

Minutes

**PLANNING COMMISSION REGULAR MEETING**  
**July 13, 2021 – 5:30 P.M.**  
**Virtual Meeting**

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

**Beginning:** 5:00 PM

**Location:** Virtual/Electronic

**Members Present:** Chairman Mitchell, Commissioner Russell, Commissioner Solla-Yates, Commissioner Stolzenberg, Commissioner Lahendro, Commissioner Habbab

**Members Absent:** Commissioner Dowell

**Staff Present:** Patrick Cory, Joe Rice, Missy Creasy, Lisa Robertson, Matt Alfele, Jack Dawson, Tony Edwards

Chair Mitchell called the meeting to order at 5:00pm and provided an overview of the agenda for the evening. Commissioners had no questions on the minutes or the application for 1206 Carlton Avenue. Chair Mitchell confirmed the potential steps for the 13<sup>th</sup> Street NE application following tonight's item and asked Commissioners for any additional questions. Commissioner Russell asked if the ROW was abandoned, could the business's park in the rear of the site. Mr. Duncan noted that he made comments concerning the possible parking options. He noted that 13<sup>th</sup> Street is a 40 foot right of way so there is space for parking and travel lanes. Commissioner Stolzenberg asked about the topography in the area of this site, whether it was impossible to construct a road or just expensive and requested confirmation on the zones that allow for zero lot lines. He also asked if the SADM would allow for alternative road designs and the process for that was outlined.

Commissioner Solla-Yates confirmed that staff would be available for comment on the new critical slopes materials provided today for the South First Street site during the meeting and it was confirmed that staff would be available.

Chair Mitchell noted that following the Housing Advisory Committee presentation that he would outline five minutes for each commissioner to ask questions and provide comments. Ms. Creasy noted that there was some confusion in the community that there is a new Future Land Use map for review and clarification needs to be provided. Chair Mitchell reiterated the goal to have the Comp Plan and Future Land Use Map ready for the current Council to vote on. He also asked Commissioner Habbab to provide a brief introduction in the meeting.

**II. COMMISSION REGULAR MEETING – Meeting called to order at 5:30 PM by the Chairman**

**Beginning:** 5:30 PM

**Location:** Virtual/Electronic

## A. COMMISSIONER'S REPORT

**Commissioner Russell** – I have an update on the Fontaine Avenue Streetscape project. Council will be reviewing the project next Monday on July 19<sup>th</sup>. They will be looking at the design. After that, authorization will be sought from VDOT to begin right of way phase authorization. More information is available on the project website, including previous meetings and the current presentation of the design on [Fontainestreetscape.com/design-public-hearing](http://Fontainestreetscape.com/design-public-hearing).

**Commissioner Stolzenberg** – There was one meeting. That was a special session of TJPDC to apply for a housing preservation grant for the rural counties. We received an announcement today of a statewide PDC housing development grant. That will be \$40 million but \$2 million flowing through the PDC to stimulate affordable housing and regional initiatives to address it. Next Tuesday, we will have a meeting of the MPO Tech committee.

**Commissioner Habbab** – I am completing the remainder of a previous appointment to the Commission. My term will end August 31, 2022. My predecessor sat on the Neighborhood Leaders meeting and the CATEC Advisory Committee. I don't believe they have had any meetings since I joined. I joined the Commission because I can serve the wonderful community that I live in. I have worked at an architectural firm for the last six years. I previously stood in front of this Commission as an applicant. I know the work it takes to get projects here. I am aware of the impact the Commission has on the city. I am joining at a crucial time. There is a lot of work to be done. I am happy to be part of the process.

**Commissioner Solla-Yates** – The Housing Advisory Committee met to discuss a new concept for the future land use map. We voted that we consider that same concept tonight.

**Commissioner Lahendro** – I attended the Board of Architectural Review meeting on June 15<sup>th</sup>. It was a quick meeting. We had five applications to consider and we issued five Certificates of Appropriateness for those applications. The Tree Commission has deferred its meeting from last week to right now. I am not able to attend that meeting. I will report on it next month.

## B. UNIVERSITY REPORT

**Commissioner Palmer** – The demolition of the Dynamics Building at the Ivy/Emmet corridor is underway. A lot of the utility enabling seems to have started over there. That project to enable the Data Science Institute, the Conference Center, and the Hotel is finally getting underway after lots of planning. The George Rogers Clark statue near The Corner was taken down. The base and the statue are in storage.

## C. CHAIR'S REPORT

**Chairman Mitchell** – The only meeting I attended was the Parks and Rec meeting. That group has been very busy. Just about everything is open with one notable exception: the aquatic center at Meade Park. It is not open and will not be opening. The reason is we can't get enough lifeguards to support all of the parks we have. This is not unique to Charlottesville. This seems to be a nationwide problem. We just can't get the lifeguards. It will not open this year. The day camp is fully staffed. It is open from 7:30 AM to 5:30 PM. Athletics is going very well; especially baseball and softball.

## D. DEPARTMENT OF NDS

**Ms. Creasy** – We don't have a work session scheduled for later this month. We do want to clarify for the public that there is not a new land use map under consideration for the Commission this evening. There's a proposal with some ideas that the Commission will be looking at this evening from the Housing Advisory Committee. If anyone was concerned that they had missed a step in the process, there hasn't been a misstep. The Commission is going to have the opportunity to hear from some members of the Housing Advisory Committee about some thoughts and ideas they have concerning the land use map. There will be many other opportunities to come for moving forward. If you, as a public member, have comments you want to provide tonight concerning any of these things, do make sure to share that information during **Matters from the Public** with the Commission.

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

**Bill Emory** – I know you are concerned with canopy equity in the City of Charlottesville. Thank you Jody for your excellent service on the Tree Commission. In the zoning code Section 34-869, R-1 and R-2 zoning districts, there is a requirement for tree canopy. You have a standing invitation to take a walking tour of East Carlton, Woolen Mills, and East Belmont. You can identify rental properties by the lack of tree canopy. Landlords are not very enlightened people, who don't care about tree canopy. Walking around Woolen Mills, you can identify the rentals because it has zero trees. Years ago, we talked about writing zoning tickets. I know the Zoning Department is understaffed. They have more important things to do. It would be easy to come up with a list and ask people to plant trees. I would encourage you to enforce the zoning code before you rewrite the zoning code.

**Phillip Harway** – Our neighbors in Albemarle just adopted their new housing policy this past Wednesday. The goals are to tackle affordable housing in their community with other objectives that includes overall housing supply and providing for community engagement, particularly on protecting existing communities. One of the core parts of their plan is that all rezonings and special use permits will be required (by definition) to be affordable and to have extended periods of affordability. The plan is being delayed. The Commission found out that some of the developers had concerns that the county will not be able to meet some of their major objectives. This is a big contrast with what Charlottesville is considering. It is a general upzoning without any guarantees and assurances of reaching the worthy goal of more affordable housing. Our neighbors are taking a slower approach and consulting. The citizens in Albemarle also realize that the consensus is to approve the plan now. Things still need to be ironed out. It seems the city is more focused on getting there quickly. I humbly request that the process be slowed down and plans from our neighbors in Albemarle and other communities be seriously considered; not allowing rezoning and special use permits to be considered without clear definitions on how much will be provided for housing affordability.

**Kimber Hawkey** – This plan is faulty and inappropriate and doesn't understand the topography and infrastructure of Charlottesville. It needs to be slowed down. There appears to be a lack of economic modeling. Where are the models for the relationship with zoning restrictions, price elasticity, and demand? What is the impact of new developments? What is the estimate for construction costs? What is the impact on neighborhoods? There is a failure to reconsider the redevelopment opportunities of

underuse of retail space. There are large landmasses for real affordable housing. With all of the space, we can achieve more than the 4000 units that we need. There is a failure to consider the University, which has a lot of land. There is a failure to consider the regional context. We need to bring in all of the surrounding counties to address affordable housing. This plan is compromised by ideology and an agenda by a few Planning Commission members. The March map was the result of community input. Two members of the Planning Commission directed RHI that they need to be more ambitious. There have been many developments pushed through on false promises of affordable housing that have never happened.

**Brandon Collins** – I am an employee of PHAR. PHAR is a resident governed and duly recognized resident council and resident advisory board for public housing. We work very closely with the Housing Authority on the redevelopment projects that are currently underway and future projects. PHAR supports the amendment to the critical slopes waiver at South First Street. The pandemic has changed a lot of things. Supply change issues are difficult. In order to move that project forward, we need that amendment to the critical slopes waiver. It is the safest and smartest way to go. It's not going to impact the environment. The water quality and the streams are going to be in better shape than when we found them. I also want to state PHAR's support for taking a look at what the HAC is proposing in terms of overlays for affordability with the residential density being by right and medium/high density requiring affordable housing as an overlay. That combined with the many policies that are being brought forward by the consultants are going to address some of the concerns by the public that these changes won't improve affordability. This really addresses those concerns. I ask members of the public to take a look at what the HAC is talking about and see if that changes your mind on how we can ensure, maintain, and hold accountable affordable housing.

**Mark Kavit** – I ask that you keep an open mind on the things that are going to be presented to you tonight as well as emails that you will be receiving. There is a group of us who have put together a lot of information that can achieve the goals of the Comprehensive Plan. We do have some concrete ideas that could be done without tearing down neighborhoods. Please take a look at what we are presenting and do consider them. I have many issues with the Comprehensive Plan. The first issue is how dense do we want the city to become. Do we want the infrastructure to support high density? The pandemic has shown that work can be done from home. Indications are that we are going to see more work from home. There is a movement nationwide for people to live in more urban areas. Demand for housing is going to remain strong for some time. We're not going to build our way out of demand. Our current rents are in line with other cities. You don't see rent decrease until you get away from the urban core and look at older housing. You're not going to achieve affordability with new construction. New construction is inherently expensive. It would be better to renovate older housing to achieve affordable housing. I and others will be making recommendations at future meetings. We have an income disparity.

**Jake Gold** – Ms. Hawkey said the Belmont residents don't like new developments. That could not be further from the truth. I would encourage her to spend more time talking to her neighbors. We believe the housing crisis is real. Some of the biggest strides that we can take reducing our emissions will come from building houses closer to the places where we work.

**James Groves** – I had a chance to listen to the recording of your work session a couple of weeks ago. I found it odd when Mr. Stolzenberg and Ms. Russell asked the consultants about how upzoning had worked in Minneapolis. The consultants didn't have any studies to share with us. I work at the University

and I teach design. In the design process one of the key things we do there is lay out goals of a designing process. I push my students to be quantitative. As you design a solution, what do you hope or expect to deliver and make it numerical. I would encourage you to go further. What do we want occupancy rate in rental units to be? How many middle income affordable housing units do you want? There is a whole set of metrics. You should define quantitatively a whole set of measures or goals. What are we hoping to achieve with this plan? A number of people have talked about getting UVA engaged. They have set their goals to be carbon neutral by 2030 and 2040 to be fossil fuel free. They have excluded faculty/staff transportation commuting from those numbers. They shirking their duties. They're avoiding that along with the students in the community. They are helping to contribute to a lot of commuting, emissions, a portion of our climate problem that you should be trying to solve throughout this planning action.

**Laura** – I live in a middle income community in Amherst Commons. It's at the end of Amherst Street off of Rose Hill Drive. We learned today that neighbor's lot is set to be zoned as a high intensity zone. Essentially, a 5 story apartment complex could be built in our backyard. We are stressed out on whether we need to sell our house within the year before our property value plummets due to this zoning. If I was a buyer looking for a single family home, I would be "turned off" if I saw high density zoning abutting our backyard. I and my neighbors will likely be adversely impacted by this zoning. Please consider the residential homes of Amherst Commons. We have a 12 home neighborhood and association. Please consider doing the moderate intensity zoning behind our community. We invite you to come to our neighborhood and see how this zoning could adversely impact our neighborhood.

**Doug Cleveland** – I am calling to ask three questions that are inter-related. Our street (North Downtown) conducted a survey to provide you with the results prior to the last meeting. It is a small street with 30+ households. One thing that is very representative is that for a large part of the community we found out about this process long into the process and the particular issues being raised. We were voicing opposition. We were very concerned about finding out about very dramatic proposals so far into the process. The Chair has expressed a desire to get this across the "finish line" quickly during the current City Council tenure. That would be great. I hope that it doesn't come at the expense of our ability as residents and participants. In the work session, Rory asked a question of the planners of the scale that was going to be possible. I have tried to get a sense of the scale from the proposed materials.

**Jonathan Rice** – I have a very specific concern with the future land use map. I live on Merriweather Street, which is between Little High and East High Street. At the dead end of the street, the urban mixed-use corridor has been added to two lots that have always been residential. It seems totally inconsistent with the notion of having a gradual transition between high density and low density areas. The urban mixed-use corridor category allows buildings up to eight stories. Most of the houses on Merriweather are single story ranch houses. This would be an obvious clash. This is a really narrow street. We don't have sidewalks. There is not a cut-through street and there is no big business at the dead end. We have a lot of senior citizens and a lot of families with children. We're really concerned with improving the walkability of our neighborhood. I have sent several emails asking for clarification. I haven't heard back. I would appreciate some clarification on that. We have no problem with the urban mixed-use corridor being along East High. We are concerned with traffic and good boundaries with transitions.

**Benjamin Heller** – The effect was a rapid capitalization of development value. This is just piece without analytical rigor. There is no model induced demand. When San Francisco looked at this, they found with

100 market rate condos, they needed 20 to 40 affordable units to break even. Charlottesville is one of the MSAs where filtering works in reverse. Where is your model for that? Where is the model for realistic marginal costs? How are you going to create supply? What is the evidence for upzoning? You have a model of restrictive covenants 50 years ago.

**Elizabeth Carpenter** – I have heard a lot of comments urging caution. This is a public health crisis. I have visited low income families. Every classroom in our public schools has kids who are homeless or on the verge of homelessness. We should not use Albemarle as the marker. I want to express how urgent this is as a public health issue for the members of our community.

