maintain the character of the site. He showed a map depicting an existing vegetated area where new trees would be added to increase the screening between the pool area and the new home site.

Mr. Clark said there were three favorable factors which were adding plants to protect the character of the facility, the improved monitoring of the site and removing the expiration date. The unfavorable factor was adding a dwelling unit in the rural area, but Mr. Clark said this portion of the rural area was already heavily developed and this additional unit would not change the development pattern. He said there were revised conditions for both permits. He said one change to the camp permit was to remove the future home site from the jurisdiction of the permit for the camp. He said another change was to remove the expiration date. He said a new condition would be added to require planting and bonding of the landscape trees. Mr. Clark said the change to the swim club permit were the same except there was no expiration date to remove.

Mr. Keller asked Commissioners if they had any questions before the public hearing was opened.

Ms. Spain asked why the permit was titled 2015 and not 2019. She asked if the permit had been in process for four years.

Mr. Clark said it had been in process for several years for a couple of reasons. He said the applicant had had another larger and more complicated special use permit request they were working on and that the Swim Club permit played second fiddle. He also said the applicant had had more work to do on this permit request.

Mr. Keller asked Mr. Clark to explain how a subdivision and the lot size required for rural areas. Mr. Clark said the minimum lot size for a development site in the rural area was two acres. He said this parcel has been in use since before development rights in the rural area were allocated

and that it had several development rights to be used. He said they were only requesting to use one and that they needed to make the lot they were creating a minimum of two acres to create that. He said that would include the area that would be removed from the special use permit. He said that a pipe stem out to the road would remain under the special use permit because it was needed for the entrance to the commercial use.

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

Ms. Kelsey Schein introduced herself as a planner with Shimp Engineering. She said the applicant, Todd Barnett, was in attendance as well and would be available to say a few words. Ms. Schein said there was a significant amount of residential development surrounding the property. She showed a map with features on the site included the site for the home. She said there is a stream buffer which limits the development area. She indicated an alternate location which would require significant alterations to the site in order to accommodate parking.

Ms. Schein said the length of the special use permit was long because there had been outstanding comments that were worked through during several revisions, including the screening of the historic resources. She said there several other possible house sites. She said there had been a concern from VDOT on adequate site distance and that had taken time to work through.

Mr. Todd Barnett said he was asking to cut off a lot in order to build a house for a caretaker to watch the 14-acre property. He said when he bought the property his neighbors had said they did not want any trespassing to visit the pool at night. He also said that over the past 10 years, he has been told by people that they had trespassed at the site. He said the best way to deal with the issue was to build a house and live it or hire someone to be a caretaker. He said he got the idea from Camp Albemarle.

Mr. Barnett said in 2015 he thought he would apply for the property to become part of the National Register for Historic Places because he thought it was the third oldest commercial swimming pool. He said he is a historian by training and did the work himself. He had asked state officials if the registration would tie his hands in any way with future decisions about the property and he had been told no. He said he just wanted recognition for the site and wanted to honor the people who had kept the pool going for many years. He said he had been assured the registration would not come back to haunt him, but when he read in the staff report that it was a historic resource where certain things had to happen, he felt it was unfortunate.

Mr. Barnett said he wanted to get the expiration date on the camp removed because he wants to be able to run a camp there. He said he was not sure where the suggestion of planting white pines came about but he did not think that was a good idea. He said the property was covered with trees already and the area between the pool and the caretaker property has naturally growing, taller canopy trees such as tulip poplars as well as smaller cinnamon bushes and other shrubs that have grown up during that time. He said these provided an excellent summer screen when people are there, but there is no one ever there except in June, July and August.

Mr. Barnett stated that he had planted white pine trees in some areas but they would stick out and not look like they belong, adversely affecting the appearance of the property. He noted that the property gets its historic designation from the period from 1913 to 1965 -- and during that era, there were hardly any trees in the area because the owners at the time wanted to minimize leaves falling in the pool. He asked that the Commission drop the requirement for white pines or

consider a requirement for trees that are already occurring naturally on the property, such as walnut, poplar, cherry, and oak, with cinnamon bushes for the undergrowth.

Mr. Barnett referenced a diagram showing where they intend to put the trees, pointing out the areas where screening were desired and where it did not make sense. He presented a photo of how the site looked in the winter, noting the location of houses that were visible in the winter but were completely shrouded in the summer. He pointed out the location of a pavilion in the woods and said that his intent was to shroud the new building as much as possible. He emphasized that historically there have been no trees in this area of the site.

Public comment was invited.

Mr. Justin Shimp presented photos to the Commission and said that it hadn't crossed his mind that the pool was only seasonal, and the request was to remove the requirement for trees or the part that specifies that they be white pines.

There being no further comment, the matter was placed before the Commission.

Ms. Riley stated that she is curious about the new site and entranceway to the house and whether it is off the existing driveway.

Mr. Shimp confirmed that it is and said there was a path going in toward the house, with the house and drain field placed outside.

Mr. Keller asked how much of the roof could be seen from the area, given the slope.

Mr. Shimp responded that it was more visible in the winter than the summer.

Ms. More asked [inaudible] regarding critical slopes and how disturbance would be necessary because of where the build site is.

Mr. Shimp replied that the area between the pool and house was a critical slope that could not be disturbed, and there was a tree clearing on the front side of the house -- but not between the house site and the pool.

