

**Albemarle County Planning Commission
FINAL Minutes January 11, 2022**

The Albemarle County Planning Commission held a public hearing on Tuesday, January 11th, 2022 at 6:00 p.m.

Members attending were Daniel Bailey, Luis Carrazana, Fred Missel; Julian Bivins, Chair; Corey Clayborne; Karen Firehock

Members absent: Jennie More.

Other officials present were Andy Reitelbach; Bill Fritz; Rebecca Ragsdale; Charles Rapp, Director of Planning; Andy Herrick, County Attorney's Office; and Carolyn Shaffer, Clerk to the Planning Commission.

Call to Order and Establish Quorum

Mr. Rapp called the meeting to order. He said the meeting was being held pursuant to and in compliance with Ordinance No. 20-A(16), "An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster." He said opportunities for the public to access and participate in the electronic meeting will be posted at www.albemarle.org/community/county-calendar when available. He asked Ms. Shaffer to call the meeting to order and establish a quorum.

Ms. Shaffer called the roll and established a quorum.

Consent Agenda

Mr. Bivins said there were no items on the consent agenda. He asked Ms. Shaffer if there was anyone signed up for matters not listed on the agenda.

Other Matters Not Listed on the Agenda from the Public

Ms. Shaffer said there were no speakers signed up at this time.

Election of Officers

Mr. Rapp asked the Commission if there were any nominations for Chair.

Mr. Bivins said he would like to bring forth the nomination of Karen Firehock as the Chair of the Albemarle County Planning Commission.

Mr. Clayborne seconded the motion.

Mr. Rapp asked if there was any discussion.

Ms. Firehock said she would be honored to serve.

Mr. Bivins said that was a good thing to know up front.

Mr. Herrick said there must be a motion to elect Ms. Firehock as the Chair if the nominations were now closed.

Mr. Bivins **motioned** that Karen Firehock be elected as Chair of the Planning Commission, which was **seconded** by Mr. Clayborne. The motion passed unanimously (6-0). Ms. More was absent for the vote.

Mr. Rapp congratulated Chair Firehock and asked her to continue with the Vice-Chair nominations.

Vice-Chair Nominations

Ms. Firehock asked if it was appropriate for herself to nominate Corey Clayborne as Vice-Chair of the Planning Commission.

Mr. Bivins said he would second the motion.

Ms. Firehock asked if there was any discussion.

Mr. Clayborne said he would be glad to do it, and he had a lot of great mentors who would keep him on track.

Ms. Firehock **moved** that Mr. Clayborne be elected vice chair of the Albemarle County Planning Commission, which was **seconded** by Mr. Bivins.

The motion passed unanimously (6-0). Jennie More was absent for the vote.

Secretary Nominations

Mr. Bivins **moved** that Mr. Rapp remain the secretary of the Planning Commission.

Mr. Clayborne **seconded** the motion.

Ms. Firehock asked if there was any discussion. Hearing none, she asked for the roll to be called.

The motion passed unanimously (6-0). Jennie More was absent for the vote.

Planning Commission Rules of Procedure

Ms. Firehock said these rules were adopted every year, and she was unaware if there had been any significant changes from last year. She asked if there was any necessary staff report on this item.

Mr. Herrick said that a staff report was not necessary, as far as he was concerned. He said as she had indicated, they were the same rules previously drafted and reissued year to year. He said he had not received any requests for amendments, so the rules that were before the Commission at this point were the same as were adopted last year.

Mr. Clayborne **moved** the Planning Commission adopt the rules of procedure as presented, **seconded** by Mr. Bailey.

Ms. Firehock asked if there was any discussion on the rules. Hearing no comments, she asked Ms. Shaffer to call the roll.

The motion passed unanimously (6-0). Jennie More was absent from the vote.

Boards and Bodies to which Commissioners Serve as Liaisons

Ms. Firehock said it was now time to review what committees the commissioners would serve on. She asked Mr. Rapp to share the list of committees for them to see on the screen.

Mr. Rapp said there were vacancies at the 5th and Avon Street Community Advisory Committee, the Agricultural and Forestal District Advisory Committee, the Metropolitan Planning Organization Technical Committee, and the Rivanna River Corridor Steering Committee. He said the plan was in its final stages and was going before the City Planning Commission and City Council over the next one to two months, and before the Board of Supervisors a month or so ago for endorsement. He said he was not expecting many more meetings on that in the near future. He said there was also a vacancy with the Village of Rivanna Community Advisory Committee.

Ms. Firehock said to simplify it, the CACs were filled by the commissioners who serve those districts. She said the 5th and Avon Street Committee was listed as vacant because they did not have a commissioner at the time.

Mr. Missel said that was his as the new member and he would gladly take that position, as he would with the Village of Rivanna.

Ms. Firehock said they could trade positions on different committees, but they should discuss the MPO Tech, which was listed as vacant because of Tim Keller's departure.

Mr. Bivins said he had served on that committee for a number of years. He said it would be interesting how that changes given that they had new leadership and the number of specific and local transportation matters that were coming up. He said it tended to be in a different path than CTAC and saw proposals before they came before the Board of Supervisors or the MPO. He said there was good work there for people who were not afraid of details and who were interested in what was happening with the transportation in their community.

Ms. Firehock asked if Mr. Bivins could detail the meeting times for the MPO Tech committee.

Mr. Bivins said he believed it was 10:00 a.m. to 12:00 p.m. once a month or once every other month. He said the unfortunate but also wonderful thing was that they were meeting by Zoom now, so there was no need to go to the Thomas Jefferson Planning District offices on Water Street, which was where the in-person meetings were held previously.

Ms. Firehock asked if he knew what day of the week their meetings were held on.

Mr. Bivins said he did not know but could look on a calendar to check. He said while he was looking, he wanted to say he did not know what the long-range school planning liaison role was, because he had never had that before.

Ms. Firehock said she did not believe that anyone attending tonight's meeting had ever served that role. She said in the past, Bruce Dotson had been a commissioner who served in that role. She said they looked at demands for schools in terms of how many students there would be, different age cohorts, what structures and facilities were needed, and general long-range planning. She said it was also a very helpful position to the Planning Commission because they were engaged in long-range planning, especially with the comprehensive plan coming up. She said understanding what the school demands were had a direct impact on how and where they were able to grow and sustainably house and teach their children. She said it was another role for people who liked to dig into details, because they did a lot of work with projections, statistics, and figures. She said that person then came back and reported to the Planning Commission what they were learning and what some of those items were that affected what the Planning Commission was doing with development plans or comprehensive plans.

Mr. Bivins said the MPO tended to meet on Tuesdays at 10:00 a.m. once every month.

Mr. Carrazana said he could take that position so long as it worked with his schedule.

Mr. Rapp said it looked like they met on the third Tuesday of alternating months at 10:00 a.m., so there were six meetings a year starting in January. He said January 18th was their first meeting.

Mr. Bivins said they just put the calendar in their chat if anyone needed to see it. He said to Chair Firehock that he had been asked to join the Lambs Lane campus master planning. He said he believed it would be a short-term position that was not connected to the Planning Commission but was asking for community members to look at alternative ways to look at the land referred to as Lambs Lane, which was Albemarle, Jack Jouett, Greer, and eventually another school. He said the Boys and Girls Club was currently in the process of building a facility on this campus. He said they would be looking at the best optimal use of this land and whether or not there should be consideration of land that was north of them and had been proffered.

Ms. Firehock asked if he was speaking about that in relation to the long-range planning committee with the schools.

