

Minutes

**PLANNING COMMISSION REGULAR DOCKET**  
**December 11, 2018 – 5:30 P.M.**  
**CITY COUNCIL CHAMBERS**  
**NDS Conference Room**

**I. COMMISSION PRE-MEETING (Agenda discussion(s))**

*Beginning:* 4:30 pm

*Location:* City Hall, 2<sup>nd</sup> Floor, NDS Conference Room

Members Present: Chairman Lisa Green, Commissioners Jody Lahendro, Taneaia Dowell, Lyle Solla-Yates, and Rory Stolzenberg

Staff Present: Missy Creasy, Matt Alfele, Brian Haluska, Craig Fabio and Kari Spittler

Chairman Green called the meeting to order at 4:59pm and the Commission began asking questions on the ZTA application for Dwelling Unit Clarification. Commissioner Solla-Yates asked if this request would result in a down zoning. It was noted that it would not. Ms. Robertson provided clarification on the request before the Commission. Chairman Green stated that the BZA was very focused on the “exclusive use of occupants” language when they made their determination last month and she felt what is presented on this agenda to clarify is more extensive than she expected.

Commissioner Stolzenberg was concerned that the language presented could lead to different housing types being considered “boarding houses”. The Commission stated additional questions and noted that further discussion will be provided during the regular meeting. Chairman Green asked if that discussion should occur prior to the initiation. Staff noted that it can be initiated and the Commission can focus discussion during the public hearing portion of the meeting.

**II. COMMISSION REGULAR MEETING**

*Beginning:* 5:30 pm

*Location:* City Hall, 2<sup>nd</sup> Floor, NDS Conference

Members Present: Chairman Lisa Green, Commissioners Jody Lahendro, Taneaia Dowell, Lyle Solla-Yates, Rory Stolzenberg, and Mr. Bill Palmer

**A. COMMISSIONER’S REPORTS**

**Commissioner Lahendro:** Attended Tree Commission meeting on December 4. In reviewing the replacement of the tree in the mall area, the tree commission became aware that the City should redesign the mall hardscape and landscape of the area, as the current area does not relate to the new Charlottesville Technology Center project. The Tree Commission will make this suggestion to City Council. On November 17, 40 volunteers, the Tree Commission and the residents in Belmont planted 21 trees in Belmont that were requested by the residents. The Commission also discussed how Parks and Recreation and Neighborhood Development Services have some confusion on City Council’s approval of the CIP for the Cultural Landscape Report for the Downtown Mall, as the

objective and scope of the study is unclear and requires clarification from City Council before any decisions can be made on the project.

**Commissioner Solla-Yates:** Attended two Housing Advisory Committee meetings and was appointed the Vice Chair of the HAC Committee and will be contributing a larger role at the meetings. The Housing Strategy may take as long as next December before there is a product. The Land Bank Ordinance language, which has been discussed as an affordable housing solution for about a year, has been revised and is set to go to City Council next Monday.

**Commissioner Dowell:** Received notification that the Community Block Development Grant and Home Investment Partnership Funding applications are in and will be reviewed during the week of January 14.

**Commissioner Stolzenberg:** No report

## B. UNIVERSITY REPORT

**Bill Palmer:** The Master Planning Committee met in November and Hosea Mitchell attended the meeting. Notes that the E-scooters and E-bikes are available now and UVA has been in close coordination with the City on this effort and feels comfortable with where things are at this point.

## C. CHAIR'S REPORT

**Lisa Green:** Attended several Capital Improvement Project meetings. The draft was sent to Council last week and a report is expected on Tuesday, December 18. Met with CLIHC about the draft Land Use Plan last week to get feedback and will be presenting to Council in January. They are working on a housing strategy that will be presented next Monday, which would help in guiding Land Use. Attended the Thomas Jefferson Planning District Commission Meeting on December 6 and there were conversations about Go Virginia, an economic development grant program throughout Virginia for businesses and localities looking to begin startup programs. TJPDC is going to do some housing assessments regionally and thinks a regional strategy instead of just a locality strategy will be beneficial. The advisory board is still being determined and an executive committee will be elected soon. On January 5<sup>th</sup> there will also be a "Marathon Meeting" and times will be posted soon.

## D. DEPARTMENT OF NDS

**Missy Creasy:** The Comprehensive Plan will be on the agenda for December 17 and Commissioners and NDS staff will help assist with questions for Council during the upcoming presentation. A work session for the Comprehensive Plan is scheduled for next Tuesday, specifically regarding the CIP. There are two January work session requests for projects.

## E. MATTERS TO BE PRESENTED BY THE PUBLIC NOT ON THE FORMAL AGENDA

**Stephen Kinningham, Woolen Mills Neighborhood Association:** Resides at 1310 Chesapeake Street and seeks clarification regarding the November 28 draft of the general land use map. The draft includes designation for high density on a 28 acre parcel of undeveloped greenspace along the Rivanna River and a significant portion of the parcel is FEMA floodway and includes a trail easement used by the Rivanna Trail. The change in designation is questionable because the floodway restriction makes it unlikely that the parcel could support high density development and the gradient of intensity for the parcel extends into a formerly low density residential area along Fairway Avenue and the gradient itself is unnecessary. Asks the Commission if the change was intentional because it is the only high intensity parcel in the City that is not currently developed. If it was intentional, how does the Commission anticipate it being used for high in intensity development?

**Jess Wenger, Fry's Springs:** Resident of 13 Mobile Lane and represents an organized group of 30 households that share concerns about the proposed Special Use Permit for a sanitary sewer pump station within the neighborhood. Notes concerns about the impact of the surrounding neighborhood, including noise, smell, and operation, as well as the long term maintenance requirements for sanitary pump stations and the possibility of the new neighborhood's homeowners association failing. A raw sewage release from an inadequately maintained sewer pump station would negatively impact the existing downstream properties and may require the City to take over the operation of the pump station to prevent human health hazards. A community meeting with the developer will be held tomorrow to discuss the details of the project. Asks the Commission to consider the potential impacts of a privately owned sanitary sewer pump station and the impacts that they may have on the existing character of the Fry Springs neighborhood.

**Mark Kavitt:** Resident of 400 Altamont Street. Last month the Commission made a political decision on the PUD for the Carlton Views Apartments and it was not a good decision because the property did not meet the requirements for a PUD. There are times when you can get things from the developer that you may not want to give, but when push comes to shove they will do what you want. Mentions concerns about the new zoning map and the high density areas and it is marked as a high density units so the only way to achieve that would be to knock down houses in the ADC district.

**Joan Albiston:** Owner of the property at 301 Azalea Drive and would like for Commissioners to carefully consider the private sewer pump, as it will impact surrounding homeowners that have been living there for many years and could negatively impact the value of their homes. That is not the only potential issue impacting the development and should not be viewed as needing approval at another date in order for the project to move forward.

## F. CONSENT AGENDA

(Items removed from the consent agenda will be considered at the end of the regular agenda)

1. Zoning Text Initiation – Dwelling Units Clarification

**Commissioner Solla-Yates moves to approve the consent agenda as presented. Seconded by Commissioner Stolzenberg. Motion is approved 5-0.**

## III. JOINT MEETING OF COMMISSION/COUNCIL

*Beginning:* 6:00 pm

*Continuing:* until all public hearings are completed

*Format:* (i) Staff Report, (ii) Applicant, (iii) Hearing

### 1. 918 Nassau Street

#### a. ZM-18-00001 – (918 Nassau Street) (Hogwaller Farm Development)

**Chairman Green:** Justin Shimp (Shimp Engineering) on behalf of Charles Hurt and Shirley Fisher (landowners) have submitted a rezoning petition for Tax Map 61 Parcels 79.17, 79.18, & 79.19, 918 Nassau Street, and a portion of Tax Map 61 Parcel 79 (Subject Properties). The rezoning petition proposes a change in zoning from the existing R-2 Two-family Residential to HW Highway Corridor with proffered development conditions. The proffered conditions include: (i) maximum height of buildings: Any structures(s) located on the property shall not exceed thirty-five (35) feet in height, where height is the vertical distance measured perpendicularly from grade from the

highest point on such building or structure; (ii) future land uses: (a) the gross floor area of any singular commercial use shall not exceed 4,000 square feet. This shall not prohibit the gross floor area of multiple commercial uses from exceeding 4,000 square feet; (b) the land uses permitted on the Subject Properties are found in the HW Corridor Sec. 34-796 use matrix, but prohibits the following; Adult assisted living greater than 8 residents. Bed-and-breakfasts homestays, B&Bs, Inns, convent/monastery, nursing homes, residential treatment facility over 8 residents, shelter care facilities, amusement centers, animal boarding/grooming/kennels without outside runs or pens, art galleries, auditoriums, amphitheaters, automotive services, banks/financial institutions, bowling alleys, car washes, catering business, health clinics, veterinary clinics, private clubs, data centers, dry cleaning establishments, elementary schools, high schools, artistic instruction up to 4,000 SF, electronic gaming cafes, hotels/motels, laundromats, libraries, small breweries, movie theaters, municipal buildings, museums, music halls, offices, outdoor storage, public recreational facilities, fast food restaurants, full service restaurants, taxi stands, transit facilities, consumer service businesses over 4,001 SF, home improvement centers, pharmacies, shopping centers, shopping malls, retail stores over 4,001 SF, laboratories, and printing/ publishing facilities; (iii) affordable housing; contingent upon approval of residential density on site, the owners shall reserve ten percent (10%) of the units built on the Property for on-site for-rent affordable dwelling units (as defined herein). The units will remain affordable for a period of twelve (12) years from issuance of certificate of occupancy. For-rent affordable dwelling units shall rent at a rate making the units affordable to households with incomes at not more than 50% of the area median income ("AMI") for the Charlottesville Metropolitan Area published annually by the United States Department of Housing and Urban Development ("HUD"). The Subject Properties are further identified on City Real Property Tax Map 61 Parcels 79, 79.17, 79.18, 79.19, & 79.201. The Subject Properties is approximately 0.8 acres. The Land Use Plan calls for Low Density Residential. The Comprehensive Plan specifies density no greater than 15 units per acre.

