

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on July 13, 2005, at 6:00 p.m., Room 241, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. David P. Bowerman, Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Sally H. Thomas and Mr. David C. Wyant.

ABSENT: Mr. Dennis S. Rooker.

OFFICERS PRESENT: Assistant County Executive, Thomas Foley, County Attorney, Larry W. Davis, Director of Community Development, Mark Graham, County Planner, V. Wayne Cilimberg, Chief of Community Development, David Benish, and Senior Deputy Clerk, Debi Moyers.

Agenda Item No. 1. The meeting was called to order at 6:00 p.m., by the Vice-Chairman, Mr. Boyd.

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Other Matters Not Listed on the Agenda from the Public.

There were none.

Agenda Item No. 5. Consent Agenda. **Motion** was offered by Ms. Thomas, **seconded** by Mr. Bowerman, to approve Items 5.1 and 5.2 on the consent agenda. (Discussion on individual items are included with that agenda item. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Wyant, Mr. Bowerman, Mr. Boyd, Mr. Dorrier and Ms. Thomas.

NAYS: None.

ABSENT: Mr. Rooker.

Item 5.1. Approval of Minutes: January 5, January 19(A), March 3(A), March 14(A), and March 16, 2005.

Mr. Dorrier had read his portion of the August 4, 2004 minutes, pages 1-19, and found them to be in order.

Mr. Bowerman had read the minutes of August 11, 2004 and found them to be in order.

Mr. Wyant had read his portion of the minutes of February 2, 2005, pages 1-20 (end Item #16) and found them to be in order with the exception of some typographical errors.

Ms. Thomas had read the minutes of March 9, 2005 and found them to be in order with the exception of some typographical errors.

Mr. Boyd had read the minutes of March 23A, 2005 and found them to be in order.

By the above recorded vote, the Board approved the minutes as read.

Item 5.2. Record Retention/Destruction of Records: Authorization to dispose of Tax Records.

The Library of Virginia's Record Retention and Disposition Schedule requires that paid tax tickets be retained by the locality for a period of five years after audit. At that time, after approval by the department head and the designated records officer for the locality, tax tickets can be destroyed, but only after authorization from the governing body. Staff approval has been received to destroy approximately 261 boxes of distribution records, which includes paid tax receipts for the period of July 1, 1992 through June 30, 2000.

Staff requests authorization from the Board to dispose of the above referenced records.

By the above recorded vote, the Board authorized the disposition of the above referenced records.

Item 5.3. 2005 First Quarter Building Report as prepared by the Department of Community Development, **was received for information.**

Mr. Boyd said that it would be helpful to have the building report include differentiation between which are inside and which are outside of the development area. Mr. Benish agreed to provide that information. Mr. Cilimberg added that staff will break it down by area.

Item 5.4. Copy of Albemarle County Service Authority's Fiscal Year 2006 Budget, **was received for information.**

Item 5.5. Copy of August 6, 2003 Board minutes and Executive Summary, **re: Cable Television Franchise, was received for information.**

Ms. Thomas said that she received a phone call from a senior citizen who had spoken with a cable company, who told her that they could offer a discounted rate if local government requested the rate.

Mr. Davis said that he would check it out, noting that he has never heard of that protocol.

Mr. Boyd commented that his understanding was the Board did not want to get involved in cable franchising, and wondered if there was a way to collaborate with the city instead.

Mr. Davis replied that his discussions with others have indicated that the long-term solution is web-streaming the Board meetings instead of putting them on cable.

Mr. Foley commented that if the objective is to have the meetings available for viewing, staff would gather more information and bring it to the next Board meeting.