## **F. CONSENT AGENDA**

1. Minutes – February 23, 2021 – Work Session

**Motion – Commissioner Solla-Yates moved to approve the Consent Agenda (Second by Commissioner Russell) – Motion passes 6-0**

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

## **III. JOINT MEETING OF COMMISSION AND COUNCIL**

**Councilor Hill called the City Council to order for the two public hearings.**

*Beginning:* 6:00 PM

*Continuing:* Until all public hearings are complete

*Format:* (i) Staff Report, (ii) Applicant Presentation, (iii) Public Hearing, (iv) Commissioner Discussion and Motion

1. **ZM-21-00001 & SP21-00004 – 1206 Carlton Avenue** – Landowner Hulett Management Services Inc. has submitted applications seeking a Rezoning and a Special Use Permit for approximately 0.25 acres of land, identified by City Real Estate Parcel Identification Number 570127000 (“Subject Property”). The Subject Property has frontage on Carlton Avenue and access to a rear private alley. The applications propose to change the zoning district classification of the Subject Property from R-2 (Residential Two-Family) to R-3 (Residential Multifamily Medium Density) for the specific development described in the application. The applicant is also seeking a Special Use Permit to increase the residential density allowable within the Subject Property from 21 Dwelling Units per Acre (DUA) to 31 DUA, as authorized by City Code Sec. 34-420 (Use Matrix, R-3 District), and a reduction of one side setback from 13 feet to 8 feet per City Code Sec. 34-162. The proposed development consists of one multi-family residential dwelling (apartment building) with eight dwelling units (a mix of one- and two-bedroom units). The 2013 Comprehensive Plan Land Use Map for this area calls for Low Density Residential. Information pertaining to this application may be viewed online at [www.charlottesville.gov/agenda](http://www.charlottesville.gov/agenda). Persons interested in the Rezoning or Special Use Permit applications may contact NDS Planner Matt Alfele by e-mail ([alfele@charlottesville.gov](mailto:alfele@charlottesville.gov)) or by telephone (434-970-3636).

### **i. Staff Report**

**Matt Alfele, City Planner** – You will be holding a public hearing for a Rezoning and Special Use Permit for a proposed development at 1206 Carlton Avenue. Management Services Inc. represented by Justin Shimp of Shimp Engineering has submitted two applications: ZM-21-00001 and SP-21-00004. These requests are needed for the owner to develop an 8 unit apartment building on the subject property. The first step of the proposal is to rezone the subject property from R-2 low density residential to R-3 medium density residential. As part of the rezoning request, the applicant is not proposing any proffers. A rezoning of the subject property would change the by right density from approximately 4 dwelling units per acre to 21 dwelling units per acre. This is misleading as dwelling units per acre is not used below R-3. It is not used in the R-2 and R-1 districts. As the lot currently sits, the maximum residential units that could be built would be a two family dwelling. At 21 dwelling units per acre on the subject property, it would accommodate 5 units by right. As part of the SUP request, the applicant is requesting the density be increased from 21 DUA to 31 DUA. The applicant is also requesting the side setback be modified from 13 feet to 8 feet. The applicant has indicated the height of the building would be approximately 40 feet but no greater than the R-3 allotment of 45 feet. The subject property has frontage on Carlton Avenue. The proposed development would utilize the rear alley to access Bainbridge Street. Public comment has been limited. Comments that staff has received are related to parking for the proposed development. Residents are concerned that the code required 8 parking spaces will not be enough for this development. The overflow parking will impact the surrounding neighborhoods, especially the homes on Chestnut Street. As you review the application tonight, keep in mind that these are two separate applications. They could be approved or denied by City Council individually. The rezoning offers no proffers. The proposed development plan is only tied to the SUP and not the rezoning request.

## ii. Applicant Presentation

**Justin Shimp, Applicant** – This will be familiar to some members of the Commission. In 2018, a very similar project was brought before you. The location was on Carlton. It was across from Chestnut Street. It is in an area with a mixture of residential and commercial properties. The site plan is largely unchanged from the original plan with the exception of the unit count. We have four 1 bedroom units proposed and four 2 bedroom units. The last proposal was six 2 bedroom units. It's the same number of bedrooms. We have added some more kitchens. This building is set to be a simple economical apartment building for people who are working in the area who want to walk or bike. One of the things that was discussed last time was a question about the alley access. We did clear that up. We do have access to that. We have met with the owner across from us who is welcome to our paving and fixing up the alley to correct the potholes. That's been established. We have also had some conversations with neighbors about parking.

**Kelsey Schlein, Applicant** – We do know that parking is one of the main concerns with residents regarding this development. It was a main concern back in 2018. It remains a concern with this application. We are open and committed to exploring solutions. We did communicate with the owner of 1208 Carlton, who recently constructed a parking lot to see if there was an opportunity for a shared parking agreement at some point in the future. At this point, there's no interest from that owner. There are a few more options that we could explore in the area for existing parking lots. We are interested in finding a solution to this concern. However, we're not interested in resolving that concern by constructing additional parking. We need the parking requirement where it will have the opportunity to continue to work with nearby businesses to see if there can be a shared parking agreement.

**Mr. Shimp** – One of the things about these developments is that 30% of people don't have access to a car. For people who live in single-family housing, the idea of not having a car seems foreign. For people renting a one bedroom in this location, it means saving hundreds of dollars per month in not having a car. This is really a way to provide accessibility to people. That's important here. That's why we did not propose to build a duplex after 2018. We felt that was not an appropriate use of this land. There has been a lot of discussion these past years about that. We have worked with the traffic engineer. We have a one-way entrance off Carlton. That is a narrow street. The one-way entrance is safe. The exit is out the alley. There are no traffic concerns. Staff outlined other factors.

We want to give you an idea of scale and massing. It will likely be a residential house-type construction. The example you see references a 4 story but is a 3 story with a rooftop terrace space. R-3 requires an enclosed recreation space. That's how we meet that standard with that third floor recreation space. It is not a 4 story building proposed.

This is the current zoning map. It has been down-zoned over time.

This slide offers a little bit of context. The picture in the lower right corner is key to all of the other pictures on this slide. You will see a collection of 6 units and 8 units. This whole side of the street is generally residential in this form. The zoning and special use permit we are seeking is not too different from what is built but to match it.

In 1949, the property was zoned B-1 Commercial. In 1958, it was a mix of industrial and residential. The remaining was zoned R-3 in 1976 and remained R-3 until 1991. There started to be this use of zoning to limit density in a period of time. In 2003, it changed to R-2. It was basically spot down-zoned. We are trying to get it back to the correct zoning district based on what is right for the neighborhood and right for the people who have lived there.

If you look at the goals that are stated for the city in terms of providing housing to people who use alternative forms of transportation and climate change, these infill projects are an excellent way to achieve those goals. With this particular location, we're not talking about going into a neighborhood of one story houses and building a four story apartment complex. We're talking about building a light structure on a street near commercial and jobs. Most importantly, it is going to give 8 families or households the opportunity to live somewhere to improve their lives. I know people are worried about parking. Somebody will get to walk to work, school, and somebody's life is going to be improved by living in this. When you talk about these housing projects, it is very critical.

**Commissioner Russell** – What is your anticipated rent for 1 and 2 bedrooms?

**Mr. Shimp** – The rent for these type of 1 bedroom units are around \$1100 to \$1200. For the 2 bedroom units, \$1500.

**Commissioner Stolzenberg** – One of our standards of review is compliance with the building code. It came up in our last meeting that once you hit the 4<sup>th</sup> story, some additional egress requirements apply. My understanding is that a second stair is required for that 4<sup>th</sup> story. How are you complying with that here? You have one stair. Is that because that 4<sup>th</sup> story is not residential space?



**Mr. Shimp** – That’s correct. It’s not habitable space. It is potentially an amenity. It’s not required. Nobody is sleeping up there. It’s not applicable to that space.

**Commissioner Stolzenberg** – What is that space? I know a general amenity space is required in the R-3 requirements. I am presuming it is to comply with that. Is it a rooftop patio?

**Mr. Shimp** – It is a rooftop patio with a pergola over it. It is still conceptual at this point. We’re trying to give people a little bit of space to get out. It’s probably over the exact R-3 square footage. It is a place to get out on the roof and to have lawn chairs.

**Commissioner Stolzenberg** – Often when we see this kind of rezoning with an SUP, we see the general development plan as given by the developer as committing to it. If not, you have the ability to do whatever is allowed under R-3 without the SUP. Can you explain your thinking behind the lack of that commitment here?

**Mr. Shimp** – If it is zoned R-3, we would have the ability to build 5 units. Assuming the rezoning and the special use permit were approved, we would not have to use a special use permit approval. With the 5 units, the setback becomes 13 feet. That becomes an unworkable building; not saying that it can’t be built. With R-3, the taller you get, the setbacks increase. You might get a 2 story building. The economics of that start to not make sense. The reason we didn’t do that is that this lot should have always been zoned R-3. There wasn’t a whole lot we would do differently in this particular case.

**Commissioner Stolzenberg** – From what I recall in the last application in 2018, it was a 6 unit building with one unit proffered as affordable. Can you speak to the affordability of this building relative to that and your decisions around there?

**Mr. Shimp** – The affordability is complicated and convoluted with these things. Back in those times, we would submit a proffer with affordable housing. You can’t really proffer it that fast. For these small projects, we’re not opposed to trying to get affordable housing. The methodology to achieve it is incredibly complicated. In some ways, we’re trying to get a building that is largely affordable for many people. We really prefer the city pass a zoning text amendment. It was said by one of the callers earlier. If you want every project that has a rezoning with 20% affordable, pass a ZTA. If we can make that number work, we will do it. If we can’t, we won’t apply. It’s very difficult to attach affordability. I think it can be done with a separate resolution attached. We did go through that with the other project in Belmont. With this project, it is not meant to be luxury. It’s just one bedroom. We’re not opposed to the idea. If you change that with 34-12, we would be happy to comply. We have ran into struggles with that over the years.

**Commissioner Stolzenberg** – Are you saying that you received an opinion from the City Attorney that you cannot proffer affordable housing on a rezoning like this?

**Mr. Shimp** – That’s our understanding of the rules. There is a mechanism by which the attached resolution and performance agreement are more than a proffer. That is what we understand the case to be.

**Lisa Robertson, City Attorney** – The last time Mr. Shimp and I were trying to work through this, we were discussing a situation where there were some affordable units that were required by the city code. Other affordable units had been proffered. We were trying to sort out what regulation and requirements would document both the legally required commitment and the commitment above and beyond the legally required amount. If Mr. Shimp understood me to say that affordable units could not be proffered, that was not what I intended to communicate. If the city regulations were to require some sort of covenant to ensure that the units required by the zoning ordinance would be provided for throughout the affordability period, the other units, which may have been proffered, didn't necessarily come with a commitment to be administered and to provide the same level of documentation as to what the city regulations might provide. We've always accepted proffers of affordable housing. What often does not happen is the proffers don't address how we are going to make sure we get that. A proffer that says "I am giving units that will be affordable to people who have incomes at 80% or lower AMI" is unenforceable. It doesn't address separately what the rents will be. It doesn't address affordability. I did not mean to say that affordable housing could be proffered. When a proffer comes in, I don't have a way to enforce for the proffered units and to force someone to provide additional documentation that wasn't proffered. What we're all waiting for is a zoning ordinance that can have regulations that say if we're going to require a certain amount of affordable housing for every development of a specific size, we want to be up front on what that means and what the paperwork that is going to be required over the course of the affordability period will be.

**Commissioner Stolzenberg** – We have standard operating procedures adopted by Council pursuant to 34-12g that apply to units required under 34-12. When the units are proffered, that's too vague to enforce. Your recommendation was that the proffer include a modified version of those standard operating procedures that also incorporated the exact terms of the proffer they were making?

**Ms. Robertson** – I am not sure whether the last one Mr. Shimp was involved in was a rezoning or a special use permit where he was agreeing to certain things in the conditions. Proffers are different. We have to take them as they're offered. We can't say "Because you're not giving us certain things we want, we won't approve your rezoning." It is not uncommon. We're running into this more and more. That's the reason why I will be elated when we get new ordinance provisions. We're running into the circumstance where more and more; where you have people come forward and tell you "One unit would be required by 34-12 with the zoning ordinance. I am going to give you five." Whether that's a rezoning or a special use permit, we're not nailing down during the application process how that will actually be administered into the future after it is approved. After City Council votes on something, we're offering some paperwork. For the one unit required by 34-12, we have a set of regulations that says there should be a restrictive covenant recorded, something documented that's enforceable by the city that will give us that commitment. We're trying to encourage people to enter into some sort of recorded commitment that administers all the same. It's really difficult. Going through the process, most of the developers haven't necessarily sorted through what it actually means to make provisions that will make those units affordable over a period of 10, 20, 30 years.

**Commissioner Habbab** – Would the new city ordinance be able to retroactively enforce promised proffers? Is that something that can be done?

**Ms. Robertson** – At the time City Council approves proffers, they become zoning requirements that are enforceable. We could not unilaterally amend proffers and impose new requirements on ones that have previously been approved.

**Commissioner Habbab** – Given the density of the surrounding properties, I don't see big issues with this. I don't have a lot of questions. I am disappointed that no proffer was offered similar to the previous application.

**Commissioner Solla-Yates** – As you know, the public is concerned about the storage of private vehicles, storm water effects, and the introducing of additional traffic. Can you briefly address that?

**Mr. Shimp** – One thing to clarify is that storm water is one of the reasons we have to go with these buildings being difficult to build. If I build a duplex, I can store 4 or 6 cars on site. I don't have to have a site plan. I don't have to have any storm water management. Whatever added impervious area we create as a result of this 8 unit and storage of 8 private vehicles is mitigated versus the no rezoning approval by the city's own storm water management requirements. We do add impervious area with this proposal. We also add treatment of all of it, which would not be applicable in our two properties. That's important to consider here.

As far as traffic is concerned, traffic is a negligible amount. We're not concerned about it. The purpose and location of this building is that you don't have to have a vehicle to store somewhere. If you do, you have to take it everywhere. There's a tremendous amount of traffic commuting in and out of the city every day. For every one of these projects you build, there's one less car coming down Fifth Street into UVA or downtown in the morning. That's the congestion around here. I have worked downtown a number of years. There was never any traffic around the office. Getting into the city at certain times of the day, the traffic can function as a pattern of the commercial and residential areas. We should focus on the positive elements of this location as far as alternative ways of transportation rather than the few extra trips on the road.

**Commissioner Lahendro** – What happened to the application from a couple of years ago? What was the outcome?

**Mr. Shimp** – It was denied by City Council. There was a variety of opinions. There were two comments that stood out. One was the alley access and whether we could use it. That would have changed the traffic patterns. At the time, there was a future land use map the Planning Commission was working on that showed this as lower density. That's where they went with it. Since then, some of those topics of discussion have changed. The map has changed. The current future land use map has this as a higher density zone. We feel that is part of the reason we are bringing this back. There's definitely a rethink from what was years ago.