**Chairman Green:** Asks staff to focus specifically on changes that have been made since previous meetings rather than to start from the beginning on this project.

**Staff Report, Matt Alfele:** Planning Commission originally heard this application on April 18 and asked the applicant to wait until the County made a decision on their portion, which they eventually approved. This item was then presented in front of the Commission again in October and Commissioners noted storm water concerns, in which a work session with the applicant was held on October 30 to discuss concerns with the name of the development. The Human Rights Commission was contacted regarding the name of the development as being derogatory and Ms. Creasy will present the feedback given from that meeting.

**Ms. Creasy:** Recommendations include that the Planning Commission should engage the residents of the Hogwaller neighborhood to see what they think about the development name and if the Planning Commission feels strongly about using the name, it could be called "Waller Farms" or be called something else and have a historic plaque be platted in the area to acknowledge the neighborhood name.

**Continued Staff Report, Matt Alfele:** Regarding the concern with the future by-right commercial retail development, the applicant updated their proffer statement to reflect a 4000 square foot gross floor maximum for any commercial use on the site. Regarding the convenience store use, staff recommended the applicant to get a zoning determination letter from the zoning administrator on the definition of a convenience store and no action was taken by the applicant. For the concern over special uses that remain over the proffered matrix, staff consulted with the City Attorney's Office and it was determined that SUPs could be removed from the proffered use matrix and the applicant updated the proffer statement to remove all SUPs except for utilities, facilities, farmers markets and outdoor parks. Regarding the concern that not enough affordable units will be provided, the applicant updated the proffer statement relating to affordable housing. Relating to how storm water would be handled on site, staff updated that analysis. Notes that the Commission may want to keep the following density in

mind during discussion: under current R-2 zoning, the subject property could accommodate 4-5 detached single family homes, each up to 4 unrelated, or 3-4 attached single family homes, each with up to 4 unrelated. If the zoning is changed to highway corridor, no single family homes would be allowed and the by-right density of the highway corridor would be 0. If the property is rezoned and the SUP is approved, the density would be 32 DUA, which would allow for 30 units. The current zoning is 4-8 units.

## COMMISSIONER QUESTIONS

**Commissioner Solla-Yates:** Mr. Mitchell was concerned that the storm water be treated onsite, including the county portion, instead of using offsite storm water credits. Where is staff on that plan?

**Mr. Alfele:** One of the conditions that staff recommends is that onsite storm water be handled to the best of their ability, but there are some unknown factors with it being in the floodplain and staff wanted to leave a little wiggle room in that condition just in case there were engineering issues later on in development.

**Commissioner Lahendro:** What exactly is the wiggle room that they have set in place?

**Mr. Alfele:** The minimum storm water management must comply with the VSMP and there is a preference for onsite quality treatment. One other condition being proposed via state code would allow DEQ to review the whole site, which is the preference of the City, but an agreement with the County is necessary before that can go forward.

**Commissioner Stolzenberg:** Asks for clarification on the affordable units and how they will be governed and enforce compliance with the requirements. Will they be subject to the standard operating procedures and will they have to accept housing vouchers?

**Mr. Alfele:** Would like to leave it up to the applicant to address, but notes that staff would enforce what is proffered right now and the mechanism to do that would be to join forces with a nonprofit but that is not currently in the proffer.

**Applicant Justin Shimp, Shimp Engineering:** Would like to discuss the enforcement of the affordable housing and notes that they can operate it and would turn in a report to the housing office every year showing that they complied. As far as the vouchers go, they are fully intending on using those. The affordable housing has also been reduced to 50% AMI. Notes that concerns regarding the floodplain construction have come up but clarifies that it is not part of the Commissioners vote because it is permitted by-right. It is not a question of if it will be build, but rather what would be built on the property. They tested the soil to be sure it would support the farm and the results show that they have only very small amounts of mitigation to do. In terms of the convenience store, they did not want to preclude that in case someone wanted to build this in the future, which would have positive impacts. It would be on a small scale with 4000 square feet and does not think it would be detrimental to the neighborhood. Applicant is supportive of the City's position relating to storm water runoff, and notes that there is only a very small risk of flooding on the development area. Applicant would like to highlight a few conditions made in the SUP that he would like to make revisions to, which are to allow for flexibility in the how number of bedrooms allowed in each unit are broken out while keeping the maximum number of units as proposed at 42, to have an 8 foot setback to address the articulation on the street and be required to shift the plane of the building, to revise the traffic plan to use the same road between farm and residential traffic because the farm traffic would be minimal, and to make the adjustment that it does meet the Land Use map if you treat the whole 3 acres as development. Notes that he does not agree with any comments stating that the name 'Hogwaller' is racially

driven and that some people like the suggestion that the Hogwaller is for “hogs” and not for people and believes the name pays honor to the history and the tradition of its name.

## COMMISSIONER QUESTIONS

**Commissioner Stolzenberg:** Would like clarification on the new floodplain that was given. It looks like the topography matches the GIS but the level of the floodplain is 324 feet, as opposed to 331 on GIS. Where did the 7 foot difference come from?

**Mr. Shimp:** It is from a flood study that was done years ago for the Woolen Mills project and there was a technical revision that is on the revised set of maps on the FEMA website. That number is the legal floodplain boundary in elevation.

**Commissioner Dowell:** What made you decide to change the hard definition of the numbers of bedrooms and move towards having a mix?

**Mr. Shimp:** Notes that he fully intends to build the mix, but would like to have the hard requirements removed for flexibility purposes in case there is a technical reason that wouldn't allow him to build those specific units.

**Commissioner Lahendro:** Asks for clarity on the new edits presented tonight and asks if staff has seen these suggestions. Is this all new information to the Commission, staff and the public?

**Mr. Shimp:** No, staff has not reviewed them. These edits are requested amendments for the Commission to make that would give them a little more flexibility over producing a better project.

**Chairman Green:** Asks if the applicant has a FEMA permit, or if the permit is from the City based off of FEMA maps.

**Mr. Shimp:** Both. There is a conditional letter of map revision and they have a City floodplain development permit.

**Chairman Green:** How would the floodplain update affect the current permit if it were to change? Would it void the permit or would it need to be updated?

**Mr. Shimp:** It would depend but it will most likely be revalidated. However, if the elevation changed, a new floodplain permit would need to be done. The processes usually take multiple years, so he believes something will be built before that point.

**Commissioner Stolzenberg:** Wouldn't the reevaluation be done based on higher hundred year precipitation totals, meaning the floodplain would move up?

**Chairman Green:** The County is working with FEMA to update the County floodplain maps. The process takes 3 years and hopefully something will have been built by then.

**Commissioner Stolzenberg:** Asks what the thought process was when the affordable housing was changed to 50% AMI versus 80%, and are you taking the HUD AMI numbers and multiplying them by 50 and then taking 30% of income, or will you adhere to the HUD low home limits?

**Mr. Shimp:** It is interpreted as the HUD low limits and the HUD low is 50%. The attempt is to try and increase affordability as much as possible since that was voiced as a concern.

**Chairman Green:** How many units are you anticipating?

**Mr. Shimp:** 30, which would mean 3 affordable units would be available.

**Chairman Green:** How will that be enforced and regulated?

**Mr. Shimp:** A report would be turned in each year to be sure they all meet the threshold to live there. Technically, it would be a zoning issue that could be enforced if there was a complaint that they were in violation of the rule.

**Commissioner Stolzenberg:** Asks if the affordable units would be one or two bedrooms.

**Mr. Shimp:** Unsure but notes that they would be on the ground floor, but is open to hearing preferences from the Commission.

**Chairman Green:** Asks Ms. Robertson how the City handles proffer violations.

**Ms. Robertson:** A proffer is a zoning regulation. In order to pursue a violation, zoning staff would have to provide evidence that there is a violation, which would be very difficult to enforce. This proffer does not address what kind of affirmative information would be provided on an ongoing basis on how the affordability is being maintained.

