

PLANNING COMMISSION REGULAR MEETING
August 13, 2024 – 5:30 P.M.
Hybrid Meeting

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

Beginning: 4:30 PM

Location: NDS Conference Room

Members Present: Commissioner Schwarz, Commissioner d’Oronzio, Commissioner Solla-Yates, Chairman Mitchell, Commissioner Stolzenberg, Commissioner Roettger

Staff Present: Patrick Cory, Missy Creasy, Carrie Rainey, Maya Claggett

Chair Mitchell called the meeting to order and asked for any comments on the agenda. None were noted. Chair Mitchell noted that he would be asking two commissioners to work on legislative package materials with Mr. Freas in preparation for the August work session. There was a brief overview of the legislative committee and work session for Aug 24 as well as mention of the Sept 24 work session.

Commissioner Roettger stated that members of the Tree Commission would be in attendance this evening and may share information. Commissioner Schwarz asked about a work session on the Zoning Code so commissioners could discuss areas that may need review. This was tentatively scheduled for the October 22 work session. He also asked if this could be placed on Municode and Ms. Creasy provided background as to why it could not. Commissioner Schwartz noted concerns with navigating the ordinance and some feedback on how to address was discussed. Commissioner Stolzenberg asked about the tree removed at 5th and Market. Was a permit obtained? Staff will research and take as complaint for next steps. Commissioner Solla-Yates asked if Steve Gaines had provided feedback on the tree ordinance. It was noted that staff provided him the information and have not received information at this time. It will move to the Tree Commission in September. He also asked about the minutes backlog and staff noted there is one additional set. Commissioner Stolzenberg asked if the Commission needs to readopt remote meeting rules? Staff will research.

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

Beginning: 5:30 PM

Location: City Hall Chambers

A. COMMISSIONER’S REPORT

Commissioner Stolzenberg – At MPO Tech, now that the Moving Towards 2050 plan is adopted, we are back on a bimonthly meeting schedule. In June, we had a presentation from VDOT on the Barracks Road smart-scale concept. We had a long discussion about the area between the overpass and Georgetown Road without a crosswalk. We strongly recommended they find a way to put a crosswalk in. They will explore that. Our June LUPEC meeting was cancelled. In July, we had updates from the transportation staff from each entity. I think that you probably heard everything that was talked about, except that there is now a map of bike parking everywhere in the city and UVA put together by our bike coordinator. It can be found on the city website. The county gave an update on each of their smart-scale projects that they are applying for. The one most relevant to us is the one at Hillsdale and Rio. They are proposing a dog-bone roundabout; 2 roundabouts merged into one. UVA gave an update on the North Grounds Garage that they are excited about. They said that they will never purchase another diesel or fossil fuel powered bus ever again. They did not get a grant from the federal

government for low emission buses this year. They are looking at an electric minibus to tie them over and reduce wear and tear on their diesel fleet until they can procure full size electric buses since the supply chain is so long for that.

Commissioner Schwarz – The BAR did not meet in July. In the June meeting, the only project of significance was a preliminary discussion for the UVA affordable housing project at Wertland and 10th. It is a 6-story building. They capped it at 6 stories instead of 11 stories because the construction type was more affordable and for parking. They did not present much more than just basic massing. The discussion was the BAR saying to provide permeability from the street and respect the streetscape.

Commissioner Solla-Yates – I am following the progress on the Virginia Housing Commission looking at potential legislation next round about accessory dwelling units and faith & housing. Currently, both are not looking promising as far as meaningful changes. I am not expecting big changes out of the Housing Commission.

Commissioner d’Oronzio – The TJPDC did not meet for their August meeting. We did have to hold a special meeting at the end of July to hold a public hearing to complete an application process for a USDA matching grant for minor home repairs that has no bearing on the city. There is not one address in the city that is qualified for it. Councilor Payne and I attended to fill out a quorum. We already addressed that in the premeeting adjustments to the virtual meeting rules and how that may or may not come to this Commission at some point. The HAC (Housing Advisory Committee) held its organizational meeting to discuss its work plan for the next year and how to prioritize what is going to happen. It is not crystallized except how we go about things procedurally has floated to the top. I will have more on that in the future as we get work product for what we want to do and the order. We had the organizational kickoff meeting for CAHF/HOPS Committee last week. We are having another meeting on the 28th. There are a couple of items that might be of more interest. One item is that we are working on the scoring and evaluation tool. It is one of those things that has been amended and changed. Four people have authored it over the years. It needs to be fixed. When you read the scoring criterion and questions, somebody rewrote that 4 times to get their point across. We are also looking at clarifying some of the documentation that accompanies the applications. Some of that has turned to trying to make it less obstacle ridden for smaller and less established applicants for these funds. We have flexibility there. The land bank should be moving forward. I am meeting with Sam Sanders to get an update for where we are and how we are moving this forward.

