

**Albemarle County Planning Commission  
FINAL Minutes May 28, 2019**

The Albemarle County Planning Commission held a public hearing on Tuesday, May 28, 2019, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Vice-Chair; Daphne Spain; Pam Riley, Vice-Chair; Karen Firehock; Bruce Dotson; Jenie More; and Luis Carrazana.

Members absent: none.

Other officials present were Rebecca Ragsdale, Rachel Falkenstein, David Hannah, Cameron Langille, Lea Brumfield, Andy Herrick, David Benish, Carolyn Shaffer.

**Call to Order and Establish Quorum**

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

The meeting moved to the next agenda item.

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

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

**Public Hearing Items**

**ZMA201800005 Proposed Hotel**

Mr. Keller introduced the item and asked for a staff report.

Mr. Benish stated that this proposal includes two properties and is proposed to establish a 109-seat hotel. The properties are established within a planned mixed-development zoning district that was created in 1980 through the comprehensive zoning that was established at that time by the Board of Supervisors, and that established a planned development district on this property. He said that a subsequent ZMA application to establish the approved application plan on a portion of this planned development was approved but did not include these properties, thus the ZMA has been presented in order to approve that application plan that's required with this zoning district.

Mr. Benish indicated on a map the location of the hotel property on State Farm Boulevard in the Pantops development area. He said that the comprehensive plan recommends this area for urban mixed use, and also for park land. He stated that the proposed hotel is consistent with the land use designations, and the applicant is proffering the back two acres of the property for future dedication to the county for park use. He noted that those comments areas it relates to the existing Pantops Master Plan, and it is also consistent with the proposed Pantops Master Plan. He said that the area in the proposed master plan is designated for community mixed use, and hotels are included as a primary use in that comprehensive plan district. He added that the

recommendation for the park area associated with these properties is essentially the same as in the current plan, so it's consistent with both.

Mr. Benish reported that the proposed hotel will include a maximum of 109 units (rooms) and will be a maximum of 65 feet in height, which includes a 15-foot step-back along State Farm Boulevard for the entire frontage of the building. He noted that there are existing sidewalks along State Farm Boulevard, and the proposal includes pedestrian access to the site from the sidewalk in two locations. He noted that as stated previously, there is a proffer for two acres in the back to be dedicated to public use, in reserve for dedication to public use. He pointed out the general location for the two-acre area and said that it is associated with some of the steeper slopes on the property.

Mr. Benish said that during the community meeting, concerns were raised about the height of the hotel and the views from the Blue Ridge Mountains as seen from State Farm Boulevard, as well as from elsewhere in Pantops. He said that in response to the community's discussion, the applicant provided visual renderings to better illustrate the intended size, massing, and appearance of the hotel, and to help demonstrate the anticipated aspects of the viewshed. Mr. Benish indicated on a picture that although it is difficult to see, in the yellow print above the building, there was a balloon flown to show the height at the site at about 70 feet; and the picture shows the rendering to be fairly accurate at 65 feet. He presented another view.

Mr. Benish stated that the factors favorable are that the proposed uses permissible in the existing zoning district, and the proposal does not seek to amend the zoning district or change any of the intensity or density of the proposed site, as permitted by the zoning. He said the proposal has been revised to comply with the general regulations for height, such that special exceptions for step-backs are no longer needed, as the building does meet the height and step-back requirements. He noted that the proposal on the application plan has been revised to conform to the neighborhood model principles to provide for relegated parking, pedestrian orientation, building and space of human scale, interconnected streets, and parks and open space. He added that it's also been revised to respond to written concerns regarding the potential impacts to the Monticello viewshed as provided by the Thomas Jefferson Memorial Foundation.

Mr. Benish said that the proposed use and improvements are limited to a portion of the overall subject property that is consistent with the land use designations in the comp plan, and the open space area is being set aside, as recommended in the plan, and a proffer as been provided for that.

Regarding unfavorable factors, Mr. Benish said that VDOT had noted that the southernmost intersection from the site is relatively close to the State Farm Boulevard/Martha Jefferson intersection. However, there is an interparcel connection being provided, so that when future development to the south is provided, there potentially could be access that better aligns with that intersection. He added that the details of how to deal with this issue can be addressed during the site plan stage. Mr. Benish noted that the location of the site and height of the proposed primary structure could have a negative impact on some long-distance views of the Blue Ridge Mountains, as seen from certain perspectives in this vicinity.

Mr. Benish stated that staff does recommend approval of this zoning request, and offered to answer questions regarding this request.

The public hearing was opened, and the applicant was asked to come forward.

Mr. Kurt Wassenaar addressed the Commission and said he is an architect in Albemarle County and is representing Shamin Hotels, along with colleagues Mr. John Wright, a civil engineer; Mr. Michael Shamin, architect and Vice President for Shamin Hotels; and Ms. Valerie Long, attorney for the Williams Mullen law firm. Mr. Wassenaar noted that the team can address questions that the public may have about any aspects of the proposal, and as staff said, this is a by-right application and the only piece the applicant is seeking approval for is the application plan.