## **PUBLIC HEARING**

**David Katz:** Resident of the City of Charlottesville and thinks building new homes on a floodplain is a bad idea and suggests that the Planning Commission should vote against the project. The project will be in the 100 year floodplain, which means every year there is a 1% chance of there being a flood. Within a 30 year span, there would be a 26% chance of a flood occurring, which is a 1 in 4 chance. Notes that the area is prone to flooding. There are other environmental issues that others will address but this area is a marshland that is a natural pollutant. Disappearing marshland is a known environmental concern in the City and County. This project would be part of the City of Charlottesville and in Albemarle County and the County is not allowing any development on their side of the boundary and an invisible line in the sand does not change the features of that land.

**Karen Katz:** Resident of the City of Charlottesville and mentions that it is ironic that the name may have more significance than we thought, as it appears they are wrestling with how to respond to a “pig in a poke.” A pig in a poke is commonly defined as an offer or deal that is foolishly accepted without being examined first. The community has found themselves threatened by the effects of unprecedented severe weather events, the land has increased exponentially as a marshland, as a sponge and a filter to manage storm water that flows from upstream. The land has continued to be recognized as unsuitable for building and the engineers have tried to turn the land into something that it is not intended to be. Commissioners are faced with the task of rezoning a site that has acted as a natural sponge and filter to absorb storm water runoff from the City and filter it before it enters Moore’s Creek and the Rivanna River, when Moore’s Creek is officially designated as an impaired waterway. This geographic disparity has troubling implications and offers an opportunity to engage in better planning development.

**Mark Kavitt:** Points out that DEQ has not heard about this plan as of yesterday. Tonight the Commission is tasked with an important decision on land use, not a political decision on land use. It is the job of City Council to make political decisions. Everyone wants more land to build on and more affordable housing, but key points need to be addressed about this decision, which include not putting people and property at risk, not putting development profits before our building to ensure the safety of people and property, and not building in a floodplain where there have been 5 floods since 1936. During the flood of 1969 the residents of Nassau Street had to use boats to get around the town. Notes that Charlottesville should be proud of what we create and we don't want to build the slums of tomorrow. Most of the world is moving away from building on floodplains and doesn't understand why Charlottesville would consider it because the entire area is in a floodplain. Notes that Commission needs to follow the Comprehensive Plan and follow the best practices by rejecting this plan. Mentions that City Council wants to change zoning away from highway corridor for this area, so why would the Commission even consider the idea of expanding? States that the affordable housing problems will not be solved by just putting one or two units in a location.

**Fran Joseph:** Shares a concern that she is worried about the affordable housing being placed out front in order to get an SUP or rezoning when it's for 12 years. We need a plan that's going to give us affordable housing for the long term.

**Kimber Hawkey:** Resident of Belmont/Carlton and states that this does not fit in line with the Comprehensive Plan. The Comp Plan promotes having a green city, healthy air, natural areas, a healthy ecosystem, improving and protecting streams, etc., yet the Commission is considering rezoning to build high density in a natural floodplain and destroying a natural habitat that serves as a filter for Moore's Creek and the Rivanna. Another goal is to have a robust urban forest and expand the urban tree canopy, but this plan would do just the opposite. Notes that houses and impervious surfaces make flooding worse, but trees help during flooding so more trees should be planted there. The Comp Plan also states that quality housing, viable neighborhoods, and to ensure environmental sustainability of these areas are all important and building on a floodplain is not a viable solution. The Rivanna is valuable and there is a goal to promote the river and system, but this project would eliminate a natural wetland filter and will have negative effects on Moore's Creek. Farm runoff will further pollute the creek and ultimately affect the Rivanna. The idea of the urban farm is a good idea but the natural wetlands area is simply not a good place to put an urban farm. Rather, suggests creating a resilient local foods system by simply promoting community gardens and a farmers market to have more food independence.

**Michael Payne:** Resident of Belmont and reiterates that the Planning Commission should seriously consider the environmental impacts. A few years ago housing was proposed by a nonprofit and it was decided that the housing was not feasible and it would have to be built on stilts for it to be viable. States that we have to figure out a way to incorporate climate change into Planning Commission decisions and city development decisions. Floodplain maps are also outdated and will only continue to accelerate, which needs to be taken into account when making floodplain impact decisions.

## COMMISSIONER DISCUSSION

**Commissioner Solla-Yates:** Asks for staff to comment on the new information that was presented tonight

**Mr. Alfele:** The floodplain information provided tonight is new information to staff. We do have a floodplain administrator that can look at the plans.



**Chairman Green:** Where does the GIS map information come from?

**Commissioner Lahendro:** We have staff that reviews this and asks if they have reviewed the application to make a recommendation. What did staff say regarding building within the floodplain?

**Mr. Alfele:** Staff reviewed the plan but the City is very limited on what they can do because it is not a city process. The applicant technically meets all of the federal regulations.

**Ms. Robertson:** Clarifies that we have an overlay zoning district in our ordinance called a flood hazard overlay and there are certain things listed as being permitted within a floodplain. If the items proposed being constructed in a floodplain are allowed by our ordinance, they will have to be flood proofed or treated with standards required by federal regulations. It's more of a verification of use from a zoning perspective to make sure the use is allowed in our overlay district, and after that it is a building permit issue to ensure the structures are compliant.

**Chairman Green:** Regarding the Standards of Review, notes that the Commission must decide (1) whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan; (2) whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community; (3) whether there is a need and justification for the change; and (4) when pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the Commission shall consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification.

**Commissioner Stolzenberg:** The question of where the floodplain is does fall within the standards of review because the Comprehensive Plan addresses floodplains. If the applicant was mistaken in his edited 324 feet floodplain level, would it invalidate this decision if it turns out he is wrong?

**Ms. Robertson:** For this stage, a general idea of where the floodplain is would be appropriate and Commission may note there are some concerns. For the actual verification of the limits of the floodplain, that happens later in the development process.

**Ms. Creasy:** The floodplain administrator is involved with this and spent a lengthy amount of time on the phone with citizens discussing the development. Right now we are just deciding a general standpoint and it will get more specified at a later date.

**Ms. Robertson:** It can be complicated because some locations only have approximate locations for making determinations regarding what the requirements may be.

**Commissioner Lahendro:** Does staff have any initial comments or thoughts regarding the changes that the applicant made even though there has not been adequate time for review?

**Mr. Alfele:** There are concerns with changing the conditions that were submitted in the original SUP and these changes are not reflected in the application. States that a street wall regulation was a concern during the transition from Linden Lofts that the City Urban Designer came up with and cannot personally speak to whether that change would work or not. The concern for the traffic control was conditioned in case there were conflicts between the residential and farm use vehicles.

**Commissioner Lahendro:** Notes he is extremely uncomfortable with the applicant making significant changes without the opportunity for the Commission, staff and the public to review ahead of time and does not feel that this should be allowed. Asks if staff feels as if these changes should be allowed?

**Commissioner Stolzenberg:** Were these conditions were part of staff's recommendations or part of the initial application?

**Mr. Alfele:** Staff's recommendations are in the SUP report that came out a week prior to the meeting. The applicant looked at these recommendations and came up with his own counter and is offering that to the Commission tonight.

**Commissioner Stolzenberg:** Regarding the stepback after the second story, will it impact how many units can be built?

**Mr. Alfele:** The applicant is trying to say that the condition could impact the number of units. There is an easement that runs through the parking lot and the applicant could not push into that easement.

## COMMISSIONER COMMENTS

**Commissioner Dowell:** Notes that it is not fair to the Planning Commission, staff or residents that people come to the night of their presentation with new information or handouts. The Planning Commission and our citizens need to have the time to review new information beforehand. As a body, the Commission should not accept handouts at meetings without first having time to review them.

**Commissioner Lahendro:** Agrees and states again that the changes are significant and that they need to be reviewed first.

**Commissioner Stolzenberg:** Agrees with Commissioner Dowell in general, but notes that in this particular instance there is a change in the floodplain and would separate that from these condition edits. The applicant typically views the conditions and makes a case at the podium.

**Ms. Creasy:** Clarifies that the motion for the rezoning must come before the SUP motion.

**Commissioner Stolzenberg:** Notes that given the housing crisis that we are in, if it is true that this property is barely in the floodplain by barely a foot or two, and that we are getting affordable units at 50% AMI, it would be a shame to deny this project on the basis of the concerns stated.

**Commissioner Dowell:** Notes that while she appreciates the 50% AMI, 3 units will not make a big difference on the affordable housing crisis and the long term consequences of building in the floodplain have not been fully assessed.

**Commissioner Stolzenberg:** 3 units alone may not make a difference, but they do add up. Agrees with the possible impact on Moore's Creek and would be sympathetic and conditions could be imposed for that on the SUP.

**Commissioner Lahendro:** Asks for clarification on which application is being voted on and if it includes the edits.

**Chairman Green:** Shares concerns about the new floodplain map.

**Commissioner Stolzenberg:** Believes the applicant said the change would not have been reflected on the map and only on the elevation of the flood. Requests for the applicant come forward to provide clarification.

**Chairman Green:** Does not think we should have a debate or work session, but if the Commission is okay with getting clarification.