### iii. Public Hearing

**Peter Krebs** – I work for the Piedmont Environmental Council. I live about two blocks from the location of this project. I am pretty familiar with this site. In general R-3 zoning is going to be reasonable and consistent with this location. The surrounding parcels are generally multi-family. The spirit of what is

happening here is appropriate. It is appropriate to have multi-family housing close to shopping, jobs, and schools. There is a lot that makes sense. It's also consistent with the direction the future land use map has taken as well. Broadly, this is the type of place where we have multi-family housing. The site really depends on walkability. I am one of those people who walks and bikes multiple times per day. That particular sidewalk has utility poles in it. That corridor is walkable because it has a pretty good tree canopy. I saw trees in the rendering and that's good. For this project to work, the street needs to remain walkable. Let's be sure those trees actually get built or planted.

**Mark Kavit** – It bothers me when applicants/developers who have been turned down by City Council and Planning Commission come back and ask to be considered again. It bothers me that they come back and present the same proposal and hope those on the Council/Commission will be more sympathetic to their application. I also have to question whether the land is worth as much as they paid for or if it is an option to buy. Maybe it needs to be a lower value on that and less units. I don't have a problem with units being built there. I think it is too many to have 8 units there. That's my biggest concern. It needs to be less dense there. If there is parking on Carlton too, traffic can't really fit in there. You also need to consider the future Riverbend project. There is really no space there to turn around a car. It's going to be very difficult for a car to turn around and get out of there. I am hearing a lot of assumptions on this tonight. I am not against development. I just want to see appropriate development. I don't think this with 8 units is appropriate.

**Vivian Schmidt** – We live on Chestnut Street. There is quite a bit of traffic down Carlton Avenue and Carlton Road. We see big delivery trucks and construction trucks going down Carlton Avenue. That area has narrow streets with no sidewalks. There is not a lot of off-street parking. As residents, we park on the street. We're all concerned about the addition of cars from this particular development. It is very much an assumption that there would be only one car per unit. In other developments like this, there have been two cars per unit. It is a traffic issue and parking issue for us. Our neighborhood has a very wide age span who need to park in front of their houses. I would like for you all to consider all of those things and the impact on our neighborhood.

**Charles Neer** – I agree with everything that Vivian just shared regarding the proposed development. The parking issues are dramatic. There is going to be more than one car per unit. The building is nice. The overall plan is deficient. There are some answers that could resolve the proposal. The owner/developer should find an additional 12 parking spaces. That would alleviate the parking problem. The owner/developer could put the whole thing on stilts and have parking under the building for the tenants of the development. The third solution is to reduce the size of the development from 8 units to a triplex. They could add one or two more parking spaces. They can also build a quad-plex with either two over two or four in a row. All of that would be an acceptable solution for the development and not be disruptive to the surrounding neighborhoods.

**Amy Marshall** – I am coming as a resident to ask you to be good stewards of our community. NDS does not review things based on the impact of the infrastructure of the surrounding areas. They only review projects in a bubble. No other land is considered when making decisions. You should review this in the same way. You have a self-sustained project. You need to have parking on site instead of pushing it off onto local streets. This is already an over-used road. This is a bus route and an emergency route for fire and police. You have to plan for the impacts of more cars. This is an area where children cross the street

from this neighborhood to go to school. The developer said that he didn't care about traffic. He doesn't live here with kids. There is no crosswalk and no continuous sidewalk on the north side of Carlton. Since this is a rezoning, you can have proffers that mitigate the impact of the transportation issues increased development will create. If you're going to rezone this, it's your job as a Planning Commission to require impact mitigation. If you care about equity, think about the people in this neighborhood. We need cars because we live in a "food desert."

**Karen Neer** – We've lived in this neighborhood for about 40 years. I am most concerned about the traffic on Carlton. There is already terrible congestion on that road. The traffic is so bad and the road is so narrow. Adding 8 units with 15 more cars in that area just troubles me. The applicant said that a third of the residents would probably walk/bike to work. I love that picture. I don't think it is realistic. There's not a whole lot of industry down here. Most people are going to have to walk to the Food Lion and walk back with their groceries. People are going to have to have a car. Eight units with eight cars is totally unrealistic. We're going to have at least 16 cars with visitors and no place to park. I think it is going to be a disaster. I ask that you reject the proposal. I would love it if the Planning Commission could spend five minutes on Carlton Avenue and see how congested it is. I cannot imagine adding 8 units. That area can be developed in a way that is much more reasonable. This was rejected in 2018 for a good reason.

**Jamir Smith** – I error on the opposite side of everyone else. Since the parking can't be reduced anymore, I think it is a perfect fit for the community. There are multiple multi-family houses in the area and, it is within a 5 minute walk of the shops on Carlton Road. It's also by downtown Belmont. It is that perfect size building to put in such a small area. I think it is a great model for what could be used in other parts of the city. How are we going to be able to increase infrastructure? The assumption that people can't take the bus to get groceries is wild. I work in transit. I take people to get groceries all the time.

**Kimber Hawkey** – I am not going to restate the safety issues of this. The one affordable unit that was there has been removed. It was rejected before with that unit. The setback has been reduced. In the previous application, there were concerns about the massing of the building. Coren Capshaw has proposed that Riverbend/Belmont Apartments behind Douglas generated 900 car trips per day. That's outrageous. It's a dangerous street. It's a safety issue. I am concerned about the R-3 designation. The average person cannot follow what is going on. There's a lot of confusion. I think you should reject this. This is a perfect place to do a redevelopment. It needs to be redone and it needs to be appropriate.

**Jake Gold** – I am dismayed by the number of neighbors who want more car storage here. This is a solid location for car free living. There are good restaurants nearby. It's exactly the kind of development we should be encouraging if we want to cut the number of cars driving in Charlottesville. It is necessary if we want Charlottesville to take climate change seriously. Any of the proposals that add more parking to encourage more cars to be brought to this location are ignoring the serious reality that we need to cut our greenhouse gas emissions. That's being a good steward of our community. I hear what others have said about pedestrian safety, food deserts, and equity concerns. There are a lot of ways to plug into that work addressing those issues that don't stop people from living close to where they work.

#### iv. Discussion and Recommendation

**Commissioner Palmer** – It’s a great place there. I think it is a very walkable place. There are not as many services there that used to be there. It’s great to be by the bus line there. It’s finding that balance.

**Commissioner Russell** – We heard from the developer that building a more “missing middle” type is not economically feasible. That is what is pushing this proposed development out of that scale of soft density and into something that is more middle or high depending on a lot of analysis between staff and myself about how we quantify density per dwelling unit. When we’re thinking about appropriate scale for the neighborhood and wanting affordability, the developer is saying that they have to have a certain level of density to hit that profit margin. That should make us concerned moving forward. How do we start to achieve that by building denser? This does tip that scale of density. There was something in the staff report alluding to things that aren’t being proffered as part of that special use permit. Do we think any of those other uses should be proffered out if we were to approve the SUP?

**Chairman Mitchell** – We can’t negotiate proffers from the dais.

**Ms. Robertson** – We have to be aware that proffers are things that come with a rezoning. Special use permits have conditions. If you’re considering a special use permit, you’re allowed to craft or impose a condition if you think that condition is necessary to make the development fit better in the neighborhood or to mitigate some impact it may have. On a rezoning, you’re not allowed to impose any conditions. In a rezoning, an applicant sometimes gives a proffer statement. That is the thing you are not allowed to alter or negotiate.

**Chairman Mitchell** – We have to do the rezoning to get to the special use permit in this case. We can’t negotiate a proffer on rezoning, which would take us to the special use permit.

**Ms. Robertson** – It is very difficult and complicated. Proffers are just a weird, unique thing.

**Commissioner Russell** – I did hear some conditions that related to tree canopy that are indicated on the site plan. That might be something we consider.

**Chairman Mitchell** – If that is something you really want, when we get to the motion on the special use permit, you may want to include that in the condition of approval.

**Commissioner Stolzenberg** – I remember this application coming up last time. I recall a City Councilor (rejecting it) saying that it was out of scale with its surroundings. It was going to be a sixplex. There was a sixplex next door. On the other side, there was a B-1 zoned single family house. It’s now a salon. This proposal and that proposal are missing middle housing. It’s a very appropriate location for it in a great location to live without a car or ‘car light’ lifestyle, where you can have a car and not use it. The traffic concerns are generally legitimate. People have reasons to fear cars and traffic. I like the fact that there will be an exit onto Carlton Avenue. The idea of a crosswalk is a good idea. That seems like something for site plan approval. I am not sure crosswalks are allowed to go to a place where there isn’t a sidewalk. Overall, I think it is a good proposal. I would have liked to have seen a proffer like the last time. Those rents that are planned are lower than an 80% AMI proffer. It’s about 64% AMI for a one bedroom and 75.5% AMI for a two bedroom. It would be nice to have some of those be guaranteed. Those are market rate rents. If the market continues to rise, they could go up. I don’t have any particular reason to believe the current

market rent is significantly different from what was stated earlier. It is well within what we need for workforce housing and even below typically workforce housing. This is the type of housing that we need. For a relatively large lot for Belmont, 8 units is entirely appropriate. I am supportive of this proposal.

**Commissioner Habbab** – I appreciate all of the comments from the public. For the rezoning part of it, I think it fits. It provides workforce housing, which is needed. Looking at it as a rezoning, they can theoretically build anything that fits into R-3 zoning. I do think that R-3 fits that. With regards to the SUP, the plan as submitted would be a good addition with all of the conditions highlighted by staff. I think having the tree in the front might help reduce the scale of the building.

**Commissioner Solla-Yates** – We have problems in Belmont. If we want to solve problems, we should spend money on it. We're not going to extract all of the solutions to the problems from developers of small lots. We have to spend money. This landowner didn't make traffic bad in Belmont. This landowner did not make parking problems in Belmont. If we have systemic problems, we need to have systemic solutions: comprehensive planning and capital improvement planning.

**Commissioner Lahendro** – I have no problem with the rezoning considering the existing zoning around this lot. I think that is entirely appropriate going to R-3. I agree in terms of getting more units in a missing middle type of building. If there's parking and traffic issues, we need to have the city step in and provide the appropriate resources and solutions.

**Commissioner Russell** – Was there a visual that showed a plan for more landscaping?

**Mr. Shimp** – We will have conceptual landscaping on the site plan. The ordinance might require two large trees. We certainly want to have a shady yard. Part of that could be an outdoor amenity space in that front yard. Having tree canopy is important to that. In the comments, I heard about the walkability in the shade. It is one of those things you experience walking through neighborhoods and you appreciate it. You don't realize it until you walk in a neighborhood without that. There is a desire for additional trees to be planted. If that is in a condition, there would be no objection.

**Commissioner Stolzenberg** – Can we get clarification? It looks like there's 60 feet of frontage. The ordinance says one large tree per 40 feet of frontage. Does that mean one large tree/40 feet and another large tree? Would it be easier to make it a condition?

**Mr. Shimp** – It basically requires two trees. If it is over 41 feet, it is basically two trees in how it has been interpreted.

**Mr. Alfele** – I would have to double-check the code. At a bare minimum, it would be at least one large tree. It would be looked at during the final site plan review.

**Commissioner Lahendro** – I would propose that we make that part of the special use permit that we require at least two large canopy trees along the street.

**Motion to Approve Rezoning – Commissioner Solla-Yates – I move to recommend approval of this application to rezone the subject property from R-2 to R-3 on the basis that the proposal would**

**serve the interests of the general public and good zoning practice. (Second by Commissioner Lahendro) Motion passes 6-0.**

**Commissioner Solla-Yates** – There is a lot of concern about walkability and sidewalk crossing safety in the area. Would it be possible to have a condition that speaks to that?

**Mr. Alfele** – I am not sure what the safety condition would be.

**Ms. Creasy** – Are you asking for a requirement for a sidewalk? That is a requirement for the site plan.

**Commissioner Solla-Yates** – Something above and beyond.

**Ms. Creasy** – We wouldn't be able to provide any analysis on the details of what that could be at this point in time. For a crosswalk, you have to have receiving areas on both sides. Each of those areas will need to be compliant. It appears that it may be a mid-block area. It may not be the most appropriate. That would be something reviewed at the site plan phase. We don't want to commit to something that is not allowable.

**Chairman Mitchell** – Some of the stuff has to be done by the city. We can't look to the developers to solve every problem. We have to do some of this work.

**Commissioner Lahendro** – Can we ask staff to do a study on this road? Or make recommendations the city might do to make things safer?

**Ms. Robertson** – You can do that. You wouldn't necessarily do it in the conditions for this development. You can make that type of request.

**Motion to Approve SUP – Commissioner Solla-Yates – I move to recommend approval of this application for a Special Use Permit in the R-2 (application ZM21-00001 under review to rezone from R-2 to R-3) zone at 1206 Carlton Avenue to permit residential development with additional density and adjustment to the southeast side yard requirement with the following conditions.**

- **Conditions recommended by staff**
- **Two large canopy trees along the street**

**(Second by Commissioner Lahendro) – Motion passes 6-0.**

**Discussion following second by Commissioner Lahendro**

**Commissioner Stolzenberg** – At the eastern border of that streetscape, there is an existing large tree. Is it possible or reasonable to make that condition to keep that large tree? We don't want to wait for the new ones to mature. Is that feasible during the construction?

**Mr. Shimp** – I don't have a map in front of me to show me what tree that is. We have a lot of trouble keeping trees. Even if there is a sewer lateral that serves this property, we have to do a new sewer lateral, new water connection. Inevitably an old tree with roots out into the zone of required utility work: we hit it. It probably dies. If we can keep it, that is preferable. I would be worried about a condition. We might



come to a site plan and utilities might say that we can't build those in here. That tree is going to have to go. I see us replacing something and the tree across the frontage being impacted. I would like to avoid that if at all possible. It is safer to plant two new trees and let them grow with the utilities over time. It's a safer bet.

2. **CP21 - 00001 – 13th Street NE Right Of Way** - Pursuant to Virginia Code section 15.2-2232 and City Code sec. 34-28, the Planning Commission will review the proposal for partial vacation of the 13 Street NE public right of way, between Meriwether Street and East High Street, to determine if the general location, character and extent of the proposal are substantially in accord with the City's adopted Comprehensive Plan or part thereof. Information pertaining to this application may be viewed online at [www.charlottesville.gov/agenda](http://www.charlottesville.gov/agenda). Persons interested in the application may contact Tony Edwards by e-mail at [edwardst@charlottesville.gov](mailto:edwardst@charlottesville.gov) or by telephone (434-970-3992).