Mr. Bivins said that was correct.

Ms. Firehock said first they would close the nominations for the MPO Tech Committee, since Mr. Carrazana had requested to be on it. She asked if everyone agreed with him taking that role. She congratulated Mr. Carrazana on his new position.

Mr. Carrazana asked if someone could put him in touch with the people associated with his new role.

Mr. Rapp said they would coordinate with him.

Ms. Firehock said that Mr. Rapp would communicate with the committees who the new appointees were, and then with Mr. Carrazana about the scheduling and other matters. She said if he wanted to speak with Mr. Bivins about his experience on that, it was certainly a wonderful idea.

Mr. Carrazana said he and Mr. Bivins were due for a lunch.

Ms. Firehock said Mr. Bivins had mentioned he was already involved in strategic planning efforts for schools; she asked if he would like to serve on the committee for long-range planning committee for the schools.

Mr. Bivins said unless someone else would prefer to do it to round out their portfolio, he would do it. He said he knew some of their colleagues had wanted to chew on school issues for a while, so he appreciated this opportunity for them to do so. He said he wanted to offer that, so people knew what was going on.

Ms. Firehock asked if there was anyone else interested in serving on the long-range planning committee for schools.

Ms. Firehock said that everyone was interested in schools, but he was willing to serve, and no one was asking to take that away. She said that took care of the vacancies that were on the list.

Mr. Bivins said the Agricultural and Forestal District Advisory Committee had not been discussed yet.

Ms. Firehock said she was not closing discussion of committees, because there may be other committees that people are interested in serving on. She said to Mr. Missel that usually, each one of them had one or two committees that they filled in addition to their roles as commissioners. She said the CAC was one and usually there was one other. She said if there were something on this list that was interesting to him, she would love to hear that, because some of them were serving on more than one. She said as their past Chair, Mr. Bivins, had mentioned, the AFD Advisory Committee had an opening. She asked if anyone knew when they met and how often. She said next year they would put that information on a chart.

Mr. Rapp said they should put that on there. He said lately, their meetings had been held on more of an as-need basis.

Ms. Firehock asked if that was when they had nominations for the district.

Mr. Rapp said yes.

Ms. Firehock asked if that was only a handful of times per year.

Mr. Rapp said that was correct—and they had just handled several of them—so he did not think they would have more of them any time soon.

Ms. Firehock asked if anyone was particularly interested in taking that role.

Mr. Missel said he would be happy to assume that position on the Agricultural and Forestal District Advisory Committee. He noted that he was also on the Land Use and Environmental Planning Committee as a UVA Foundation employee. He said Mr. Bivins had that as well. He said he was there automatically as a member, so he did not know if it were also helpful for him to serve as a Planning Commissioner if he could represent both roles.

Mr. Bivins said whatever he wanted to do. He said he was on that because most of the land they discussed was in three jurisdictions in what was referred to as the "urban core," although he wanted to find a new word for that because it was neither urban nor a core. He said most of that sat in the Jack Jouett District and UVA, which was the nexus of him being on it, but if someone else wished to, he was fine with that. He said Mr. Missel could deal with some of the issues of the closer properties.

Mr. Missel said he was not offering to take the position but wanted to ensure everyone's awareness that he was also involved in that process.

Ms. Firehock said that Mr. Missel would be assigned to the Agricultural and Forestal District Advisory Committee. She asked if there were any other positions that were currently filled by a Planning Commissioner that another commissioner would like to take on. She said she was aware Ms. More was absent that evening and was on the Historic Resources Committee.

Review and Adoption of 2022 Meeting Calendar

Ms. Firehock asked if there was any discussion about the 2022 meeting schedule as proposed. She asked Mr. Herrick if there must be a vote to adopt the schedule.

Mr. Herrick said there should be a motion and a vote to adopt the meeting schedule.

Mr. Missel **moved** to adopt the meeting schedule as proposed.

Mr. Bivins **seconded** the motion.

The motion passed unanimously (6-0). Jennie More was absent from the vote.

Consent Agenda

Approval of Minutes from December 7 and December 14

Ms. Firehock said she reviewed the minutes from December 7, 2021, and she believed that the motion on page 10 was also to include street trees as part of the planting strip. She said she sent this comment back to staff but wanted to ask Mr. Rapp if that were his recollection; if so, it needed to be added to the minutes or perhaps further research was needed and adoption of the minutes would take place at a later time.

Ms. Shaffer said she made the change that Ms. Firehock sent to her, and that was what was said when she listened to the recording.

Ms. Firehock said that was the only change she had. She asked if there were any comments on that change.

Mr. Herrick clarified that if there were a motion to approve the consent agenda as submitted, perhaps Ms. Shaffer could clarify if that consent agenda now included the amended minutes.

Ms. Shaffer said that was correct; they were the amended minutes with the changes she had received.

Mr. Herrick thanked her.

Mr. Carrazana **moved** to approve the consent agenda as submitted, with the amended minutes, which was **seconded** by Mr. Clayborne.

Ms. Firehock asked if there was any discussion. Hearing none, she asked for the roll to be called.

The motion carried (5-0). Mr. Missel abstained from the vote. Jennie More was absent from the vote.

Items for Public Hearing

ZMA202000013 Overlook Hotel Pantops PDMC Amendment and SP202100010 Auto Superstore SP Amendment

Mr. Andy Reitelbach introduced himself as senior planner with the Albemarle County Planning Division. He stated that he was presenting a staff report on two separate applications that were interrelated. He said they were ZMA2020-00013, the Overlook Pantops PDMC amendment, and SP2021-00010, the Auto Superstore SP amendment. He said to provide context on where these applications were, he had circled the location where the first application, the hotel, was proposed in Pantops. He said the aerial view was looking from the north to the top of the screen which was the south. He said they could see the edge of the Rivanna Ridge Shopping Center in the top left, the Carriage Hill Condos and Apartments were in the top right, and Route 250 went across the screen in the bottom left. He said the green area in the center was the site of the proposed ZMA and the SP, which also involved the auto dealership seen to the right.

Mr. Reitelbach stated that while there were two separate applications, they were interrelated. He said the zoning map amendment was a request on Tax Map Parcel 78-73A7, which he had labeled and could be seen in the photo on the right. He said there was a related special use permit request, which was for Tax Map Parcel 78-13, which was also labeled, so it could be seen how the parcels were adjacent to one another. He said the zoning map application was a request to amend the application plan approved with ZMA2002-0008, to allow a hotel as a use permitted on this parcel and to remove a tree conservation area that was designated on the application plan approved back in 2002.

Mr. Reitelbach said the special use permit was a request to amend the previously approved special use permit, SP2002-13, to remove conditions and language in it that required an offsite landscaping easement. He said even though the special use permit applied to TMP- 78-13, that offsite landscaping easement was on Tax Map Parcel 78-73A7, which was the parcel proposed

to be rezoned to allow the hotel. He said that was a summary of how these two applications were connected and why they were coming before the Planning Commission together in one presentation and as one staff report.

Mr. Reitelbach said the zoning of these parcels was of different zoning districts. He said 73A7, the subject of the ZMA for the proposed hotel, was currently zoned PDMC, or planned development-mixed commercial, which was a planned development zoning district that allowed flexible, mainly commercial uses, and at PD-MC to include several parcels to be east and southeast, including the Rivanna Ridge Shopping Center. He said the subject parcel was really the outermost parcel of this PDMC and was the last undeveloped parcel that was located in it. He said the special use permit application that related to 78-13 was zoned HC or highway commercial. He said the overlay districts of these parcels were within the entrance corridor, and there were managed steep slopes on both parcels as well. He said there was a small area of preserved steep slopes on 78-13; however, it was on the west and southwest part of that parcel and was not relevant to the request of removing the landscaping easement requirement condition.