Ms. Ragsdale commented that staff's concerns may have come from when the trees were surveyed, and they look at the vegetation as it is at that time.

Mr. Bivins asked the applicant to reiterate which trees he would consider.

Mr. Barnett responded that the trees that are out there are many giant tulip poplars, some walnuts, cherry trees, dogwood trees, etc.

Mr. Dotson said that Condition #11 doesn't reference a certain tree type but mentions an additional sheet.

Mr. Clark referenced a plan and white pine trees, noting that this was where that reference came from.

Mr. Dotson suggested amending the condition to say “trees common to the site” instead of specifically saying “white pine.”

Mr. Clark said they could say as it is in the applicant’s [inaudible].

Mr. Dotson asked if it would have been possible to keep the boundaries of the SP where they are and add a caretaker house to that, or if it is necessary to subdivide it -- which mean it can be sold and no longer be a caretaker house.

Mr. Clark responded that from the County’s perspective, they could probably approach it that way, but whether it made legal sense for the applicants and their ownership issues was uncertain.

Mr. Dotson stated that he is in favor of approval, and he is not sure his mind would be changed if the applicant needed to sell a lot to keep the property going.

Ms. Spain asked if they could change it in this way so the applicant wouldn’t have to do anything else.

Mr. Clark responded [inaudible].

Mr. Herrick stated that Mr. Barnett had indicated that the wording anticipated now would allow for submission of a revised “Sheet C-3,” and there was nothing in Mr. Clark’s conditions that referenced “white pines” -- as that was on Sheet C-3.

Mr. Clark commented that as long as the applicant didn’t object, that was easy enough for staff to handle.

Ms. More said that she understands that there were no trees around the property at the time it was originally established, but there was something symmetrically pleasing about the pool and the trees on either side -- and she was concerned about how that changes this, as it was hard to envision how the open grass spaces on the side would look if they didn’t have trees.

Ms. Riley stated that they could leave that condition in, as long as naturally occurring trees on the property could be sited.

Mr. Keller asked for clarification as to where the comments were coming from.

Mr. Clark responded that all of the comments on historic resources and screening were provided by Margaret Maliszewski, who he worked with extensively on this.

Mr. Keller asked if that was where the recommendation for white pines came from.

Mr. Clark replied that he did not immediately see that in the comments, and he could not recall whose suggestion that was. He said that Ms. Maliszewski had mentioned tree height of 68 feet because the screening need was for something on top of the slope -- and it seemed like they were considering not requiring screening or requiring screening of a different species. He said that if they were going to consider no screen or different species, he would not recommend a small species like dogwood because it would never get tall enough to do the screening of something further up the slope.

Mr. Keller said that there has been an evolution of this site from the time shown in the pictures representing its early history, with significant development and trees providing screening for that. He stated that he tends to agree with Mr. Dotson's perspective and asked if the 13-acre parcel is the original ownership size and parcel configuration back to that historic time period.

Mr. Barnett responded that originally it was about 500 acres from 1901, and most recently there was a trade between Virginia Land Company and the pool so they could build two houses.

[Mr. Barnett is still speaking at this point, but the sound is inaudible.]

Mr. Keller stated that the parcel had become smaller and smaller, so the question is the remaining character as an historic resource in the context of changing land use patterns and how the trees have grown up -- and an argument has been made that the existing, now mature canopy of the tulip poplar trees is providing a filtered separation. He said that he didn't think there was an argument for putting in conifers, especially since they would be gone in 30 years. He stated that as Ms. More had stated, he wasn't sure why this should be changed from an open space.

Mr. Dotson **moved** to recommend approval of SP 2015-0028 with the conditions provided in the staff report and that a revised Sheet C-3 be submitted before the Board of Supervisors action to specify trees of similar species to those already existing on the site. Ms. More **seconded** the motion, which passed unanimously (7:0).

Mr. Dotson **moved** to recommend approval of SP 2015-0029 with the conditions provided in the staff report and that a revised Sheet C-3 be submitted before the Board of Supervisors action to specify trees of similar species to those already existing on the site. Ms. More **seconded** the motion, which passed unanimously (7:0).

### **ZMA201800019 325 Proffit Road**

Mr. Andy Reitelbach stated that he is the lead reviewer on this ZMA, which is a rezoning for a parcel on Proffit Road, approximately 1,000 feet east of the intersection of Proffit Road and Route 29, on the south side of Proffit Road. He said that it is 3.19 acres in size and has one single-family detached house. He said the current zoning is R-1 residential, which allows for one dwelling unit per acre, and it is in the Airport Overlay District. He said with current zoning, the by-right use would be a maximum of three dwelling units. He stated that the applicant is proposing to rezone this property to R-15 residential, which would allow a maximum of 47 dwelling units -- but the applicant has proffered a concept plan that includes a road network and written proffer station, the draft of which was provided in the staff report.

Mr. Reitelbach said that in the concept plan, they are requesting a maximum of only 40 dwelling units. He presented a view of the site from Proffit Road looking to the south/southwest, and he referenced the current zoning map of the area, stating that the subject property is surrounded by other properties zoned R-1 -- including the Maple Grove Christian Church to the east and south, Lighthouse Preschool and Worship Center on the two parcels to the west, and a vacant, mostly wooded property with one vacant house and was recently approve for rezoning to R-15 by the Board of Supervisors. He noted that the land is designated Urban Land Use in the Places 29 Master Plan, which recommends primarily residential units at a density of 6-34 units per acre, and the rezoning of R-15 with a density proposed at 12.5 acres would fit within that.