#### i. **Staff Report**

**Tony Edwards, City Engineering** – The Subject Street was created in 1940 within the subdivision plat that established the Little High neighborhood. The 1940 subdivision plat created a new “Lewis Street” running north from the east end of Little High Street all the way to “Free Bridge Road”, which is now East High Street. The subdivision plat shows “Lewis Street” continuing beyond the home now located at 426 13<sup>th</sup> Street N.E., behind three other lots, and ultimately connecting with East High Street further to the west (i.e., between the La Michoacana restaurant and an office building). Subsequently the City paved a portion of the platted street—now 13<sup>th</sup> Street N.E.—which aligns with most of “Lewis Street” shown on the 1940 plat. The paved portion of the street runs from Little High Street to the edge of the lot identified as 426 13<sup>th</sup> Street N.E. The City also paved the other streets that were depicted within the 1940 subdivision plat (including Little High Street, Meriwether Street, and an unnamed alley located above Meriwether Street). By its actions in paving the streets platted within the Little High subdivision plat, the City effectively accepted all of the streets depicted in the plat—including the entire strip of land labeled “Lewis Street” in the 1940 Plat. Therefore, even though the Subject Street remains undeveloped, that undeveloped portion is now a public right-of-way owned by the City. Therefore, for purposes of City Council's 2019 Updated Street Closing Policy, the Subject Streets falls within “Category A” (proposed vacation of a public right-of-way previously dedicated to and accepted by the City). The property owners that border a portion of this undeveloped section of 13<sup>th</sup> street NE have expressed their desire to avoid a cut-through street for the Little High Neighborhood and any added congestion between properties and at the intersection with East High Street. They have indicated that a vacation of this right of way would allow them to address existing drainage issues, reduce limiting setback requirements on those High Street properties, reduce any potential grading issues in dealing with the existing steep grades and eliminate potential financial burden for new street construction. The property owners further agree with the City's understanding in that a utility easement will be required to accommodate the existing sanitary, water and gas utilities. However, this will not provide a multimodal approach through the area. Also in 2019 Stephen Bach, a resident of the Little High Neighborhood, contacted City Council to request clarification of the status of a gravel path at the north end of 13<sup>th</sup> Street N.E. According to Mr. Bach the public has been using the gravel path for a long time to access East High Street. Mr. Bach desired for City Council to improve the path to serve as a long-term pedestrian and bicycle connection from 13<sup>th</sup> Street N.E. to East High Street. Upon investigation of Mr. Bach's request it was determined that the existing gravel path

actually veers outside of the platted ROW for 13<sup>th</sup> Street N.E., over the yard of a private residence and a busy parking lot. Staff at the time was also of the opinion that establishing a bike/ped connection within the platted ROW would be difficult and expensive. The area of the platted ROW goes through a large, forested lot, into a driveway between the parcels containing La Michoacana and the office building next door (the City would need to clear and develop the ROW area through the forested lot). To establish a bike/ped connection over the gravel path that is/was actually being used, the City would need to acquire land from the owners of 426 13th Street N.E. and 1202 East High Street, and reconstruct the area to manage conflicts between cars and pedestrians in the existing parking lot.

### **Comprehensive Plan Alignment**

The following excerpts identify some of the related goals established to be in alignment with the City of Charlottesville adopted 2013 Comprehensive Plan. Staff recommends that this request is not in alignment with the comprehensive plan as outlined in the objectives below, but if the Planning Commission and Council determine that the request is in alignment with the Comprehensive Plan, the request for closure could move forward for consideration.

### **Land Use**

This section of right of way is located within a proposed High Street / Martha Jefferson Small Area Plan Development area. The small area planning process is intended to examine these areas anew and holistically, with the full engagement of the public, elected and appointed officials and planning professionals. Each small area plan should be also coordinated within a city-wide map and “multi-modal system framework plan” as called for by Land Use Objective 1.4 and required by the Institute of Transportation Engineers (ITE) guidebook, “Designing Walkable Urban Thoroughfares: A Context Sensitive Approach” (Transportation Objective 2.5,) and the Virginia Department of Rail and Public Transportation (DRPT) “Multimodal System Design Guidelines” as they are developed. The City’s Land Use Map identifies this proposed right of way section as being adjacent to low density residential and mixed use areas and should be allow to remain for such a process.

2.3 Enhance pedestrian connections between residences, commercial centers, public facilities, amenities and green spaces.\*

3.4 Increase both passive and active recreational opportunities for Charlottesville residents.

8.5 Incorporate best practices in the location and design of a range of parks, school yards, public trails and recreational facilities of various scales and functions, from large natural areas to small urban parks throughout the city.

### **Housing**

8.5 Promote redevelopment and infill development that supports bicycle and pedestrian-oriented infrastructure and robust public transportation to better connect residents to jobs and commercial activity.\*

### **Transportation**

1.2 Provide convenient and safe pedestrian connections within 1/4 miles of all commercial and employment centers, transit routes, schools and parks.

2.1 Provide convenient and safe bicycle and pedestrian connections between new and existing residential developments, employment areas and other activity centers to promote the option of walking and biking.\*

2.2 Encourage new street connections and alternate traffic patterns where appropriate to distribute traffic volumes across a network and reduce trip lengths for pedestrians, cyclists, and vehicles.

2.6 Promote urban design techniques, such as placing parking behind buildings, reducing setbacks, and increasing network connectivity, to create a more pedestrian friendly streetscape and to reduce speeds on high volume roadway.

3.5 Identify additional roadway connections to improve the connectivity of streets.

5.4 Provide public parking to maintain the vitality of the City while using pricing strategies (including metering) and coordinated locations of parking to encourage use of transit, walking and bicycling.

### **Urban Design & Historic Preservation**

1.4 Develop pedestrian-friendly environments in Charlottesville that connect neighborhoods to community facilities, to commercial areas and employment centers, and that connect neighborhoods to each other, to promote a healthier community.

### **Staff Discussion and Recommendation**

City staff has provided the following comments in their review of the application material:

This section of the 13th Street NE right of way provides rear access to one (1) lot at 1142 E High Street. The lot is zoned High Street Corridor and is not permitted to have accessory dwelling units (ADUs) per Section 34-796. Therefore, the closing of this section of 13th Street NE will not impact rear access to existing or future ADUs under current zoning.

City Traffic Engineering does not believe that this right of way should be closed. Although undeveloped up to this point closing it potentially removes a chance of developing parcel 54-50.002, which is currently owned by the same owner of the adjacent lot at 517 13th St NE, unless the two lots are combined. While there is currently no physical street for parking, parking could be on this street if ever developed. This right of way connects two existing dedicated streets and could allow a through type connection from 2 directions. It could provide an alternative route to existing routes with vehicular traffic of greater than 1000 ADT.

In addition, by closing this 13th St section, we would officially be creating 2 separate dead-end streets that would not meet the city's criteria for a turn around. A possible solution in the short/midterm would be to pave this as a 12 foot wide bike/pedestrian trail with a removable bollard at either end. This would restrict access to cut through traffic that the applicant has referenced, while still leaving the route available to emergency use if needed and more formally recognize it as a good pedestrian route to High Street.

Parks and Recreation would like to preserve a bike and pedestrian easement, if this does close and retain the right of way.

Public Utilities has existing water, sewer, and gas lines within this right of way. If closed, Public Utilities requests the entire area be retained as a Public Utility Easement.

Staff notes that the determination of conformance with the Comprehensive Plan and the closure request itself are two separate actions. Only conformance with the Comprehensive Plan is under consideration at this time. **Staff recommends that this request is not in alignment with the comprehensive plan.**

**Commissioner Solla-Yates** – I understand there has been an email today with some other ideas. I am interested to hear your thoughts on this email.

**Mr. Allen** – There were some other options that came in late today. It should be considered as a possibility. It just was not in time to be considered for the report. Staff has not had an appropriate time to analyze all of that.

**Commissioner Solla-Yates** – Are you suggesting more time would be helpful to make an informed decision?

**Mr. Allen** – For consideration of those options, if Mr. Van Doorn is confirming tonight that those are still on the table that would be appropriate.

**Chairman Mitchell** – I don't think it would be appropriate for us to consider the new information unless we had input from staff.

**Commissioner Habbab** – I know there was the old report that said that it would be implausible to build a pathway. Would it be feasible to build a pedestrian/bike path that connects that area? The second question concerns the drainage. I don't know if you had a chance to look at those issues that the residents are concerned about.

**Mr. Allen** – The Parks and Recreation Department feels that could be achievable. It would require a great deal of work to accomplish that. There is no estimate at this point to what extent that may require. With the drainage, I am not aware of specific complaints of drainage in that area.

## ii. Applicant Presentation

**Ray Van Doorn, Applicant** – I am the applicant. I speak for all of the property owners who touch this right of way section. This is the planned view of the area without vegetation. This section of 13<sup>th</sup> Street is called a paper street. As a paper street, it acts for us, as property owners, like a real street. We have an unusual requirement in the High Street Corridor. Those buildings facing High Street have a 15 foot setback. Those properties that face a connector road (13<sup>th</sup> Street would be a connector road) have a 20 foot setback. If you look at where that #21 is, you will see that spot (if you take 20 feet away from that property line) removes all that property from utility. The 20 foot setback is really a pressure point for us in two ways. I mentioned drainage. If you park in the back of the La Michoacana, there is water that flows downhill from lots 52, 53, and 54 up to Locust Avenue. It comes down during storms. That area where the number 21 is a big hole that receives the water. To effectively address this problem, we need to put an underground conduit from a section behind lot 55 about ten feet into the right of way to a location in the corner of lot 59 and 13<sup>th</sup> Street. There is a 30 inch storm drain there for stormwater underground. That removes all of this stormwater that we get washing through here. On 13<sup>th</sup> Street Northeast behind La Michoacana, that is a city paved street that isn't code compliant. It is just paved asphalt that is one continuous asphalt. When it rains, water just flows over the top of 13<sup>th</sup> Street and down into where that #21 is and into the storm drain. We need to use a portion of this right of way to address this water issue. The other problem we have is that we would like to get more parking off High Street. Across the street is

the digestive center. They have been extremely busy. There simply is no on street parking for commercial use. As this area matures and we get more density, having off street parking is exactly what the Small Area Plan calls for. We can manage that with our customers. All of this area is commercial. We want to build more off street parking so we can relieve High Street from parking. We don't do this application that much. The city doesn't get many applications for right of way abandonment. When we got the staff report, we pondered on what the staff report said. We have a couple of thoughts for your consideration. One is pedestrian and bike access. We think it is appropriate and in the best interest of the city that that section of land have a bike path and pedestrian path so people can walk from the Little High Neighborhood down 13<sup>th</sup> Street, on this path, and up towards La Michoacana. That gives them access to High Street and buses in a different way. The city rejected putting a path in because of cost. It does cost a lot of money. Another issue is that the city has been negligent in maintaining that utility easement. This area is frankly a jungle. If there is a water, gas, or sewer leak, there is no physical way for them to get in there. The trees are 70 years old and have outgrown that area. If there was a water or sewer leak, I don't know how people get in there.

The traffic engineer is correct in saying that this is a connector road. In earlier public testimony, a Mr. Rice was concerned about the Little High Neighborhood, the streets being really narrow, and the concern about cut-through traffic. This road was to be connected, this would be a perfect cut-through for people going to High Street to Meade and cut out the congestion on the corner and that tight pinch-point turn at Meade and High. You would see nothing but traffic going through these narrow streets with no sidewalks. There was a proposal a few years ago to develop that into some high density housing. We had a public hearing about this with the Little High Neighborhood. They all pleaded with us to connect that road. All it would do is create a major cut-through for the neighborhood. They were happy with the situation as it is now. If that site was connected, the big problem for the city and us in the neighborhood is the intersection of 13<sup>th</sup> Street and High Street. If any of you have been to La Michoacana, you know that it is nothing more than a big parking lot. There is no curb and gutter or sidewalk. It is not an improved city street. It is nothing more than asphalt. When lots 50 and 51 were looking to develop, this was in the realm of possibility. The city said we needed to develop 13<sup>th</sup> Street to city standards all the way to the intersection of lots 50 and 49 with city approved streets. Two and a half years ago, it was \$700,000 to do that section. If it was connected all the way to lot 47, it is well over \$1 million. Whenever a street is built today, you have private people saying "I want to develop lot 49 or 50 and put in that." There are no lots left to develop. There's no interest by anybody in the private sector to improve that road. Who is going to do that work? Is the city interested in putting in \$1 million to making a connector to a neighborhood who does not want it? It really doesn't make any sense. The goal of the High Street Corridor is the continuation of scale and existing character with an emphasis on infill development or similar uses. We meet this requirement and embrace it. We want to increase parking and infill in a commercial area and in a location that is not going to interfere in any way aesthetically and anyway with the residential neighborhood. I made a proposal that we as property owners around this section would put in a 12 foot wide gravel connector so that bikes and pedestrians can walk in that area. We would enter into an agreement with the city to maintain that gravel road. It would be exactly over the utilities. That would give the city the ability to access the utilities if there's a failure. We would put in bollards so it wouldn't become a vehicle cut-through. We would ask that the rear setback be reduced from that area down to zero or ten feet away from any utilities. That would give us the ability to develop the land and use it to its best use without interfering with the public.

This is at the end of 13<sup>th</sup> Street. You can see where the pavement ends right now. This is the path many people use to exit. If you look straight ahead, that's Davis Appliance. People were cutting across this lawn and going over to those trucks and getting access. Since that has been a problem, they have put in a chain linked fence and prevented that access. This is a picture of 13<sup>th</sup> Street from La Michoacana on the left and office building on the right. This is a public highway. There is plenty of room at the end of this layout to turn around. This is 13<sup>th</sup> Street and the area we're talking about cleaning up. Seventy years of neglect have had a toll on this. These trees could be saved if we start working on it now. We would propose putting a path through here and cleaning up the kudzu, putting in a gravel road, and maintaining it. We would use that gravel road for our own internal exit out the rear. We would prevent through traffic from going through here. This is the other side of that path. That's what we would connect to at the very end. There might some realignment. That would give the residents of Little High Street the ability to walk or to bicycle down this path and connect to an area that doesn't have a chain linked fence. They can get to High Street, buses, and shopping. We anticipate more restaurants and shopping coming in on High Street and connect Little High Street to the High Street Corridor. We think it makes a lot of sense. We can't do it now because of this artificially created paper street.

**Chairman Mitchell** – If we elect to move that this is in compliance with the comprehensive plan (but only if he does the things that he suggests that he is going to do), how do we do that? I don't think we can condition this.

**Ms. Creasy** – This isn't an action that can be conditioned. It's an 'up' or 'down' resolution.

**Chairman Mitchell** – We have to have faith.

**Ms. Creasy** – In the past, you have provided the recommendation. You have noted a few comments that you have asked to be passed onto Council. That could be a consideration.

**Commissioner Russell** – What are the obligations of the city to maintain a utility right of way?

**Ms. Robertson** – That is up to the city. The city maintains the right of way in a manner that will ensure that the utilities in that area are operating properly. There is not a standard that requires it. As long as it suits the operation of the utility facilities, that's all the utility easement is designed to ensure.