Agenda Item No. 6. **ZTA-1999-006. Special Events. Public hearing** on an Ordinance to amend Sec 3.1, Definitions; amend Sec 4.12.6, Minimum number of required parking spaces for scheduled uses; amend Sec 10.2.2, By special use permit; add Sec 5.1.43, Special events; of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec 3.1, Definitions, to add a definition of "special events," which would be one- to three-day events such as meetings, conferences, banquets, weddings, dinners and private parties; amend Sec 4.12.6, Minimum number of required parking spaces for scheduled uses, to provide the minimum number of parking spaces required for special events; amend Sec 10.2.2, By special use permit, to allow special events in the Rural Areas zoning district by special use permit; and add Sec 5.1.43, Special events, to establish supplementary regulations pertaining to the prerequisites for and the operation of special events, including a regulation that attendance at special events would be by invitation or reservation only and not 150 persons. (Advertised in the Daily Progress on June 27 and July 4, 2005.)

Mr. Benish said this ZTA proposal was initiated by a Zoning Text Amendment (ZTA) application which was submitted in August 1999 requesting that Tourist Lodging in the Zoning Ordinance be amended to allow for weddings, special events, corporate meetings, or other events. This request was tabled by the Planning Commission in April 2000, following staff's recommendation that this request be deferred until completion of the Rural Areas section of the Comprehensive Plan. The Rural Areas Plan was adopted by the Board of Supervisors in March 2005. Following the applicant and the Planning Commission's request to reactivate this ZTA, a resolution of intent to amend the ordinance was passed on January 18, 2005. The Planning Commission held a public hearing on this item May 24, 2005 and recommend approval of ZTA 99-06 with several changes to the draft ordinance, as provided in the attached Planning Commission action memo. (Attachment A)

Staff is providing you with the revised draft ordinance (Attachment B) reflecting all of the Planning Commission's recommendations and one revision suggested by staff. Following further evaluation of temporary signs and over Zoning Administration's concerns regarding administering this section of the ordinance, it is no longer recommended that Section 4.15.4.d be modified to allow additional temporary signs for special events. Property owners would be permitted, following application for a sign permit one freestanding sign of up to 24 square feet in size, one wall sign up to 40 square feet in size and up to four temporary signs per year. These signs are currently permitted in the Zoning Ordinance. The ordinance also allows farm/estate signs without a sign permit application up to 4 square feet in size. Staff feels this provides adequate signage for the property owner to advertise and would not cause a proliferation of temporary signs that could be incompatible with the character of the Rural Area and burdensome for Zoning to permit.

Mr. Benish explained that the ZTA would allow special events for up to 150 guests as a secondary use in the rural area properties with an existing rural area use. He said that the ZTA would add a separate definition for special events in the zoning ordinance and would allow it as a use by special permit in the rural areas zoning district. Mr. Benish noted that supplementary regulations are proposed to ensure that the impacts to the rural areas are minimized and these uses are scaled appropriately; provisions for parking, signs, concept plans, setbacks, structures, reversibility, and limiting events to 24 annually have been included in the supplementary regulations. He added that the ZTA will provide for an ancillary use in the rural areas for structures such as barns that may need rehabilitation. During the special use permit process, the adequacy of roads during the site would need to be evaluated and determined appropriate by staff and VDOT.

Mr. Benish reported that the intent of the ordinance is to allow rural area landowners to have additional uses to offset any financial pressures they may have to subdivide their property and encourage the protection of rural areas structures, particularly historic structures and agricultural structures. He added that this use is viewed as consistent with the principles of the Rural Areas Plan by providing alternatives to land fragmentation, and the regulations for the special uses and the structures and any improvements related to the special events are intended to be reversible and would not be in conflict with the rural character as proposed under this ZTA.

Mr. Benish said staff recommends the Planning Commission approve ZTA 99-06 as drafted in Attachment B.

Ms. Thomas asked if staff recommended the wording as presented for use of temporary signs.

Mr. Benish explained that the original version that went to the Planning Commission recommended additional temporary signs; upon discussion with staff and the Zoning Administrator, he said, there was concern about enforcement of that and the proliferation of temporary signs, and it was felt that the sign provisions under the current ordinance were sufficient to advertise these uses.

Mr. Boyd asked what the origin of this ZTA is.