Mr. Reitelbach stated that the applicant has proffered a concept plan with the rezoning, and he referenced a plan showing the proposed road network and proposed right-of-way dedication for the area. He said that the property is only three acres, so the layout is simple and allows for future parcel connections to the east and west were the property to redevelop in the future. He stated that there was also a fire/rescue lane as required by ACFR for any development over 30 units. He referenced a site layout map that showed where the propose dwelling units are shown, including frontage along Proffit Road, private street networks, and a recreational area proposed for a minimum of 4,000 square feet -- located in the east central portion of the property and a small area of open space in the northwest side near the fire access lane.

Mr. Reitelbach said that the applicant is also requesting two exceptions to the street standards, including a sidewalk exception and a planting strip exception. He said that the sidewalk exception was recommended by staff because the dwelling units would front along Proffit Road, with Private Road B acting more as an alleyway than a street. He stated that with the area of the sidewalk and planting strip exception in the southeast corner of the property, it would be to the rear of the dwelling units proposed to front on the recreational area -- with the area along Private Road C being the location for the driveways and access.

Mr. Reitelbach noted that the applicant had provided a draft proffer statement with proffers of the concept plan, which includes dedication of public right-of-way on Proffit Road, right-of-way improvements including one travel lane of 11 feet, curb and gutter, a planting strip, and a multi-use path of 14 feet along the width of the property. He said the applicant was also proposing relegated parking along Proffit Road with access from the internal street network only. He said the applicant was also offering a maximum of 40 dwelling units, interconnected streets, and transportation networks within an access easement for inter-parcel connectivity, as shown in the concept plan.

Mr. Reitelbach said that staff recommends approval of the application, noting that it is consistent with the Places 29 Master Plan and with 11 of 12 Neighborhood Model principles. He stated that staff also recommends approval of the sidewalk exception request and planting strip exception request in accordance with Attachment H, the exception request exhibit as he presented earlier.

Ms. More asked for clarification of where the parking was proposed to be located.

Mr. Reitelbach responded that depending on the type of units, such as townhouse units, the driveways would be located in the areas as noted in Attachment H. He said that the applicant had requested an exception for requiring the sidewalk and planting strip, as that would be more of the vehicular access for the dwelling units with the pedestrian access along a multi-use path on Proffit Road and the sidewalk along the recreational area. He confirmed that the parking and driveways would be along Alley A for the residential units shown on the west side of the property.

Ms. Riley asked what would happen if a parcel on either side ended up with a public road.

Mr. Reitelbach responded that there cannot be a private road in between two public roads, per VDOT standards, and the applicant has proffered an access easement upon demand of the County -- at which time, if those properties were to redevelop, the County and the applicant would work out the exact requirements of the access easement.

The Chair opened the public hearing.

Mr. Justin Shimp stated that he was representing the applicant, and he provided a presentation on the proposed ZMA. He said that the Comp Plan designation of Urban Density Residential for this site allowed for a range of 40-109 units, and there was a layering of density ranges. Mr. Shimp provided a layout map showing the buildings and the common space, and the plan has the buildings facing Proffit Road, with the project across the street having the requirement that the buildings also face Proffit Road and be rear loaded. He said that what is driving the requested sidewalk waivers is that street frontage. He noted the location of the 10-foot shared use path across the front and the pedestrian orientation to nearby sidewalks. He noted that vehicular access has cars coming into a small T and said that staff's only unfavorable factor is the street section for Proffit Road, and the dimensions on the Comp Plan do not address the [inaudible].

Ms. Spain asked what the basis of "may" was relating to housing types.

Mr. Shimp responded that they would likely be townhomes or multi-family homes, but they did not know for sure and would probably have both types. He stated that this was a fairly small parcel, so they planned to use a mix of housing types in keeping with other properties in the area.

The Chair invited public comment.

Mr. Joe Page of Key West Drive stated that he was present with another member of Maple Grove Christian Church, and the only concerns raised were setback distance for the new construction along their border, as well as where the storm water is going because it wasn't apparent where it went and what it tied into. He mentioned that water already collected in some of the spaces in the lower part of the church property.

Mr. Shimp mentioned that there would be a series of underground retention basins, particularly under the recreation areas and under the private street. He mentioned the state and County requirements for reduction and mitigation, noting that storm water did cross onto the church property.

Mr. Dotson asked if there would be trees even if there would be no sidewalk and planter strip per the waiver request.

Mr. Shimp responded that there would be trees around the driveways but would not be one continuous strip.

Mr. Dotson said that different wording was used in the staff report, with references sometime to a dedication along Proffit Road and references sometime to improvement and provision of the curb and other amenities needed for that area.

Mr. Shimp explained that the frontage on Proffit Road was both a dedication and construction, and they would be obliged to provide an easement in the center if required.

Ms. Spain asked why they were referencing proffers at this point, and whether it was because of the timing of the request.

Mr. Herrick explained that this application was submitted under the 2016 proffer law, so the

county could not suggest, request, or require offsite proffers unless they are specifically attributable to onsite impacts. He stated that the suggested motion differs slightly from what's in the staff report, and the staff's comments in the report are not suggestions, requests, or requirements -- and the Commission cannot make those for an offsite proffer. He said that if this application was still pending as of July 1, 2019, the applicant could elect to proceed under the 2019 proffer law, so that was an additional variable.