**Commissioner Russell** – Is it possible to allow for pedestrian connectivity but not give up the right of way; keeping the option to exercise it at a later date?

**Ms. Robertson** – I don't know if that would suit the applicant's purposes. Just because the city owns the area, the city doesn't have any obligation to develop it to any particular standard, to create a pedestrian trail. Depending on the reasons why the applicant wants it closed the city already owns it in full. It's not for one purpose or another. It would be a little difficult to craft a closing only for certain purposes that keeps title for other purposes.

**Commissioner Russell** – I am just worried about limiting development along East High should it ever be advantageous; not necessarily for cut-through.

**Commissioner Stolzenberg** – Would the city allow a private entity to improve a right of way to a standard less than that of a street if it wasn't required for a development? Would we allow someone to take a platted right of way and put a pedestrian path there?

**Ms. Robertson** – It depends on if it is for public use or not. If you want to make a path around your lot, you don't have to make that ADA accessible for yourself. If the applicant is going to incorporate that area as a public sidewalk or as part of a future public dedication of facilities, it is those public facilities that have to be compliant with particular standards if we're going to accept them and turn around and own them again and maintain them.

**Brennen Duncan, Traffic Engineer** – It would necessarily have to be built to the full roadway standards. It would have to be built to ADA standards or bicycle trail standards if those were the types of facilities that were going to be built in that right of way.

**Commissioner Stolzenberg** – Would that be the case even if we were to vacate the right of way and they were to create a pedestrian path for public use?

**Mr. Duncan** – If they were dedicating it for public use, it would have to meet those ADA Guidelines.

**Commissioner Habbab** – If the applicant wanted to put in a pedestrian right of way, is that allowed?

**Mr. Allen** – Are you suggesting that it would be a private owned area with a dedicated pathway through it?

**Commissioner Habbab** – If it remains as a right of way for the City of Charlottesville and they voluntarily wanted to improve it to be a pedestrian pathway, is that something the city will let them come in and cut down the trees that are in the middle of the walkway? You can't walk from one point to another. It's not really a connector.

**Ms. Robertson** – As long as it is city owned property, we can't let private individuals use it for their private purposes as long as it is owned by the city. If they were providing a pedestrian path for use by the general public and it is on the property that we own, it is going to have to be compliant with standards for public accommodations. If we were to lease the property to them and it became their property by virtue of that lease, they would control it. That might be a private facility. I can't say whether if they allow people to privately cross an area that they have a leasehold interest in, what the requirements would be for them.

**Commissioner Solla-Yates** – I am not concerned with understanding the character of this paper street. Could we waive the setback requirements if we haven't developed the street?

**Ms. Creasy** – The code doesn't allow for that. There are options if in a special use situation. You can request relief from setbacks. That's the only situation given the current zoning ordinance.

**Commissioner Lahendro** – Can staff tell us what existing utilities are in this right of way now? What is their condition and age? What are the master plans for replacing them or adding to them?

**Mr. Allen** – There is water, sewer, and gas located in that area. The condition of them and future plans is something that we would have to discuss with public utilities.

**Commissioner Lahendro** – What is the size of the sewer and the water?

**Mr. Allen** – I don't have that information. I can get it for you.

**Commissioner Lahendro** – I am just trying to get a 'feel' for how major this utility corridor is. I thought the city normally does condition assessments of their utilities and how soon someone is going to have to get in there.

### iii. Public Hearing

**Peter Krebs** – I am from the Piedmont Environmental Council. PEC is working every day to obtain rights of way and easements to improve public connectivity in every day access to nature. For the city to relinquish rights of way, there needs to be a public good. The owner's convenience is a factor. A decision like this is very difficult to reverse. I find the verbal proposal quite interesting. It would do just about everything I described. There would need to be a public access right of way. An easement for that needs to be in writing. There are too many cases where we try to provide connectivity through private lands. We have seen cases where leadership or an HOA changes and that right of way is lost. It needs to be much more than a verbal agreement from the landowner. I have an alley behind my house and it does all the things I described. The trail described here would be great and would connect to High Street. City code can give you guidance. It would clearly need to be a highway. This is a complicated decision. I like the creativity the landowner is exhibiting here. I would like to see more details.

**Steven Bach** – I have been opposed to the city vacating any portion of this right of way. I laid out my thoughts and sent a memo to the Planning Commission and City Council. I appreciate the offer from the applicant about a bicycle/pedestrian path. What is important is having it binding. It has to be done. They could 'weasel' out of it. It would conform to ADA standards. A gravel path is not conforming to ADA standards. You cannot ride a bike on a gravel path. In Mr. Van Doorn's letter, he mentioned 80 years of inaction by the city. Eighty years ago, Meade Park and the aquatic center did not exist. It now is a different story. East High is under redevelopment. There's a real interest in the city allowing citizens to go from Little High Neighborhood north to East High Street to patronize those commercial establishments. There's also an interest with the people north of East High Street to reach Meade Park. To close off this right of way would really not be in conformance with the comprehensive plan. I would urge the Planning Commission to find it is not in conformance unless some other arrangements are ensured.

**Jonathan Rice** – I am in favor of bike/pedestrian paths through 13<sup>th</sup> Street. I really liked Mr. Van Doorn's presentation. We do not want to see automobile traffic through here. I understand that you would anticipate vehicle traffic greater than 1000 ADT (Average Daily Trips). That number of cars would be a huge problem for the people that currently live there. There is a lot of talk of reducing the carbon footprint and automobiles. There are a lot of parents with children in this neighborhood. A lot of parents drive their children to school. It is so wasteful and a real shame. I don't care if Mr. Van Doorn owns this or the legal disposition of the land. If we could cut through here, there would be a lot less traffic. I am adamant and opposed to automobile traffic through this. It would be a mess.



**Greg Jackson** – I don't think the neighborhood has taken a formal position on this. There's been a lot of talk. The general consensus is that bike/pedestrian is desired; automobile cut-through is not desired. The question is the action to get there. I am hesitant to give up the right of way until I see the full consequences. There should be a map that can easily be shown when all the property lines meet in the middle and take over the right of way. We get the back ten feet on either side of utility as to what that path may be like. If there's a zero lot line and zero setback from the properties on High Street, building could be up close to that path. It seems at this point public works needs to take a look. I would like see a way that this can happen. I think zero setbacks might be asking for too much.

**Elizabeth Carpenter** – The traffic assessment that they really are hoping for holds out the possibility for developing that for cut-through traffic doesn't seem like a great idea for me. I don't see the benefit there. I would love to see the pedestrian/bike pathway. I have been looking at all the maps. I do find it confusing. If that is vacated, where does all that land go? I appreciate the creativity of Mr. Van Doorn. I do think it needs some more diligence for that.

#### iv. Discussion and Recommendation

**Commissioner Lahendro** – It does break your heart to look at pictures of this area overwhelmed by kudzu. I don't believe this conforms to the comprehensive plan of vacating this piece of street. I don't like the idea of forfeiting the city from the future possibility of doing something and needing this street. I don't see that it benefits the larger community to do it. In terms of making improvements, there are ways of doing things in this city that doesn't have to be either private or public done. I am aware of organizations, neighborhoods, and community organizations that work with Parks and Rec to clear out evasive plants to create open areas and to make improvements to park areas. There is a will in the community that would benefit from doing that here. It can be done. I am not for vacating this property by the city.

**Commissioner Solla-Yates** – This is a public right of way. If I can understand a public benefit, I am open to the idea. I don't have that clarity from staff. At this time, I can't support it.

**Commissioner Habbab** – I would have to agree with the other commissioners. Since there are no conditions that can be set throughout this process, it does not conform to the comprehensive plan. In my opinion, there might be other options the city can possibly take a look at. Maybe Parks and Rec can study this property and estimate a date they could improve it. It can be leased out if neighbors want to clean it up. Setback reductions are only allowable as part of a special use permit. That could be something we could look at with the new ordinances.

**Commissioner Stolzenberg** – I am sympathetic to the property owner's plight with the rear setback issue. High Street as it is zoned doesn't make a lot of sense. Even if this was vacated, it would still require a ten foot landscape buffer adjacent to a low density residential district. I am not even sure that can coincide with a utility easement. That could add even more. The appropriate way to address that would be with a ZTA (Zoning Text Amendment) or just waiting for the new zoning ordinance, which is anticipated to create some pretty significant increases in intensity in this area. That could make an improvement in the right of way more viable. Given how much this would restrict the utilization of these properties, you could ask the BZA (Board of Zoning Appeals) for a variance. My impression would be that they might grant a variance in a case like this. The comprehensive plan is quite clear as far as the transportation

network goes. More connectivity is good. A redundant grid is the way to go. I hear the neighbor's concerns about vehicular traffic. Everyone wants their street to be a cul de sac. The 1000 ADT is for Meade Avenue but not what would be moved if there was a cut-through. It's not likely there would be an improved street here. I would like to see a bicycle/pedestrian connection in lieu of that. The proposal that was made is pretty compelling to me. I wish we could figure out a way to make that work on the public right of way, even if it has to meet standards. It sounds like it would have to if it is open to the public. I would hope that public works would allow adjacent property owners to make stormwater improvements as necessary on the public land and to make bicycle/pedestrian improvements compliant with standards if they so desire voluntarily. It is not a proffer, not binding. I just don't see how I can vote to affirm this as compliant with the comprehensive plan.

**Commissioner Russell** – I agree with my fellow commissioners. I would appreciate staff's response and thoughts on what might be viable or could be codified in terms of achieving pedestrian connectivity. I am reluctant to limit the potential and give up right of way. I am also not as convinced that it would be a really great cut-through when Stewart Street is right there providing connectivity to Meade. That is not to say that I don't hear the concerns. There is an existing cut-through that is pretty direct right there to Meade from High. I appreciate the applicant's creativity. I hope we can find ways to work together on this moving forward.

**Chairman Mitchell** – I have to agree with my colleagues. This is not in compliance with the comprehensive plan. The creativity makes this very appealing. I don't see a way forward.

**Mr. Van Doorn** – **We all want the same thing. Getting there is the challenge. Giving up city land is a challenge. I would like to withdraw my application for today and work with Ms. Robertson and city staff and come back with an idea that is acceptable. Owning the land for us is not that important. What is important is that the Little High Street Neighborhood has a way to utilize connectivity. Nobody in Little High wants a cut-through. It is not designed for it.**

**Chairman Mitchell** – **We all like what you are trying to do. We accept your withdrawal.**

**The meeting was recessed for five minutes.**

#### **IV. Commission's Action Items**

##### **1. Critical Slopes Waiver – CRHA South First Street**

##### **i. Staff Report**

**Carrie Rainey, Staff Report** - The Charlottesville Redevelopment and Housing Authority (CRHA) is requesting a waiver from the requirements and conditions of a critical slopes waiver previously granted to it pursuant to Section 34-1120(b) of the City Code (Critical Slope Ordinance). The previously-granted critical slope waiver allows construction and land disturbing activities within critical slopes, for a development that would include 62 multi-family residential units in three (3) buildings and a community resource center (Phase 1). Improvements specific to areas where critical slopes would be impacted should the waiver be approved are shown on the Critical Slope Exhibit (Attachment B) and include portions of the buildings, sidewalks, on-site parking areas, an access aisle, stormwater maintenance facilities, and

recreation amenity spaces. Subsequent to commencement of construction, CRHA contacted staff, representing that it cannot construct the development in accordance with the previously-approved critical slope waiver. Specifically, CRHA believes that it cannot comply with Condition 4. The provided staff analysis focuses on the applicant's proposed modification to the previously approved critical slope waiver. Each applicant for a critical slope waiver is required to articulate a justification for the waiver and to address how the land disturbance, as proposed, will satisfy the purpose and the intent of the critical slope regulations. The applicant has provided this information in the critical slopes waiver narrative. The approved general land use plan of the comprehensive plan calls for the site to be high density residential, which is defined as the density of more than 15 dwelling units per acre. The applicant currently proposes density of approximately 21 dwelling units per acre. Per Section 34-1120(b)(6)(d)(ii), the shape and location of the critical slopes may unreasonably restrict the use and development of the subject properties in a manner in accordance with the Comprehensive Plan. Alternative site layouts may reduce impacts to critical slope areas, but may also impact other development factors such as achievable residential unit counts due to increased construction costs.

**Jack Dawson, City Engineer** – There was a condition that I formulated based on some submittals that we got last week. I wanted to give a brief background of where we are and describe the situation. There are 4 or 5 conditions previously approved with this project. One was to have buildings 1 and 2 completed before building 3 could start. The purpose of that is building 3 is placed on the tract that serves the treated sediment that flows from where buildings 2 and 3 are being built. There are some other issues with this plan as approved. In June, an amendment was approved to address how the best management practice (BMP) for stormwater, which is a quantity feature and it is the underground retention pipe, to be constructed. It wasn't clear in the plan. We approved an amendment that showed how, not only would buildings 1 and 2 be constructed first, but the curb on the southside of parking lot would not be constructed with the parking lot so the water would not go into the storm drains and not go into the BMP and flow off the curb into the tract where the dike would remain. While I understand the supply logistics and construction is bit 'screwy' these days, I don't think it alleviates the existing concerns. What the applicant wants is to eliminate that requirement essentially. My concern with that is that is a specific requirement based on how this plan was put together with building 3 and the tract being coexistent. What the applicant is proposing now and there was an email today that referenced mulch and silt fence. That is mostly not acceptable for this type of application. There are some further concerns I have with that as well. While I did craft that statement, I don't know how detailed you want me to get with this.

This is what is being proposed now by the applicant. The blue is the approximate mulch area. The light green area is the area that we sodded. The red is silt fence. What the update to the plan said was that there are three filtering practices. Mulch is not a stabilization measure for this use. The intent would be that the people building the buildings would be in the mulch bed. Mulch is in the Virginia Handbook as an acceptable practice. It is for the same thing you use it typically. Straw is actually in the mulch preventing raindrop erosion. If you have bare ground, you cover the ground so raindrops don't stir up the mud. Technically, the use of mulch in this situation requires a variance. The mulch is less of a concern to me compared to the other issues going on here.

There are some issues with the plan clarity. When I was made aware of this two weeks ago, I proposed taking it to the Planning Commission that night when we were discussing the comp plan. I know the applicant has done their best to get something here. Part of this plan is very complex with the schemes.