Mr. Reitelbach said when looking at the Pantops Master Plan, both of these parcels were largely designated as community mixed-use, which was signified by a brown color on the screen. He said it recommended a wide variety of uses, including hotels as a specifically designated primary use. He said the recommended building height for this land use designation was two to four stories, and the rear of those parcels on the opposite side of the parcels from Route 250, where those parcels were adjacent to the Carriage Hill residential community. He said there were areas designated as parks and green systems of those two parcels.

Mr. Reitelbach said he would now discuss the specifics of these items. He said the ZMA was a parcel that was part of a larger PDMC district that included the Rivanna Ridge Shopping Center and outparcels. He said the applicant was requesting to amend the application plan to allow a hotel on this parcel, which was currently not a permitted use under the current plan. He said as he mentioned in the previous slide, a hotel was a primary recommended use in the community mixed-use land designation in the Pantops Master Plan. He said the applicant was also requesting to remove a tree conservation area located on this parcel. He said this was approved with the previous rezoning on the applicant's plan for screening purposes, but it was currently largely devoid of trees. He said this development would be subject to ARB approval. He said the applicant was requesting that an entrance be allowed directly onto Route 250, as there were no available street stub-outs to connect to, including from the other adjacent PDMC-zoned parcels. He said that entrance would be subject to VDOT approval at the site planning stage.

Mr. Reitelbach said that as he had mentioned, there were a lot of managed, steep slopes on this property, which were permitted to be disturbed by the zoning ordinance. He said that however, any disturbance degrading retaining walls or that sort of thing would be subject to the regulations found in the ordinance for that overlay district. He continued that it would be reviewed at the site planning stage and must be approved by County engineering. He said there was no development in the rear of the parcel; that portion was designated as parks and green systems. He said it was important to note that this part of the parcel was actually the location of a proposed future roadway that was identified in the Pantops Master Plan, where Rolkin Road would continue from its intersection at Hansen Road, continuing onto the northwest.

Mr. Reitelbach said the slide shown was from the application plan provided by the applicant, which showed the layout of the proposal. He said the proposed hotel building was in the center, and the yellow shading in the middle was the tree conservation area that was proposed to be removed. He said there was a landscaping easement up in the top right that was a green rectangle, which was proposed to remain in the site plan if the ZMA was approved, and it would be required that the conditions of that easement continue to be maintained. He said the portion of that landscape easement that was proposed to be removed and was subject to the special use permit could be seen in a light orange color on the left side of the screen, in the west- southwest portion of the parcel, adjacent to TMP-87813.

Mr. Reitelbach said he would provide more information on the special use permit request. He stated that it was the location of an existing auto dealership that was proposed to remain. He said the original SP from 2002, which permitted the outdoor storage and display use for that dealership, had conditions and language in it requiring an offsite landscaping easement to screen that use of the outdoor storage unit and display, so this easement was on the rear of the parcel 78-73A7, which the applicant was now proposing to put the hotel on in the center and front portions of that parcel.

Mr. Reitelbach showed a sheet from the conceptual plan that was provided by the applicant, showing the easement that was proposed to be removed there in the rear of 78-73A7 to allow for the hotel to be constructed on that parcel. He said in staff's review of these two applications, there were several factors favorable. He said they were consistent with the uses recommended by the Pantops Master Plan and the community mixed-use land use designation. He said the requests were consistent or mostly consistent with the applicable neighborhood model principles. He said no development was proposed for the rear of the parcels, especially 78-73A7, which was where that future extension of Rolkin Road was identified in the Pantops Master Plan, so that extension could still happen in the future whenever the County decided to move forward with the project.

Mr. Reitelbach continued that there were no unfavorable factors identified with these applications. He said the staff's recommendation was to approve the zoning map amendment, ZMA202000013. He said staff also recommended approval of the special use permit for the Auto Superstore, SP202100010, with six conditions. He said they were the same conditions that were approved with the original SP from 2002; the only change was the conditions discussed per the landscaping easement on the adjacent parcel had been removed, but all of the other conditions remained the same. He showed the suggested motions for the special use permit and the suggested motions for the zoning map amendment.

Mr. Bivins asked to see the slide that showed the physical buildings on the adjacent lot. He asked why staff said there were no stub-outs there. He said he struggled with disconnected properties, and there seemed to be an opportunity to connect either from Abbey Road into this site or from Hansen Road into this site, instead of having to create another entrance onto 250. He asked if that had been discussed with the applicant when working on this project.

Mr. Reitelbach responded that staff had recommended early on in the review that the applicant look into trying to connect with these travel ways near the bank near Hansen Road and 250, and some office buildings. He explained that those were all parking lots and private travel ways owned by private property owners, so it would require their approval to allow the property owner of the proposed hotel to use those. He said his understanding was that the applicant did try to reach out

to them, and nothing was able to come of that, but they may be able to provide some more information on that. He said he thought the other issue was that there were some topographical challenges on this site. He said that where the hotel was proposed was significantly lower in elevation than the office buildings and the bank directly next door.

Mr. Bivins said that it seemed that when they looked at these types of projects, particularly as they drove up 29, most of the hotels that were there were actually part of something larger, so if nothing else, there should be a way to create a pathway for people to walk to the various restaurants that were in there, as opposed to getting in their vehicles to drive a hundred yards back into the shopping center. He said that was something he would like for them to encourage.

Mr. Missel said he had a question about the easement next to the SunTrust bank shown on the concept plan that was required to be maintained. He said he did not see any grading on that site and wanted to know if Mr. Reitelbach knew if “remaining” meant undisturbed, or if it required additional landscaping to be replaced if it was disturbed.

Mr. Reitelbach said they were proposing to keep the easement there, and any landscaping that was required by that if it were disturbed in the construction of this hotel would be replanted in the manner to ensure that the conditions of the easement were maintained. He said the applicant may be able to provide more information on that as well.

Mr. Clayborne asked where the closest transit stop was to this parcel.

Mr. Reitelbach said he did not know. He said he would have to look into it and get back to him about it.

Mr. Clayborne said he read in the report—perhaps as part of SmartScale but he wasn’t sure—there were some anticipated improvements to get rid of the center turn lane going up 250 to put in some medians so there was more control when drivers made that left turn. He asked if Mr. Reitelbach had to give a range, if he knew when those improvements would be done, and if they would coincide with the construction of this or were as far as 12 or 15 years out.

Mr. Reitelbach said his understanding was that the project was in the planning stage, and he believed it had already been funded. He said the center lane in 250 that was a turn lane for both sides would be removed, and a median placed in there to prevent turning left into all the various driveways along 250, and there would only be median breaks in certain sections. He said his understanding was that this was well on its way and moving forward.

Mr. Rapp confirmed that as Mr. Reitelbach mentioned, it was a funded project that was awarded. He said he did not believe they had allocated a specific year as to when they would move forward, but they were in the process of doing it at the state level with VDOT. He said he would look into that and see if he could find it during this meeting. He said it was within the next few years, and typically those kinds of projects were around a four-year time frame but depended on the availability of funding each year.

Ms. Firehock said it would be great if he could find that out. She said she imagined it would take a few years for this site to be developed and asked if there were any further questions or comments for staff.