Mr. Keller asked if the applicant would have to pay additional fees if they proceeded under the new law.

Mr. Herrick responded that they would not, and it would depend on whether the application was still pending on July 1, 2019 -- with the applicant able to request either law if their proposal straddled the two time periods.

Mr. Dotson asked why there was no discussion of affordable housing in this application, while there was on the next agenda item.

Mr. Herrick responded that the same proffer law would apply to both applications, as they were both submitted between July 1, 2016 and July 1, 2019.

There being no further public comment, the Chair closed the public hearing and the matter was brought before the Commission.

Mr. Reitelbach clarified that the Commission would either approve or deny the two exceptions requested by the applicant, and those would not go to the Board of Supervisors.

Mr. Keller asked if the long-range transportation plan had taken into account the impact of the first half-mile or so of Proffit Road, as it was becoming a more urbanized area.

Mr. Reitelbach responded that there was no plan for upgrading Proffit Road and no CIP funding allocated for it, so the County was relying on developers to potentially include the sidewalk or multi-use paths in their developments as suggested in the Comp Plan.

Mr. Benish stated that there was a firm design cross-section for Proffit Road that was developed in the 2010-2012 timeframe, with a traffic circle and the road transitioning to a three-lane section at Pritchett Lane and then a two-lane section, as well as a pedestrian multi-use path proposed for either side. He mentioned that there was a design concept and some traffic studies done, but this area could benefit from a more comprehensive design.

Ms. Spain **moved** to approve ZMA201800019 as recommended by staff in their presentation. Mr. Bivins **seconded** the motion, which passed unanimously (7:0).

Ms. Spain **moved** to approve the special exception request for sidewalks as proposed with ZMA201800019 with conditions as recommended by staff in their presentation. Ms. More **seconded** the motion, which passed unanimously (7:0).

Ms. Spain **moved** to approve the special exception request for a planting strip as proposed with ZMA201800019 with conditions as recommended by staff in their presentation. Ms. More **seconded** the motion, which passed unanimously (7:0).

### **ZMA201800013 Work Session -- Rio Road W**

Ms. Falkenstein reported that this would be a work session and not a public hearing because of an error in the legal advertisement. She explained that there were several unresolved issues between the applicant and staff on this, and the applicant felt it would be good to get feedback from the Planning Commission prior to the public hearing. She asked for a motion to defer the public hearing until June 18th.

Mr. Bivins **moved** to defer ZMA201800013 until June 18, 2019. Mr. Dotson **seconded** the motion, which passed unanimously (7:0).

Ms. Falkenstein stated that the work session would solicit feedback to the question of whether there should be a commitment to the timing of Block 1 residential building in relation to the construction of Block 2 building, and a question of whether affordable housing should be tied to this development. She said that the project is located on Rio Road and is comprised of four parcels totaling about 3.32 acres, and she presented a map showing the location of the property, which is currently zoned C-1 with the Comp Plan having it within the Rio 29 Small Area Plan.

Ms. Falkenstein stated that the frontage of the property is in the core area of the plan, with the back in the flex area. She stated that the proposal is to rezone the property from C-1 to NMD, and the applicant has divided the property into three blocks -- Block 1 as Active Urban, which would allow up to 112 multi-family uses and commercial, retail, and office development, with up to 290,00 square feet of development. Block 2 would allow up to 310,000 square feet of development and uses of Office R&D Flex, Light Industrial, general commercial, or multi-family; Block 3 is neighborhood green space and was primarily undeveloped open space, with the applicant proposing a shared use path and landscaping, maintaining the building space.

Ms. Falkenstein presented a map showing the scale of the development, with Block 1 allowing 3-6 stories in height with a step back of 4 stories -- and the building would be built up to the edge of the right of way, with the applicant proposing some streetscape improvements recommended by the Rio/29 plan, including 8-foot sidewalks, street trees. She said that when the county was ready to do final streetscape improvements to Rio Road, there would be striping to allow a bicycle lane on Rio Road, for which the applicant was willing to dedicate some right of way.

Ms. Falkenstein said there were additional form standards within Block 1 to create the streetscape, including ground story to be constructed to allow for retail and commercial uses -- although the applicant did not feel the market was there now but wanted to accommodate that in the future. She noted that there would also be pedestrian entrances and first-floor transparency requirements.

Ms. Falkenstein stated that the applicant is proposing surface parking in between Block 1 and Block 2 to serve both blocks; Block 2 would allow up to 6 stories and stepback above 4 stories. She said the site sloped from Rio Road quite a bit, and the applicant would build into the slope. She stated that the applicant's intent was to build Block 2 and the surface parking first, and she had asked the applicant to commit to construct Block 1 at some time shortly after completion of Block 2 -- but the applicant was not comfortable with that. She pointed out that staff's concern is that the site could end up with just a storage building in Block 2, which is what the applicant has stated as their intent for that block. She noted that just a storage building with parking did not fit into the small area plan for the area.

Ms. Falkenstein emphasized that staff would like to see a commitment to beginning construction of Block 1 within two years of issuance of a certificate of occupancy for Block 2.