There is a lot of information on the plan that is not in the sequence. There are some considerable issues with this. If you see within the blue line where there is that SO label that is the sod label. Above that is the 402 contour. That implies there is a basin there. Under the cursor is a grey inlet system. That inlet system is not specified when it is to be installed. That inlet system would carry water into the main storm drain system, which would take it to a BMP. That was a detail that I asked when it was intended to be built. It's not clear. If it is not built early on, you're going to have all of these basins at elevation 402 around the foundation as the foundation is poured without anywhere to leave. The building is currently shown at a finished elevation of 402.2, which is 0.2 feet higher than those basins. There are a lot of 402 contours to that whole area and it is essentially flat back there. Mulch would track vehicles and lifts in there doing their thing is not going to be adequate.

As of a month ago, the plan was changed so that the intent would be that this curb that you see on the plan south, the bottom of this parking lot would not be built. The water would not go into those inlets and not go into the underground retention. They would flow across where that sidewalk is supposed to be into a dike, and into a trap. What is happening now is that it is being directed right into the storm drain system. Per this plan, the only filtering system would be that red silt fence, which is shown. The protection is not supposed to be the primary residential feature. The BMP would be used for erosion control by default.

The plans as currently submitted, there is a note that says "In an emergency situation, the BMP can be used as an erosion sediment control feature." That is still on this very plan, which conflicts with the sequence that says "Now it is the primary feature after all of these are done." There are some more inconsistencies in there. The narrative provided today talks about the silt fence being behind the sidewalk and building the sidewalk later. In looking at this plan and the amount of information that's on the plans, it's going to be difficult to ensure what is done here is actually enforceable and carried out. There's been significant problems on the site with conforming to the erosion control scheme. Last week, they went outside the limits of disturbance (LOD) and possibly disturbed more critical slopes at the bottom because it wasn't feasible to get down there and work within the prescribed LOD. As of today, there was a bust on the survey of about 5 feet where the storm drain outfalls as it is designed. With all the riprap that is required for such a significant outflow, it conflicts with the sewer line. It is not shown like that on the plan. We're going to need more revisions. While I created that condition, I am not really comfortable suggesting that is going to be the silver bullet that makes this workable.

**Chairman Mitchell** – Is that your recommendation or is this the revised recommendation from what we got from the applicant?

**Mr. Dawson** – It was not terribly different. I had a recommendation that the buildings be ringed with silt fence entirely and a stone access road so that the vehicles building the building can be on stone in a basin that is a muddy mulch mix. This plan that was provided today adds a silt fence to this scheme, which is a good step. Once the builders get going, they're not too keen on silt fence. You can drive right over a standard silt fence. There are some concerns there. While I suggested a condition (that would be the minimum condition at this point), I would have to see more of these things addressed in further submittals. It would be hard for me to craft a condition that describes all of the things I would need to see addressed in a more considered submittal.

**Chairman Mitchell** – I am confused. You just walked us through your revised recommendation that's in the application we read earlier today. You're not endorsing it?

**Mr. Dawson** – It's a good recommendation. It's not going to close the gaps in the scheme here. What was intended to happen is that the two buildings surrounded in blue were to be built first because the building at the bottom of the page has the tract. In saying that they're going to eliminate the tract and ring the building with silt fence, there are further problems that need to be investigated on this plan. It is not stated in the sequence when this yard inlet system will be built. That's very important. If you don't build it first, you're going to have all these basins with mud and silt fence. There is not adequate conveyance. Without those inlets, that whole rear blue line is going to be a pond. These contours don't flow anywhere but to a yard inlet system that has not been detailed when it is going to be constructed.

**Chairman Mitchell** – Nothing about this project has been an exact science. We don't have all the answers. We have never seemed to have all the answers. Do we have enough answers for you to feel comfortable with us granting the waiver based on what you have?

**Mr. Dawson** – I could probably craft some language that would lead to more submittals and reviews.

**Ms. Creasy** – Maybe hearing from the applicant team will provide some insight that might be helpful to the discussion.

**Commissioner Lahendro** – I am looking to get some clarity on what the issue is. From the presentation I have heard so far, we have non-compliance going on. There are problems building it like they said they were going to build it. I don't know what that has to do with the critical slopes waiver. I am hearing a lot of problems. I would like to have them teased out to know what it is we're being asked to do and what is the impact? Are there things that still have to be worked out that needs us to not grant the waiver that is being requested? I need some clarity.

**Commissioner Solla-Yates** – My guess is that if we don't amend the language, we lose this project for a year (LIH TC funding goes away). If we do find some language that is better, we have no real guarantees that it will be great. Is that accurate?

**Mr. Dawson** – The project is under construction. This came to light 8 days ago. The applicant is trying to address one specific thing to address their concern or their issues with getting materials. What they don't want to do is, if they can't get materials, they don't want to prep buildings 1 and 2 and sit around and wait for materials to arrive and they can prep building 3 so they can build all three at the same time. That is an understandable concern. The issue is that I don't think what has been submitted is satisfactory. I have been trying to think of a condition I can tell you so they can take a week to put this all down logically. I think there are five critical slope conditions. One is that they will be marked in the field; the limits of disturbance so that everyone can see it. They wouldn't pass that. There is no repercussion for that. My concern is that it makes my job awfully hard if we put a condition on here with an honest intent of keeping sedimentation out of Pollocks Branch. I have been at this site a lot and have talked with the contractors. They're under notice to comply now for "failure to adhere to the plan." We're going to need plans to address how they have expanded the LOD and see if they have impacted the critical slopes. That's going to effect stormwater management computations and all of those things as well. There are

going to be at least four amendments for this project. It is hard for me to keep up with all of these things. What I saw today was a shift away from the correspondence I was working with the engineer last week regarding using the underground retention as a trap. This is extremely esoteric. The BMP facility they have: You cannot use that. You cannot direct water to that facility without a variance to the Erosion Sediment Control Handbook. You can only use features from the VESCH from what they're intended without a variance. I would entertain a variance. I would prefer not to. We have spent a lot of time putting this thing into place where it would work as shown. That pipe is 4 to 6 feet wide. It is a big pipe for retaining water. It is on a half percent slope with a hole in the bottom. That hole is at the inverted end of the pipe. If you get mud into that system, it goes right through. There is no sediment dropout provided. Minimally, if we can have a condition that the sequence is clarified for how this is actually going to work, stick with my condition about the stone construction entrance instead of mulch, and address how the BMP will be tweaked, when it will be constructed, what orifices will be plugged, when, and how it is going to work. That's what we need to see. Those are the three conditions. More work will need to be done.

**Ms. Robertson** – For those commissioners who haven't been through critical slopes applications, I would like to offer a much higher up description of how I think we got here. The city has this provision in the zoning ordinance. It was adopted years ago. My understanding was that it was intended to provide additional protection for sensitive environmental areas. The idea is that if you protect critical slopes, you're achieving some sort of environmental benefit. The city wrote a zoning ordinance provision that says that you protect these critical slopes but turned around and said "we will let you obtain a waiver of that protection under certain circumstances." Those provisions were written before the state really beefed up all of its erosion and sediment control regulations. We now have modern erosion and sediment control regulations. You are being asked to vote on a critical slopes waiver before an applicant has actually done the detailed work needed to get approval of an erosion and sediment control plan is in accordance with the regulations. The situation you wind up with is that you vote on these things. You adopt conditions such as "let's sequence the buildings to make sure we provide extra protection for the critical slopes areas and minimize disturbance." When you get closer to construction, through the process of doing the erosion and sediment control plan, certain things can/can't be done with that. You all typically don't ever see an erosion and sediment control plan. That's all handled administratively by a local E&S administrator. That's why this is so confusing. Your role is to try to figure out what steps you would like to implement above and beyond basic erosion and sediment control measures to protect this area that is a critical slope area. If you are now at the point where you want to grant a general waiver to the critical slopes area and modify conditions that really can't be implemented, Mr. Dawson and the city's E&S staff will just have to work through all of this E&S compliance with the developer in the context of the state regulations. What you need to decide tonight is whether or not you're going to get rid of the construction sequencing condition and whether or not you need to get rid of any other conditions; we're granting a general waiver and work it out through the E&S process. That's about as simplified as I can make it.

**Chairman Mitchell** – It seems to be an abdication of responsibility if we say to work it out through the E&S process. We leave Pollocks Branch at the mercy of all of these other idiosyncrasies.

**Ms. Robertson** – The problem is that the only conditions that you all (to date) have been able to conceive of that might achieve that level of protection; the developer is saying that they can't do them. I don't know how you want to resolve it. Critical slopes waivers deal with measures above and beyond regular

erosion and sediment control. That's very difficult to craft as Planning Commissioners. Not all of you have erosion and sediment control, engineering, or other expertise.

**Chairman Mitchell** – Let's say "work it out through the E&S process." What precedent do we set with other developers?

**Ms. Robertson** – This is not the only time a situation like this has come about. This particular type of development is one that everybody wants to see moved forward as expeditiously as it can. Everyone is very concerned about it. I am going add to the list of things you need to look at during the zoning ordinance rewrite: this critical slopes waiver provision. I am not sure you all should be looking at it unless you are looking at it in conjunction with an E&S plan that has been engineered and developed through the site plan process. In my opinion, you are getting these way too early. It is creating more problems than it is achieving environmental benefits.

You're back to having to collectively decide whether you would prefer to grant a general waiver or whether there are any conditions that the developer can comply with above and beyond regular E&S measures. Things like mulch and straw are to be handled under the normal E&S regulations.

**Mr. Dawson** – It is also frustrating when we do these critical slope things early in the process. They are showing you rectangles and here is the building. It makes my job easier. I can make a blanket statement. I don't have to go through the details with you about what mulch applies. It can be more general. With Grove Street, there was enough of a plan there to come up with one condition. To Rory's point, I can describe that plan for the next three hours and my concerns. That is not going to solve this problem. If there was no critical slopes provision and this came in as a VSMP amendment, I couldn't approve what is sitting here right now. I understand your concern about abdicating responsibility. In the interest of keeping this project moving and if you eliminated condition 4 (the trap and sequencing), we would go through the typical review process of this amendment and try to get something that works. There is still a condition in there. We have improved erosion control statewide. People are getting better at it. It is not quite as important as it once was. Had I had this a month ago to prepare for this, it would have still been confusing. It sometimes helps to just get with the applicant and their engineer: this is the concern, work through it, and instead of doing it in this public forum with a lot of moving pieces.

**Commissioner Habbab** – I do want to disclose that I am working with owner and applicant on a separate project that is next door, which is Phase II of South First Street. I believe I can remain impartial for this critical slopes waiver application.

**Commissioner Stolzenberg** – It seems to me that the problems with this plan now are that it doesn't meet the state EFC requirements. You're only going to approve it when it meets those requirements. Is there additional authority above and beyond that you need under a critical slopes waiver? Is it better to let you do what you need? Sometimes, we talk that you need that extra authority.

**Mr. Dawson** – Condition 1 says something along the lines of other measures as deemed necessary by the VSMP authority. If they argue with me too much, I can use that. There is some extra authority there if required.

## ii. Applicant Presentation

**Ashley Davies, Riverbend Development** – I really appreciate the quandary that Jack is in as well as the information Lisa shared with you. She summarized it perfectly. These critical slopes waivers come very early in the process. You are last to add all these technical conditions to a project that is not fully designed at that point. It does create a lot of issues along the way. None of us want to be in this position. We appreciate everyone coming here. We will try to provide as much clarity as we can for your consideration. In general when we look at this, staff was recognizing that it is a tight site and was looking for ways to ensure that we're not doing anything near the slopes until we absolutely had to in keeping that trap in place. If anybody has been by the site recently, what you will find is (in terms of the critical slopes waiver), all of the slopes that needed to be disturbed have been disturbed. All of the perimeter measures and those types of things are in place. We have done all the major grading on the site. The building foundations are in. We're at the point where we're basically preparing for vertical construction. What we found is that (with Covid) all of our suppliers were having a really hard time getting the materials to even build the buildings. We're really having to adapt and pivot as much as we can to keep the project moving forward as closely as we can to the anticipated schedule. We really appreciate the city being a major partner on this project. We have residents next door that are waiting to move into their new homes. Everyone is really excited about this. We have run into some issues with the survey and things not being exactly where they thought they were. We're all just trying to adapt as best as we can. We certainly don't have any ill intent. We are just as committed to protecting Pollocks Branch as anyone else. In terms of the actual waiver and the disturbance, that has already happened. The stabilization methods are on site. We're looking around buildings 1 and 2 at these measures that are above and beyond, which include the permanent stabilization method of sod around those buildings. We know that basically it is going to put all of that in. Instead of temporary stabilization methods on those areas of the site, we will put in a more permanent stabilization in all of the areas that are outlined in green. It is really just around those building foundations where the sod is not going to hold up very well. We will be continuously refreshing the mulch. Downhill of that is where all of the silt fence goes in to touch anything that might come through. You have all of that sod area. The rest of this is already foundation of the building. It is not any back areas of exposed dirt. On the downhill side of the parking areas, you have the additional inlet protection. What this gets into is not much of anything to do with the critical slopes waiver, the slopes have been disturbed. The site is in the process of getting back towards stabilization as we move forward with construction. What we're really talking about is getting an erosion sediment control sequence that everyone can be comfortable with. This is a little bit different. We had this condition that was imposed over two years ago. We are finding that does not work with current conditions. We have also spent a lot of time working with city staff to try to make adaptations on site. What we found was that staff said "we can't make any of these recent adaptations because of this was a Planning Commission and City Council condition." It doesn't really allow the E&S process to adapt or be amended with staff. As Jack and Lisa mentioned, those are very strict measures imposed by the state. Jack, through condition 1, has the ability to impose additional measures as necessary above and beyond. We're just looking for a solution. We do not see any danger to Pollocks Branch.

**Ryan Goodrich, Breeden Construction** – The conversation was brought to the team's attention that there was a supply issue, particularly with lumber to be able to construct buildings 1 and 2, which are the ones in this photo that are surrounded by the blue mulch lines. In order to keep the schedule and catch up to the owner's overall delivery schedule, we realized that it was going to take building Building 3 along



with buildings 1 and 2 in order to keep the schedule. Initially the schedule was laid out that building 3 would come much later as buildings 1 and 2 would be out of the ground and stabilized. With the parking area, I am not sure what Mr. Dawson is referring to as the lower half of the curb and gutter being left out. As part of the next phase eliminating the sediment basin, it clearly states that the parking area was to be completed and that all inlets be fully operational. That can't happen until the curb and the gutter on the plans south is fully installed. What we're trying to do is get rid of the pond so we can build the third building. We're trying to do it so we can keep the schedule. We have a community that is cheering us on next door. We have a city that has been wonderful to work with. We're just trying to keep the expectations and keep the community from being let down. We were trying to get creative about the way to keep the progress in the midst of today's environment, material shortages, and supply chain shortages. We conferred with our team and pitched a couple of ideas. I am not entirely sure about Mr. Dawson's recollection of eight days ago, this came up. We had a meeting set that he wasn't able to make. We had a phone conversation after that. I pitched the same verbal idea on the phone call. He made it sound like it was going to be something that potentially could be redlined and put into a set of drawings as redline. We thought we had some traction. We put together that narrative. Unfortunately, there was a glitch in some other language that contradicted what we were trying to do. This conversation has been going on almost a month. We're just looking to get a general consensus that our team works with Mr. Dawson's team to make sure we're complying with state and local regulations and get creative in a way to maintain the schedule but to accelerate the removal of the sediment basin and not do anything abundantly different than the way drawings are designed. We will have foundations sticking out of the ground instead of 3 full buildings. That's the only difference in what we're trying to achieve here. Start building the third building before we get buildings 1 and 2 exteriors complete. That's the goal. Mr. Collins has been working with us on how to make sure we comply. We're looking for the city to help us help the community and CRHA get to a point where this project can continue to move forward.