Mr. Carrazana said he couldn't find it, but he thought he had read that they were looking to reduce or eliminate a setback requirement.

Mr. Reitelbach said there was a special exception application submitted to reduce the setback on the hotel. He explained that for any structures over three stories or 40 feet, they required a setback, so the application had been submitted so they could build a four-story hotel; however, a few weeks ago, the applicant resubmitted to the ARB some revised plans where they redid the grading and put the bottom floor underground so only three stories would be visible above grade and 250. He said there would no longer be a need for the setback to be waived for that if it was dropped down to three stories above grade. He said that was something staff was still reviewing to make sure it would be verified for sure before it went to the Board of Supervisors. He said that was where it stood on the setback.

Mr. Carrazana said that his read was that it still seemed to be an open question as to whether they were going to redesign with three stories instead of four.

Ms. Firehock said they could visit that topic again, but it was certainly a condition that could be placed upon this if necessary and if it was unclear. She said perhaps when it was time in the meeting, the County Attorney could tell them a bit more about whether they needed to get to that level of detail with this application. She asked if there were any further questions for staff before they heard from the applicant. She said it was a somewhat confusing application with the strange geography of the parcel, so she would not be surprised if there were more questions.

Mr. Justin Shimp introduced himself as an engineer with the project and said that Kelsey Schlein was also present and had worked on the application materials. He said it was true that it was a little complicated because of all the history. He said he did not have a lot to add to the staff presentation from a standpoint of technical items, but he could give a bit of context to how things came to be. He said that there was a transit stop at the Applebee's, so it was very close by. He said they approached the neighbors at the Truist Bank about a connection through specifically for pedestrians because there was a grade issue, and he had some illustrations to show that connection being nearly physically impossible, but they did approach them from a pedestrian standpoint and were unable to make progress. He said there was a sidewalk along 250 that connected to their project, so someone could easily walk from the site to the Applebee's or Bojangles or Rivanna Ridge Shopping Center. He said a landmark that people might recognize was the Tip Top Restaurant across the street from the project.

Mr. Shimp showed a color image of the limits of the original zoning, stating that the red boundary was the PDMC district, which they were seeking to amend. He said at the same time, there was a strip of yellow in far-left corner of the map that was zoned to highway commercial, which was a Dennis Car Dealership at the time. He said it was a different car dealership now, but the special use permit they were seeking to amend was related to that parcel.

Mr. Shimp showed a slide with the original zoning application plan. He said they had done more technological updates since the previous plan was done in 2002. He said he believed the copy shown was actually a 1998 map that was amended in 2002.

Ms. Firehock asked if he had a way to enlarge his presentation because a few commissioners said it was difficult to see.

Mr. Shimp said he would try a different setting for that.

Ms. Firehock said while he was doing that, it would not count as time for his presentation. She said the commissioners said that changing a setting on Zoom might help the commissioners.

Mr. Shimp asked if it looked any better.

Ms. Firehock said he should continue.

Mr. Shimp said the current slide showed the master plan, which was highlighted because a hotel was noted as a primary use in this district. He said they often tried to be more generic with these zoning application plans, but this particular plan was saying it would be a specific hotel. He said this followed with the history of the parcel where it was given sort of a block-by-block designation. He said if going back to the old map, there was high volume retail, grocery shopping center, and an office with a church. He said their site once was a hotel and was then changed to office, and they were now trying to change a portion of it back to being a hotel. He said the benefit of these zoning districts was the ability to create a master plan for them, but it sometimes needed to be amended during these processes.

Mr. Shimp showed a map he had referred to earlier and wanted to restate information about the easements. He said there were two being removed, shown in light pink, which were tied to the special use permit for the auto place. He said that strangely, the special use permit conditions for the auto storage display of vehicles contained a condition for the adjacent property. He said it was actually unclear as to whether the owner of parcel A7 could not violate the easement for the special use permit. He said it was seemingly done at the last minute when it was processed. He said looking back at the file, they could not find evidence from the staff or the County or even the landscape planners as to why it was included. He said it looked like it had been added on at the Board meeting when it was originally approved. He said that similarly, the conservation easement area was discussed as there being some trees that would remain, but in looking at the picture that staff provided, there were very few trees in that zone. He said that again, they could not find any particular evidence as to why that was there or why that was important, so they were proposed to be removed and replaced with the hotel and its associated parking. He said that was why it was a bit more specific of an application than they would normally submit, but he thought County staff wanted to see more specific design given that it was a challenging parcel and to flush these issues like how pedestrians get around, where the vehicle points are, and what could be done there. He said this specific plan was meant to address that.

Mr. Shimp said he heard a question about the future VDOT improvements, and he had heard from a few people in a community meeting who were curious. He said he was meeting with VDOT engineers on the previous Thursday morning about the particular impacts to one of the commercial sites. He said there would be a median from where the Wawa was located all the way up to the entrance to Hansen Road. He said this would be a right-in/right-out only situation. He said VDOT had determined it would make entrances and traveling safer up and down the corridor. He said he could bring the matter back up if there were specific questions about it.

Mr. Shimp said he thought that showed a rendering from design development that showed the view from the entrance from Route 250. He said on the left was the bank drive-through and through the trees was the office building. He said he believed they were 25 or 30 feet below the office building location with their first floor. He showed another picture that showed how they stepped the building to be three stories. He said one of the ARB comments was to integrate the slope better, so they essentially picked up the grade on one side for a walkout condition to continue a three-story appearance from the street side. He said it also had a nice side patio that people could use. He said a simple way to think about it was that in the 2002 special use permit and rezoning, a variety of these easements were placed on at the last minute. He said as the master plan had evolved, they revised it and essentially created a plan that followed those guidelines and worked with the ARB guidelines for design at a site like this. He said at the end of the day, they were wiping the slate clean on something that was cobbled together over a few different approvals from a long time ago. He said now they would not go to the Board to add an easement at the last minute, because something like this situation may happen 20 years later. He said this was just an example of cleaning up those things and making a project that matched the master plan.

Ms. Firehock asked if there were questions from the Commission for the applicant.

Mr. Clayborne asked if Mr. Shimp could talk about what kind of hotel they would be building there, so the public was aware.

Mr. Shimp said he could share what he knew and emphasized that there was a caveat with the type of zoning, where they could start with one type of hotel and change to a different one, because the County did not classify between, for example, an extended stay hotel and a more traditional hotel. He said the owner had been pursuing an extended stay type of hotel, and that was what was submitted to the ARB. He said they were looking to continue down that path, but he wanted to caution that there were zoning settings that could change that to a more conventional hotel.

Mr. Clayborne said he believed he saw in the packet a circulation plan that suggested pedestrians walk along the sidewalk up 250 to go to Applebee's or another place. He asked if there were any conversations about softening that travel path. He said he sometimes ran along that route, and it was not pleasant when cars drove by at 50 or 60 miles per hour. He asked again if they had discussed softening the walking experience from the hotel to the shopping center.

Mr. Shimp responded that they were cognizant of that early on and made an effort to try and connect them, as it was possible to put stairs that connected up to the SunTrust—but those property owners were not amenable to that sort of request. He said it did help in this particular location that there was a turn lane coming in, so traffic merged over to turn right, and there was a bit of a reduced-speed condition there. He said he had taken a walk through that area to drop a vehicle off at a Pantops car dealer and walked to his office downtown. He said it was a walk of busy traffic in places, but they didn't really have another option here. He said he did think for the short distance and the fact of the turn lane being there was a little better than the normal condition. He said Mr. Clayborne was right that it was not an ideal pedestrian experience, but the applicant thought it was workable.