Commissioner Lahendro and Commissioner Solla-Yates both consent to this clarification.

**Mr. Shimp:** FEMA affects the elevation, so if you look at the floodplain study there are tables that have the floodplain elevation for different cross sections. Within those, it outlines the new elevations, which match with the field survey for the floodplain. There will be steps after construction to establish the bounds and ensure the floodplain does not affect the buildings and the floodplain is 6 feet lower than the buildings proposed and barely touches the back of the property.

**Commissioner Stolzenberg:** Asks if the applicant would be building more than 6 feet lower.

**Mr. Shimp:** It would be approximately 6 feet of fill placed under the building.

**Commissioner Dowell:** Notes that we continue to get applications that do not match the Comprehensive Plan and that we need to follow that plan.

**Commissioner Lahendro:** Would like clarification that we are not voting on the changes that have been made by the applicant.

**Commissioner Solla-Yates:** Confirms that is correct.

**Commissioner Solla-Yates moves to recommend approval of this application to rezone the subject properties from R-2 to Highway on the basis that the proposal would service the interests of the general public and good zoning practice. Seconded by Commissioner Stolzenberg. Motion fails 3-2.**

**Commissioner Solla-Yates moves to recommend denial of this application to rezone the subject properties from R-2 to Highway on the basis that the proposal would not service the interests of the general public and good zoning practice. Seconded by Commissioner Dowell. Motion is approved 3-2.**

**Chairman Green:** Asks for clarification with legal at what point are there so many conditions that it no longer meets good zoning practice.

**Ms. Robertson:** That is not a legal conclusion because it depends on circumstances of a particular case.

**b. SP18-00004 – (918 Nassau Street) (Hogwaller Farm Development)**

Justin Shimp (Shimp Engineering) on behalf of Charles Hurt and Shirley Fisher (landowners) have submitted an application seeking approval of a Special Use permit (SUP) for a portion of Tax Map 61 Parcel 79, Tax Map 61 Parcels 79.16, 79.17, 79.18, & 79.19, 918 Nassau Street (Subject Properties). The SUP application proposes a density of 32 Dwelling Units Acres (DUA) per City Code Sec. 34-740. The applicant is requesting a rezoning (see

petition ZM-18-00001) and a SUP for the proposed development of eighteen (18) one-bedroom and twelve (12) two-bedroom units split between two (2) three-story buildings for a total of thirty (30) dwelling units. The development is being proposed as an urban farm and will accommodate a 1,280 square foot greenhouse and a 600 square foot retail farm store. Additional parking, farm sheds (not to exceed 600 square feet), and agricultural fields supporting the development are proposed on an adjacent 7.52 acre county parcel. The Subject Properties are further identified on City Real Property Tax Map 61 Parcels 79, 79.16, 79.17, 79.18, 79.19, & 79.20. The Subject Properties are approximately 0.94 acres and has road frontage on Nassau Street. The Land Use Plan calls for Low Density Residential. The Comprehensive Plan specifies density no greater than 15 units per acre.

**Commissioner Solla-Yates:** Asks if the SUP would still apply if the rezoning did not pass.

**Ms. Creasy:** The vote that you take on it with the recommendation cannot be in the affirmative because it would not be applicable, but a recommendation will be sent to City Council and they could choose a different route on the rezoning, so any information the Commission would want to share with them if they choose to do that should be done at this point.

**Chairman Green:** States that this is not the appropriate place to try and make these conditions work.

**Ms. Robertson:** Comments on conditions 11, 12 and 13 for formatting purposes by saying that condition item 11 is intended to deal with identification of wetlands that may be on the property and it is typically written as seeking “a delineation of wetlands” and then provide documentation of the results of the delineation as part of a site plan process. On item 12, normally an SUP condition would not impose requirements on two local governments, so it could be tweaked a little bit to state that the applicant shall cooperate with any joint or cross jurisdictional implementation of the regulations. For the portion of item 13 that states that storm water management must comply with the requirements of the VSMP, points out to the applicant that there are state technical criteria that apply and if the intention is to say that onsite water quality treatment will be provided during the development, it would be better to clarify that by saying “in complying with state regulations, onsite water quality treatment will be provided.”

**Chairman Green:** Clarifies that in the event that City Council overturns the Commission’s decision and the SUP goes through, the Commission should make a comment based off of the recommendations.

**Commissioner Solla-Yates moves to recommend approval of this application for a Special Use Permit for subject properties in the R-2 (application ZM18-00001 under review to rezone from R-2 to HW) zone to permit residential development with residential density with the listed conditions on pages 18 and 19 of the staff report determined with some language strengthening for the preference for onsite water quality treatment. Motion withdrawn.**

**Ms. Creasy:** Notes that the Commission cannot have a motion for approval on something that you have a recommendation for denial on the zoning for because the SUP could not come to pass.

**Commissioner Stolzenberg:** Clarifies that the only choice is to vote to deny the SUP request.

**Mr. Alfele:** Clarifies that currently the SUP cannot pass with the denial of the rezoning application. However, you can make recommendations that go in the memo to City Council, should they approve the rezoning and the SUP after the Planning Commission’s recommendation of denial. This would be separate from the motion, but it would be included in the report that is taken to City Council.

**Chairman Green:** Notes that without these recommendations, they would be left with no conditions.

**Commissioner Dowell moves to recommend denial of this application for a Special Use Permit for the subject properties in the R-2 zone. Seconded by Commissioner Solla-Yates. Motion passes 3-2.**

**Chairman Green moves that in the event that this motion is overturned and approved by City Council, the Commission recommends the conditions on pages 18 and 19 of the staff report be taken into consideration and approved with amendments to items 11, 12 and 13 for clarity. Seconded by Commissioner Lahendro. Motion is approved 4-1.**

**Commissioner Stolzenberg** moves to make an amendment that at a minimum, storm water management must comply with the requirements of the VSMP. In addition, the applicant shall capture and treat storm water from the development onsite, including the County parcel, to the *greatest possible extent* while complying with restrictions on locating certain best management practices in the 100 year flood plan. Accepted by Commissioner Lahendro. Motion fails 4-1.

**Chairman Green:** Notes that we do not know if that would be best practice to treat it onsite.

**Commissioner Stolzenberg** moves to make an amendment to strike Condition 4 and not accept the proposed replacement and to accept the developers proposed changes to the first two edits to 2A and not the third. Motion dies.

**Commissioner Lahendro:** Would like to hear Commissioner Stolzenberg's thoughts behind making this recommendation.

**Commissioner Stolzenberg:** If we keep condition 4 as is, it would conflict with the others. If it will remove units, then the entire condition becomes invalid. The developer suggested their needed flexibility and we should not be excluding it so the developer has the potential to build a larger number of units.

**Ms. Creasy:** Notes that that amendment is different from what the application is requesting.

**Chairman Green:** Would like to stick with her recommended conditions from the motions.

**Commissioner Dowell:** Thinks it doesn't matter one way or the other because the Commission is not supporting the project and notes that this is the reason why residents do not participate in public policy.

**Commissioner Stolzenberg:** Thinks that it is important to give as much information as possible to Council.

**Ms. Robertson:** Council will have their own public hearing where staff and the applicant can present their recommendations to council separately. If council decides to approve the rezoning and the SUP, then they can craft the conditions without the Commission's input. Recommends voting on the main motion even though they were somewhat divided on the conditions.

**Chairman Green:** Comments on the Hogwaller name, stating that the applicant should follow the Human Rights Commission if it were to pass because it is not about how it makes the applicant feel, but rather it is about how it makes other people feel. Also notes that FEMA is in the process of updating floodplain maps and has asked the

community to provide input from the County. There is a meeting regarding this on December 13 at 9am in the County Office Building.

## **2. ZT18-11-05: Amusement Centers**

A proposed amendment to the text of the City's Zoning Ordinance, City Code sections 34-480, 34-796, and 34-1200 to revise the definition of "amusement center" and identify the zoning classifications where this use is allowable.

**Staff Report, Brian Haluska:** In the initiation for this change, staff discussed looking at the definitions as well as the use matrices where these particular uses are permitted. In our current code, the definition of "amusement center" is currently three electronic games in which you have to pay to activate in some fashion, or more than one billiard table in which you have to pay to use. It is currently allowed by-right in one district, the Highway Corridor, and is allowed by Special Use, and several other corridors. Staff identified three applications of the definition. Firstly, it could be a typical restaurant with games in the corner. Secondly, it would cover the classic arcade with electronic games and it is the lone purpose of the business. The third option is a hybrid between the two where they are oriented towards adults with food, seating, and a large number of modern games. In all cases, staff came to the conclusion that the games aren't causing problems in any of these businesses. However, what could be causing problems are how the business is being managed. The concern is no longer about the problems that arise in these types of institutions, so staff recommends not having them be as highly regulated as they are and recommends moving this to a provisional use permit where a form can be filled out to have permission to use it as long as they agree to the conditions are listed in the code. The conditions being proposed are the same being used in music halls where if the business has a certain number of calls for business (4 calls) in a calendar year, then the permit can be revoked. One exception would be to keep Special Use Permits for the Corner district because of traffic concerns regarding pedestrian access. They are also proposing to strike it from the South Street Corridor because it is a more residential area and would be out of character with the area. Mr. Stolzenberg mentioned another section of the code that deals with provisional use permits in section 34-181V, and staff does not currently propose any amendments but at some point the section should be revised to include an up-to-date list of provisional use permits, but all of the rules still apply to any special use permit in the city.