Commissioner Roettger – Last week, I was at a Tree Commission meeting. Parks and Recreation has an RFI out for an urban forest management plan. There was a lot of discussion about what the consultant would be able to provide and what kind of things people could do and more citizen participation with that. There was discussion about notable trees or heritage trees and how to get that program back. We are going to be hearing more about the ordinances. There was some discussion about how to get more ‘teeth’ in the preservation of these large trees.

B. UNIVERSITY REPORT

Commissioner Joy – We have an upcoming Board of Visitors meeting in September. It is a light agenda. There will be an update to our historic preservation report. I have a couple of construction updates. The Fontaine Parking Garage is making great progress. It is through the difficult parts. The difficult parts were completed ahead of schedule. It is on track to be done a little over a year in the fall of 2025. That parking garage will be operational. At Fontaine, the energy plant construction is progressing. Several of the geothermal wells have been drilled. Footers are being poured. The North Grounds Parking Garage is another key element to address the parking issues. The initial bridging documents are complete. It is a design-build delivery project. It is currently going through the shortlisting process to identify the ultimate team that is going to complete the

project. I previously talked about the Piedmont site and the Wertland Street projects. There has been a strategic decision to prioritize the Wertland Street project, with the Piedmont project following after Wertland. This was done to not have the 2 projects compete for the same associated housing tax credits. UVA Health System is going to be taking the lead on a comprehensive planning study for the Grove Street and Oak Lawn properties. Those will be looked at holistically.

C. CHAIR'S REPORT

i. Appointment of Nominating Committee

Chairman Mitchell – The Annual Meeting will be next month. Commissioners d'Oronzio and Solla-Yates have agreed to be the nominating committee. They will be presenting a slate of candidates that we will need to vote on for Vice-Chair and Chair next month. I met with Ms. Creasy and Mr. Freas to talk about an idea that they have about helping us identify the legislative agenda for the city. Mr. Freas is going to discuss in greater detail about what he would like to see when he presents. I will need 2 volunteers to do the work. You need to be ready to present your idea to Planning Commission by the 27th. The BZA met twice. The first meeting was an orientation. We have 2 or 3 new members on the BZA. We wanted to get them oriented to the work we do. We also wanted to orient the BZA to the new development code. I think there is only one major modification that we need to worry about on the BZA. It is in Section 5.2.11. That speaks to administrative modifications. That allows the applicant to make appeals during the hardships if they are caused by coverage requirements or setback requirements. We also had our first hearing this year. This was related to homestays. The intent was to appeal a denial by the zoning administrator. The zoning administrator denied the application because the intent of the homestay ordinance is that you live in the home for 185 days while you are doing the homestay. The zoning administrator denied it. We overruled him and voted in favor of it; not because we did not agree with the intent. We agreed with the intent and the reason why he denied it. The ordinance reads that you must be in the homestay 185 days during the permitted period. You do not have to be in there 185 days before the permitted period. We need to go back and tweak that. There is some gaming that is going to happen with that. Mr. Freas and Ms. Creasy are aware of that, and they are working on that.

D. DEPARTMENT OF NDS

Missy Creasy, NDS Deputy Director – We are planning to have a work session on the 4th Tuesday of August. At the premeeting, we noted that we have the 4th Tuesday penciled in. We have not had work sessions in some time. During the zoning ordinance, we had them every week. We will be having work sessions more often. We will be preparing for a work session on the 27th. We are also working on the work session for September 24th. We have planned for that to be a joint work session with the Albemarle County Planning Commission about the Climate Resilience project that is being done between our localities. These will be updates from both city and county staff and an opportunity to meet with the County Planning Commission. We have not done that in some time. This is now a good opportunity to regroup. We are also talking about other topic areas where there would be interest to have future joint meetings to continue that dialogue. There are a lot of things moving forward on that front. We are set for CIP discussions coming in November and December.

James Freas, NDS Director – The idea for the August work session is to put together a letter to Council around their legislative priorities for the upcoming state legislative session. This is in response to comments or requests that have been made by commissioners over the last couple of years. How do we get engaged in this process every year. Every year, Council puts together their set of priorities and forward those on to the delegation. This is how we do it. The idea is that with a couple of commissioners, we will meet and talk about what those priorities might be and put those into a draft letter that will then come to the Planning Commission for consideration and ultimately a vote by the Commission to forward that letter on to Council at your August meeting.