Mr. Bivins said many of them saw what happened at Stonefield where there was a connection between Stonefield and the properties above it, and they put stairs in. He said there was a small community of commercial spaces behind that, which were also a link. He said what he had heard from everyone involved was that it had created a flow between those two pieces of property that everyone was pleased about. He said he was disturbed that the supposed caring bank, which was what SunTrust used as its new marketing language as it went from SunTrust and BB&T, Truist was not willing to consider a stairway or something so people did not have to go on 250. He said if that were not a possibility, they could perhaps get economic development people to discuss with the bank that it was helpful for people to be able to walk by them—and it would create a nexus of caring. He said he was sorry that they were not willing to provide some means for people to come from that piece to join the commercial sector there together, as this was to go before the Supervisors for approval. He said he was baffled by a stairway or entrance walkway would get a no or no response. He said his suggestion was to have a conversation with economic development because they may be able to arrange for a conversation between the two parties.

Mr. Shimp responded that he was happy to try and do that, but they had gotten no traction. He said there was an unfortunate thing that happened with pathways across privately owned properties, attorneys discuss liabilities, and everyone shuts down about it. He said they were not opposed to reaching out and moving that forward, but he was not optimistic.

Mr. Bivins said there was no more liability than the other buildings that were over there, which people who work over there still use. He said he used to go there to eat at a few restaurants, and there were always people walking around there at noon to go to those businesses. He said hopefully they would see this as extending their community and not be so focused on the liability. He said he would recommend working with staff to connect with the Economic Development Office to advance that one piece.

Mr. Missel said to confirm what staff said, the landscape easement looked like it would not be impacted by grading according to their grading plan. He asked if that was accurate.

Mr. Shimp said that was true for the most part. He stated that it could be seen where their retaining wall clipped the corner of that area that there was to be some grading in that zone and on the other end. He said it was a steep slope, so disturbing that did not help in any way. He said they were disturbing it slightly, but any affected trees would be replaced through the original site plan for that project. He said only a portion—perhaps a quarter—of the land was being disturbed, not the entire thing.

Mr. Missel said it would be helpful if the plants could be supplemented to serve as screening and adjoining property softening, if there were some additional plants that could be added beyond the original landscape easement, which had different conditions. He said the second thing he wanted to clarify was that the building was still four stories, even though there were only three stories seen from the entrance corridor.

Mr. Shimp confirmed that was correct and that it would be classified as four stories. He said at the front entrance, which was pictured in the middle, it would be a four-story building, and up on the street side, it was three stories. He said he expected by building code it would still be called a four-story building.

Mr. Missel said he was trying to understand the image shown exactly. He said it seemed that the side that was facing 250 was actually just in the ground for one story, but it was in fact a four-story building.

Mr. Shimp said that was correct, and the picture did not show it quite correctly, because there was a retaining wall along the corner where there were four windows shown currently. He said two of them would be below, with a retaining wall between them and the sidewalk. He said they would be egress windows rather than a full window.

Mr. Missel said that question was relative to the special exception, and he knew that was still being discussed, but he was not sure if it was entirely true that only three stories were visible from the entrance corridor. He said especially if it were in keeping with their model, it seemed like the four stories would be visible from an oblique angle.

Mr. Shimp said the setback came as a technicality issue, and the side of the building that faced 250 was how it would be measured. He said they were not trying to say it was anything other than a four-story building. He said it was a technicality as a result of some of the comments the ARB had, and they were trying to soften that grade rather than having it all be four stories.

Mr. Missel said his last question was if Mr. Shimp knew if the adjoining remainder, the triangular parcel that was "Happy Boxes Pantops, LLC" had any future development plans.

Mr. Shimp replied that he had not heard anything about that parcel. He said he believed there was still a site plan and preliminary plan for storage buildings of source that may or may not be valid still, but they had not done anything on that property.

Mr. Missel said part of the reason he asked that was because it was somewhat wooded at the moment, so it provided a bit of a buffer. He said to Commissioner Bivins' point, there were retaining walls built along the edge of the property entirely on that side, so it would be challenging. He said there was a question of whether they would ever want to consider some kind of pedestrian interconnection between those two parcels and if it would even be possible.

Mr. Shimp said nothing was impossible for a pedestrian connection because stairs could be used. He said from a vehicular standpoint, that was a non-starter. He said again, they were on the side of Pantops Mountain, so they were doing grading. He said there was not a particular problem with that, but he was not sure when that would come up. He said it might be site plan connectivity question, but there was no objection to that, although it was unclear whether it was necessary or would be of use there.

Hearing no further questions, Ms. Firehock moved onto the next agenda item.

Public Hearing

Ms. Shaffer read the rules for public hearing.

Mr. Dick Ruffin said his question had to do with the access onto 250. He asked if they moved from Overlook Hotel onto the through lanes, or if there were a way to make the exit from the hotel onto the right-turn lane that went to Hansen.

Ms. Firehock said that was a question for the applicant, and they would be coming back to answer any questions that came up during the public hearing process. She asked if there was anything else, he wanted to speak about.

Mr. Ruffin said that was all.

Ms. Firehock said they would have the applicant address his question when it was their turn. She asked if there were any more speakers.

Ms. Shaffer said there were none.

Ms. Firehock asked if they must close the public hearing before the matter went back before the applicant or if the applicant's closing comments were part of the public hearing.

Mr. Herrick said that the applicant's closing comments were part of the public hearing.

Ms. Firehock said there was a chance for the applicant to offer any additional comments as well as answer the question brought up by a member of the public.

Mr. Shimp stated that as to pulling out on the turn lane, once the construction of the median began in 2026, it would be fairly in line with the construction thereafter. He said people would pull out and head east only, which would be a safer maneuver out of the lot but also a little less convenient. He said he thought if naturally making that move into the turn lane, there would be no room to go completely across, but people would do strange things on the road sometimes—and VDOT put these concrete medians up to limit that to whatever extent they could. He said as long as people were making a right turn, the risk of impacts or accidents would go down at this location.

Ms. Firehock asked if Mr. Shimp had anything else to discuss.

Mr. Shimp said he did not, but he was available to answer any other questions.

Ms. Firehock closed the public hearing and said the matter was now back before the Planning Commission.

Mr. Bivins said his understanding of what was being planned there was going from east to west, the only way to easily access this project was to turn left onto Rolkin Road and then either go past the hotel and make a U-turn.

Mr. Reitelbach said his understanding was if approaching from the east from 64, Route 250 West would have to be taken past the hotel, make a U-turn at the next available intersection where there was a median break, and then come back eastbound on 250 to make a right into the hotel property.

Mr. Bivins asked if this was all because they could not get an entrance off of Abbey Road. He said his other question was related to Mr. Missel's observation, and he believed they needed to discuss the special exception. He said Mr. Missel had brought their attention to the fact that it was

a four-story building, and he would like to at least give it some attention before it went before the Supervisors.

Ms. Firehock said she could comment but asked if anyone else would like to go before her.

Mr. Rapp said he would give an update on the VDOT project. He said that what they called “starting development”—which was design, engagement with the public, and right of way—was meant to take place towards the beginning of 2023 and would commence for about three years with construction starting in March of 2027.