Mr. Wassenaar also thanked Tim Padalino, who was not present at the meeting, and other staff, who has worked extensively with the applicant to amend the proposal, both architecturally and in regards to the planning aspects of the project in order to bring the proposal into favorable consideration. He added that he felt the report was very thorough in terms of the items discussed and worked upon, and he would like to present another architectural rendering.

Mr. Wassenaar stated that doing a hotel project with Hampton is a fairly involved project, and the team is working with the prototype hotel designs that are typically available by hotels, as well as the desires of the applicant. As an architect and resident of Albemarle County, Mr. Wassenaar said he was concerned with making sure that what was proposed would, to the best of the team's ability, fit in with the existing buildings on Pantops and with Martha Jefferson Hospital -- the largest building in the viewshed. He said the team was very careful to incorporate the comments by Monticello and address their concerns about the viewshed. He said they did quite a number of aerial studies to look at the visual impact of the building, and the impact is not substantially different than the impact of Martha Jefferson Hospital in the viewshed area. He said that that and the buffering that was done on the back side of the building, as well as the landscaping added to the project, significantly mitigate many of the visual aspects.

Mr. Wassenaar stated that the other components of architecture that the team addressed were to work with the step-back requirements of the model neighborhood components in order to articulate the building so it doesn't look like a giant slab, and to move the building into materials and colors that are more in keeping with the adjacent Pantops buildings, as well as Martha Jefferson Hospital. He said the team has tried very hard to match and make compatible the materials, massing, and articulation of the building that, from the viewshed standpoint, makes it as inobtrusive as possible and an attractive addition to the State Farm Boulevard area.

Mr. Wassenaar thanked staff for their help in working through interpretive issues relative to the step-back pieces of the plan.

Mr. Wassenaar wanted to point out that this building is not within an ARB district, but as a commitment to being a good neighbor in the community and trying to do the right thing with the project, the team has worked hard to try to conform the project to a thoughtful process relative to the design of the building, even though it is not subject to an ARB-type review process. He mentioned that the team had follow-up discussions with Monticello, and he believed Monticello felt the team had incorporated all the comments they had and there were no objections they had to the design the team submitted for the building.

Mr. Wassenaar stated that the team felt very fortunate that they were able to effectively work with Hampton Inn and push them a bit further in order to get a quality project, and within the realm of the team's ability -- from regulations, business model, and other components of the project, he felt that the project would reflect well on the process and for the community. He

turned the discussion over to Mr. Wright to talk about the site plan components, offered to answer any questions from the Commission about the building or the project in general, and asked for approval of the application.

Mr. John Wright from Bohler Engineering introduced himself as the site civil engineer for the project. Mr. Wright pulled up the site plan for the Commission's review, and stated that the proposal is for a 109-room hotel with two access points on State Farm Boulevard and with inter-parcel connection to the southwest. He said that the goal is when the parcel develops, it would have alignment with the adjacent intersection.

Mr. Wright said the project is providing a landscape buffer along the frontage, landscaping along the southernmost property line and, and although not shown on the site plan would include additional evergreen trees, as that was one of the comments from the foundation to help further buffer the viewshed. Additionally, he said, the team proposed underground detention facilities that would be located at the rear of the site, with step-backs in the retaining wall at a maximum of six feet high. As Mr. Wright indicated on the site plan that there are three to four tiers in that area, and all the design information would be worked out during the final site plan process.

Mr. Wright said all utilities are available on site, including water and sewer. The site is 4.5 acres, with 2 acres proposed to be dedicated for a future park. He concluded and offered to answer questions for the Commission.

Mr. Keller opened the public hearing.

Mr. Bivins invited members of the public to speak regarding the proposal.

Hearing no motions from the public to speak, Mr. Keller invited the project team to speak on additional points, and Mr. Wassenaar offered to answer any questions from the Commission.

Mr. Dotson stated that the rear portion of the site is to be dedicated upon request in the future to the county, and asked if it was represented by the dotted line on the site plan presented on the screen.

Mr. Wassenaar responded that he believed that to be correct, and it is included in the proffer statement, which is part of the application package.

Mr. Dotson asked, from what is stated as being a park or part of a park in the future, what would be the visibility of what looks like three or four tiers of retaining wall, and if he was reading the diagram correctly.

Mr. Wassenaar explained there is a steep slope that runs down the edge of that portion of land, so the project is retaining the slope, and the edge would be buffered by trees along that edge so that the wall would not be visible.

Mr. Dotson stated that he didn't see any trees on the site plan presented on the screen.

Mr. Wright explained that the goal was to use the existing tree line, as seen in the rendering, and the conceptual landscape plan shows landscape plantings along the front edge, the side, and some along the rear. He noted that there is a natural tree buffer that would be pulled back to install the retaining wall, so the existing vegetation would remain. He said that during the site

plan process, they would meet the code requirements for landscaping along the perimeter as well.