## **COMMISSIONER QUESTIONS**

**Commissioner Dowell:** Asks what applicants this amendment would impact.

**Mr. Haluska:** It would impact two existing businesses that are not in compliance with the zoning ordinance. In addition, staff has been approached by someone interested in opening a billiards facility in one of the zones where it is not allowed at all and staff feels as if the location would be an appropriate place for it to go.

**Chairman Green:** Asks for clarity if they are nonconforming or illegal.

**Mr. Haluska:** They are currently illegal.

**Commissioner Solla-Yates:** Understands that the provisional use for music halls was driven by noise ordinance violations, specifically in Belmont. Does staff foresee similar noise violations from arcades and billiards?

**Mr. Haluska:** Not from the machines themselves, they are internal machines where the activity is enclosed. Notes that the text being proposed is identical to the one in music halls and the noise ordinance is enforced by the

police department. If a business did get a noise complaint operating this ordinance, it would probably be from mismanagement of crowds and if they received more than 4 complaints the permit could be revoked.

**Commissioner Stolzenberg:** Do you think that most patrons of restaurants and bars on the Corner drive?

**Mr. Haluska:** No.

**Commissioner Solla-Yates:** Asks what is different about South Street from the other areas?

**Mr. Haluska:** There is a smaller height requirement and are very close to residential areas. It may be too intensive of an allowance for some districts and it has already been cut from High Street and NCC, and they are adding South Street to the list because it is neighborhood scale.

**Commissioner Dowell:** Doesn't South Street have a brewery?

**Commissioner Stolzenberg:** It's actually just outside of the South Street district, but it is on the same street. That brewery is actually in the Water Street district.

**Commissioner Solla-Yates:** Would it be reasonable to just to by-right usage instead of taking the provisional use method?

**Mr. Haluska:** If there was no concern of the buildings ever being out of control in some way and notes that he doesn't think those types of establishments would locate downtown because of parking. Typically they go near shopping malls or strip areas where there is a large amount of parking. If there are any concerns about detrimental impacts or people getting out of hand, then they could have to sign the form stating that they would comply with the rules.

**Commissioner Stolzenberg:** Can you break out all night amusement centers if there is a worry for late night?

**Mr. Haluska:** You could add a condition in the list that staff proposed stating limits on hours of operation. If people are concerned about the impact with alcohol service, ABC requires that to be cut off at 2am.

**Chairman Green:** Notes that this does not apply to private clubs because the alcohol doesn't stop and the noise could increase.

**Mr. Haluska:** Most private clubs require special use permits within the city.

**Commissioner Dowell:** Would like to see more activities of this nature and encourages the Commission to approve the text amendment.

**Chairman Green:** Is it essentially being moved from an accessory use to a primary use?

**Mr. Haluska:** As it is worded right now, it is not permissible as an accessory use, it is its own component of a business the way the definition is written. Once you get above three machines, a business would be classified as a restaurant with an amusement center on the side.

**Chairman Green:** Did you contemplate making it an accessory use so it can be more of a family event space?

**Mr. Haluska:** Notes that it could be moved to an ancillary use where it is not the primary establishment. Concerned about the standalone arcade that its only purpose is to play games.

**Chairman Green:** Why would we need 2:00- 6:00 am arcades? How many provisional permits in the city for bad businesses have you revoked?

**Mr. Haluska:** The time guidelines were just taken directly from the music hall regulations. Directs the provisional permits question to the zoning administrator.

**Ms. Creasy:** States that there are none.

**Mr. Craig Fabio:** The current location that the applicant is seeking the code change for had a music hall permit revoked, so there is at least one.

**Mr. Haluska:** Mr. Fabio is indicating that someone operating a business in a location had their music hall permit revoked, but that this application is for an entirely different group running a different business, just in the same location.

## **PUBLIC HEARING**

**Valerie Long:** Encourages Commission to consider this to be a by-right use because the uses are very different than they used to be. Anytime a special use permit is required, it is extraordinarily more difficult and time consuming and becomes unlikely to achieve. It is ideal if there is more of an administrative process that can address all of the concerns internally and regulate for those issues outside of the special use permit process.

**Judi McMullen:** Owner of an establishment that would like to pass this ruling. Notes they are trying to overcome what used to be a music hall establishment and change the atmosphere to promote a family friendly space. They do not plan to have late hours into the night, although they do plan to serve alcohol.

**Commissioner Solla-Yates:** Asks Ms. McMullen the name of the organization she is referring to.

**Ms. McMullen:** 917 Preston Plaza behind Sticks.

**Craig Fabio:** Belmont resident and believes it is appropriate and provides some means of control in a situation where there could be a bad operator. The music hall permit is in place because of the Belmont neighborhood because of one bad egg. If there was a provisional use permit process in place at that time, things could have been resolved much faster. Notes that it is a means to provide protection for the community and the provisional use permit is inexpensive and easy to work with on a staff level.

## **COMMISSIONER DISCUSSION**

**Commissioner Stolzenberg:** Would like to know to what extent the zoning matrix can be edited, or would it have to be sent back?

**Chairman Green:** If you add it to a zoning matrix district where it is not, you would have to send it back.



**Chairman Green:** There is only one district in the proposal where there is special use, which is in the Corner district where there were traffic and parking concerns but she does not agree that traffic is a problem in the area

**Mr. Haluska:** Clarifies that it is pedestrian traffic and there is at least one business where there are questions about lines queueing out onto sidewalks during the lunch hour.

**Commissioner Stolzenberg:** Recognizes this but states that this use is about as intense as restaurants, which are by-right and can think of at least one location on the Corner that would qualify under these rules. Would like for the Corner to be provisional use and institute a separate rule about having queues on the sidewalk if necessary. Would like to consider making commercial and industrial uses by-right because of potential impacts that could be fixed by revoking a provisional use permit may not apply.

**Chairman Green:** Does not agree and thinks they back up to many neighborhoods, including her own.

**Commissioner Dowell:** Does not see organizations like Dave and Busters and Chuck E Cheese causing noise disturbances and would like some clarity on what kind of organizations would have noise issues outside of the organization.

**Chairman Green:** That is an accessory use to a restaurant, not a standalone primary use, and that makes a difference. Notes that usually the families are not the problem, it's the potential establishments that are open late at night that may produce loud crowds. We have to plan for all of the things that could potentially happen and thinks a provisional change is the right way to go to ensure that it does not backfire because you never know what will come forth in the future to plan for the unknown.

**Ms. Robertson:** Reminds the Commission that it can be a pool hall as well.

**Commissioner Stolzenberg:** We do have separate regulations regarding pool halls.

**Ms. Robertson:** Clarifies that the definition encompasses more than just the machines.

**Commissioner Solla-Yates:** Would like to try to predict and prevent legal issues in the wording, but cannot think of any issues that may arise within the organization.

**Chairman Green:** Comments that inside the organization is not typically the problem, but it is all about the problems outside the organization. This is why provisional permits are a better way to go. We have zoning laws that offer protection and without enforcing them, there would be no reason for them in the first place.

**Commissioner Stolzenberg:** Asks if the cost is an administrator review that is not discretionary

**Mr. Haluska:** Regarding the provision use permit process, the applicant must agree to follow the rules in the code.

**Commissioner Stolzenberg moves to recommend approval of this zoning text amendment to amend to the Provisional Use Permit regulations (§34-1170 et seq.), the Commercial district use matrix (§34-480) and the Mixed-Use (§34-796) district use matrix of the Code of The City of Charlottesville, 1990, as amended, to amend the regulations for Amusement Centers on the basis that the changes would serve the interests of (public necessity, convenience, general public welfare and/or good zoning practice) with the following additions and modifications: change Corner district use matrix to provisional use.**

**Seconded by Commissioner Lahendro. Motion is Approved 5-0.**

**Commissioner Stolzenberg moves to add an amendment to change only industrial corridor on River Road and Harris Street to by-right. Motion dies.**

### **3. ZT18-11-06: Primary and Linking Street Designations in Mixed Use Zones**

A proposed amendment to the text of the City's Zoning Ordinance, City Code section 34-541 to include any undesignated streets into the designated streets listing, correct any clerical errors and standardize the language used to identify streets. The following zoning districts and streets are included:

Downtown Extended Corridor: East Market Street, 1st Street, 4th Street, Elliott Avenue, Levy Avenue, East Water Street, East South Street, Graves Street, Lyman Street and City Walk Way.

Downtown North Corridor: 8th Street, N.E., 5th Street, NE, 1st Street, 4th Street, NE, 9th Street, NE, 2nd Street, NE, 2nd Street, NW, 7th Street, NE, 6th Street NE, 3rd Street NE, 8th Street, 11st Street NE, Locust Avenue, Lexington Avenue, East Market Street, West Market Street, East High Street, West High Street, 10th Street NE, 9 ½ Street NE, Park Street, Court Square and Altamont Circle.