**Scott Collins, Collins Engineering** – In our sequencing with the removal of the sediment trap, we're not changing that. We are still achieving 100% stabilization on the site from the parking lot up. For everything that would go to that sediment trap, we are stabilizing that per Virginia Stormwater E&S Control Measures Standards. Mulching is a standard. Sod is a standard. These were approved. We are doing the same thing. We are stabilizing the site. In addition, all of that clean water is being routed through our stormwater management facility because it is a stabilized site. It does have inlet protection as another form on the inlets to ensure that the runoff is treated for additional above and beyond controls. All of this site will be stabilized with the sod and the mulch around the upland areas. That is what the approved plans say now. That's what we're asking to continue. The only change is that they will still be working on the buildings. There will be scaffolding on top of the mulch. Nobody will be in there digging around that foundation creating disturbance. Everything will be stabilized with the sod and with the mulch areas. That's really the only thing we're asking for tonight with the critical slopes waiver. Condition 4 is about when we can achieve stabilization on the upper half of this site so we can remove the sediment trap on the lower part and start construction of building 3. We are committed to stabilizing all of the upland areas as it was originally approved. That's the biggest thing being lost in the discussions tonight. The reason why we're asking for this is because of COVID issues. We're not asking for anything that wasn't already part of the approved plans. We're still in compliance with that. We're not asking for the BMP to be an E&S measure to hold sediment laden water. That's not what we're trying to achieve. If we were doing that, I wouldn't be behind this plan trying to move it forward. I have put the requirement on this site

for to be upland area to be stabilized before that trap can be removed. That's what I have been working with the contractors, site contractors, and with the team in order to achieve.

**Jay Kessler, Owner Representative** – The Breeden team did come to us about a month ago with their issue with the lumber delivery. They were looking at a way to maintain the schedule and the delivery. One of the reasons I am comfortable with our team putting this forward is that the Breeden team has done a good job of following E&S requirements on the project. It got off to a rough start. There were two notices of violations within the first month of the job in February. Breeden worked with Jack and David Frazier. There have been regular inspections. Until last Friday, I wasn't aware of any violation. I did get a phone call that there had been an E&S inspection done. Apparently, there was something noticed and we were going to receive a notice of violation. I called the superintendent of Breeden. He spoke with David Frazier. We have not seen the notice of violation. We don't know what it includes. There were proactive measures taken. In offering to take this approach of effectively doing what the original plan required of stabilizing around buildings 1 and 2. I believe Breeden's team is focused on what that will take to maintain the stabilization and not disturb the ground. We will inspect it. They will do what they are committing to the owner they would do. There is definitely going to be an increased burden on their construction team to do the scaffolding, to build buildings 1 and 2 off of stabilized ground. They have committed to us that they will do that. Based on their track record, they will.

**Commissioner Solla-Yates** – It sounds like my fears of LIH TC funding are not correct. What are the schedule risks?

**Mr. Goodrich** – We're looking at the supply chains being 60 to 90 days behind. It's a major impact to this rather tight schedule as it was designed. With the community involvement and building right next to their future homes, it is even more of an impact to the community and their expectations. This is why we are trying to get creative. It could be a really quick and easy announcement to this development team. We could say that we're behind. That is not the approach we want to take. We want to exhaust all options to try to get creative to maintain the overall schedule. 60 to 90 days is a rough delay in materials right now.

**Ms. Davies** – You do start to see a ripple effect. We will not lose the LIH TC funding for this current project. If you are unable to deliver projects within a certain timeframe, it knocks you out of the running for LIH TC funding in certain future years. It will also have a negative impact. Once the South First Street residents move into this project, we're supposed to immediately begin construction on South First Phase 2, which is also a LIH TC development. Anything that impacts us now will have a ripple effect on future phases.

**Commissioner Palmer** – What is the sediment trap? Why is it so important to be able to remove that in your sequencing?

**Mr. Goodrich** – The third of the three buildings gets built on top of where the sediment trap is right now. It has to be infilled. There is a process of removing and infilling the sediment trap and preparing that area for the new building. The logic here was to get rid of the sediment basin, get to that third foundation, and the burden would be on us as the contractor to build all 3 buildings at the same time once the materials became available. It is important to us to maintain the schedule so that burden is something we're willing to accept.

**Commissioner Stolzenberg** – The original plan for the two buildings was that they were to be completely constructed. You're maintaining that the foundation being constructed is functionally equivalent because the ground will have the stabilization measures in effect. Isn't the reason we said they should be fully constructed that while you're constructing the buildings, there will be heavy equipment moving there to construct the buildings?

**Mr. Goodrich** – There will certainly be equipment, personnel, and scaffolding. The commitment we have made to our client is that we will maintain the levels of stabilization that Mr. Dawson and his team are requiring. In the end, we will permanently, if it requires, convert removing all of the temporary sod and temporary mulch from the areas we are using to complete the checklist for the conversion of the pond. If we are having to remove that and reinstall the permanent areas, that is what we will do.

**Commissioner Stolzenberg** – Didn't Mr. Collins just say that there would be permanent stabilization prior to the removal of the drainage pool?

**Mr. Goodrich** – There will be. It will be muddy grass. We will put in new green grass prior to opening up the complex.

**Ms. Davies** – A lot of those buildings are also surrounded by the parking area that will be utilized for materials and the heavier equipment.

**Mr. Goodrich** – It is a very logistically tight site as it is. Every square inch of parking area is going to be needed to construct the third building, even if we didn't have a materials shortage or a need to talk about this. We are still going to need every square inch that we have out there to finish the project. We're fully prepared to permanently redo any kind of sod areas and parking areas. We're going to freshen the place up before we deliver the project. We are going to need the entire project to get it done.

**Commissioner Stolzenberg** – It sounds like you are not OK with the initially proposed alternative condition from staff that would require a stone construction entrance. What's the issue with that?

**Mr. Goodrich** – It's not that we're not OK with it. The stone construction entrance was the code that was kicked back as if we are less than 10 feet from the building perimeter to the back of curb or to the parking area that was the means of stabilization. That was how I read the response. All of the other areas were "super silt fence" (silt fence backed chain link) backing all the way around the perimeter of the building. It makes for the feasibility of construction. It makes it difficult. I understand that there may be concern that a typical silt fence behind the curb of the parking lot is going to be a challenge to keep maintained. We're up to the challenge. We felt that the three levels of filtration protection (one being the filtration of the permanent sod, even though it is a temporary permanency), the sod filtration through the silt fence behind the curb potential filtration. If that made it across and into the parking area, by design, all of that water is intended to sheet across the parking area. We would have inlet protection before it made it into the storm system on the lower side of the parking area as well. We felt we had a trifecta of protection. That was the intent. We're open to suggestions from Mr. Dawson's office. We just want to make sure that we can continue forward and keep the schedule on this project.

**Ms. Davies** – I think we just need a reasonable way that we're able to actually access those building foundations and do the construction.

**Commissioner Stolzenberg** – Do you think the city is being unreasonable that another locality would have approved your E&S plan?

**Mr. Goodrich** – I don't think the city is being unreasonable at all. We're in trying times and everyone needs to think outside of the box a little bit. We're doing this on behalf of our client. This doesn't affect Breeden Construction. It really is about the client, the clientele, and the City of Charlottesville. We are coming in to try to make an impact and a positive one. We want to get creative. We're asking you guys to do the same. It is just an extension of a schedule under unfortunate results of a pandemic that we're all very familiar with.

**Ms. Davies** – I am in full support of Ms. Robertson's analysis of the situation. We get ourselves in trouble when we try to put too many details into the critical slopes waiver. You all have already granted Mr. Dawson the authority to apply whatever measures he sees necessary on this site. If you have a critical slopes condition, you can't adapt at all because things come up. I think those are best left to the technical staff members to achieve as necessary and keep your conditions more general if possible while granting the necessary authority to staff to handle it.

**Commissioner Stolzenberg** – Why did you bust through your limits of disturbance of the building?

**Mr. Goodrich** – This is the first I am hearing about it tonight.

**Mr. Dawson** – I will just discuss not disturbing steep slopes. There is storm drain outfall construction, which is required and where the survey bust is. There is still disturbance to the slopes. That's the area where they went outside of the LOD. It looks like the LOD is too tight to the creek. There was a survey bust down there. When you have issues like that and you're trying to put a 10 foot wide machine in 6 feet, you have issues. I paced it off today. They went about 20 feet outside of the LOD. If you walk down the hill towards the creek, we're talking about 5 feet away from the creek. One of the requirements is that the LOD be stable in the field. You can quite clearly see there are two jersey barriers 14 feet away from the LOD. It looks like there was probably not the turning radius to get a machine down there and back up. There was sediment discharge into Pollocks Branch, which is what we're trying to avoid. It was quite clearly done. We could have issued a stop work order immediately. It is not what we did. I can't speak to why they went outside of the LOD.

**Commissioner Habbab** – I think the applicant mentioned they were to complete the foundations for buildings 1 and 2 prior to building 3. What would the difference be from a sediment control if those buildings' exteriors were completed as well? What is the difference there by having the foundations?

**Mr. Goodrich** – It wouldn't be working on the permanent stabilization. If the siding, roofing, and window installation were done and the building envelope complete, we wouldn't be working as much around the building. What we're proposing is that there will be considerable construction to complete the envelope and framing around the building on temporary/permanent stabilization.

### iii. Commission Discussion and Motion

**Chairman Mitchell** – What would you like to do with this? Would we like to make a motion to adopt the item 4 that has been recommended by the applicant? Would we like to adopt the item 4 recommended by city staff? Would we like to reject the waiver?

**Motion – Commissioner Solla-Yates – I move that we strike Condition Four. Second by Commissioner Stolzenberg.**

#### Discussion Following Motion

**Commissioner Stolzenberg** – It sounds like the plan they proposed would not be approvable as an E&S by you (Mr. Dawson). Do you feel that Condition 1 gives you the authority you need without a Condition 4? Do you feel there needs to be a Condition 4? If so, the one proposed by the applicant, the one proposed by you, or another one that is more general?

**Mr. Dawson** – With Condition 4, this is a great example why we shouldn't hash all of this out here. Even if you struck Condition 4, I would require something very close to Condition 4, unless there was further mitigation provided in the plan. Yes, I think there is enough authority there that we can make this happen.

**Motion passes 6-0.**

## 2. Presentation – Housing Advisory Committee – Future Land Use Map Proposal

**Sunshine Mathon, HAC** – What we are going to talk about is a presentation that was made. This is a slightly iterated version.

Over the last few weeks, Dan Rosensweig and I have listened to and attended a variety of community-based and neighborhood meetings focused on the Future Land Use Map. The proposal we're going to discuss reflects our effort to distill the common ground from the spectrum of insights, concerns, and hopes that we heard. Consistently across all of the discussions, we have heard the following.

- We have heard common praise for protecting and preserving historically black and low-income neighborhoods.
- We have heard common support for addressing affordability broadly across the city. Most everyone is OK with future affordable housing in their neighborhoods.
- We have heard common concern that density for density's sake alone doesn't serve anybody well.

The framework proposal I am about to share acknowledges the fundamental truth that growth and change is inevitable in Charlottesville. We cannot control this. What we can do is guide the character and the purpose of the growth. The framework also acknowledges that existing neighborhoods are always experiencing change; if not in built form then change is evident through dramatically increasing home values, which result in a changing arc over time of who can afford to live there. The proposal is only a framework. Our effort has been focused on establishing common ground that can be used as a purposeful vision driven foundation to guide the city's future. This foundation will require our subsequent, detailed

analysis and discussions through the zoning update and other topics. The framework that we're proposing will rely on the Future Land Use Map being a living document. We will never be able to detail a vision that fully accounts for all future outcomes. The Future Land Use Map must be able to adapt and refine over time.

Here are the core concepts that build on those three common threads.

- First key concept in our proposal is to create a new low-intensity residential land use category using the language that is currently already in place that the consultants have put forth. This land use would be the base land use for historically black and low-income neighborhoods to reduce development pressures by essentially keeping in place the existing density allowances in these neighborhoods.
- Second key concept in proposal is that all residential portions in the city would have a base land use of the currently proposed general residential land use category. Recognizing the growth has historically been accommodated on the backs of low-income neighborhoods, this would shift growth patterns to higher income areas to some extent.

In effect, all residential areas of the city would have a base land use of either low-intensity residential or general residential. Under the principles of all kinds of housing for all kinds of people in all kinds of places and density with purpose, higher intensity land uses would be allowable if and only if affordable housing is part of any higher intensity development. Functionally, as a layer on top of the base land uses, this proposal recommends medium-intensity residential be a by right use in all residential parts of the city if and only if affordable housing is part of a proposed development. This recommendation privileges affordable housing and guides intensity with purpose in all neighborhoods. Further, the proposal also recommends high intensity residential be a by right land use in specific scale, context appropriate parts of the city if and only if affordable housing is part of any proposed development (importantly) governed by practical constraints, topography, lot sizes, infrastructure, etc., we full anticipate the need for gradations of middle-intensity and high intensity residential allowances in different parts of the city. Our proposal is intended to establish common principles that set the stage for the next level of detailing. One of the most important details that will need to be worked through is the specifics of affordability. This proposal does not yet tackle these details. Recognizing that each detail has both community impact and financial impact, this detailing process needs to determine:

1. The minimum percentage of affordable units in a particular development.
2. The depth of affordability of those units.
3. The length of time those units must stay affordable.

In closing, I have two key additional comments. This framework does not address every concern of every neighborhood. Fundamentally, no proposal ever will. What our framework does is set forth a practical vision for growth with purpose, privileging affordability as the central tenant of this city's future. This proposal recognizes that a good land use policy and well-crafted zoning structures are necessary but are wholly insufficient ingredients in guiding the city to one that works for everyone. Good land use and effective zoning must be coupled with the full plan of necessary interventions as laid out in the recently adopted Affordable Housing Plan: Adequate funding, rapid redevelopment processes, tenant's protections, etc.