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

Bob Troy (108 Chandler Court) – I am the President of the Willoughby Neighborhood Association and a resident in that subdivision. I am here to share our concerns about the proposed Willoughby Place development by Woodard Properties, which lands entirely within the footprint of Willoughby. We have real concerns about zoning for the property. The arithmetic of their preliminary site plans aligns with the zoning. It does not align with the nature of the neighborhood or the rest of the area around it has been developed. We think that should be a part of that. There are 84 units proposed. There are concerns about access to the proposed development itself and the added pressure to has the intersection at 5th Street Extended and Harris Road. That is already a problematic intersection. There has recently been a lot of development that has already added beyond the capacity of that intersection experienced when it was designed and built. We are concerned about those 2 things. There are ongoing questions about the access easement and its use. I am very concerned about the environmental impact on Moores Creek, the impervious surfaces, and the significant critical slope drop leading into Moores Creek. It will certainly add to erosion pressures on the creek. We have seen erosion pressures on the creek cost the area money. The Rivanna Sewer Authority had to install a pretty large granite block wall to protect a sewer main that runs along Moores Creek. Because of the runoff from 5th Street Station, not all that stormwater management at 5th Street Station has performed that well. This will increase that pressure on Moores Creek in terms of erosion. The likely direction of any outflows will lead to erosion that will undercut the roadway of 5th Street Station Parkway.

Joan Albiston (921 Royer Drive) – The people here tonight are our neighbors and residents of the Willoughby Neighborhood Association. I am a resident of Willoughby and a landscape architect. I understand that preliminary plans for an 84-unit multifamily project, developed by Moores Creek LLC, has been submitted to the city and been reviewed by city staff. I also understand that the project is considered a by right project barring issues with the easement. I have major concerns about 2 details of the project: the narrowing and tightening of curves of travel lanes of Harris Road at the Willoughby Association entrance and potential grading within the extensive critical slopes of the site. Narrowing travel lanes for a section of Harris Road at our entrance to 11-foot widths is about the width of a standard driveway with mountable curbs in the middle of the road and painted area where vehicles are encouraged not to stray while tightening the curvature of the road for the benefit of Willoughby Place site triangles will make travel for the existing 238 homes more hazardous than the adjacent 5th Street/Willoughby intersection. As first proposed in 2011, I expect that any proposed development designed for the adjacent county parcel will be similar in scope, with the additional vehicular traffic most likely directed onto Harris Road at the Willoughby Place entrance. The nearby intersection at 5th Street and Harris Road is already overburdened with frequent accidents. Willoughby residents have repeatedly requested that intersection be made safer. It is the only intersection that we can leave and enter our neighborhood. If the Willoughby Place project moves forward, the 5th Street/Harris intersection must be improved to support the increased traffic through it. Another concern is the substantial negative environmental impact on the rocky critical slopes where stormwater flows into Moores Creek. I understand that the majority of the critical slope waivers are approved by the city. At what point are critical slopes worth protecting? What acreage or grade of critical slopes is too much when the slopes exist in undisturbed woodland when the stormwater flows directly into Moores Creek when onsite water quality and quantity treatment will be inadequate for a substantial amount of groundwater recharge, when Charlottesville is working towards establishing a climate action plan, when Charlottesville has been awarded a community flood preparedness funding grant for the city section of Moores Creek? All those factors exist now. Now is the time to decide at what point critical slopes are critical.

Jalle Meintzschel (621 Harris) – Willoughby is a single-access subdivision created in 1978 with 238 homes located off the city's entrance corridor and adjacent to 5th Street Station. My purpose is to deliver written notice and on public record of the Willoughby homeowners' opposition to the proposed Willoughby Place Apartments, a 84-unit multistory multi-building apartment complex with a phase II of an additional 150 units on

the Albemarle County side accessed only at the Willoughby entrance. The letter given to your staff with supporting exhibits has been signed by over half of the homeowners, showing their support of this opposition. This letter has 4 reasons why we oppose the proposed Willoughby Place development. There are additional valid reasons for opposing this development, such as critical slopes and doubling the traffic volume. The homeowners have prioritized this list for more immediate attention in the preliminary planning process.

John Owen (919 Royer Drive) – My main concern, as a teacher and principal, is the safety of children. Our demographics have shifted recently in a good way. We have a lot more children in the neighborhood. I fear for their safety.