Mr. Dotson asked about the portion that would be dedicated to the county and if it would be left in its current condition.

Mr. Wright confirmed that this portion would be left in its natural state, except for what is needed to construct the retaining wall. He said that the dotted line on the site plan represents the roughly two acres that is being proposed as a dedication.

Mr. Dotson said his concern was from the proposed parkland, the view of a several-tier retaining wall, and wanted to be sure there would be screening there.

Mr. Wright indicated on a rendering that one could see the existing vegetation and there is a substantial elevation difference from the site as it drops down into the area. He said that the goal is that by having the retaining wall, the slope is able to be held back, limiting the impact on the natural tree line. He stated that one would not be able to see much from that area and there should be care in where the trees would be planted so that the root system doesn't impact the retaining wall structurally.

Mr. Benish added that the retaining wall height is about 5-6 feet.

Ms. Firehock asked about alleviating concerns from Monticello, and asked Mr. Wassenaar to provide examples of those concerns, and whether they regarded the planting of evergreen tree, or other matters.

Mr. Wassenaar responded that the major issues presented related to vegetative buffering, as when looking at the viewshed, one would want to see mostly trees; the color of the building and to make it a natural color that would blend in with earthtones and complement the greenery of the site, as well as fit in with the appearance of Martha Jefferson Hospital and other Pantops buildings.

Ms. Firehock noted that in the balloon test rendering, the building was red, and in the rendering currently being presented, it's more of a beige or neutral color.

Mr. Wassenaar said the team did a study on the existing buildings on Pantops, as well as Martha Jefferson Hospital, so that the hotel would fit visually with what is seen in the area.

Ms. Spain asked if the two acres dedicated to parkland consists of steep slopes so it would be more vertical than horizontal.

Mr. Wassenaar said a portion of the dedicated land is in the managed steep slope area, so his understanding is that the dedication would be a passive park in that regard, and whatever plans the county has to work in that area would be up to them as they saw fit.

Ms. Riley asked if the parcel behind the proposed project, which has a retention pond, is county owned or privately owned.

Mr. Benish responded that none of that area is county owned and that it's all portions of other parts of the development. He said the pond may be related to the shopping center area up the

hill. Mr. Benish said that is the area that is designated in the existing and proposed master plan for the park area -- and a lot of it is steeper slopes, but there is a bottom landing area that provides for useable passive opportunities. He said that though it was not large, it does take the critical steep slope areas and flattening bottom areas to be used for passive purposes.

Mr. Keller asked for the rough distance from Monticello to the proposed hotel.

Mr. Wassenaar provided a guess of about eight or nine miles.

Mr. Keller also asked for the size of the roof plane.

Mr. Wassenaar responded that the size of the roof plane is 14,000 square feet.

Mr. Keller asked for the proposed color of the roof plane.

Mr. Wassenaar responded that it probably wasn't going to be visible.

Mr. Keller explained that many years ago, his firm had done the viewshed analysis for Monticello -- which has been updated since -- and the colors of materials for this project have been addressed for the sides and ground view, but as buildings have moved toward lighter colored roofs for the cooling aspects of the summer, they have become quite visible. He stated that 14,000 feet of white from Monticello would be highly visible, and he had a concern about that.

Mr. Wassenaar responded that the project could commit to a roof color that would not be reflective in a way that would be distinguishable from Monticello.

Mr. Keller said the hope is for a color that blends into the ground plane from up above.

Mr. Mike Sweeney from Shamin Hotels introduced himself and said that either a ballasted roof or a tan TPO-type roof could be done and stated that the roof would not be white.

Mr. Keller asked if this needed to be included in the discussion at present time, or if staff could add it to the list.

Mr. Benish said it could be addressed and depending on the operation of this zoning, Monticello's review of the site plans is required as an additional step, as it is for the shopping center on the hill as well. Mr. Benish said this could be taken under advisement as it moves to the Board of Supervisors.

Mr. Wright added that they could do an earthtone roof.

Mr. Carrzana asked for the stormwater management solution for the site.

Mr. Wright responded that the proposed stormwater management solution is an underground detention at the rear of the site -- the lowest point of the site -- and the project would meet the water quantity and quality requirements of the state. He noted the schematics on the site plan and indicated the underground facility on the plan, with a pipe that goes through the site that the project would pick up and re-route around, and would collect all the onsite impervious area into

the underground detention system, which would fall into the current point of interest for the site, which is at the rear of the site.

Mr. Carrazana asked if it would then drain towards the back.

Mr. Wright replied that it would, due to the natural terrain of the land where the water goes, and that the project team would analyze the pre- and post-conditions and ensure that runoff through the site would not be increased, and this analysis would be further explored during the site plan review process.

Mr. Carrazana asked if there were any natural live streams there that would take the runoff.

Mr. Wright responded that there is an existing pipe that runs through the site now that collects some of the drainage from State Farm, and there is an existing channel that drains to the rear of the property. He said their goal is to re-route that system and also detain the new flow on the site to pre-development rates.