Mr. Benish replied that an individual request from a landowner in 1999 began the dialogue for the ZTA, and staff and the Planning Commission at that time chose not to move forward with that one particular type of use change, deferring to the Rural Areas review to see whether that use would be consistent with the new Rural Areas plan. He added that once that plan was adopted, the Planning Commission directed staff to pick up the deferred item and move forward with it, adding that the original request is consistent with the principles identified in the Rural Areas.

Mr. Wyant commented that it is hoped that old barns and other historic structures will be preserved and renovated for these types of uses. Mr. Benish agreed, adding that the intent of this ZTA is to keep the use as a secondary use, and to keep it consistent with the Rural Areas plan.

Mr. Boyd asked if there had been outreach to landowners who might apply for these uses.

Mr. Benish responded that staff has had limited contact with some people who might be able to use their properties in some way. He added that the wineries provision fall under farm winery use even in the case of special events, noting that this ZTA is taken from the winery language but allows more than farm winery uses.

Mr. Dorrier asked if these events would include music events such as bluegrass festivals and the Ash Lawn Opera.

Ms. Thomas pointed out that the maximum number of guests would be 150.

Mr. Davis noted that Ash Lawn would not be covered by this, because such events would be an accessory function to the primary use of that facility.

Mr. Benish said that the language doesn't specifically mention music events, but does identify uses that are examples, noting that the events would have to be by invitation.

Ms. Thomas asked about outdoor amplification and noise limitations.

Mr. Davis pointed out that noise is measured from the property line, and it doesn't matter if it is amplified noise or not.

Ms. Thomas said that it makes it difficult for event planners to figure out whether amplification is appropriate or not.

Mr. Benish commented that the Commission chose to address that issue by having it addressed with the existing noise ordinance, and the potential need to condition each event on a case by case basis through the special use permit process.

Mr. Davis noted that there are two ways it could be considered: added on a case by case basis where it would be necessary by special use permit; or put in supplemental regulations and removed by the special use permit process.

Ms. Thomas said that the latter is probably best so people know what the expectation is prior to planning an event.

Mr. Bowerman said that those problems would come to the surface at the special use permitting process either way.

Mr. Dorrier said that cutting out amplification would cut out a lot of instruments.

Mr. Wyant asked what would be permitted in terms of lighting, especially in parking areas. Mr. Benish replied that an applicant would be subject to the same restrictions as stipulated in the lighting ordinance.

Public comment was invited. No one came forward to speak, and the matter was placed before the Board.

Ms. Thomas asked what the process would be for amending a special use permit. Mr. Davis replied that it would go back through the Planning Commission and Board.

Motion was offered by Ms. Thomas, **seconded** by Mr. Wyant, to adopt ZTA-1999-006, Special Events. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Wyant, Mr. Bowerman, Mr. Boyd, Mr. Dorrier and Ms. Thomas.
NAYS: None.
ABSENT: Mr. Rooker.

(The adopted ordinance is set out below:)

ORDINANCE NO. 05-18(8)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, Article II, Basic Regulations, and Article III, District Regulations, of the Code of the County of Albemarle are amended and reordained as follows:

By Amending:

Sec. 3.1 Definitions
Sec. 4.12.6 Minimum number of required parking spaces for scheduled uses
Sec. 10.2.2 By special use permit

By Adding:

Sec. 5.1.43 Special events

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

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Special event: An event authorized by section 10.2.2(50) that is typically conducted on a single day, but which may be conducted for up to three (3) consecutive days, for which attendance is permitted only by invitation or reservation; *special events* include, but are not limited to, meetings, conferences, banquets, dinners, weddings and private parties.

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Article II. Basic Regulations

Sec. 4.12.6 Minimum number of required parking spaces for scheduled uses

Except when alternative parking is approved as provided in section 4.12.8, the following schedule shall apply to determine the number of required off-street parking spaces to be provided in a particular situation. If a particular use is not scheduled, then section 4.12.7 shall apply.

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Special events: One (1) space per two and one-half (2.5) participants, plus one (1) space per employee (includes staff, caterers, musicians and vendors).

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Sec. 5.1.43 Special events.