Logan Kimble – The main things that I wanted to talk about were the Harris Road and 5th Street intersection. The traffic backs up there from the turn into Wegmans. You regularly have accidents there. It happens quite a bit. The Yield at that intersection is incredibly confusing. Ben Koby and I watched multiple cars misuse the turn, avoid not using blinkers. A cyclist crossed the intersection diagonally at rush hour. It frequent backs up from Wawa to that intersection. We watched multiple cars come in up the curve and do U-turns on the blind curve to go back out. We only see that getting worse once Wawa opens. We see that corridor becoming even more congested and confusing. Even as you exit the neighborhood, that curve backs up. It is uphill and confusing. I don't like going up there. It is a blind uphill curve, which is where they want to put these mountable curbs. The sight lines are terrible. Every time it snows, there is a car stuck there for days. You have this nice piece of forest. It would be a shame to see all that removed from the city's stormwater protections.

Alexandra Reborn (815 Harris) – I am here to lend my voice in solidarity to the rest of the people from Willoughby. There are several reasons, opinions, and thoughts on why or why not we should support this project. Even if only half the people have had a chance to sign the letter thus far, just about every resident in the neighborhood would say that they are against this project. It is not about infill housing. It is about egress and access to that property. I have lived in that neighborhood for 20 years. Trees fall because of the erosion. Trees have fallen in the last decade at a rate that is 100-fold from what it was the previous decade. I know that erosion problems and the Moores Creek problem are real. Those effects are real and felt. It is crazy to get out of there. Adding 160 to 200 cars to that pressure is insane. Unless there was a way to make another road, it is unrealistic and unsafe. It will not be a win for the people that live there. We respectfully request that you deny it.

Beth Owen – I have been in Willoughby for over 30 years. It would be nice to invite you to come to our neighborhood. That would give you an idea of the concerns that we have in our neighborhood. We are talking about 84 units. That is at least 2 cars, maybe more per unit. That is too many cars coming in there. I cannot imagine how that is going to be handled. We have had 2 deaths in our neighborhood. It is a huge safety concern.

Larry Garretson (818 Harris) – We understand the safety and infill. We support the idea of infill. It takes pressure off the rural land that we enjoy. The area along the 5th Street corridor has grown substantially in the 20 years that I have lived at Willoughby. It comes with a body count. There have been 5 deaths along that road. There was a time last year when there were 5 memorial wreaths set up along that road. What we are talking about with this development is bringing that kind of dangerous pressure into a smaller roadway and an uphill curving access that is the only access for the homes in our development. I would like to ask you to look long and hard about enabling that to happen.

F. CONSENT AGENDA

1. Minutes – February 14, 2023 – Regular Meeting
2. Minutes – March 13, 2023 – Regular Meeting
3. Minutes – January 10, 2023 – Regular Meeting
4. Minutes – June 11, 2024 – Regular Meeting
5. Site Plan – Mount View PUD

Motion to Approve Consent Agenda – Commissioner Schwarz – Second by Commissioner d’Oronzio – Motion passes 6-0.

III. PLANNING COMMISSION PUBLIC HEARINGS

Beginning: 6:00 PM

Continuing: Until all public hearings are complete

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

No Public Hearings Scheduled.

IV. Commission’s Action Items

Continuing: until all public hearings and action items are completed.

1. Presentation – Public Art

Staff Report

Mr. Freas – This summer, we have had Maya Claggett as our intern. She is a graduate student at UVA. She has done a fantastic job working with us and working with many of our colleagues in several departments. We tasked her with 2 projects. One was looking at a full body of work that we do around protecting and preserving trees, particularly those in the public right-of-way and identifying best practices that might exist within the state of Virginia that we could apply or bring to bear here in the city. The other item was looking at public art. The issue of public art has been coming up a lot lately. We have had several requests from various organizations or members of the public about installing public art. We have had a general interest in this topic. We believe that it is a worthy topic. I believe it is even cited within the Comprehensive Plan to encourage public art. We do not have any mechanisms around selecting public art or even managing that once it is in place. We asked Ms. Claggett to look the best practices within the state of Virginia for that type of program.

Maya Claggett, Intern – The research that I conducted largely draws from models from Falls Church, Alexandria, Williamsburg, and Richmond. They each offered something slightly different as far as practices and models. Falls Church was very informative with possible ‘bumps in the road’ and best practices that come from implementing public art programs in smaller municipalities. I hope that the document consolidates some of my research into a usable format. It shows that a committee could be formed that helps to advance public art initiatives more immediately while also looking at a longer-term public art plan and trying to form that.