Mr. Carrazana said it would be interesting to see more detail of the development of exactly how the runoff would work, so that erosion would not be created.

Mr. Wright said that some of the end treatments would be to use a level spreader design so that way, the out fall is not point discharge but is rather a runoff flow that's more gradual to the remainder of the slope. He said that further design details would be provided in the site plan review.

Mr. Carrazana said that right now, there isn't much to see as far as what's happening on the additional two acres, and he wanted to ensure that these are details that would be managed and worked with the county on.

Mr. Benish emphasized that this work is standard practice with the site plan.

Mr. Keller asked if there were further questions, and heard none.

Mr. Benish displayed an aerial rendering in order to show a perspective of the wooded areas and pond. He said that most of the wooded area contains the critical slopes, and the stream valley swale area that drains to the Rivanna is in the middle of the wooded area.

Mr. Keller closed the public hearing and brought the item back for Commission discussion and action.

Ms. Spain said that she has been part of the Pantops CAC that was updating the master plan, and the staff report under "Factors Unfavorable" that states that it would negatively impact and/or block long distance views of the Blue Ridge Mountains, as seen from certain perspectives in this vicinity, is very much an understatement from the standpoint of the CAC members. She emphasized that this was a real flashpoint, and there is concern that not only land but views would be lost, and her thoughts are that many of the residents resent that the Monticello viewshed is more important than the residents' viewshed -- so they are not being given the opportunity to have the type of input that they would like. She said that because no one from the public is present at the meeting, that they have likely accepted that this is a by-right development and there is nothing they can do about it. Ms. Spain noted that this is her

district and she would be making a motion, but she wanted Commissioners to realize that there was quite a bit of objection to this proposal, in any form, by the CAC.

Mr. Bivins asked for clarification of where the additional proposed or anticipated connection to State Farm Boulevard would be located on the property.

Mr. Benish indicated on the aerial view the two entrances -- north and south -- heading toward State Farm. He pointed out that the southernmost entrance is the spacing issue, due to Martha Jefferson Drive, and with future access provided to the adjacent properties as these sites developed, VDOT and staff would reorient those accesses to that intersection. Mr. Benish said that once the area begins to develop more, this property would probably have access to an entrance that would be at that crossing. He said the spacing now is about 139 feet, so there is a weaving issue, but the traffic is relatively low there and should not be a major concern.

Ms. Spain **moved** to adopt the resolution recommending approval of **ZMA201800005, Proposed Hotel**, for the reasons stated in the staff report. Mr. Dotson **seconded** the motion.

Ms. Firehock noted that there was a statement in the report that staff recommends approval providing that a finalized, signed, and notarized proffer statement is submitted. She asked if that was something to be included in the motion or if it was assumed to be taken care of.

Mr. Herrick stated that it was assumed, and the motion is sufficient for the purposes of this meeting at the present time.

Mr. Benish said those are technical issues that the Commission would address.

The motion was adopted by vote of 7:0.

Mr. Keller thanked the applicants and said the application would move forward to the Board of Supervisors.

### **ZMA 20190002 Hollymead Town Center Area A-1 Proffer Amendment**

Mr. Benish reported that this is a proposal to amend the proffer to reduce the cash contributions towards transit operating expenses provided as Proffer 4 for ZMA 2012-00005. He said the cash proffer that was approved amounts to a total of \$500K to be paid over 10 years. He said that the applicant is proposing to reduce that proffer to \$250K paid over 10 years or a \$200K total amount payable in a lump sum within 14 days of the approval of this application.

Mr. Benish stated that the applicant has also provided for an alternative proposal, which would require the submittal of an additional ZMA and modifying the proffers associated with ZMA 2016-0001 Hollymead Town Center Section A-2, which proposes to pay the full amount of the transit proffer associated with the ZMA 2012-0005 proffers, but deletes the cash proffers with the ZMA 2016-0001 rezoning and amends the code of development for A-2 to reduce the total number of units from 1,222 to 800.

Mr. Benish showed the location of the property, which is on the corner of Town Center Drive and Route 29 and is bounded on the west by Berkmar Drive. He said that regarding the proposal and the reference to areas A-1 and A-2, the original rezoning for this portion of the Hollymead Town Center was done as one zoning: Hollymead Town Center Area A, and was

subsequently divided into A-1 and A-2, and that's why they are somewhat associated with one another.

Mr. Benish stated that the rezoning was originally approved in 2005 and was approved for both A-1 and A-2, and in 2010, the applicant made a rezoning request to request relief from obligations of proffers for completing Meeting Street, to allow for a Kohl's certificate of occupancy. He said there was also a request to place a sunset on the public transit proffer for two years after that date. He stated that at that meeting, the request to reduce the transit proffer was brought up and discussed by that Planning Commission at that time -- and the Commission recommended a reduction to \$250K a year, at \$25K per year.