Each special event authorized by section 10.2.2(50) shall be subject to the following:

- a. *Eligibility and applicability.* Special events may be authorized on those parcels in the Rural Areas (RA) zoning district on which there is an existing and ongoing by-right (section 10.2.1) primary use. A special event special use permit issued under section 10.2.2(50) and this section shall not be required for special events associated with farm wineries or historical centers, or for events determined by the zoning administrator to be accessory to a primary use of the parcel.
- b. *Information to be submitted with application for special use permit.* In addition to any information otherwise required to be submitted for a special use permit, each application for a special use permit shall include the following:
 1. *Concept plan.* A preliminary schematic plan (the "concept plan") satisfying section 32.4.1. The concept plan shall identify the structure(s) to be used for the special event, include the area of the structure(s) in which the proposed special events will be conducted, the parking area, and the entrance to the site from the street. The concept plan shall address, in particular, provisions for safe and convenient access to and from the street, the location of the parking area, the location of portable toilets if they may be required, proposed screening as required by this section for parking areas and portable toilets, and information regarding the exterior appearance of the proposed site. Based on the concept plan and other information submitted, the board of supervisors may then waive the requirement for a site plan in a particular case, upon a finding that the requirement of a site plan would not forward the

purposes of this chapter or otherwise serve the public interest.

2. *Information from the Virginia Department of Health.* The applicant shall submit written comments from the Virginia Department of Health regarding the private water supply and the septic disposal system that will serve the proposed special event site, the ability of the water supply and the septic disposal system to handle the proposed events, and the need to improve the supply or the system in order to handle the proposed events.
 3. *Building and fire safety.* The building official and the county department of fire and rescue shall review and comment on the application, identifying all Virginia Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code issues and requirements.
- c. *Zoning compliance clearance.* The applicant shall obtain a zoning compliance clearance prior to conducting a special event. A single zoning clearance may be obtained for one (1) or more such special events in a calendar year as follows:
1. The zoning administrator may issue a single zoning compliance clearance for more than one (1) special event if: (i) the application submitted by the applicant includes the required information in subsection 5.1.43(c)(3) for each special event to be covered by the zoning compliance clearance; (ii) the zoning administrator determines that each special event is substantially similar in nature and size; and (iii) the zoning administrator determines that a single set of conditions that would apply to each such special event may be imposed with the zoning compliance clearance.
 2. The applicant shall apply for a zoning compliance clearance at least thirty (30) days prior to the date of the first special event to be authorized by the zoning compliance clearance. The application shall be submitted to the zoning administrator, who shall forward copies of the application to the county police department, the county building official, the county department of fire and rescue, and the local office of the Virginia Department of Health. As part of his review, the building official shall determine whether the structure(s) proposed to be used for the special events satisfies the requirements of the Virginia Uniform Statewide Building Code for that use.
 3. The application shall describe the nature of each special event to be authorized by the zoning compliance clearance, the date or dates and hours of operation of each such special event, the facilities, structures to be used, and the number of participants and support staff expect to attend each special event.
 4. Upon a determination that all requirements of the zoning ordinance and all conditions of the special use permit are satisfied, and imposing all conditions of such approval required by the offices identified in subsection 5.1.43(c)(2), the zoning administrator shall issue a zoning compliance clearance for one or more special events. The validity of the zoning compliance clearance shall be conditional upon the applicant's compliance with all requirements of the zoning ordinance, all conditions of the approved special use permit, the approved concept plan or site plan, and all conditions imposed by the zoning compliance clearance.
- d. *Special events sites and structures.* In addition to all other applicable requirements of this chapter, special events sites and structures shall be subject to the following:
1. *Structures used for special events.* Each structure used for a special event shall satisfy the following: (i) the structure shall have been in existence on the date of adoption of this section 5.1.43, provided that this requirement shall not apply to accessory structures less than one hundred fifty (150) square feet in size; (ii) the structure shall be a lawful conforming structure and shall support or have supported a lawful use of the property; and (iii) modifications to farm buildings or farm structures as those terms are defined in Virginia Code § 36-97 shall allow the structure to revert to an agricultural use, as determined by the building official.
 2. *Minimum yards.* Notwithstanding any other provision of this chapter, the minimum front yard shall be seventy-five (75) feet. The minimum side yard shall be twenty-five feet (25) feet. The minimum rear yard shall be thirty-five (35) feet. All yards shall be measured from structures and off-street parking areas. These minimum yard requirements shall apply to all accessory structures established after the effective date of this section 5.1.43 and all tents, parking areas and portable toilets used in whole or in part to serve special events.
 3. *Parking.* The number of off-street parking spaces for a special event shall be as required in section 4.12.6. Notwithstanding section 4.12.15(a) through (g), the additional parking area(s) for special events shall consist of or be constructed of pervious materials including, but not limited to stabilized turf, approved by the county engineer. Asphalt and impervious materials are prohibited. If the parking area is on grass or in a field, the applicant shall reseed and restore the parking area site as required by the zoning administrator. In addition to the requirements of section 4.12.5, the parking area shall be onsite and screened from abutting parcels by