Ms. Falkenstein stated that the second question was whether 15% affordable housing should be provided through the code of development with this proposal, and the applicant is proposing a minimum of 30 and maximum of 112 dwelling units on this site -- all multi-family attached. She noted that NMD calls for at least two housing types, and the applicant is requesting a special exception. She said that generally staff is supporting of just one housing type because of the density in the area, but there is a Comp Plan recommendation that 15% of units be affordable, so the applicant could require 15% affordable units within the code of development.

Ms. Falkenstein said that putting that in the code of development is allowable and is not a proffer, and that is the difference between this application and the previous conventional rezoning application.

Mr. Herrick stated that this was being offered through the code of development, and the proffer law applies only to proffers.

The Chair opened the public hearing.

Mr. Justin Shimp addressed the Commission and stated that the phasing request reflected a \$10-15 million commitment, which was a challenging thing to condition because of market conditions. He said that the logistics were such that the building in the back, they don't want to construct Block 1 first because of construction traffic [inaudible].

The applicant stated that this was an opportunity to have a site that produces a project that others may want to replicate, and in this environment, they were looking at what would be desirable in two or three years. He said that with the previous recession in 2007 and 2008, he had a mixed-use development project that went belly-up, and he ended up losing his home and living in affordable housing.

Mr. Shimp said that even though the affordable housing with this development wasn't a proffer, it felt like one because the approval seems linked if it is conditioned. He stated that he felt it would be a mistake to penalize this developer, who was stepping out first with this development.

The applicant said that a project not far from his office was originally started in 2007 but stopped in 2008 when the recession hit, and it was similar to this one. He said that the project sat for years and the developer took it back and ended up rebuilding it into what it is today, which is desirable.

Mr. Sean Tubbs of the Piedmont Environmental Council stated that a slide presented with this application showed the intersection of Berkmar and Rio as a roundabout, which was in the small area plan as a concept -- and he wondered what the timing of it was, particularly in relation to the streetscape, as it wasn't expected to happen in the near term.

Ms. Falkenstein responded that the roundabout for Berkmar is considered a long-term project in the plan, and the exact timing had not yet been established but was not expected to happen at the same time as the Rio streetscape.

Mr. Keller said that they currently have the bicycle trail with Berkmar beginning at the bridge and going north, and they have a plan for more bike and pedestrian-friendly path only at the Rio Road roundabout -- and he asked if those were timed together or were two separate segments.

Ms. Falkenstein responded that they are listed as two separate projects in the Rio/29 plan, and the County would likely request them separately in the CIP or VDOT funding -- but they could possibly be requested as one project.

Mr. Keller asked if this would be similar to what they saw on Proffit, with a planting strip and sidewalk, or if the sidewalk would be closer to the street.

Ms. Falkenstein replied that they would hope for a planting strip, as VDOT doesn't like trees right next to the street, and the small area plan contemplates a planting strip between the sidewalk and the street. She said that the bike lane on Rio is proposed as an on-street bike lane, although they would like to see if there could be a buffered bike lane -- either paint on the street or some physical barrier between the street and bike lane. She noted that Berkmar Drive has a shared use path, with most of it proposed to be extended almost all the way to Rio Road.

Ms. Falkenstein stated that there is a parcel on Rio where there is not enough space for a shared use path, so it would be a sidewalk -- and the applicant is proposing a shared use path on the back of their property, so staff is exploring a connection with the Berkmar path. She added that the small area plan contemplates the shared use path eventually continuing and hopefully crossing 29 either under or over ground to get cycles across; there would also be the on-street facility on Rio.

Mr. Keller said that he was glad this was being contemplated, as national and international studies show that the division in major traffic areas between cars and bikes was very important. He stated that since they were going to have a major stretch of alternative bicycle lanes, it would be prudent to have a commitment to a divided bicycle path for at least the densest portion of Rio.

Ms. Falkenstein clarified that the applicant is proposing a wide sidewalk for pedestrians, with the bike lane remaining on the street.

Mr. Keller stated that since they are talking about future phases, they should be thinking about a more robust bicycle connection from the south end of Berkmar to the front of this property.

Ms. Falkenstein responded that staff has been contemplating that as well, but the next step in implementation is looking at the Rio Road streetscape. She said that they went back and forth with VDOT about this in the small area plan process, but they could not reach agreement as to getting bikes across 29 at the grade-separated intersection. She noted that they were considering a shared use path on the south side of Rio Road, as there seemed to be more space there, and that would get cyclists off of Rio Road -- but the question that remains is where they would cross at Rio.

Mr. Keller said that this site might provide an opportunity for that, and of Berkmar over to some portion. He stated that they have been in the future planning mode with Places 29 and what the opportunities are, and he would like to hear their best thoughts on taking these from ideas to implementation. He said that the applicant is proposing some things that make this the right time for that discussion.

Ms. Spain commented that she was sympathetic to the applicant's anticipation of a recession in the next several years -- but she had a different viewpoint as to that effect, as this could become the county's version of the Landmark Hotel, which failed in the last recession. She said that her tendency would be to have the building happen within some time limit linked to occupancy, but she also felt there could be some compromise with the starting of construction as long as there was sufficient screening.

Mr. Bivins said that with Block 2, the applicant is suggesting a huge storage space with no housing.

Ms. Falkenstein responded that this was what the applicant shared with her as their plans, but the code of development allows a wide variety of uses -- including multi-family -- but their plans are to build a multi-story indoor storage space.