Mr. Carrazana said that was the other reason he had brought up that stepback issue. He said he was not clear from the report exactly how that was being dealt with, and after seeing the rendering, he still had some concerns. He said he was not quite sure that the renderings in the site plan were in sync. He said the site plan showed some curved retaining walls that wrap on the street side, or west side of the building. He said in the renderings, that was not seen. He said the last rendering they saw where the walkways were trying to use the topography was a good use. He said that however, the lack of landscape around there hindered that approach. He also mentioned the issue of it being a four-story building and said it did help to have the ramp to go up, but he was unsure about how this aligned with the retaining walls seen in the site plan.

Ms. Firehock said they had some discussion already about as Mr. Missel said, the oblique angle from which it may still be considered a four-story building, and there would be some vegetation removed by the construction of the building. She said in her opinion, he would be able to add a condition for additional landscaping or screening if that would help to soften that. She said he certainly did not have to exempt them from the proposed stepback, which was another tool available to them. She said if he felt if there were some solutions that the Commission might recommend in a motion, they certainly could add those to suggest a staff motion. She said she knew sometimes it was difficult to construct those on the fly, but they did it all the time.

Mr. Missel said to him, there were two issues running in parallel. He said one was the aesthetic issue, which he had seen before when he served on the ARB. He said he was not speaking for the ARB, but the reason for lowering it and nestling into the site, as Mr. Shimp said, was to mitigate the aesthetic impact of that height from the entrance corridor. He said the other parallel track was what the height regulation said. He said to him, they felt like independent things, and he did not know enough about the specific height regulations, although he had tried to do some quick preliminary research, but he would be interested to know more. He said maybe this was what staff was referring to when they said “still in discussion” or something like that. He said he would be interested to know what the actual requirement was for building height in this district. He continued that he thought that the aesthetic and the requirement for building height impact were two independent issues.

Ms. Firehock asked if Mr. Reitelbach or Mr. Rapp would like to comment on the actual regulation regarding stepback for a four-story structure and how far it had to be stepped back. She said something that might be hard for a hotel-type structure was that stepping it back may basically get rid of a row of rooms. She said for Mr. Missel’s benefit, this was all why part of the Planning Commission existed: Many things were not straightforward, so they had the opportunity to come up with their own recommended solutions.

Ms. Ragsdale said the requirement was for every over-third story or 40 feet or above, there should be a setback at 15 feet. She said parallel to the rezoning and the special use permit review had been the review on the building. She said in this case, they were relying on the ordinance, and if they did need the setback, that could be waived or modified by the Board of Supervisors. She said they also had been relying on the ARB feedback to this point regarding what would be appropriate at that location. She said the technical aspect of it was how they got to the design that was appropriate. She said it was a newer design that they had seen as they were wrapping up the staff report, so that was where they were in the process.

Ms. Ragsdale said if there were specific concerns about the appropriateness of the setback there, or if they liked what they saw, maybe they needed a waiver or not; if they were okay with the way it was constructed in the concept so far, working with the grade and as they went back to 250, it was a four-story building. She said if there were specific comments they would like to make, they would certainly consider that as they went forward—but primarily to date, it had been the ARB weighing in on that and deciding technically whether or not they need the setback waiver. She said this was a relatively new design, and they did not have a site section that might help with that. She said that was what she suggested as far as moving the between the Commission and the Board. She said the Board was always happy to have feedback as well on special exceptions.

Ms. Firehock said their job was always difficult because they usually were not looking at things that were straightforward.

Mr. Missel said when reading the code that talked about every story that began over 40 feet, minimum setback of 15 feet or more, to him that was the technical requirement that still applied. He said he did not know why it would not apply, but if there were precedent that stipulated an aesthetic of it only being visible as three stories was sufficient enough to no longer require a waiver, he could support that. He emphasized that his sense was that it was more about the technical piece that she mentioned, so he would support that approach.

Mr. Herrick said he would defer to the planners on the technical requirements, but procedurally, the applicants had requested a special exception, had an application pending, and unless or until they withdrew that request, the application was entitled to a Commission recommendation one way or the other. He said his suggestion from a procedural perspective would be that the Commission make recommendations on the ZMA, the SP application, and the special exception request—unless or until any of those were withdrawn.

Ms. Firehock said she believed part of the rationale provided in the application and made in writing by the applicant's own request was that the building was far enough back from 250 that it somewhat mitigated the effect of the three stories, and the setback requirement was trying to avoid a "dark cavern" approach. She commented that 250 was a wide road though, and the building was not right up against the road as other structures might be. She said it was in the Commission's purview to say they technically supported this County standard because it made sense and had its place, but in this particular instance, it was not necessary to impose that to fulfill a harmonious design that was not overshadowing the pedestrians or the joggers running down the road. She said she liked to operate by the book as much as possible, but she thought this was an instance in which they could use some of their discretion. She said these things did not necessarily have to be linked, and they could decide that the setback was not necessary—but

to soften the feel of a four-story building on one side, they would still like to request additional landscaping. She said those were just some of the things to consider.

Ms. Firehock commented that it was not the rule nor a law but was her opinion that it was helpful for motions to come from the Commissioner whose district the project was in. She said it was not required but was preferred since they were the representative of that area. She asked if there were any other comments or questions.

Mr. Clayborne said he wanted to go back to a comment Mr. Bivins had made earlier about how to access the site, as he had brought up a really good point. He asked if someone went down 250 to make a U-turn, if the next available spot was at Stony Point Road or somewhere else. He said he would like a better understanding of that and how that played out against a SmartScale project.

Mr. Rapp stated that SmartScale project had not been fully designed. He said what Mr. Shimp shared was a conceptual design, and over the next couple of years, they would be working through figuring out trip generation and requirements for turning and identifying best locations for those movements there. He said they were a few years out from knowing the specifics of exactly what turning movements would be allowed and where they would break. He said there currently was just an open lane, so the idea was to restrict that and bring some of those vehicular movements to specified areas where it was most safe, so they would have to go through a process.

Ms. Firehock said it was awkward at present, and it would be better but not perfect to have to do U-turns, with people from out of town trying to navigate around the road. She said a question to consider was whether any business put in that location would have to have the same situation. She asked if it were simply a problem for this hotel or a general problem. She said they had a lot of traffic problems and traffic design issues plaguing Route 250, and this would be a problem regardless of who occupied that site. She assumed that if this project would be approved that VDOT design of crossovers would take that into account.

Mr. Bailey said he thought that 250 from a transportation perspective was challenging, but as Ms. Firehock had rightfully pointed out, if the use were a hotel, it generated trips—but likely fewer trips than another type of facility like a doctor's office. He said the use and the conceptual plan presented was well thought out, and the use of topography and incorporating the building into it lessened his concerns about the setback requirement. He said he had what was considered a two-story house, but he had a walk-out basement, so he understood that it was a gray area. He said based on the way that the plans had been laid out, he did not have any major concerns with it and was inclined to support the application and the special exceptions.

Mr. Bivins said he would support this project also.

Ms. Firehock said Mr. Bivins' audio cut out.

Mr. Bivins stated that he supported the project and keeping with Mr. Missel's suggestion and Mr. Carrazana's suggestion about the treatment in the front; while it was not their issue, it should be kept in the notes that there should be some consideration about how they offered this. He said now that they were fully aware that the entrance was going to be from 250 East, it would effectively be a four-story building. He said while it may sit on the side in a way that makes it more

appropriate, it was important how they created that so it had some aesthetic and worked for people walking or running up and down that area. He said that he would like to see a condition that included the landscaping and treatment of the entrance to be a consideration when they moved this forward. He said that he did support it.