topography, structures or new or existing landscaping. Notwithstanding section 4.12.16(d) and (e), the delineation of parking spaces and the provision of bumper blocks shall not be required.

4. *Water and sewer.* The private water supply and septic disposal system serving a special event shall be approved by the Virginia Department of Health.
 5. *Streets and access.* Streets serving the site shall be adequate for anticipated traffic volume for a special event. Access from the street onto the site shall be adequate to provide safe and convenient access to the site, and applicant shall install all required improvements and provide adequate sight distance in order to provide safe and convenient access.
- e. *Special events operations.* In addition to all other applicable requirements of this chapter, special events operations shall be subject to the following:
1. *Number of participants.* The number of participants at a special event at any one time shall not exceed one hundred fifty (150) persons
 2. *Number of special events per year.* The special use permit shall identify the number of approved special events per calendar year, which number shall not exceed twenty-four (24).
 3. *Signs.* Permanent and temporary signs advertising a special event shall be permitted as provided in sections 4.15.4 and 4.15.8.
 4. *Food service.* No kitchen facility permitted by the Virginia Department of Health as a commercial kitchen shall be allowed on the site. A kitchen may be used by licensed caterers for the handling, warming and distribution of food, but not for cooking food, to be served at a special event.
 5. *Portable toilets.* If required, portable toilets are permitted on the site, provided that they comply with the yard requirements in section 5.1.43(d)(2) and shall be screened from that parcel and any street by topography, structures or new or existing landscaping.
- f. *Prohibition of development to a more intensive use.* A parcel subject to a special events special use permit shall not be subdivided so as to create one or more parcels, including the parent parcel, of less than twenty-one acres in size without first amending the special use permit to expressly authorize the subdivision. If a parcel is so subdivided without first amending the special use permit, special events shall thereafter be prohibited on the resulting parcels unless a new special use permit is obtained.

Article III. District Regulations

Sec. 10.2.2 By special use permit

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50. Special events (reference 5.1.43).

Agenda Item No. 7. **ZMA-2005-009. Briarwood (Signs #89,92&94) Public hearing** on a request to rezone approx 124 acs from PRD to Residential (PRD) w/proffers to modify the application plan for the Briarwood PRD to change bldg separation requirements & to establish yards & setbacks. The lands proposed for rezoning are at the intersec of Seminole Trail & Austin Dr (Rt 1575). TM 32G, P1, TM 32G Sec 3 P A & TM 32G Sec 3 P 83. (The Comp Plan designates these lands as Neighborhood Density providing for general usage as residential & recommended for 3-6 du/ac. The Zoning Ord provides that the general usage w/in the PDR zoning district permits a variety of residential uses, together with certain uses ancillary thereto that are compatible with & to not detract from one another or from surrounding districts.) Rivanna Dist. (Advertised in the Daily Progress on June 27 and July 4, 2005.)