(Visuals and slides shared)

What you are seeing right now is the current proposed version of the Future Land Use Map the consultants have constructed. What you are seeing is a photoshopped rendering of an illustration of the principles. We're not suggesting that this is the final map. What we're trying to do is illustrate those core principles. We have added that low-intensity residential category. It is a peach color. We have done a cursory effort at drawing an area around what could be the identified historically black and low-income neighborhoods. That will require some refinement and detailing. The remainder residential portions of the city are highlighted as general residential. These two illustrate the differences side by side. It is a pretty simple concept that sets forth a pretty potent vision. We have been sharing this with a variety of neighborhoods who have requested it, at the HAC. We have had individual conversations with some city councilors, some planning commissioners, and other people to highlight what we're trying to talk about. Hopefully, it feels like it has some resonance.

**Commissioner Palmer** – It is a very interesting proposal. It will be interesting to see what place this has. This is an overlay versus not losing sight of some of those neighborhood nodes that were being contemplated to be a little denser. You don't want to lose sight of some of that. Visually, maybe there is a way of accommodating those two concepts.

**Commissioner Russell** – Are we also reviewing the additional layers? That's in our packet: the medium intensity and the higher intensity by right if affordable.

**Chairman Mitchell** – We can talk about that. Dan, when I asked you a question, you gave me a pretty good clarifying answer about the other maps and the intention of putting them in the packets. It was intended to be illustrative of what might happen.

**Dan Rosensweig, HAC** – One thing to point out is this is really a concept and a framework. Some of the things that we discussed when the consultants followed up with us is that there might be areas of the city where they don't really want to be general residential. They're really the areas of the city that a lot of people know where they are. You really don't want to put the extra restrictions on them where you want just density, intensity, and volume to happen. I won't name specific areas. Ours is just a framework. Defining the General Land Use Categories is really important. In the memo where it says that it would keep existing densities in the place in the low-income neighborhoods, rather than replicating R-1, it wants to be rewrite of what that is. It could be more restrictive in some ways but probably less restrictive allowing neighborhoods to gain equity while avoiding displacements. I don't think it really serves us that well to go into the details at this point. What we're looking for is to see if there's general traction on the part of the Planning Commission to direct the consultants to utilize this framework for thinking about the next steps in advancing the Future Land Use Map (FLUM).

**Commissioner Russell** – I am generally supportive of this framework and the direction it is going. I actually had that concern of preserving a neighborhood and community but also not capping wealth accumulation and that balance. How would you employ a possible incentive for the affordability? I think it wants to be an overlay as opposed to a zoning designation. We're not looking at the same materials that were in our packets. I don't know if that question applies.

**Mr. Mathon** – One thing to consider is that we have had a couple of conversations with the consultants over the last 4 to 5 weeks around this concept. One of the initial comments from the consultants is that they had been planning, on some level, to address the question of affordability requirements or some form of inclusionary zoning in the zoning stage of the process. Because the land use map has gotten a lot of attention and it has gotten intense in lots of different ways, it became appropriate to bring that level of conversation around affordability in at the land use map level. It will absolutely be more detailed at the zoning level once it gets to that point.

**Commissioner Russell** – I would just add to encourage you add a counterpart or a corollary overlay (designation) that also incentivizes rehab or renovations for affordability.

**Mr. Mathon** – We have certainly heard that a couple of times. Prioritizing preservation of existing structures as opposed to teardowns is one of the ways to help preserve both character and protect low-income neighborhoods even further.

**Commissioner Stolzenberg** – What I like best about this proposal is that we're "marrying" the text that we talked about before with the map. In the Affordable Housing Plan, it says explicitly under the multi-family by right zoning "establish inclusionary zoning policies as part of any revision into the multi-family zoning." It does make a lot of sense to add that directly into our descriptions on the map. It makes a lot of sense to allow that possibility of medium-scale apartments everywhere with the requirement for affordability. That saves us a lot of fine grained picking out things on the map versus just letting that go to the site plan requirements and making sure that the infrastructure and physical constraints are in place and it is doable. Is the goal to create the maximum number of affordable units or the maximum percentage of affordable units even if that means a lower amount?

**Mr. Rosensweig** – For me it is two things. It is qualitative and quantitative. You can't do a mapping exercise without thinking about the history of the map and the intentionality of the zoning map to calcify what had been put in place with restrictive covenants. To me what is really important, as a champion of affordable housing who has tried to develop affordable housing, opportunities for affordable housing should be available throughout the city. A family zip code shouldn't be their destiny. One of the primary purposes of this map is to create the conditions by which affordable housing can happen in every neighborhood. In terms of percentage versus maximum, I am focused on the delta. I am not as concerned about the percentage as I am the fact that our own data is that by 2040, we are going to need 4,000 new units/interventions in the city and 12,000 units in the region. If overall densities go up, that is fine with me provided there is infrastructure in place. I am really focused on equity.

**Commissioner Stolzenberg** – That's a really good point about making every neighborhood accessible. It gets into a big worry whenever you talk about an IZ (Inclusionary Zoning). It is very easy to make an IZ ordinance that effectively bans any development by making it completely infeasible. What I also like about this proposal is it lets us turn that dial. We want to make sure that projects are able to pencil in every neighborhood. In sensitive neighborhoods that have historically been disenfranchised in the zoning process, we can crank that dial up to protect them. Sensitive neighborhood or sensitive residential is a better description than low-intensity. In the overlay, medium is available and an existing condition. There are plexes throughout every neighborhood in the city. It will be really important. I think the zoning ordinance staff needs to really carefully calibrate that and to make sure we set numbers that make things work. We can have affordable housing produced in every neighborhood; even the highest opportunity



neighborhoods. In addition to the three numbers you talked about, the affordable housing plan talks about additional levers that we can pull in order to make inclusionary zoning work. On page 94, “to offset lost rental income, you can have a tax rebate.” Real estate tax is going to be about \$150 a month on a \$200,000 assessed unit. We can use those especially where the math gets hard in order to make things work. I think it is a proposal that makes a lot of sense. I think it is a good base for how we look at this whole thing in the future. I think it simplifies things a lot. It is a good framework.

**Mr. Mathon** – On the point in making that balance, you’re absolutely right. Projects have to pencil, it won’t happen. Part of the work the consultants will have to bring to the table is the economists to help drive those equations appropriately. There are other tools to use to counterbalance some of the financial impacts.

**Commissioner Habbab** – I agree with Rory and Liz. I am very supportive of the concept of the overlay. I think having that language will be very helpful. Taking into consideration the earlier application we approved, we need to be able to enforce affordable housing in R-2/R-3 zoning. I am curious about exploring homeownership. I don’t know how that would fit in or be added to anything or where that fits. That is an important part of the affordability of Charlottesville.

**Commissioner Solla-Yates** – The people of Tenth and Page are suspicious. They’re concerned. There is fear. I too feel that fear. Historically, down-zoning the black and low-income areas was a “time-bomb.” It is exploding. Does keeping it all R-1 stop it from exploding? Probably not. Does replacing it all with 12 unit apartments solve it? Probably not. Frankly, I don’t think we can solve it with Future Land Use Map or zoning. I understand the desire to solve everything with the Future Land Use Map. We have to get the zoning right. I like the overlay concept a lot. It is better than inclusionary zoning. If we had the Cambridge example earlier in the process, we would have explicitly had that in the affordable housing plan. That’s the right way to go once we’re in zoning. In general, I am reluctant to make major changes to the Future Land Use Map. People are getting used to this plan. Making an explicit connection to affordable housing in the Future Land Use Map is a good idea. We probably should have done it. That makes sense to me. With penciling, I pushed the consultants on this during the housing plan. The HAC had been talking about it. They were concerned it would only pencil for very high density. It would have been like 30 to 50 units. For little things, it was no. Rich people have money. Rich people can build mansions by right. They’re doing it now and are going to keep doing it. We’re not going to solve that.

**Commissioner Lahendro** – I am not seeing limits on number of units, number of stories, and heights. Is it presumption that what the consultants are recommending for general and medium intensity carried over to your proposal?

**Mr. Mathon** – We did not tackle that range of issues, recognizing that getting to that level of detail; there still may be work that needs to be done to refine those categories and potentially nuance them in different parts of the city. That’s not what we’re talking about. For the moment, we’re going to assume that the consultants’ definitions hold for this proposal as well.

**Commissioner Lahendro** – The problems I have with the consultants’ recommendations are carried over as well. Who establishes whether a development is compatible within the context? What are the

benchmarks? What are the requirements? Is it done on a project by project basis based upon the context directly around that project? Is it done by a zoning district or district of some kind?

I like the general idea. We still have a lot of work to do with the original proposal and what carries over this one.

**Chairman Mitchell** – Density for the sake of density is ‘dumb.’ Density with a purpose, density that is smart, density that privileges affordability is good. The overlay, as it has been presented, does just that. It provides density with a purpose. The purpose being affordability. The protection of low-income communities and African American communities from displacement as a result of not being able to afford to live there anymore, as a result of gentrification is important. I think the map as they have outlined it does that as well. We also need to begin thinking about protecting the historical edifices in our city. Protecting these historical areas needs to be built into whatever we do. We are focusing now on just the Future Land Use Map. We should not be thinking about numbers. We should not be attempting to define what affordability is. That will happen when we get to the zoning ordinance. We should not be thinking about how long affordability should last. That will happen in the ordinance. We should not be thinking about how many affordable units need to be involved in a given overlay development. That needs to happen in the zoning ordinance. If we decide to move forward with this, I think the one thing that needs to be a part of any thing we submit to Council is the overlay concept. That has to be implicit in the map. We will have overlays. These overlays will “privilege” affordability. We get to the numbers when we get to the zoning ordinance rewrite.

**Councilor Payne** – My thoughts would be similar to what I expressed at the HAC meeting. The overall framework is a good one. It is a good framework for addressing some of the concerns a lot of people had about ensuring density is actually promoting affordability to the maximum possible extent. The only concerns I have: have to do more with the details than with the framework. In particular, making sure we don’t end up in a situation where projects don’t pencil out when we have a de facto down-zoning for some neighborhoods that have racial covenants and redlining and we’re not inadvertently doing a de facto down-zoning in some of those areas because projects don’t pencil out. How do we ensure that we’re actually monitoring and keeping units affordable as part of the requirements in the overlay? Those are questions beyond the land use map. I am sure those will be addressed at a later date.

**Mr. Mathon** – That’s really savvy and really smart. You can’t down-zone from R-1. Most of Charlottesville is R-1. Even General Residential is a step up.

**Councilor Payne** – De facto down-zoning from the land use map without an overlay versus with the overlay.

**Councilor Hill** – I shared a lot of the things that have already been raised. The devil is in the details. Specifically with what Commissioner Lahendro said, making sure we have the right structures in place. Whatever we do, there are a lot of appropriate places to add density in the city, it is in context with what is surrounding and what those procedures are going to look like and ensuring there is that kind of accountability. This framework is definitely stepping us in the direction that the community can coalesce around. There is still a lot more work to be done. I really appreciate the efforts from those leading this and bringing it forward for our consideration

**Commissioner Stolzenberg** – The real details need to be pushed to the zoning ordinance rewrite where we will have the map done. It is also important now, for your small projects that are just getting into this overlay, in determining what your baseline level is, you're going to be setting those levels implicitly. If General Residential allows tri-plexes and you're building 4 plex and saying that it has to be 25% affordable. While the bulk of the details should be pushed out later, there is some amount you need to be thinking about now. We have heard from CLICH that General Residential, outside of sensitive neighborhoods, should be pushed up to 4 or 5 plexes. That would make the 5<sup>th</sup> and the 6<sup>th</sup> unit be the affordable one, which gets you down to a percentage that makes sense. It might make sense to say the 5<sup>th</sup> unit or the 6<sup>th</sup> unit if you preserve the existing building. When you're looking at a 12 plex, is the 8<sup>th</sup> unit, 9<sup>th</sup> unit, or 10<sup>th</sup> unit affordable? That is the sort of thing that will change once we're hammering out the details. We do need to think about that now. There is no reason to me not to have this inclusionary requirement when you're building x number of townhomes or single-family homes. If you're building dozens of homes, why shouldn't it apply any development of that kind of number or more? If you are building two townhomes on a lot, that should fall under General Residential. If you're building 5, that's when the overlay kicks in.

**Jennifer Koch, Consultant** – Our goal tonight was to listen to what you all were thinking on this map. We haven't prepared any comments. We have met with Mr. Mathon and Mr. Rosenweig a couple of times just to make sure we understood what was being proposed. Some of these thoughts about an overlay we have in the chapter in the Comprehensive Plan as part of the next step with zoning at a real high level. What we will do is take into account what you all have brought forward and see if there is a way that makes sense to bring some level of that into this land use map component or make it more clear on the map as we move forward with what the expectation will be.

**Chairman Mitchell** – If we decide to move forward with the overlay, we embed the overlay into the future land use map. I am hoping that this Council will have the chance to vote on this future land use map. The overlay concept will be memorialized in that when we move forward into the next Council.

**Alex Ikefuna, NDS Director** – We met with Dan and Sunshine and the consultant team to go through the proposal. The Planning Commission should ask the consultant team to review the proposal and see whether there are elements of the proposal that can be incorporated into the future land use map. One of the products that comes out of the process has to be something that the market can respond to. We don't want to come up with something at the end of the day the developers are not going to respond to. Whatever we come up with, we have to be conscious about that and make sure the market will respond to it.

**Chairman Mitchell** – Have we chatted with any developers about this?

**Mr. Ikefuna** – Two of the representatives that presented this are nonprofit developers. We haven't talked to the private developers.

**Ms. Creasy** – There might be other ways to accomplish the goal. If the premise of the overlay is something that is appropriate for residential and general, perhaps it is not an overlay. Perhaps it is a portion of the ordinance that any residential area could take advantage of. That would simplify

understanding. I don't know what that would look like. There is potential for meeting the framework ideals in a different way.

**Chairman Mitchell** – At the end of the day, we will have a hybrid of all three plans/land use maps that we have worked through.

**Councilor Hill** – What timelines does the Planning Commission anticipate taking with this broader process of the Comprehensive Plan over the next 6 months?

**Mr. Ikefuna** – Following the Planning Commission meeting on June 29<sup>th</sup>, we are looking at this coming to the Planning Commission around November or late October and to the City Council between November and December.

**Chairman Mitchell** – I really want this Council to move on this.

## **V. Adjournment**

The meeting was adjourned at 10:52 PM.