Cherry Avenue Corridor: 4th Street, 5th Street, Delevan Street, Estes St., Grove St., King St., Nalle St., 9th St., 6th St., 6½ St., 7th St, Roosevelt Brown Boulevard, Dice Street, Elm Street.

Neighborhood Commercial Corridor: Bainbridge St., Carlton Avenue, Douglas Avenue, Fontaine Avenue, Garden Street, Goodman Street, Hinton Avenue, Holly Street, Lewis Street, Maury Avenue, Monticello Road, Walnut Street, Meridian Street, Jefferson Park Avenue and Price Avenue.

High Street Corridor: 11th Street, Willow Drive, 10th Street NE, 13th Street NE, Duke Street, and Little High Street.

Highway Corridor: 5th Street, Eastview Street, Monticello Avenue, Carlton Road, Hillsdale Drive, 250 Bypass, Monticello Road, Rives Street, Nassau Street, Quarry Road and Druid Avenue.

Urban Corridor: University Avenue, Old Ivy Road, Wise Street and 250 Bypass.

Corner District: 12th Street, 12 ½ Street, 13th Street, 14th Street, Jefferson Park Avenue, Minor Court Lane.

**Staff Report, Brian Haluska:** This an edit to 34-541 to fix many staff frustrations with the section. It came forward because of a site plan submitted in the downtown north district that fronted on 10<sup>th</sup> Street. In this district, height is delineated by the street that it is fronting on. 10<sup>th</sup> street was not listed on either list, which led to a lot of frustration when trying to determine height requirements. Staff went through section 34-541 where there were primary and linking streets delineated and removed West and East Main Street since they were taken care of in the revision of their code. Downtown and Water Street are not on here because all streets are primary in those districts. Anywhere where there is an existing street where it was a continuation of a name that was a primary street are on the primary list and all others are on the linking list. Because they touch these roads they can cause confusion if anyone tries to develop them. All of the number and direction streets were also standardized and spelled out all of the street names. One last thing to note is that the current section says the North Downtown District but the proper name is Downtown North.

**Commissioner Dowell:** Asks if the 10<sup>th</sup> Street on the Central City Corridor should be called 10<sup>th</sup> Street Northwest.

**Mr. Haluska:** There is a 10<sup>th</sup> Street Northwest on the draft in the section as it is. In the revised version, 10<sup>th</sup> Street is 10<sup>th</sup> Street Northwest.

**Commissioner Solla-Yates:** Asks what the determination is of a primary versus a linking street.

**Mr. Haluska:** They were designated when the codes were adopted in 2003 and those with a higher functional classification tend to be primary streets, but there was probably not a hard and fast rule when it was created.

**Chairman Green:** Wouldn't it involve transportation designations for VDOT?

**Mr. Haluska:** No, and Streets that Work did not change this list either because it only involves the public realm.

**Ms. Robertson:** Recalls that this was an attempt to incorporate some elements of a form-based code and primary streets were streets where you were focusing the desire to have more activity and a specific architectural presentation and linking streets were less significant in terms of activation.

**Chairman Green:** Clarifies that this is essentially just a cleanup of the existing roads.

**Mr. Haluska:** Correct.

## **PUBLIC HEARING**

**Valerie Long:** Thinks that the concept of these changes make sense and help provide clarity, but asks for it to be deferred to allow time for the local development community and design professionals to work with Mr. Haluska to be sure that these are the right designations for all zoning districts. Does not believe was any public outreach or engagement on the issue and there should be.

**Bill Emory:** If there were substantial changes to this it would be one thing, but the neighborhoods and the public have had the chance to view the Planning Commission agenda for tonight so no additional action is required for the public. The development community should not be able to sit down with Mr. Haluska to discuss these changes unless all of the people in all of the neighborhoods do as well.

## **COMMISSIONER DISCUSSION**

**Commissioner Solla-Yates:** Notes that Ms. Long's comments are valid and that this is not the time to be making changes on designation, but he would like to review this when zoning is redone.

**Commissioner Lahendro moves to recommend approval of this zoning text amendment to the intent and description of the mixed use districts (§34-541 et seq.), of the Code of The City of Charlottesville, 1990, as amended, on the basis that the changes would serve the interests of (public necessity, convenience, general public welfare and/or good zoning practice). Seconded by Commissioner Dowell. Motion is Approved 5-0.**

### **4. ZT18-12-07: Dwelling Units Clarification**

A proposed amendment to the text of the City's Zoning Ordinance, City Code Section 34-6 and 34-1200 to clarify language and uses which constitute dwelling units, clarify definitions for Dwelling unit; Dwelling, multifamily; Dwelling, single family attached; Dwelling, single family detached; Dwelling, townhouse; Dwelling, Two-family; DUA; Accessory apartment; Adult assisted living; Bed and breakfast ("B&B"); Bed and breakfast ("Inn"); Boarding

house; Boarding, fraternity and sorority house; Condominium, Convent, Dormitory, Family, Family day home, Hotel/motel, and Lodging and add new definitions for Rooming unit and Common Party wall.

**Staff Report, Craig Fabio:** The amendments are a response to a recent Board of Zoning Appeals meeting where it was determined that a fraternity was to be counted as 0 dwelling units in accordance with the way the city code is written. Staff, nor the board, felt that this was an appropriate understanding of the code and clarification was needed to determine what a dwelling unit was, which led to a much larger conversation than just some definition changes. Staff stands with the proposed code this evening.

**Chairman Green:** Notes that this was a topic of conversation during the pre-meeting and a member of the Board of Zoning Appeals. Clarifies to the public that the conversation from the pre-meeting was about clarifying the definition of dwelling units and the wording “consists of sleeping, bathroom and complete kitchen facilities,” the wording in question was “for the exclusive use of such occupants.” The Board of Zoning Appeals seemed to agree with that wording and deemed a fraternity house zero dwelling units.

## COMMISSIONER QUESTIONS

**Commissioner Solla-Yates:** Agrees that this is a much broader approach, but asks why a broader approach is needed.

**Mr. Fabio:** The point of the full review was to not end up back in this position again and simple definition change could have provided a lot of opportunities to find a space in the code where an interpretation could be made and end up back in front of the board.

**Commissioner Solla-Yates:** We are currently in a housing crisis and without a housing coordinator. How will this affect our current housing crisis? Will it help or hurt us?

**Mr. Fabio:** Staff does not think it would impact the housing crisis in any means, but in this case in particular would limit the density.

**Commissioner Solla-Yates:** How would limiting the density affect the housing crisis?

**Mr. Fabio:** Doesn't know that it would impact the housing crisis whatsoever, but in a situation where a fraternity house is counted as a 0 units, if you have an allowance by code for 6 dwelling units on the property and the fraternity counts as 0, regardless of the number of occupants, it would add that many extra occupants to the established allowable dwelling for that property.

**Commissioner Solla-Yates:** There is an additional change dealing with the definition of a dwelling unit and understands that in general boarding houses are only allowed in one zoning designation, whereas they used to be all throughout the City. Is that correct?

**Mr. Fabio:** Yes, this was a change that occurred in 2003 to greatly limit them, but this change here would not make any changes to where they would currently be allowed.

**Commissioner Solla-Yates:** Understands that the development community have found workarounds with the existing code to provide boarding houses where they are forbidden through creative means. Is that fair to say?

**Mr. Fabio:** It would be fair to say that it has happened in the past, and there are some current attempts to provide housing that staff does not feel meets the current code.

**Commission Solla-Yates:** Does not believe in deceptive zoning. He believes these types of problems should be corrected. Does this timing make sense given the housing issues?

**Mr. Fabio:** Believes that it does make sense because it doesn't impact the current housing issues. Boarding houses may be a means to help with the housing crisis, but what is being spoken about today does not impact it at all. It clarifies some of the definitions, however where they are permitted is not impacted.

**Commissioner Stolzenberg:** Would like to clarify that under a creative reading of the rules, one could say a 4 bedroom apartment let out to 4 leases could be classified as a boarding house. Was the intent to keep that multifamily?

**Mr. Fabio:** The intent was for it to be multifamily and it wasn't until early today that that creative possibility could be interpreted. If there is an opportunity for another creative workaround, perhaps we aren't there yet.

**Commissioner Dowell:** Asks why we are considering fraternity houses where people live not as dwelling units.

**Mr. Fabio:** That was the determination the Board of Zoning Appeals made based on the argument that the applicant brought forth. The zoning administrator determined that the fraternity house would count as one dwelling unit and the applicant made the argument that the code does not state that, for which the board agreed.

**Commissioner Dowell:** Where are boarding houses prohibited in the City?

**Mr. Fabio:** Does not have the matrix on hand, but states that there are only a few locations in the City where they are permitted.

**Chairman Green:** Recommends looking at the zoning ordinance and initiate an additional text amendment to mitigate other concerns, however clarity is still needed for the current definition.

**Commissioner Stolzenberg:** If a limited subset of the edit is approved, could the Commission immediately initiate a new ZTA?