Mr. Bivins said that the residential part would be in Block 1, for which the applicant indicates has some fragility in terms of the market. He stated that he was struggling with how this decision supported the Rio/29 Small Area Plan -- even though it is an interesting proposal. He said that he was also struggling because this did not really feel like it was in the spirit of the plan, and it was also a major entrance corridor. He emphasized that he was not against the development itself as proposed but was trying to reconcile it with the small area plan. He also expressed concern about the presentation of first-floor residential and potential window fenestration in the context of the area.

Ms. Falkenstein stated that the first-floor transparency could likely be enforced through zoning clearance, which is part of any business opening in the county, and that would trigger the requirements for the development. She said that staff also had the same struggle regarding the applicant potentially only opening Block 2, which would not be in keeping with the small area plan. She emphasized that the applicant's intent is to build out Block 1, and she presented the applicant's renderings of what would be built in Block 1.

Mr. Dotson said that he was curious as to whether the applicant would develop both blocks himself, and he wondered if someone else who had not been part of these conversations execute the plan. He said that his second concern was the pace at which this may go forward, and he had attended the community meeting for this -- with no opposition and some support, but expressed surprise that they were only at this stage at this point.

Mr. Dotson stated that an additional concern was that a multi-story climate-controlled storage facility didn't strike him as a viable urban center, and he wondered if this type of structure could be readapted into something else later or if it would have to be demolished and the site redeveloped. He also mentioned that storage facilities would likely have low parking requirements, and having minimal parking could limit future active use. Mr. Dotson said that he had suggested the applicant speak to his neighbor, with whom he shares a joint access driveway, and he wasn't sure if they had spoken and had an agreement.

The applicant stated that there were no plans for any other developer to be involved in the development. He stated that the building could be readapted or demolished in the future, depending on what happened -- and there was a single story on the main frontage, with the rest of the multi-story downhill behind it. He said that Mr. Shimp would address the

parking requirement, and they were looking at 75 units currently but the architectural plan was not yet developed. He said that they were taking parking that traditionally had been two units or more on average, and looking instead at actual parking use in the County.

Mr. Shimp stated that what is nice about the form for this, which they worked with staff on, is that over time it could change. He said that he hoped in 10-30 years, the storage building would be repurposed and they would not need two parking spaces per residential unit -- and that was the goal here, and the first floor would be 14 feet, the front wall is knocked out with storefront glass and compatible for something like a restaurant. He noted that this project is the first step in making the master plan come to fruition, and it would change over time.

Mr. Shimp said that to his knowledge, the applicant had not had conversations with the adjacent property owner as Mr. Dotson had asked.

Mr. Keller mentioned a cold storage facility in Gainesville and said he could see how something like this could be integrated aesthetically. He asked if they had any intent in the parking area to rent spaces for campers, and whether they would have a right to do that if someone else owned this after that.

Ms. Falkenstein replied that in NMD, that would need to be listed as a use. She said they didn't have any outdoor storage listed in their code.

Mr. Keller asked if it would have to be a special use permit to have that happen.

Ms. Falkenstein stated [inaudible] rezoning.

Ms. Riley said that even if this would be a storage facility now, she had concerns about other uses that are possible -- such as auto commercial sales and service; water, sewer, energy, communication distribution facilities, etc. -- and she was interested in uses that were more vibrant for an urban area. She expressed concern that if they don't put some kind of timeframe on the blocks being developed, a storage unit could sit alone for a long time.

Ms. Riley emphasized that this is a great location across from the library, and it could be part of creating the kind of vision that the Rio/29 Small Area Plan calls for. She said that she is leaning toward the two years as recommended by staff.

Mr. Shimp stated that they are comfortable with the path in the back, and the streetscape improvements would be within that two-year timeframe -- and there would be screening regardless. He said that if something were to happen with the economy, he didn't know how enforceable the two years would be. He said that there were other examples in the County [inaudible], and were trying to be honest about the building.

Ms. Falkenstein mentioned that this was a work session, and the Commission could bring forth any additional concerns to the public hearing in June. She stated that auto commercial sales and service would only be permitted in Block 2 and thus not adjacent to the road, and there was no outward storage of vehicles so the intent is that there could be auto sales but it would be similar to businesses that display their vehicles inside.

Ms. Falkenstein stated that as far as the utilities distribution facilities, those uses are [inaudible], as are group homes and other uses.

Mr. Shimp said that it refers to sewer lines to their building, not a Dominion overhead transmission.

Ms. Falkenstein said that the uses were essentially permitted to make the building use possible.

Mr. Dotson stated that he assumed that Block 2 was visible and would be subject to ARB review, and if Block 1 was developed first, Block 2 might not be reviewed.

Mr. Shimp responded that they both would be.

Ms. Falkenstein confirmed that Block 2 would be visible from Rio Road as you approach from the east and the west, and both would be subject to ARB review. She stated that knowing that the applicant intends to build Block 2 first might yield additional scrutiny from the ARB, and they would also review screening if there were no time limit put on the buildout of Block 1.

The applicant asked what the goal would be of the screening.

Ms. Falkenstein responded that the ordinance requires that parking be screened because of the public right of way and adjacent residential properties, and they would want surface parking to be screened -- and Block 1 would provide that screening, but not until it was constructed.