Ms. Firehock said that someone on the Commission could recommend additional landscaping in that area without getting into specifics, and staff could work with the applicant to improve the screening around the lower corner.

Mr. Carrazana said he agreed with Mr. Bivins and agreed with Ms. Firehock's point that the distance this hotel would be away from the street would render the setback meaningless, even if it was a four-story building. He said he did not think from a visual standpoint that it would have much of an impact given how far it was. He said what they were seeing was still fairly conceptual, and he was not sure if the complexity of the topography and the retaining walls they would end up with were fully vetted yet, so there was an opportunity to bring back some landscaping. He said there was a section of this site that looked bare, but it also was quite wooded towards the back, and they would be losing some of those trees as well. He said there was an opportunity to think about how they would mitigate the four stories a little more with landscaping and then introduce that three-story elevation with the ramp-up they were doing, which could be effective. He said he would encourage the applicant to consider how they could buffer with trees towards the front of the site to help mitigate the visual impact of the four stories.

Ms. Firehock said any type of condition such as that was definitely in keeping with offsetting the impact of this particular structure, and it was very much within their purview to add such a condition. She asked if anyone was prepared to make a motion, keeping in mind some of the issues the Commission had raised so far.

Mr. Clayborne said he was prepared to make a motion. He asked if it was correct that there were three separate motions. He also asked if the context of their conversation applied predominantly to the special exception.

Mr. Herrick asked Mr. Clayborne to clarify his question.

Mr. Clayborne said when he made these additional conditions, like one for landscaping, where they had talked quite a bit about exploring a pedestrian connection between the site and the bank and the rest of the commerce area, whether through stairs or another walkway. He said that and the landscaping piece were the two issues he had written down. He asked if that would go with the exception.

Mr. Herrick said that Mr. Clayborne would need to specify which of the matters he would like to add that condition to. He said the current motion that Mr. Reitelbach had prepared talked about the conditions recommended in the staff report, which were only for the special use permit. He said if the Commission wanted to recommend additional conditions, the Commission would need to specify which of the items the Commission wanted to attach those conditions to.

Mr. Clayborne **moved** to recommend approval of SP202100010 Auto Superstore SP amendment recommended by staff in the staff report.

Mr. Bailey **seconded** the motion, which passed unanimously (6-0). Jennie More was absent from the vote.

Mr. Clayborne said he believed this was where he would add the context of their conversation about additions.

Mr. Clayborne **moved** to recommend approval of ZMA202000013 Overlook Hotel Pantops PDMC amendment for the reasons stated in the staff report, with the following two recommendations: Condition one was that the applicant take on the exploration of developing a pedestrian connection between this property and the adjacent bank property so people could walk to the areas of commerce. Condition two was that additional landscaping be provided towards the front of the property at 250 that recognized the building was four stories tall approaching 250 East.

Mr. Herrick said that what Mr. Clayborne was recommending were recommendations, because it was a rezoning. He said that what was recommended would be recommendations rather than conditions.

Mr. Clayborne confirmed this.

Mr. Herrick said that provided Mr. Clayborne was agreeable to that, Mr. Clayborne had made a motion to approve the zoning with those recommendations, assuming that was what he intended to do.

Mr. Clayborne said yes, that was what he had intended to do.

Mr. Bailey **seconded** the motion.

Ms. Firehock asked if there was further discussion.

Mr. Missel said Mr. Reitelbach had mentioned the applicant was requesting a special exception. He asked if that was to be addressed separately or if it was part of this motion.

Mr. Herrick said the special exception would be handled separately.

Ms. Firehock asked if there was further discussion. Hearing none, she asked Ms. Shaffer to call the roll.

The motion passed unanimously (6-0). Jennie More was absent from the vote.

Mr. Clayborne **moved** that the Planning Commission recommend approval of the special exception request SE202100016 Overlook Hotel, with the recommendation that landscaping be explored at the front of the property to acknowledge it was a four-story building when approaching 250 East.

Mr. Missel **seconded** the motion.

Ms. Firehock asked Mr. Clayborne if he wanted the landscaping recommendation to be more specific as to whether it was a meadow, shrubs, or another feature.

Mr. Clayborne said he would prefer not to get more specific until it went before the ARB.

Ms. Firehock said she wanted to make sure he did not want to add language to make it more specific.

Mr. Clayborne said he wanted it to be landscaping that acknowledged the fact that they were trying to mitigate that it was a four-story building, since they were giving an exception to the setback rule.

Ms. Firehock clarified that it would be some substantial landscaping that would provide screening and softening.

Mr. Clayborne said yes, and making sure they recognized the exception for the setback.

Ms. Firehock said she did not know if the motion needed to be amended, but perhaps the conversation could be acknowledged in the minutes. She asked if there was any further discussion. Hearing none, she asked for the roll to be called.

The motion passed unanimously (6-0). Jennie More was absent from the vote.

STA202100002 Maintenance of Private Improvements

Mr. Bill Fritz introduced himself as Development Process Manager in the Community Development Department. He reported that in December, the Planning Commission adopted a resolution of intent to amend the subdivision ordinance regulations addressing the maintenance of private improvements. He said that staff had identified a number of issues in the ordinance related to maintenance. He said at that time, in the resolution they had presented to the Planning Commission, staff was of the opinion that a number of sections would require revision. He noted that after further review of their ordinance, the ordinances of other localities, and the state code, staff had determined that the issue of maintenance of private improvements could be addressed by making one significant amendment to one provision. He said there were some other provisions that needed to be changed if this single provision were amended, because they were related, but they only needed to perform one change.

Mr. Fritz explained that if private improvements were proposed in a subdivision, the ordinance required a maintenance agreement. He said this agreement was reviewed by CDD staff and was subject to approval by the County Attorney. He said a review of this document was a time- and resource-consuming exercise. He said ultimately this document did get approved; however, the County was not a party to that agreement and could not interpret or enforce the agreement, and the ordinance did not actually require that the document they had spent so much time preparing be recorded. He said it needed to be in a form that could be recorded but did not actually say it needed to be recorded. He continued that, to put it bluntly, the County required an expensive document that had no enforceable value. He said what they needed was something that was enforceable to ensure that these private improvements were in fact maintained.

Mr. Fritz stated that the ordinance required a note on the plat that if there were private streets in the subdivision, the note acknowledged there were private streets in the subdivision and stated

that they may not meet VDOT standards, and they may not be maintained by VDOT or Albemarle County. He said the note did not require maintenance and did not state that failure to maintain may be a violation of the ordinance. He said the note also only applied to private streets. He said to address that problem, staff came up with some language. He showed on a slide the existing language and the proposed language change. He said the original language said if there were a private street, it did not meet the standards and would not be maintained—and what they were proposing was much clearer. He said unless something was noted as public, it was of private nature and would not be maintained by the public. He said the maintenance was an obligation of the affected lot owners, which was new language.

Mr. Fritz said further new language was that failure to maintain what was substantially the same condition as was originally approved so they established a standard that had to be maintained, may constitute a violation of the County ordinance. He said they went from a simple statement to including private features that would not be maintained by the public, and lot owners were obligated to maintain them by a set standard, which was a much more informative piece of information for anyone who was buying a piece of property and going into that subdivision. He said this would apply to both commercial and residential subdivisions and put them on notice that failure to maintain may constitute a violation of the ordinance. He said he believed it was much more extensive language that eliminated the need for the County to review a maintenance agreement. He said it established that the improvements must be maintained by the lot owners, and it established the standards.