Mr. Cilimberg summarized the following staff report which was previously forwarded to Board members. On February 2, 2005, the Board of Supervisors approved changes to the Briarwood PRD which allowed for changes to phasing and changes to unit types shown on the application plan, removal of one interconnection, a commitment to provide screening for the backs of units along Camelot Drive, an addition of 4 more units, and a commitment to provide affordable housing and curb/gutter/sidewalks on at least one side of the street. The Board also approved modifications of Section 19.8 and 4.11.3 of the zoning ordinance to allow building separation of 20 feet. The attachments listed at the end of this report provide background on activities that occurred between the Planning Commission meeting of December 7, 2004 and the Board action.

As the Commission may remember from the December 2004 meeting, the applicant did not provide all the needed documents within the necessary time frame for review at several stages in the process. When the applicant responded to the Board's request for information necessary for final action, the time frame for review was again diminished. Although the applicant requested specific setbacks of 25, 6, and 10 for front, side, and rear yards, respectively, no action was taken by the Board. The current request is to establish setbacks and change the building separation requirement established by the Board.

Setbacks were not established for the Briarwood PRD when it was initially approved. Consistent administrative interpretation in recent years has resulted in the application of R-4 setbacks being used. These setbacks are 25 feet in the front, 15 feet on the sides (with ability to reduce to 10 feet), and 20 feet in the rear.

As staff understands it, in either late May or early June, the owner of the Briarwood property, approached Ken Boyd about this situation and the need to establish different setbacks. Mr. Boyd asked the Board at their meeting on June 8 to establish setbacks for Briarwood. After an hour-long discussion at the Board meeting, the Board advised the owner that establishment of setbacks required a zoning map amendment. The Board suggested that the owner apply for the ZMA and then it committed to review the request at the earliest possible date. It is for that reason that the Planning Commission's hearing is scheduled for July 12 and the Board's hearing for July 13.

The applicant desires setbacks of 20 feet in the front, 6 feet on the sides and 5 feet in the rear as indicated in Attachment F. With only an abbreviated review by staff, staff believes that the setbacks should be established at 20 feet for the front, 6 feet for the side, and 10 feet for the rear. A 20-foot front yard allows for cars to be parked in front of a garage without extending into the sidewalk. Fire flow has been verified as adequate in Briarwood for 6-foot side yards. Regarding rear yards, staff believes that rear yards of 5 feet are so shallow as to make them practically unusable. The minimum rear setback staff can recommend at this time is 10 feet. Staff notes that, if unusual circumstances were to occur and reduced setbacks were desired, Section 8.5.5.3.1 of the Zoning Ordinance allows the Planning Director to make a minor variation to setback. These requests are reviewed on a case-by-case basis.

Staff notes that, if this rezoning is approved, the new setbacks would apply to only the parcels being rezoned and not to the existing development. Staff will continue to use R-4 setbacks for the existing developed part of Briarwood. Section 8.5.5.3.1 of the Zoning Ordinance also applies to this section of the development.

Staff recommends that the applicant amend the approved application plan to show setbacks and building separation as follows:

Front setback: 20 feet
Side setback: 6 feet
Rear setback – 10 feet

Building separation – 12 feet

Mr. Cilimberg said once these notes have been added to the application plan approved on February 2, 2005 by the Board of Supervisors, staff recommends approval.

Mr. Cilimberg noted that at the Planning Commission last night, Mr. Wood contended the five-foot rear setback has been consistently used and applied. Mr. Cilimberg noted that in a number of cases, that setback has been used – sometimes adjacent to open space, sometimes where one lot backs up to another, etc. He concluded that staff's recommendation for the 10-foot rear setback was based on the belief that five-feet would be too minimal in terms of use of a rear yard and in terms of the building separation between two units back to back being as little as 12 feet. Mr. Cilimberg noted that it is necessary that there be a provision of adequate light, air, convenient access and safety from fire, flood, and other dangers, and protection against overcrowding of land and obstruction of light and air. There was a concern by staff when you had a particular five-foot rear yard backing up to another five-foot rear yard that you would have a very confined space in the back, and staff would prefer to be able to work from the 10-foot rear yard and then allow adjustments as necessary based on the circumstances – such as open space being behind the yard rather than another house.