I am going to get into an overview of the procedures and guidelines document, which is one of the outcomes of my research around public art. It begins with language that could be used to form a public art and memorials commission and what the makeup of that commission could look like. As presented in this document, the commission would serve in an advisory role to City Council on many things related to public art, including the long-term planning, review of public art proposals, and public art commissioning. The following procedures and guidelines in the document cover elements that are typically found in public art plans. It lays out responsibilities for key actors, notably the public art and memorials commission. They would be tasked with creating a master plan, funding, creating a memorials plan or policy, and addressing any changes to these procedures that might better reflect the community. In addition to this, there is review of art proposals and assessing projects. Guidelines and possible criteria for those are included in this document. Procedures around commissioning art and what those processes could look like are included. While this committee would guide projects, the project management, as it is written in this document, would most likely be done by city staff.

Specifically, as it is written in this document, by the staff liaison to the public art and memorials committee. These would be legal agreements and proper documentation. From my research, I want to point out that this new role would be crucial to the success of the committee as it is written. Those responsibilities for this liaison are written out more in depth in the project management section. There is language around deaccessioning pieces of public art. The public art and memorials commission could potentially serve as a resource for private development if they wanted to include public art.

The language as it is written in the document clarifies that all the recommendations from this public art and memorials commission would have to go through City Council and seek their approval. I would like to present some options for discussion about how the Planning Commission might want to be involved if a more formal art program should continue. The first option would be that the Planning Commission would become involved when public art requires a site plan or some structural element. It would not include more 2D public art like murals. The second option that came out of my research was the Planning Commission supplying one member who would be a part of the public art and memorials commission and report back to the Planning Commission and communicate their interests in public art meetings. This largely the language in the draft.

Commissioner Joy – Is city-owned property under the jurisdiction of the Virginia Art & Architecture Review Board?

Mr. Freas – I am not familiar with that body.

Commissioner Joy – They have jurisdiction over state-owned land.

Mr. Freas – My expectation, given that I not heard of them, is ‘no.’

Commissioner Roettger – It is thoughtful research and helpful to have proposals. That is the hard part, to get the language there for people to react to. I thought that the thinking about donations, given we recently had the 7th anniversary of August 11th and 12th, having a clearer way to move forward with both adding and moving monuments and artwork, I think the Planning Commission makes sense when it is a something that has to do with the space around it in terms of looking at it. I think you had one a commissioner on the proposed committee. It makes a lot of sense. There is a different process for murals. Thinking about making sure that the composition of the commission is diverse. It is so specific with all these different characters and that makes a lot of sense. There could be an open resident position that might bring a different point of view than professional people might bring. It is great work.

Commissioner Solla-Yates – Historically, when we have considered adding new capacity and new services, we have done so without adding funding or staffing. Can you talk about the value of funding and staffing this to achieve success?

Ms. Claggett – What I have seen in a lot of places who did not have this built-in staff capacity, including for a couple of years Fall Church, is that the committee focuses on maybe long-term planning and values and community input. I think that the importance of a staff person is largely on the approvals process and moving things along and from a legal perspective; having someone that manages those documents. I would like to note that Falls Church, the person they have assigned to this role, it is half of her role. She serves in a full-time capacity for their Parks and Recreation Department. She has other responsibilities and other roles.

Commissioner Joy – There is the 1-percent for art precedent that happens in some cities. Any city-funded project designates 1 percent to go into a public art fund. I was thinking of a way to build in funding. It moves the money around. It could be a way to formalize the funding structure of public art.

Mr. Freas – One of the things Ms. Claggett highlighted in her presentation and response is an important aspect of this and speaks to what Commissioner Roettger noted. We have immediate needs for this body to be at work right now. We also recognize that to really do its job effectively, it should be working against a larger master plan or plan for public art within the city. What are we trying to accomplish relative to public art? Those types of questions should be answered within that document. We need to do both at once. Ms. Claggett has done a good job of setting us up for that potentially. We recognize that to be successful in this place, we will have to staff it. We will have to make sure that we give it the tools it needs to do this job that we want it to do. I have started that conversation with the city manager. There are no guarantees. We are going into the budget process. We are going into this with the recognition that we cannot do this halfway. If we are going to go down this road and address this issue, respond to this desire within the community, we will have to do it with some staffing. On the 1-percent for the arts, the city adopted a 1-percent for the arts back in the 90s. It seems to have gone defunct in the intervening time. An art commission that was established at that time also went defunct. We must relook at that and start thinking about that within the budget. We have a lot of different projects that theoretically could have a 1-percent for the arts tacked onto this. That is a substantial cost. What we will have to do going forward is look at that again and make some decisions. I would prefer to have a 1-percent for the arts come out of a planning process. It is interesting that we already did that.