Mr. Dotson said the main question before them was whether there should be a two-year requirement for construction on Building 1, but he felt that was unenforceable -- and it would probably just be a zoning violation. He said that he would rather rely on design, review, and landscaping that lent quality to the visible portion of the project.

Ms. More said that her question was how that stipulation would unfold and whether staff would come back and say they needed to amend this.

Ms. Falkenstein responded that the applicant would always have the option to come back and amend any of the requirements of the code and proffers.

The applicant [inaudible] constraints to move forward, and he mentioned the last recession and impossibility of getting financing for anything. He said that restrictions could paralyze his ability to move forward with anything.

Mr. Bivins commented that this intersection has the chance to become something different and has the spark to provide a sense of place there. He said that he was struggling with how the benefits of the small area plan can be incorporated into this project, and he didn't see how this project supports or advances all of staff's work and effort. He stated that the county attorneys are saying they cannot enforce the two years, and he did not feel that he could support this as it is.

Mr. Keller noted that this was just a work session, and they were not voting at this time.

Ms. More asked Mr. Bivins if the Block 2 was causing him concern.

Mr. Bivins responded that he got excited about this opportunity because he envisioned people on the streets, restaurants, and bike/ped amenities -- and this did not advance that. He said that

this was just a taller version of the storage place in Block 2, and he was sensing that the developer had the energy and means to go forward with it.

Ms. More stated that she had a positive reaction to Block 1, especially given its proximity to the library, and she appreciated that while Block 2 was not in keeping with the vision now, it could be someday and had the ability to transform into something that was in keeping with it. She said that she liked the idea it was not that now but could be converted in the future and had the ability to transform. She stated that she felt that someone had to go first in the plan that the county has, and she was struggling because Block 1 wasn't being presented first -- so she felt there needed to be some commitment to it in order for her to support Block 2.

Ms. Riley asked how that commitment would be enforceable.

Ms. Falkenstein responded that the county could put them under a zoning violation, and the county could bring them to court and fine them.

Mr. Benish stated that it would be difficult, and usually something like that in zoning that is programmed in phasing has to be incentivized, otherwise it would just be a zoning violation. He said that if it was what the Commission and Board wanted to achieve, the county could work with the applicant and figure out a way to make it [inaudible] enforcement.

Ms. Spain commented that she was surprised that there was a demand for storage units, but the applicant has done the market research. She said what they were seeing was the clash between their vision and market realities, and she didn't understand why Block 2 was the first to be developed, but that was also likely based in market research. She stated that she could support Block 2 as long as there was sufficient screening between it and the road, because if a recession hits and Block 1 is only half constructed, they wouldn't want an eyesore and a reminder of a poor economy.

Ms. Spain stated that she had worked on the Pantops Master Plan over the last year and realizing the clash between what they would like to see and hoped to see in the future and what was actually possible. She said that given investment opportunities, she would support this without a time limit.

Mr. Keller said that essentially summarizes his feelings, and he mentioned Stonefield and how the economy had affected that development. He stated that they did not have bankers who were willing to loan for this type of mixed use right now, but having a developer come in with a block approach got something going and was part of a larger vision for the area -- and it was better than not developing it. He said that he was initially inclined to require a two-year limit as staff recommended, but he was encouraged by the screening and concerned about their ability to enforce the timeframe. Ms. Falkenstein stated that the second question was related to affordable housing.

Mr. Keller said that the question he had asked staff earlier in the day was whether they could be more specific about what is meant by "affordable housing" and whether it would be into perpetuity or if it would have a time limit.

Ms. Falkenstein agreed that staff could do that.

Mr. Dotson commented that they could also be rentals.

Mr. Keller stated that there were other variants with land trusts and land banks, and affordability as presented by the development community is not really specific. He said that he hoped in the future, they could provide that and would be better off for doing so.

Ms. Spain said that the question is how they define between a proffer and the code of development, and Mr. Shimp has been present for all three presentations and is involved in all of them -- and she feels like he is getting mixed signals from the county. She stated that it seems that the code of development is the only way the county can increase the affordable housing stock, and she is conflicted about the message across the board about these developments.

Ms. Riley stated that she supports staff's recommendation for 15% affordable housing per the code of development, and she supports the special exception as a reasonable tradeoff. She said that she agrees with Mr. Keller about being more specific in terms of who would be served and for what period of time. She stated that she is looking forward to the policy being revised later this year, particularly a more extended term of requiring these properties, including rentals. She stated that they can't keep coming up with new subsidies every 5-10 years, and they want to keep them in developments that support growth management policies, such as transit-oriented development.

Mr. Bivins stated he supports and he encouraged collaboration in creating places where people in a different strata could live.

Ms. More said she agreed with Ms. Riley and the way she expressed it, and she stated that she supported staff's recommendation.

Mr. Dotson stated that he supported staff's recommendation for affordable housing, and there were work opportunities in this area. He said that he would like to see those workers as walkers, not parkers.

Mr. Keller commented that it would be helpful to have a "shopping list" to consider in these reviews, because they really didn't touch on some of the other things that were priorities for staff and Commissioners -- such as parks and greenspaces. He said that because of the state legislation, there were constraints in terms of proffers and impact fees. He stated that staff was essentially using a shopping list, and it would be helpful for the Commission to have that in front of them. He said that these two issues they discussed were the ones that rose to the top in this particular application, but it would be good for them to see the other five or six items that staff has considered.