Mr. Cilimberg noted that Mr. Wood expressed concern that a 10-foot rear yard might encourage decks and screen porches; under the Zoning Ordinance they are allowed in the rear yard up to four feet or within six feet of a 10-foot line. Mr. Cilimberg said that with a five-foot setback, that is much less likely. He added that the Planning Commission supported the 10-foot rear yard setback, but not the five, and staff supported the front yard setback as 20 feet.

Mr. Wyant asked if you could build porches into the setback.

Mr. Cilimberg responded that covered porches can have a four-foot intrusion, but if it turns into an enclosed porch it turns into part of the structure and must meet regular setbacks of 10 feet. He said that having a five-foot setback and a porch would still mean the need for adequate building separations. Mr. Cilimberg added that you cannot be within six feet of the line for the intrusion, so he is not sure that you could put a deck or a porch in the five-foot rear yard and satisfy the ordinance requirement. You could make it part of the structure but once you build it and start intruding into that yard, you actually have intruded more than this ordinance would allow, which is that there be at least a six-foot separation from the lot line.

Mr. Wyant asked if fire separations considered the main structure or if porches were also included.

Mr. Cilimberg replied that there needs to be a building separation of 12 feet, but he is not sure if porches are included. Mr. Davis responded that he is not sure either.

Mr. Boyd asked if this was originally applied for as a five-foot or 10-foot rear setback.

Mr. Cilimberg said that in the letter of January 3, 2005, the request was for a 10-foot rear setback.

Mr. Davis read from the Zoning Ordinance: "covered porches, balconies, chimneys, and like architectural features may project not more than four feet into any required yard, provided that no such feature shall be located closer than six feet to any lot line." He added that none of those features are allowed within six feet of the property line.

Mr. Cilimberg said that if the Board uses the 10-foot setback, there are variations that might be possible, whether or not they would be granted or not.

The applicant, Wendell Wood, addressed the Board. He thanked the Board for their promptness in returning the item to their agenda.

Mr. Wood explained that they have built 354 houses in Briarwood, all with recorded plats of five-foot rear yard. He said that the issues arise when there is a slope in the lot, which affects about 20 percent of the homes. Mr. Wood added that every house has a 10 to 12-foot patio that makes affordable housing look better. He emphasized that there has not been a single complaint from any neighbor. Mr. Wood said that he had asked for the existing setbacks to apply, but made a mistake in the January letter and referred to the setback as 10-feet even though every recorded plat has a five-foot setback.

In response to Mr. Bowerman's comment, Mr. Wood assured him that the decks would not be "back to back."

In response to Mr. Boyd's question, Mr. Wood explained that if the 10-foot setback is required, there could not be patios on those homes.

Ms. Thomas said that she thought the ordinance required six feet from the line.

Mr. Davis explained that if the setback is established at five feet, then the building and the balconies, etc., still have to be a minimum of five feet from the property line. If the setback is 10 feet, then the main structure has to be 10 feet from the property line, but porches, etc. could intrude into the section by up to four feet because they can't be any closer than six feet from the property line if the setback is greater than six feet. The difference would be one foot. If there was a 10-foot setback, it could be intruded by four feet by the accessory additions to the building. The building would have to be 10 feet back. If there was a five-foot setback, a building could be five feet from the property line and the accessory features couldn't be any closer than that.

Mr. Wood emphasized that he would not build a four-foot deck.

Mr. Davis commented that the only difference is one deck would have to be five feet from the property line and one deck would have to be six feet from the property line.

Mr. Cilimberg said that there is more room in the front to push the house forward, but you would have to stay within the line of either five feet or six feet. It's a difference of one foot.

Mr. Davis said if you had a 10-foot setback, then the deck would have to be six feet from the property line. If you had a five-foot setback, then the deck would have to be five feet from the property line.

Mr. Bowerman commented that it would not work.

Mr. Wyant noted that the houses might have to be shifted to accommodate the slope and driveway, entrance, etc., which limits how much it can be moved.