Commissioner d’Oronzio – A question on the role of the Planning Commission. Some of these processes may not be aided by adding more people. At some point, most art is intrinsically solitary before it becomes a community matter. In evaluating how we put these guidelines up make the Planning Commission’s role explicitly clear. How does this physical object function in the environment with no aesthetic input or judgment from the Planning Commission? That confuses the matter. It is one more body that you must placate, please, and impress. Does the Planning Commission agree that this widget can fit on this block in this place?

I saw that our at-large member is from this overlay corridor area. What was the process of space constructing? Who might be on this board? How did you get to where you are going? One of the things that I see about this having is that some of the buckets we have can be served by multiple people. You can have an art educator who is also a leader of an art organization. It can be convenient when you are trying to staff up the members of the board. Where did we come up with this? The other piece that I would ask about is it is somewhere in this Commission or City Council. In opposition to what I said about the Planning Commission not being allowed to make an aesthetic decision is some sort of formalized input process. Whether it is warmly received or whether it is not and opposed. Would there be a public input process? Where would that go? Does it make sense to put that at the end and with the City Council? It seems that is the bad place for the City Council to start hearing about that on the night they are approving it.

Ms. Claggett – The makeup of this commission is based on a couple of different things; largely based on models that already exist and from municipalities that have gone further in this process. A lot of the recommendations that I received was to make the committee smaller than other places have based on their experience. It was hard to put out a lot of the buckets that other places did. I wanted to consolidate. I agree. It is something to consider and I would love feedback on. Specifically, the member from the neighborhood corridor overlay. That was partially inspired by the Charlottesville Tree Commission, which has at least one member from a low-income neighborhood. This idea was taken from there but changed so that the geographic areas were clearer and aligned with the new development code. Public input processes vary a lot. Hopefully the formation of this commission would, in their public art plan, that is based on community outreach. They will form a process and clarify those roles and where those public inputs fit into the process of approving or making recommendations. It is something to consider and an important part of a public art program.

Commissioner Stolzenberg – On other committees, we have sometimes found that when we are overly restrictive for certain slots, we find that we don’t ever get any applicants for those slots. I wonder if we could incorporate some outreach for that. If there are no eligible applicants meeting their criteria, an at-large member

can be appointed or an interim at-large member can be appointed until a qualifying person is found. I am a little ambivalent about the idea that we would reserve a slot specifically for people who live in a single-family zoned area. Mr. Freas mentioned that we need this as soon as possible. I know our transportation planner and bike & ped coordinator are ready to start painting streets. Could we incorporate an interim de-facto commission before the commission and liaison are fully ‘stood up?’

The thing that concerns me when we talk about public art or monuments is that there is maybe a line between an art commission by the government that is government speech under the First Amendment versus creating a public forum where we might have people suggesting art that might be undesired by the community. Does this put us on the side of the protected from someone filing a lawsuit? Is that the goal of the criteria?

Mr. Freas – That is part of the intention here; to protect us.

Commissioner Stolzenberg – Is it creating this plan and criteria and discretionary review of this committee that offers that protection? Is there a risk that the plan they make is so general that we lose it?

Mr. Freas – I don’t know at this point. I know that as we move forward with this idea, consultation with the City Attorney is going to be an essential part of that. Addressing that issue is key to why we are pursuing this. We have been advised not to do that because of the risk.

Commissioner Schwarz – My questions have to do with the Board of Architectural Review and the role they may have to play. My suggestion would be that the BAR would be able to review something, make a recommendation based on: Is art appropriate for a location in terms of something will have to happen to that location? The existing area will have to be modified. Is that area historic in any way? Can the BAR make a recommendation on whether it is appropriate to change that location? That would include public property and public right-of-way. It is a recommendation. It would not be a certificate of appropriateness. It is more of the BAR giving feedback on this location. Is it appropriate for art? Keeping the BAR out of aesthetics. Does this distinguish between public and private art? Several years ago, we had an application for a mural on 4th Street. The mural was supposed to memorialize the counter protesters for the Unite the Right rally. Some of the public was upset because there was no public comment. The BAR was the only body who got to look at it. They ended up not doing the mural because it was a famous muralist. When there was some ‘static’ to what he wanted to do, he pulled out. That was private art on private property. Is there a role this committee would have for something like that? I wonder if that needs to be considered.