Mr. Benish said they set a more extensive sunset clause in July 2018, and the Planning Commission recommended change to the proffer but it was not fully reviewed by the Board of Supervisors. He stated that the request was deleted from the applicant's proposal at the request of the Board, so that the remaining aspects of the proposed proffers at that time could be reviewed at the public hearing and acted upon. He noted that the next most relevant history is with the JAUNT service, as the 29 Express began operation in May 2016, and the applicants were requested to provide for the cash proffers at that time.

Mr. Benish reported that the applicant's justification for the amendment request is that there is insufficient nexus and rough proportionality between the proffer as written, in any reasonably expected condition or impact caused by the project. He stated that the JAUNT commuter service does not address any impacts caused by the subject development, and significant improvements have been made in the area, which reduce transportation concerns. He said that staff has addressed those reasons and believes that the transit proffer addresses transportation traffic and impacts generated by A-1 and A-2, rezonings that amount to more than 730K square feet of commercial use and 1,222 dwelling units. He noted that the A-1 area specifically would generate approximately 9,400 vehicle trips through the area over a 24-hour period, and the transit service would provide another modal option and a potential means to mitigate traffic impacts created by these rezonings.

Mr. Benish said that staff opinion is that the JAUNT service does provide transit alternatives to vehicular travel to the area that provide and make capacity available on the roads for transportation generated by these uses. He stated that the improvements in the area were improvements identified as needed at the time of the rezonings to address the impacts of those rezonings.

Mr. Benish stated that regarding the alternative proposal, which essentially is a request to modify the cash proffers related to residential development, those requests for reductions for previously accepted cash proffers for residential development area not consistent with the Board's policy regarding changes to those cash proffers. He noted that the Board has not agreed to make those changes, and the reduction in density from 1,200 to 800 units as a general rule is not encouraged in the development areas, so there isn't a significant benefit to the county to provide for that. He said that eliminating the cash proffers for the remaining units in A-2 would result in an approximate loss of \$2.5-\$5, depending on the number of units the density proposed.

Mr. Benish said that staff found no factors favorable to this request, and the unfavorable factors are that the applicant/owner agreed and signed the proffer forms, agreeing that the conditions were voluntarily proffered as part of the request to rezone, and acknowledged that the

conditions were reasonable. He stated that there is sufficient nexus and rough proportionality between the proffers as written, and the reasonably expected conditions are impacts caused by the development. He said that the alternative proposal is not consistent with the county's police for requesting changes in the cash proffers, and it would also require submittal of a revised application -- and without further paperwork and processing, the application couldn't be approved at this time.

Mr. Benish stated that staff recommends denial of the request, and he had discussed with the applicant the possibility of deferring this item, and the applicant had wanted to discuss possible other options to better address the county needs and considerations for this amendment. He said that in the end, staff agreed it might be best to hold this conversation and discussion with the Planning Commission to hear their input, as other ideas might arise from that discussion.

Ms. Spain said the staff report indicates the JAUNT service began in 2016, and no payments have been received in the last three years and a zoning violation has been issued. She asked what sort of weight a zoning violation carried.

Mr. Herrick asked what she was referring to specifically in terms of weight carried.

Ms. Spain responded that she was referring to penalties to the owner, who was not meeting the proffers.

Mr. Herrick explained that any failure to comply to the existing proffer is grounds for a zoning violation, and the zoning administrator has cited the owner for failure to make the payments under the existing proffers. He said that finding of violation was appealed to the Board of Supervisors, who upheld the decision of the zoning administrator -- and that has been appealed to circuit court, where the case is currently pending.

Ms. Spain asked if there was a point where a violation imposed a financial penalty.

Mr. Herrick responded that every violation of the ordinance had a \$200 penalty for the first violation, with subsequent violations subject to a \$500 penalty.

Mr. Dotson asked if each day was considered a violation.

Mr. Herrick responded that every 10 days was considered a violation.

The Chair opened the public hearing.

Mr. Pete Karamanis addressed the Board on behalf of the applicant and said he wanted to clarify a few things in the staff report. He stated that Mr. Benish had mentioned that the Planning Commission in 2011 made a recommendation to the Board for the \$25,000 for 10 years, which is what the applicant is proposing tonight. He said that the staff report makes it sound like the Board didn't support that, but at the Board meeting the following night -- January 12, 2011 -- they never really reached that issue.

Mr. Karamanis stated that it was clear that some Board members favored it and some didn't, but what was determined was because this proposal arose at the Planning Commission meeting and was not noticed publicly, the Board did not have the authority to grant it. He said that this left the applicant with a dilemma of either not getting the other amendments that were on the

table that night or just removing this and revisiting it in the future. He stated that it wouldn't be accurate to characterize it as the Board just dismissing what the Commission had said, as there was conversation and it's uncertain what the Board would have done that evening.