Ms. Falkenstein said that this presentation focused on those two issues that had not yet been worked out with this application -- but there were many positive aspects that hadn't been discussed, and they would come forward in the public hearing.

Mr. Benish stated that they would want to be consistent in standards, although not every topic would be applicable to every application.

Mr. Keller agreed, noting that it would be helpful for future Commissions to have more standardization -- which had come quite far in the few years he had been a Commissioner. He added that it was helpful to have a work session on this, and he looked forward to having the

applicant back for a public hearing.

### **Committee Reports**

**Ms. Riley:** She reported that the 5th & Avon CAC held their first session on the Avon Street corridor site, and it was well-attended with about 30+ residents. She said there were some who questioned the roundabout, but there was a lot of support in general.

**Mr. Bivins:** He stated that the MPO Tech Committee has moved forward the Long Range Transportation Plan. He said that the secretary of transportation had begun a statewide planning process through 2045, beyond what they had been doing through 2021. He said that the Places 29 Hydraulic CAC had met the previous night, and there was a plan to put a small office building at the intersection of Hydraulic and Georgetown Road. He stated that they also had a presentation about a new mixed development going into Stonefield and learned that there would be a 160-unit apartment building there with commercial on the first floor and residences on the upper floors. He said that at one point that was going to be townhomes, but given the market they were going with a different approach.

**Mr. Dotson:** He reported that the Board of Supervisors and School Board had held a joint meeting on May 9 with members of the CIP Oversight Committee invited to participate, and staff had given a slide presentation on the process envisioned for the CIP moving forward -- but he did not see the Planning Commission on there, so he started asking some questions about that and was told that the focus of the meeting was on the relationship between the two boards. He said that this was also an indication about the role the Commission could play and their need to understand the CIP better as they plan. He commented that the planning staff is thinking a lot more about affordability and the CIP, with most items funded being for maintenance and replacement.

Mr. Dotson said that the Board had suggested that the Commission discuss their role and tell the Board what they should be doing with the CIP. He stated that he saw this as an opportunity, and his proposition was that they attempt to answer the question of what their role should be and schedule a work session with an hour or so to discuss this, with questions provided in advance for them to deliberate -- and he envisioned the possibility of them increasing their role in the CIP process.

**Mr. Keller:** Mr. Keller expressed support for Mr. Dotson's idea and said they would work on a timeframe for it.

Mr. Dotson said that the next joint board meeting was September, and he would like to provide something in advance of that meeting, with the Commission discussing this possibly in June.

Mr. Benish commented that the Commission schedule got lighter in June, but he thought some Commissioners might be out in June. He said that staff would work on that and get something in time for the joint September meeting. He noted that when he first came to the county, the CIP was done by the Planning Commission, a process that is enabled by state code.

### **May 15, 2019 Board of Supervisors meeting.**

Mr. Benish reported that the Board had reviewed three items that the Commission had previously reviewed: SP2001800021 Charlottesville Waldorf School, approved as

recommended by the Planning Commission; ZMA2016-00022 Moss/Avinity Drive, approved as recommended by the Planning Commission with the applicant addressing modifications to the condition that would allow the fences to come down and landscaping to be installed; and ZTA201900002 agricultural events, approved as recommended by the Planning Commission.

### **Old Business/Items for Follow-up.**

Ms. Spain stated that in the Commission's agenda, the 3226 Proffit Road item says "Proffers -- yes," and the Rio Road West project also says "Proffers -- yes," but that should have said "no." She said that she did not want to be picky, but it seemed to be a no.

Mr. Benish responded that he recalled in the staff report that their proffers, so the answer was "yes," but they just weren't discussed.

Mr. Herrick confirmed this.

Mr. Benish agreed with Ms. Spain that they needed to be consistent, and it could be confusing in the case of planned developments and by-right developments.

Mr. Keller agreed that this was a good point, and the clarification he had was that because of the nature of the work session, they had to be careful not to start asking for things because it could call up a category they were not really allowed to address under the new state legislation.

Mr. Benish said that staff would look at the AMI information and try to come up with a quick reference guide or bullet point to address that.

Mr. Keller stated that they have asked many times about the units approved by the Board of Supervisors over time, and how many of those were continuing to be affordable housing, how many were moved to market rate, and how many actually have a 5-10 year contingency and how many have been phased out. He said that this was important for the year-end report and perhaps it could be noted for the next one, and Mr. Gast-Bray had said it wasn't complete.

Ms. More said that she was asked to get some kind of firm numbers on this but had not been able to put together all that information.

Mr. Benish responded that he did not know of a quick way to do it, and certain information would be based on execution of proffers and others would be housing information and tracking that over time -- and once the proffer is met, the zoning aspect of this can be done, and then it becomes a housing policy/program issue.

Mr. Keller said that this regional housing study will also yield valuable information, and they are overdue for an introduction from Stacy Pethia in the housing office.

### **New Business.**

There was no new business presented.

**Adjournment.**

At 8:55 p.m., the Commission adjourn to May 14, 2019 Albemarle County Planning Commission meeting, 6:00 p.m., Lane Auditorium, Second Floor, county Office Building, 401 McIntire Road, Charlottesville, Virginia.

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David Benish, Interim Director of Planning

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

Approved by Planning Commission
Date: 06/25/2019
Initials: CSS