Ms. Claggett – Section 7 of the document is some of the research that I have gotten around the private side and developer-initiated projects. I think this committee could be a great resource for those kinds of conversations. It depends on the capacity of this commission when it is formed and the public art plan that is reflective of the community and processes that they want to move forward with. It is something that is being considered.

Mr. Freas – It is laid out in the materials of the line between public and private. There would be no formal role for this committee on private art. I think Ms. Claggett has written in here the notion that they could serve as an advisory role on a voluntary nature. The other place where we might tap into the expertise is on the zoning side. When a mural comes in, we must draw the line between a sign and art. We could consult with this body as to where that line is.

Commissioner d’Oronzio – The advisory role could get fraught fast. What advice are you giving? Are you chilling expression? Are you inserting the personal biases of staff or appointees up here. Could that be fraught in and of itself? You are opening the door for those sorts of problems with the private art and private property.

Mr. Freas – There is no formal role. It is completely voluntary. It is whether somebody chooses to come to the body.

Commissioner Schwarz – It would be beneficial to have some mechanism.

Commissioner Roettger – The benefit for coming to the commission for advice would not be their advice, but how they usually reach out to the public.

Chairman Mitchell – It is important that there is public input before we put stuff up. That is very important.

2. Presentation – Street Tree Project

Staff Report

Ms. Claggett – I would like to start this discussion by saying that I did not identify any significant policy avenues that Charlottesville is not already taking advantage of around trees, particularly with the new development code and new tree removal permits that are in place. In my final report to NDS, I am developing steps and further avenues to pursue. It would include increased staff capacity so that processes and procedures could be more developed around this tree removal permit and possibly incentive based solutions. Like many areas of Virginia, Charlottesville is losing tree canopy. This is a really important area of research. I wanted to note that Charlottesville is not alone. A lot of the people that I am talking to in Virginia have been pursuing this area in a similar way. There are many conversations that are happening throughout the state and at the state level.

For this document, I used models from Arlington, Norfolk, and Fairfax. Under Virginia law, this ordinance allows municipalities to establish a procedure around the designation heritage, memorial, specimen, and street trees. These designations can happen on public and private property. They include a special protection status for the trees that are identified. The language in this markup (a product of my research) will strengthen the ordinance in a few key ways. I would like to mention that after talking with practitioners, it seems that the stronger and slightly different language of this ordinance does not strongly change the ways that this ordinance is implemented in these municipalities.

The first main addition that I have made in this markup is ‘trees on public property’ and making it clear that trees on city property are owned by the city. It includes language around that if there is any injury or removal of these trees, it would be a class 3 misdemeanor. I did not know what that meant. It is a fine of no more than \$500. It is commonly used for unintentional damage to property, which is why it is applicable here. In the later part of this markup, that is the first main addition. With the later part, there are some changes, some language around encouraging the nomination of trees on a broader range of properties. By expanding the properties that people can nominate trees for, it will increase the awareness of this program. It would still require the consent of the property owner to nominate and protect these trees. Hopefully, it would encourage more conversations around that.

Commissioner Joy – Following up the nomination of the heritage trees, is the idea that there would be a call for nominations? Would it be annualized into an effort that could be brought in? I wonder if there is an opportunity we can make it into an annual ceremony. It could be something that could be part of civic pride. Does this include heaters on the downtown mall associated with cafes?

Commissioner Roettger – It is helpful and good work. The Tree Commission is going to be hearing from you. That might help get into some of the specifics. At the last Tree Commission meeting, the heritage tree was being discussed as a topic. How does it potentially help someone to nominate a tree in their yard? There are

maybe some things around that that would not be too costly to offer someone. It is interesting to hear that you were more focused on the language. The pieces are in place. They are not being administered. We do not have the follow through yet or the processes are not as widely known to residents. There might be more about education.

Commissioner Solla-Yates – Something that I say is that Charlottesville does everything we are legally permitted to do in Virginia about tree protection. I understand that other states are doing more than Virginia. Am I right? If so, who and what are they doing?

Ms. Claggett – There are a lot of different avenues for tree protection. It comes up in a lot of different areas of regulations and incentives. Something on the state level that Virginia is trying to push through is loosening the restrictions on the percent that is required during development. That is a big area that is restricted. It is just the percents that you are allowed to require during development are larger in other areas. There are a lot of incentive-based things that are happening in other states including stormwater fee structures. I can recommend a document to you. It is A Select Review of the Virginia State Code for Trees and Forests. It is from 2020. Foresters and practitioners got together to look through Virginia code to ask the questions that you are asking.