Mr. Karamanis stated that in the discussion section of the report, it talks about the JAUNT service, and one of the justifications for keeping things the way things are is that the Board of Supervisors approved this service with the understanding that the proffered funds would be available to help fund the service. He said that it's very relevant to point out that during that conversation, prior to any vote being taken by the Board, the applicant came forward in multiple meetings and expressed the applicant's belief that the proffer was not properly triggered by this JAUNT route and this was not a proper application of the proffer. He stated that the Board proceeded anyway, but to use that as justification for not hearing this matter is inappropriate.

Mr. Karamanis said that he also wanted to clarify that the applicant was not there to oppose public transit or weigh in on its use, and his point is what the developer should pay for and whether or not the transit service addresses an impact that this development created. He stated that the staff report says there is sufficient nexus and rough proportionality between this proffer as written and any reasonably expected condition or impact caused by this project, which is presented to the Board as a fact -- but the matter is before the circuit court to determine, and it would be entirely inappropriate to use that as the basis for a decision. He added that the applicant's position is that there is not rough proportionality and nexus.

Mr. Karamanis stated that there were other proffers associated with this project -- widening Route 29, creating Town Center Drive -- and those things have happened and have alleviated traffic to the point where if they were to review traffic when the proffer was put in place versus now, they could likely not say there is a need for this public transit in particular, which takes them over to the practical side. He said that this bus is a commuter route that runs in the morning before the shopping center is open and comes back in the evening, and it is built to take people from north of town into town to work.

Mr. Karamanis stated that it is not built to bring people to and from the shopping center and is not eliminating any cars that would otherwise be going to and from the shopping center. He said that if you were to take it from town up to Hollymead Town Center in the evening, which is the only time you could do that during operating hours, you would have no way to get home. He emphasized that it is not designed any particular cars and traffic that are serving the shopping center. He added that regarding rough proportionality, it was basically serving single digit numbers of people every day to bring them to and from work, and the question of whether or not that is worth asking a developer to pay \$1/2 million is a very relevant question.

Mr. Karamanis stated that staff has indicated no favorable factors to this request, and the applicant finds this unfair. He said that favorable factors were that it would be consistent with prior Planning Commission approvals -- as they had supported this proposal many years ago, and that was before all the other traffic improvements were made to alleviate traffic in other ways. He said that there was a dispute going on for some time now and was pending in the circuit court, and this would resolve that and provide outcomes for both parties.

Mr. Karamanis emphasized that the applicant was not trying to avoid legitimate obligations and was before them to offer more than what he feels he is legally required to provide. He said that as Mr. Benish mentioned, the applicant is open to conversation -- and what they would like was

some feedback on how to resolve this dispute and not just looking the other way. He noted that there were even more favorable factors now, and he hoped the Commission would agree.

Mr. Keller opened the public hearing.

Mr. Bivins invited speakers to come forward.

There being no public speakers, Mr. Keller invited the applicant to address the Commission again and asked Mr. Herrick if there were any ground rules for this proposal.

Mr. Herrick explained that Mr. Benish had referenced the possibility of a deferral, and they have a scheduled court date for this matter in July -- so staff would ask that the Commission consider and decide this tonight with a recommendation one way or another.

Ms. Firehock asked if the original proffer for the transportation was only ever intended to serve the shopping center.

Mr. Karamanis responded that the proffer language states that once the transit service served the shopping center, that would trigger the proffer -- and what is before the Commission is the original proffer language, which has not changed.

Ms. Firehock stated that the applicant had mentioned that the transit service did not operate when the stores were open, and asked if a remedy would be to change the hours of the shuttle.

Mr. Karamanis responded that this was out of the applicant's control, and his understanding from what he has read about the route was that it was a commuter route for people living north of town and working in town.

Ms. Firehock stated that the original owner entered into the proffer and must have made it because there was some relationship between the proffer and the development, so she was having a hard time following the line of logic that a proffer was freely and voluntarily offered that had nothing to do with the development. She asked him to elaborate.

Mr. Karamanis said that it's not that this proffer couldn't theoretically have a relationship with the development, and if the data supported that this development had created a significant amount of traffic that was alleviated by the public transit that served it, this would be a completely different situation -- but that's not the situation they are in. He added that when this was originally proposed with the proffer, there was a much greater level of development anticipated with this property that now will not come to fruition. He said that the reason they proposed the alternative was that staff indicated it would be well-received, but there had been inconsistent feedback overall.

Mr. Bivins asked to reference the map of the property and said he hoped they could create a nexus between where this proposed density would be and where it won't be, if in fact this was allowed.

Mr. Karamanis stated that this proffer applied to A-1 -- the commercial property with the Kohl's on it -- and the correlating property is Block A-2, which has residential on it. He said that if the alternative were favorable, it would require an additional application to be filed, which the applicant had hoped to do prior to this meeting.

Mr. Benish pointed out the concentration of residential in the development and the mixed-use area.

Mr. Bivins asked if the homes were in the area off of Dickerson Road.

Mr. Benish responded that A-2 is undeveloped at this point, and Abingdon Place is another part of the Hollymead Town Center, with minimum and maximum units -- and the 1,222 is the maximum for this area.