Mr. Fritz pointed out that the state code actually included a Property Owner's Association Act. He said that was required for subdivisions that included privately maintained features, and this provision of the state code was self-acting and did not require incorporation into the County code. He noted that as he had said before, there were some other provisions of the ordinance that required revision. He said the section dealing with the maintenance agreement, section 317, was repealed in its entirety. He said they also noted that section 235 needed to be amended, which was in their packet. He said after the preparation of the report, they noticed there was another section 234, which contained the same information as 235 and said if there was a private improvement, they also must submit the document required by 317. He said that needed to be stricken in the same way 235 would be stricken, which was included in the packet. He said that concluded his presentation, and the issue boiled down to a fairly simple subdivision text amendment that they believed would have significant impact on the workload for the applicant and the County, and actually resulted in a better situation for enforcement and awareness for lot owners in any particular subdivision.

Mr. Bivins said there was a tragic situation when a large amount of rain came perhaps five years ago, and a bridge going into West Leigh failed. He said those were private roads, so the question arose as to how a bridge would be reconstructed—and if there were delay in that, what the County's role would be in getting somebody in that development to get the bridge constructed.

Mr. Fritz responded that it was a difficult question to answer. He said what Mr. Bivins was asking was what the County's role would be to restore that, and that would be dependent on what the Board of Supervisors wanted to do. He said that was a political question and not a subdivision question.

Mr. Bivins said the main piece was that there was nothing that would come from VDOT or the County because the bridge was washed away.

Mr. Fritz said that was correct.

Mr. Bivins asked if the bridge were considered a private road.

Mr. Fritz responded that it was a private improvement that was part of the private street.

Mr. Bivins said that was what he was trying to figure out, noting that it was included by the other language.

Mr. Fritz said they made it all inclusive, so unless it said it was public, it was not.

Mr. Bivins said that was his only question about how the County and VDOT would react in that case of being a very expensive repair.

Mr. Fritz said something he did not include in the presentation but that was in the staff report was that drainage was an issue. He said drainage was addressed by a different provision and enabling authority from the state code, which was dealt with in Chapter 17 of the County code. He said that would remain the same because they had different ways of dealing with it—and it seemed to be working. He said they were unable to take the authority they had for Chapter 17 and move it into Chapter 14.

Mr. Bivins asked if when they began looking at their comprehensive plan, they would begin looking at private roads and see what the obligations were for new developments to have roads built to VDOT standards, so that this particular ordinance would not become an issue again in the future.

Mr. Fritz said he could address that issue because he began his work at the County just as they began dealing with private streets and creating them with standards, because there had been previous problems with that. He said at that time, there was a lot of discussion about whether or not private streets should be due to the obligation it placed on the property owners within the subdivision. He said there was also a period in the 2000s where the Planning Commission denied a number of private street requests that then went before the Board of Supervisors. He said they had the authority to approve private streets, but it was a policy decision if they wanted to do that.

Mr. Rapp commented that he had been involved in localities that handled it both ways, and there were drawbacks with both. He said it was a debate that would be had as they worked through some of their development standards with their upcoming comprehensive plan and multi-modal transportation plan, and as they adopted some of the more urban street standards and updated their ordinance that related to that. He added that they needed to expand on their standards manual for these types of physical public improvements. He said there were some that needed to be revisited and fleshed out so they had something more concrete in terms of maintenance and some of those requirements—so that in the event they were not maintained, they could ensure they had the means to do so.

Mr. Missel said he wanted to know what the word “substantially” meant in the phrase “failure to maintain the improvements, it was substantially the same.” He said it seemed like it could open

that up for interpretation. He said the second question associated with that was what violation of County ordinances it might constitute.

Mr. Fritz explained that whenever a road was built, as soon as they finished constructing it, it began to deteriorate; they did not want to say it was exactly the same, because it was not practical—so the best word they could come up with was “substantially.” He said they used that language throughout planning activities when there were rezoning proffers were accepted that said they would be “substantially in accord with.” He said it was language of the art of planning. He said that it was absolutely up for debate and interpretation, and that would be something that the agent would have to analyze and decide that it had deteriorated to the point it was no longer substantially in accord with the previous approval, and then invoke the enforcement provisions of the subdivision ordinance. He added that there was a variety of things the agent could do to cause compliance.

Ms. Firehock said it seemed to be a relatively straightforward need that the County had, and she felt sorry for people who ended up with private roads that did not realize they were private and now had to take care of them, but it was up to the buyer to figure that out. She asked if anyone was prepared to make a motion. She asked for further clarity that they were making a motion of intent to consider this.

Ms. Herrick said it was a public hearing, so it must be opened up to the public first.

Ms. Firehock said she understood and wanted to know what they would be advancing.

Mr. Herrick said that the Commission was advancing the actual text that Mr. Fritz had recommended, and in addition to the one modification he mentioned, there was an additional section that would need to be addressed when it was taken before the Board of Supervisors.

Ms. Firehock said if there were no further questions for staff, they would now open the public hearing.

Public Hearing

Ms. Shaffer said no one was signed up for public comment.

Ms. Firehock closed the public hearing and returned the matter to the Commission.

Mr. Fritz said he did reach out to a number of regular applicants during the development of this language and received no negative feedback from them.

Ms. Firehock said that was good to know. She asked if there was any further discussion by the Commission, and if not, she was ready to entertain a motion.

Mr. Bivins **moved** to approve STA202100002 Maintenance of Improvements, which was **seconded** by Mr. Carrazana.

Ms. Firehock asked if there was any further discussion. Hearing none, she asked for the roll to be called.

The motion passed unanimously (6-0). Jennie More was absent from the vote.

Committee Reports

Ms. Firehock said she had concluded her work on the Capital Improvement Plan for the County. She said as she had mentioned at their last meeting, there was not a lot of money to use to be expansive with their decisions, and they put a lot of emphasis on trying to modernize the schools and support future construction of a new school. She said they all received the report from the CIP committee, which was sent to the entire Planning Commission and everyone else on that list. She said she was sure it was available for other members of the public who wanted to peruse the details.

Review of Board of Supervisors Meeting from December 15, 2021

Mr. Rapp said there were two public hearings on December 15 for land use applications. He said the Board unanimously approved a special use permit for the Education Transformation Centre in Earlysville that had been before this Commission. He said the Board also approved a ZMA for Rio Pointe, which had been Parkway Place when it came before the Commission. He said it had a new name and owner but was mostly the same project.

Mr. Bailey said if he remembered correctly, those were the ones on Rio Road that were not part of the Rio Corridor traffic study.

Mr. Rapp clarified that they were right at the corner of John Warner Parkway and Rio Road, adjacent to the roundabout. He said it was included in the study, and he would continue to work with them and VDOT as the project moved forward. He said they had incorporated some things like the multi-use paths along the frontage that they planned to send down Rio Road.

Mr. Bailey said he was not sure which apartment building it was because there was another in that area.

Mr. Rapp said there was another currently in review that was on the other side of 29.

Old Business/New Business

Mr. Bivins said that they had approved a project on the corner of Belvedere and Rio and asked if that project would be moving forward.

Mr. Rapp responded that the project was not moving forward as of now, and they had nothing in review. He said he was familiar with the project that had been approved.

Adjournment

Ms. Firehock **moved** to adjourn the meeting, which was **seconded** by Mr. Bivins and passed unanimously.

The Planning Commission adjourned its meeting at 8:20 p.m. to January 18, 2022.



Charles Rapp, Director of Planning

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

Approved by Planning Commission
Date: 02/01/2022
Initials: CSS