Commissioner Solla-Yates – One thing I understand that we can do is spend money. We basically have unlimited authority to spend money. Am I correct that we could put a small amount of money in the budget and give people a small consideration for nominating a tree?

Ms. Claggett – To my knowledge, yes.

Commissioner d’Oronzio – I have a couple of comments. One is the use of single-family residents. That was advisedly used. I would like to point that we have this new zoning where we talk about residential zones. Is there a reason we are using single-family residents instead of zone residential RA or something like that as the exclusionary criteria? What we are saying is that a duplex does not apply?

Ms. Claggett – This language is largely taken from other models. We have discussed that the language could be revised on that. There are comments in my document noting that. It is just a draft.

Mr. Freas – You are not just objecting to the word ‘family,’ but you are suggesting that if there is a waiver or an exemption granted, that should be granted to a higher number of units than one.

Commissioner d’Oronzio – It seems that we continue to give extraordinary privilege to single-family residents as opposed to something zoned RA with 2 or 3 units on it. I am not sure that I have a simple solution to that.

Commissioner Stolzenberg – It would apply to a single-family even if it was their own NX-10. Is that because specific state code would not allow us to designate a tree?

Ms. Claggett – Not from what I remember. The specific terms of the state legislation are not specific in that area. That specific language I think was taken from Arlington.

Commissioner d’Oronzio – The second question would be on 18-XA and that we be very careful about use of the word ‘pruning, maintaining, removal’ and putting that on the administrator. What that will do is annoy the administrator for having to deal with the 100s of people who maintain, prune, and occasionally remove trees from the city-owned alleys that the city is not maintaining. We need to be careful about that. People treat that as their yard in some respects if there is no barrier. Every point you have made here is well taken.

Commissioner Stolzenberg – I understand Arlington is being sued over their tree protections. Did we take any of the ones that are in that lawsuit into this?

Ms. Claggett – I will investigate that.

Mr. Freas – No.

Commissioner Stolzenberg – This language in 18-XB-1, specifically calling out utility companies is interesting. Dominion is probably the biggest butcher of trees in the city. Does another locality put that restriction on their electric utility? Has that successfully worked?

Ms. Claggett – I am trying to remember where this language was used. To my knowledge, I don't know how effective that this is. I don't think it is anything that I talked with practitioners about in other municipalities. I will investigate that.

Commissioner d'Oronzio – Some of those easements for utilities are quite specific about the utilities absolute right to do whatever they want to do to anything growing in there to maintain their power lines.

Ms. Creasy – This was one of those sections that we figure at some point an attorney will spend a lot of time with. There are franchise agreements that are involved. There are lots of different parts of the puzzle. It will be helpful to see if anyone has been effective with this. My inclination is probably not. That was a section where there would be some oversight. The misdemeanor part is something that stands out. We are in the early phases. This has not gone through any legal review. I am sure that we will get feedback.

Commissioner Schwarz – Later in that section, you have the exceptions in section 18-11. It says, 'routine installation, maintenance, and repair of cable and wires used to provide cable television, electric, gas, or television service.' That is an exception to anything in the ordinance. I am wondering how that works with the section that we just mentioned. I think you said that the blue text cannot be changed or shouldn't be changed.

Ms. Claggett – The blue text is taken straight from Virginia code on the allowances of this ordinance.

Commissioner Schwarz – There seemed to be a conflict between those two. I would love to see 18X be one work. I would love to see you guys figure that out. I noticed that conflict later in the exceptions.

Under the definitions, it says that street trees need to be individually designated. Do we have a record of every street tree that we call a street tree? Can we change that? Is there a way that we can say if it is in the public right-of-way, it is a street tree? If it is on private property, how do we make a designation that those are street trees even though they are on private property? Are they on an easement at that point?

Mr. Freas – Yes.

Commissioner Schwarz – Do we have GIS documentation of all the trees?

Ms. Creasy – We have had in the past. I am not sure about the update and whether it determines private versus public if it is in a right-of-way or if it is on private property.

Commissioner Schwarz – I am wondering how someone knows whether their tree falls under this ordinance. All the definitions say individually designated. I guess that implies that we should have a list of all these trees we want to protect. How would the public find out if their tree is considered a street tree?

Under 18X-B.1, it also says 'where the city is responsible for the maintenance of such easement.' I was under the impression that street trees and planting strips needed to be maintained by the private property owner even if it was in the public right-of-way.

Chairman Mitchell – Excellent pieces of work

The meeting was adjourned at 7:18 PM.