Mr. Dotson stated that he would offer comments on proportionality, which was a complicated question but one for which they had some guidelines and ideas. He said that the proffers were stated in 10 equal installments, and no one imagined that the need itself would happen that way -- which suggests to him that proportionality and the sequence of contribution were at best very loosely linked.

Mr. Dotson said that when this was before the Board of Supervisors, Mark Graham advised the Board not to make the mistake at looking at this proffer in isolation from the other proffers -- as they were considered in their totality in the approval. He stated that the Commission needs to continue to heed that advice, and in thinking about schools they don't look at proportionality, as people who no longer have children in schools still contribute. He said that a family with many children in school does not necessarily contribute proportionality, and looking at proportionality in a simplistic and literal way doesn't really apply when operating a community.

Mr. Dotson stated that he felt there was transit service, and this application did not request a trigger date because the service has already begun, so he concluded that this was not requested as it had been previously. He added that when starting something new, and this northern area of the county was new and thus would take a while to build transit ridership. He stated that initially there were expected investments with marketing and gaining comfort and experience with the route -- and if the applicant had been paying the proffers, they would have met their full amount, and the cost of transit might have gone up by the time they were done paying. Mr. Dotson said that he would likely follow staff's suggestion and for the reasons outlined in the staff report and presentation, which would be a vote against this.

Ms. Firehock concurred with Mr. Dotson.

Mr. Bivins stated that there were no conditions of performance on the proffer statement, Attachment B, and the individuals who entered into the original proffer agreement were very sophisticated in the way they approached this 11-point proffer. He said that the real estate market tanked in 2007/2008, and he was struck that when this piece of property was purchased that there had to be some trading that happened there. He said that he had read the proffer was for the entire piece, so when the transaction took place, they could have placed things on individual pieces of property.

Mr. Bivins stated that he was not sure why at this stage this was now being subject to another level of interpretation of schedules, busses, and whether the transit is functioning well with the property, because the decision was made for the proffer at a certain amount over a certain time period. He said that this transit route was part of a larger package presented when this was done and accepted by the county, and if this is going to the circuit court, they should decide if

the clause should be null and void -- and it is not the role of the Commission to circumvent the litigation.

Mr. Dotson **moved** to recommend denial of ZMA201900002 Hollymead Town Center Area A-1, Proffer #4 amendment to the Board of Supervisors, for the reasons as articulated in the staff report and explained in the presentation, as well as the comments he offered regarding proportionality and the fact service has begun. Ms. Firehock **seconded** the motion, which passed unanimously (6-0).

#### **ZTA 20190004 New Residential Proffers**

Mr. Fritz reported that this is a zoning text amendment to bring the county code into alignment with a change in the state code that will go into effect on July 1, affecting proffers. He stated that in 2016, there was an amendment to the state code that significantly limited localities' ability to accept proffers -- and for an offsite proffer to be deemed reasonable, it had to address public transportation facilities, public safety facilities, public school facilities, or public parks.

He said that the proffers had to address impacts specifically attributable to a proposed new residential development, address an impact where that development creates a need or an identifiable portion of a need for improvements, and provide each new unit with a direct and material benefit from that proffer. He stated that it was a very precise measurement that prevented offsite proffers from being accepted, and the language in 2016 had a damping provision that did not allow localities to discuss proffers, because suggesting them presenting problems -- but that provision would be removed as of July 1, 2019.

Mr. Fritz said that it also retained the language he had just provided but also had a provision that said at the applicant's choosing, they can make a proffer and as long as they say it was reasonable, it is. He stated that this would allow the county to accept proffers if an applicant was willing to make one -- and the county cannot deny an application because the application did not choose to make a proffer and instead chose to go under the narrow proffer language. He said that was what the provision did, and the Commission would simply be adopting the state code language.

Ms. Spain asked how this was different from where they were two years ago.

Mr. Fritz responded that there have been some lively discussions about this, and arguably it takes them to a better place than they were in 2016, because it has the language that says if the applicant says a proffer is reasonable, it is -- which may be slightly better than where they were in 2016. He added that it was at least as good as 2016.

Mr. Herrick agreed, stating that the section adopted in 2016 was Section 15.2-2303.4, and this adds an important provision that allows developers and localities to have discussions. He stated that if the developer signs a voluntary proffer and agrees that it's fair and reasonable, then it is. He stated that the proposed ZTA simply strikes out the sole reference to Subsection C, which was the very demanding list that appeared in the 2016 law, and says that all of 2303.4 as revised now applies, including the provision that allows there to be voluntarily signed proffers that stipulate to the reasonableness.

Mr. Dotson said the key date was July 1, 2019, and asked if that was the date for a completed and accepted application, or if it was the date for Board of Supervisors' action on applications files before that date.

Mr. Fritz responded that it applies to actions filed after July 1, 2019.

Mr. Herrick added that there is an enactment clause the General Assembly put in saying it “shall apply to all applications filed after July 1, 2019,” and for pending applications that cross over the date, the applicant has the option of choosing either set of proffer laws.