**Ms. Robertson:** Initiating a new ZTA isn't necessary, it can be done in pieces. You can act on a piece tonight and defer acting on other pieces until later. Suggests leaving the definition of a boarding house as it is currently written, and carve out a new definition later. The rest can be left as written and the other changes are more stylistic ones.

**Commissioner Stolzenberg:** Notes concerns about that solution is that the definition of dormitory as is provides boarding house style accommodations and the definition of boarding house is a building with 3 or more guest rooms. A guest room is a portion of a building used for lodging without a complete set of living accommodations but does not include dormitories. Is there any way to fix this because it doesn't make any sense?

**Mr. Fabio:** The term "dormitory" is an existing definition that is being tweaked and it can be revised, although there are no dormitories within city limits currently.

**Ms. Robertson:** Some things would technically be within city limits but they aren't subject to our zoning authority.

**Chairman Green:** Clarifies that the Commission is considering leaving the definition as it currently is and taking out the rest for this motion. Commission is also considering leaving out the new definition for now and removing the changes to dormitory.

**Commissioner Stolzenberg:** Recommends keeping one change to boarding house and strike “no meals are provided to outside guests.”

**Ms. Robertson:** Notes that this could lead to people operating boarding houses with restaurants in them.

**Commissioner Dowell:** Would like to take more time to discuss this during a work session and there is no immediate fix, regardless of making any changes tonight.

## **PUBLIC HEARING**

**Valerie Long:** Notes that her firm represented the landowner and applicant in question before the BZA. Clarifies that the fraternity house in question has been in operation for nearly 100 years, so it is not a new proposed boarding house. It is a historic structure that they would like to renovate. Believes that this discussion could have a lot of unintended consequences that could result from making a rushed change. This change warrants broad community engagement and outreach with the development community and the neighborhood. It should not be rushed through and hopes to give everyone an opportunity to go through it in more detail. Just because something looks and functions like a residence or a dwelling unit, doesn’t mean you regulate it by density. Both nursing homes and assisted living facilities are residential structures that are not regulated by density.

**Justin Shimp:** Comments that it is unlikely that there are a line of boarding houses that would take advantage of the density all of a sudden that would require this going through tonight. Because it is not an urgent need, there is time for more input to be had. Encourages the Commission to think about the proposal put forward on the 808 Cherry project and how that might be affected by this change.

## **COMMISSIONER DISCUSSION**

**Chairman Green:** Does not recall many items where there has been a need for clarification when people tried to create workarounds.

**Ms. Creasy:** It has not been as frequent as of late, but it has occurred in the past.

**Commissioner Dowell:** Asks if the Commission can defer rather than deny the motion.

**Ms. Robertson:** Confirms that is an option.

**Commissioner Stolzenberg:** States that the best fall back option is to make a motion to strike only “for exclusive use of such occupants” and defer the rest of the motion.

**Ms. Robertson:** If the Commission does this, recommended considering the changes to 34-6, which states that certain things are counted as one unit to clear the issue up. Recommends striking the language regarding the

exclusive use because it causes problems in other areas and hopes Commission will consider making their definition look more like the County's definition. Notes that it does not need to be an urgent decision.

**Chairman Green:** If it is taken back out it has to go to the neighborhoods, not just the developers, so we can get better feedback.

**Commissioner Stolzenberg:** Asks if there are any adverse impacts to taking away the exclusive use clause

**Ms. Robertson:** The exclusive use piece is yielding some creative solutions, which does not always yield dwelling units or accommodations for low income housing and it begs the question about why people should have to live in creative and bizarrely organized living accommodations because of frailties in the definitions.

**Commissioner Dowell:** States that people are living in more creative dwellings because they cannot afford to live in the City of Charlottesville and it forces creative uses to be designed so low income folks can still be in the city. Thinks it should be deferred until it can be gone through in more detail.

**Chairman Green:** States that Ms. Robertson is being very generous with her use of the word creative and doesn't think anyone would want people to live in those situations.

**Commissioner Dowell:** Where else would they live?

**Chairman Green:** Low income people should not only live in the creative solutions.

**Commissioner Dowell:** They cannot afford any other options. Asks when this would be looked at if it were to be deferred.

**Ms. Creasy:** It would likely be February before it could be worked on.

**Commissioner Lahendro:** Likes the approach of doing the important things that need immediate attention and then coming back at a later date to look at the broader changes.

**Commissioner Solla-Yates:** Agrees with Commissioner Lahendro.

**Commissioner Lahendro:** Asks for Council's recommendation on what should be addressed tonight.

**Ms. Robertson:** Recommends against doing anything with the boarding house if there are still questions about it. If Commission is interested in dealing with the adverse BZA decision, 34-6 would be the clearest way to deal with that. The language in the current definition of dwelling unit that is creating problems for staff is "kitchen facility for the exclusive use for such occupants" and strike out those words, which would eliminate problems that have been going on lately.

**Commissioner Solla-Yates moves to recommend approval of this zoning text amendment to amend and re-ordain §34-6 et seq. and portions of §34-1200 (Amendments to the Zoning Ordinance) on the basis that the changes would serve the interests of public necessity, general public welfare and/or good zoning practice, and strike "for the exclusive use of such occupants" from section 34-1200. Seconded by Commissioner Lahendro. Motion is Approved 5-0.**

**Chairman Green:** Staff will bring the remaining items to a work session at its earliest convenience to discuss and gain further clarification on item 34-1200. Motion is approved 5-0.

**Commissioner Stolzenberg:** Asks if the boarding house use matrix could be added to the ZTA.

**Ms. Robertson:** That hasn't been advertised with the rest of this, but at the work session the Commission should focus on the definitions, then bring back the edits and advertise a change to the matrix simultaneously.

**Chairman Green:** Reiterates that we should not have to reinvent the wheel, but to rather look at current definitions of things that are working and work off of that.

#### **IV. COMMISSION'S ACTION ITEMS**

##### **1. Preliminary Discussion – Belleview Pump Station PUD**

**Staff Report, Matt Alfele:** The application being discussed is not complete yet, but staff would like the Commission to provide feedback as the project is getting started and let the applicant be aware of concerns that they may have. A private sanitary pump station is being proposed that would be allowed through an SUP and would be part of the Bellevue/Azalea Cottages subdivision. The SUP is not for density, but rather for private sanitary pump station. Where the subdivision is at, they cannot tie into the City's gravity fed system. They do not abut any sewer lines and the closest gravity line would be to the south of the proposed property near Azalea Park, which would require easements. The applicant is proposing to collect sanitary sewage within the development and pump it into the City's sewer system. Public Utilities is heavily involved with this, but would like a preliminary discussion from the Commission about the application.

#### **COMMISSIONER QUESTIONS**

**Commissioner Dowell:** If this request was not approved, how would the applicant remove the waste?

**Mr. Alfele:** The development is connected and it isn't completely separate, but wants to be clear that the SUP is not for this development. In theory, a developer could get the easements to tie into gravity fed and the rest would be by-right. The SUP should not be looked at in regards to the development, but only for the pump station. However, the developer would have to look at securing the easements if it wasn't approved.

**Chairman Green:** Asks how much land it would take up?

**Mr. Alfele:** Does not have an exact dimension, but it would be smaller than a typical lot in the City

**Commissioner Solla-Yates:** Can you quantify the relative cost savings of doing a pump station versus an easement?

**Mr. Alfele:** It depends on the person owning the land of the easement and how much the easement is valued.



**Commissioner Lahendro:** Asks if anything was submitted regarding elevations, the fencing around it, how it would be secured, etc.

**Mr. Alfele:** Nothing has been submitted, but they were talking about it being underground. If that is needed for the public hearing going forward, staff would like to know about those things.

**Commissioner Lahendro:** Believes this is the first pump station that the City would have to take care of and asks if they are equipped to do that.

**Mr. Alfele:** There is nothing of this scale that the City does currently and staff is waiting to hear back from Utilities to understand that further.

**Commissioner Lahendro:** Would the city be evaluating the quality of the pump station to have the opportunity to provide input regarding how it is constructed in case it does fall into the City to take care of?

**Mr. Alfele:** They are still gathering information on how that would look, but staff will inquire about the standards it has been built to.

**Ms. Robertson:** Under the utilities chapter of the code, they would obtain construction plans because they aren't able to allow connections to the City's system if those connections would not be safe. They would work with the applicant to determine what information is needed to draw that conclusion.

**Commissioner Stolzenberg:** Is there any recourse to get monetary compensation for the homeowner maintenance?

**Mr. Alfele:** They talked about having a reserve in the HOA to have enough money to maintain it but it is uncharted territory. There are concerns about what would happen if the HOA were to fail.

**Chairman Green:** If the HOA fails in 30 years, will the City have to eventually take this over?

**Mr. Alfele:** That is a fear that Utilities has and would like to navigate whether or not it is sustainable.

**Commissioner Solla-Yates:** There is a public interest in there not being failures and risks. Can the City just fix the sewage connection?