Mr. Dotson said that a school might serve several developments, but an applicant can say a proffer is reasonable even if other students are attending.

Mr. Herrick read the language of the new law: “An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate as conclusively evidenced by the signed proffers.” He said that by signing the proffers, they are acknowledging that they are reasonable and appropriate.

Mr. Keller opened the public hearing.

Mr. Bivins invited speakers.

Mr. Sean Tubbs of the Piedmont Environmental Council spoke in favor of the item before the Commission to amend the county’s rules to accept proffers from developers for rezonings and special use permits. He said that this restores the possibility of what should have been happening all along -- conversation. Mr. Tubbs stated that the ordinance before them is in response to legislation that was in response to local decisions made all across the Commonwealth over the past 10 years or so. He said that in the last public hearing, they were made aware that the mechanism by which developers pay for the cost of development and cost of growth was a tricky subject. He stated that this issue had been underway for decades and this amendment was a chance to make the conversation better -- mostly because of what they have learned over the last several years. Mr. Tubbs said that how to cover the cost of development is a topic that all of the state’s growing localities were facing -- but what matters is that the conversation happens and that the county’s toolbox remains stocked, which this amendment helps achieve.

Mr. Tubbs stated that county staff was getting very good at developing master plans that clearly lay out what is desired by the community as it grows, and this has happened with the Rio Road Small Area Plan and would happen with Pantops. He said it would take a lot of good planning and some good luck to bring all the places of urban Albemarle come together, and this amendment opens the door and gets them back to the point they can simply have the conversations between things.

Mr. Tubbs said that the Fiscal Impact Advisory Committee, which was disbanded a few years ago, has not come back together -- and with all the tools happening with economic development and the work being done with planning and school populations, perhaps the time was right to convene a group to bring all of it together. In the meantime, he said, this was a good step forward.

Mr. Neil Williamson stated that this discussion takes him back to the time of negotiated proffers, and they rose to such a point that developments didn’t happen. He said that the Commission has an opportunity tonight to look back at the legislation there was and limit the proffers to be

those things most directly associated with new development. He stated that the previous legislation included parks, public safety, transportation, and schools -- which seemed reasonable to him -- and the Commission could limit and consider how much they were planning to spend in the CIP per current housing unit and back it up five years, rather than what they got out of the last applicant. Mr. Williamson said that he is in favor of this least bad choice, but it could be so much better.

There being no further public speakers, Mr. Keller closed the public hearing and brought the item back for discussions and action.

Ms. Spain asked Mr. Herrick about the choice an applicant had to go under the new rules or the old rules, and she asked if this also affected the Commission's ability to talk to applicants.

Mr. Herrick responded that one of the problems with the current law is it prohibits requiring or even suggesting proffers, which has had a chilling effect on dialogue. He said that if an applicant chose to proceed under the old law, the county and its imputed agents could not suggest, request, or require any unreasonable proffers as defined in the legislation.

Ms. Firehock **moved** to adopt ZTA20190004. Mr. Bivins **seconded** the motion, which passed unanimously (6-0).

### **Committee Reports.**

**Ms. Riley:** She reported that the previous week, the Village of Rivanna CAC had sponsored a community meeting on the Boyd Tavern application, which would be moving forward to the Commission sometime this summer.

**Mr. Dotson:** The Rio/Places 29 CAC was reviewing their watch list of items and a developer on the committee commented that she wished there was a way a developer could get feedback from the community and how developers might ease those concerns. He asked how this new legislation might affect that.

Mr. Herrick said that the provision was eliminated for applications filed after July 1, 2019.

Mr. Bivins stated that while there may not be a specific development on the table, sometimes CACs just want to have a blue-sky discussion about what would be an added benefit.

Mr. Herrick said that was problematic for applications filed before July 1, but not those filed after.

**Mr. Keller:** He attended the May 15th CTAC meeting, with the long-range transportation plan being the primary item, found in detail on the TJDPC website -- and going onto the MPO for approval. He said that there would be a new transportation planner coming to the county, and there has also been some interest in rethinking the role of CTAC, which he would share with them.

Mr. Benish stated that the Commission would see the LTRP, because once it was adopted, the county would incorporate it into the comp plan.

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

Mr. Dotson said that the impetus of county leadership and budget staff seems to be tipping to identifying affordability up front -- and the park behind Pantops at the hotel is going to be way down on the list, so they should be realistic about that. He said that the hotel was said to have no impact on schools, but there were employees and he wondered if there was different language they could use to reflect that. He stated that many employees in the hospitality industry are likely to need affordable housing, and perhaps this could be noted in the staff reports in an effort to promote awareness.

Mr. Keller stated that this was part of the overall affordable housing discussions and how best to integrate concerns into those.

Mr. Benish noted that staff was in the process of updating the AMI information and would try to dovetail that into future reports.

**New Business.**

There was no new business presented.

**Adjournment.**

At 7:38 p.m., the Commission adjourned to June 4, 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 and transcribed by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards)

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