**Ms. Creasy:** The City wouldn't condemn property for private development.

**Ms. Robertson:** Typically, the service line to a house is on private property and the rule is that the private landowner maintains the facilities on the private land. The City maintains the connection to the public street. Most pumps and service lines to a residence is the responsibility of the landowner to maintain.

**Chairman Green:** How many lots would it encompass?

**Mr. Alfele:** They are applying for 36 homes, but the SUP allows up to 40. If the subdivision ends and the pump station was approved, there are some larger lots that would be subdivided that are not part of the Bellevue that could tie into the private pump.

**Chairman Green:** Will the gravity fed sewer line be in the backyards of five other houses?

**Mr. Alfele:** The 3 on the southeastern side are a BMP for their drainage and the southwestern side has the pump station.

**Chairman Green:** Confirms that only one house would get the underground detention. Asks if the Commission can add this to the list of matrix things that need to be reviewed and asks how many private pump stations are already in the city.

**Ms. Robertson:** The land left to be developed in the city can be a challenge, and it can be difficult to get the sewer to feed by gravity to the nearest public main. If you want to look at the zoning ordinance going forward you should determine how to look at this situation. There are currently no private pump stations, but there are some private mains that cross multiple private lots. These are challenging because it's the private landowners responsibility to get it into the main. It is a different type of facility but it does move the sewage from a private home across other lots to a public main.

**Chairman Green:** Asks if the requirement for the private owner to be responsible to maintain is in the City's ordinance.

**Ms. Robertson:** Yes, it is in the utility chapter.

**Chairman Green:** States that maybe that is the problem that needs to be addressed because it is unreasonable.

**Commissioner Stolzenberg:** Why wouldn't the liability fall on the landowner that gets the pump station on it?

**Mr. Alfele:** That is a part of the code that says there has to be a house on the lot. There can be an easement for the pump station, but whoever buys the house would need to do their research. There are some houses that do this, but this application would be on a much larger scale.

**Commissioner Stolzenberg:** Why wouldn't 30 individual pumps be feasible?

**Mr. Alfele:** It would be easier to gather them all, but that would be a question for the engineer.

**Commissioner Lahendro:** States that there is a range for how you build the pump station, some lasting longer than others. It would be in the City's best interest to help the Commission determine the terms for how an SUP could be given and building that into the requirements. This is a fairly common thing to do, but what securities would the City want to have to ensure they are not going to be saddled with something they do not want?

**Mr. Alfele:** Staff definitely will work with Utilities to make these determinations, but wants to hear if there are other major concerns about the project from the Commissioners.

**Chairman Green:** States they don't know what they are missing so they don't know what kinds of questions to ask.

**Ms. Robertson:** Recommends the Commission ask questions that they would want to be answered by Utilities, but to help staff determine what questions need to be answered from a planning standpoint.

**Chairman Green:** Would like to see staff provide research of similar projects and SUPS, and to provide guidance/starting points for the Commission to work off of. Would also like to know about other options aside from the HOA, as well as how the maintenance of the easements would be maintained.

**Commissioner Lahendro:** Is interested in the presentation of what it would look like above ground, if anything.

**Commissioner Stolzenberg:** Is particularly interested in how the City would recover the costs if the City has to take over at some point and if there would be any way to get that money back, as well as if it would require changes to city code to enforce those.

**Commissioner Solla-Yates:** Not a fan of the pump station aesthetically. Notes concerns because the City built a great gravity fed sewer system and would like to see it used. Would like to see if it can be done just like the rest of the City even if it costs a little more money rather than a potential long term serious risk.

**Commissioner Dowell:** Would like to know who would cover the cost if/when it eventually fails.

**Chairman Green:** States that if it does fail, it would likely go into the creek.

**Applicant – Justin Shimp, Shimp Engineering:** In the last 20 years, the HOA issue has come up because of storm water management and an HOA is necessary to maintain the facilities, as well as reserve funds set aside to replace them. There is a model already built for this in the HOA. At Wintergreen, there are 15 pump stations similar to this request that are already used and some places even prefer it because they are not prone to collecting runoff and the pump can fix that. It would be better to have one single pump rather than individual pumps because if it were done individually, there would be an individual fee to cover maintenance issues. To address the cost issue, if it was set up as an HOA and the City had to take it over, if there was a problem with the pump the City would have the right to establish a special district for the houses and charge a fee for maintenance, which would help the City cover the expenses. There is a push to have it underground so the noise would not be a problem and it would look like a dog house set up in the backyard.

**Commissioner Lahendro:** Noticed that there are underground storm water retention devices on both sides of the property. Would the HOA be maintaining these as well?

**Mr. Shimp:** Correct. There is a reserve assessment done by the engineer that works with HOA companies and establishes a replacement lifetime.

**Commissioner Lahendro:** Would the City have to take this over if it failed by the HOA?

**Mr. Shimp:** States that some ordinances maintain that the City would never be responsible. The Albemarle requirement mandates that the residents pay for their storm water and they could file a lien if they didn't pay for their storm water. States that a shared cost would probably be cheaper than individual fees if problems arise, although there would need to be rules on what can and cannot be put into the sewer to prevent individuals from costing the entire community.

**Commissioner Stolzenberg:** Clarifies that it would be economies of scale versus tragedy in the commons. When the County puts liens on houses for storm water violations, does it include cost of enforcement?

**Mr. Shimp:** Unsure, but states that it doesn't happen often and hasn't personally encountered it on any of his projects.

**Commissioner Lahendro:** Asks if the applicant can elaborate on the odor of the pumps and if you could smell it nearby.

**Mr. Shimp:** If you were right on top of it, maybe there would be an odor. The key is for the pump to have frequent cycling to prevent odor issues. Would like to defer to the design staff for further statistics on the odor.

**Chairman Green:** Asks if the Commission had recently seen this application where there was a plan to make combined lots.

**Mr. Alfele:** States that the subdivision came to the Planning Commission with questions that staff could not answer. The Commission decided it was a major subdivision instead of a boundary line adjustment but the lots were nonconforming. They can move closer to conforming, but they do not have to be 6,000 square feet and they can have less than 50 feet of road frontage. However, they have to conform to all other areas of the subdivision and site plan code.

**Commissioner Stolzenberg:** Is the pump sized at 49 houses for spare capacity or are there plan to expand past the 36 houses?

**Mr. Shimp:** There is a safety factor built into the numbers and the extra is for the lots around the area that could be subdivided further but would have no sewer. Because of this, the request from Utilities was to make it large enough to accommodate them so they don't have to make their own pump later on.

**Chairman Green:** Confirms that there are 40 lots.

**Commissioner Solla-Yates:** How difficult is it to buy an easement?

**Mr. Shimp:** You cannot compel someone to buy an easement and they don't have to. The City does have condemnation power but they aren't usually used.

**Commissioner Lahendro:** Are the roads public?

**Mr. Shimp:** Yes, the roads, water and gas are public. The sewer would be the only thing private.

**Commissioner Stolzenberg:** Will the generator be periodically tested to be sure it still works?

**Mr. Shimp:** There is usually a test cycle run once a week for 15 minutes. There would be an auto-dialer to alert City Utilities and cut the water off if something were to go wrong, which is common.

**Commissioner Solla-Yates:** Asks if people want this change

**Mr. Shimp:** States that most people probably won't even know it exists

**Chairman Green:** That may be true, but only until they get the bill for it and have the extra fee

**Commissioner Lahendro:** Notes that he would like to know that the applicant and Utilities are working together throughout the entire design process. Asks Mr. Shimp if there are any questions for the Commission or anything else he would like to address.

**Mr. Shimp:** Notes that the fundamental elements are sound, smell and appearance, all of which are things that he would like to include in the report to ensure that they are non-impactful.

**Chairman Green:** Recommends having a member of Utilities present during the public hearing to clarify points. Asks if the applicant if he has tried speaking with anyone to see if an easement is possible?

**Mr. Shimp:** Has not had any involvement with it, but the developer sent letters to all neighbors down the hill and offered them an amount of money for the easement. One of the City's requirements was to make a good faith effort to determine that no one would sell their easement. They have heard back from one person that said no, but still waiting to hear back from the other 6 properties.

**Commissioner Stolzenberg:** Asks if the "dog house" would be lit in some way and asks about the structure of the generator.

**Mr. Shimp:** There would be a small light similar to a yard light outside in case it needs to be checked. There would also be a red light that would flash if something needed attention. As for the generator, there is a control panel on one side with the gauges and the other side would have vents for airflow. It would be similar to a breaker box in the house. In the event of a power outage, it would be covered by the generator because it's running on gas.

**Commissioner Lahendro:** Would a security fence need to be put around the generator?

**Mr. Shimp:** No, it would be a like a little house with a lock on it to keep it closed up. Notes that there will be a neighborhood meeting tomorrow to discuss the project further and a public hearing might be scheduled for the spring.

## **2. Comprehensive Plan – reserved time for continued discussions**

**Chairman Green:** Commission will meet with Council on Monday for review. The work session on December 18 will be on the CIP and the Emmet Street Streetscape project.

## **V. Adjournment**

**10:39 pm –Commissioner Stolzenberg moves to adjourn until the second Tuesday in January 2019.**