Mr. Davis noted that the most significant difference between a five-foot setback and a 10-foot setback is that with a 10-foot setback the main structure of the building would have to be 10 feet from the property line; if you grant a five-foot setback, then it is possible to actually push that main building all the way to the property line. He added that if you did that, you couldn't have a deck, a porch, a chimney or anything encroaching.

Mr. Cilimberg noted that the biggest impact would be if the porch were enclosed because it becomes a part of the structure.

Mr. Wood emphasized that there have never been neighbor complaints, and the plat is recorded with five-foot rear setbacks. He added that he would not request a variance.

Mr. Wyant asked how many homeowners were enclosing their porches.

Mr. Wood replied that out of the last 250, about 15 or 20 have enclosed them and air-conditioned them, with 15 or 20 just putting roofing and/or screen.

Public comment was invited. None was offered, and the matter was placed before the Board.

Ms. Thomas said that if every house has a patio in the back, then no house would be five feet from the property line, but the patio must be six feet from the property line regardless.

Mr. Davis reiterated that if there is a 10-foot setback, a deck or a porch could intrude four feet into the setback to the six-foot line; however, he said, if someone wanted to enclose it and make it into a part of the main structure they couldn't do that if it was closer than 10 feet. If it's a five-foot setback, then a porch or deck could be no closer than five feet to the property line and the main structure could be as close as five feet to the property line.

Mr. Cilimberg said that in terms of a variance, an applicant would request a modification to setback because the property is a planned development district. He stated that this would be handled exclusively by staff.

Mr. Dorrier commented that he is concerned about housing affordability, and said he favors the applicant's proposal.

Mr. Boyd agreed, adding that they're only talking about a difference of one foot.

Mr. Wyant agreed, adding that it allows a homeowner to build up equity in their home.

Mr. Davis clarified that the front setback would be 20 feet, the side setback would be six feet, and the rear setback would be five feet.

Motion was then offered by Mr. Dorrier, **seconded** by Mr. Wyant, to approve ZMA-2005-009 to amend the application plan to show setbacks and building separation as follows: Front setback: 20 feet, Side setback: 6 feet, Rear setback: 5 feet, and Building separation: 12 feet. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Wyant, Mr. Bowerman, Mr. Boyd, Mr. Dorrier and Ms. Thomas.

NAYS: None.

ABSENT: Mr. Rooker.

Agenda Item No. 8. Update: Subdivision Ordinance - Overlot Grading.

Mr. Graham summarized the executive summary which was forwarded to Board members. On April 20, 2005, the Board considered revisions to the Subdivision Ordinance. One of the proposed revisions was an overlot grading requirement, which would regulate grading and drainage on smaller lots in the development area. This provision proved to be controversial. Given the controversy, staff suggested tabling this provision and allowing a work team comprised of County staff and Blue Ridge Homebuilder Association members to see if consensus could be reached. The Board agreed with using this approach and David Wyant agreed to facilitate this effort. This executive summary is a status report of that team's work.

Since the April 20th Board meeting, the work team has met as a group 4 times and also done considerable work outside of those meetings. The work team has reached agreement on a number of key provisions, but has not finished its work. As a result of that work, the team has agreed the lot grading concerns can be addressed without a mandatory overlot grading plan, provided certain precautions can be built into the development review and building inspection process. Those precautions include:

- Driveways and pedestrian access can be regulated through the "safe and convenient access" provision that currently exists in the zoning ordinance. This would be verified at the time of certificate of occupancy ("C.O.") versus demonstrated through an overlot grading plan. To reduce problems with issuance of a C.O., staff is preparing a set of guidelines that will be distributed with building permits. A copy of the current draft is attached.
- Slopes and vegetation requirements are existing requirements under the erosion and sediment control permits. As such, staff can continue to regulate those provisions under the existing permits.
- Potential drainage issues can be identified as part of the subdivision plan review. At that time, staff can inform the subdivision applicant where potential drainage issues have been identified. The applicant will then have a choice of either preparing an overlot grading plan to demonstrate the adequacy of the drainage across lots or staff will "flag" the lots of concern and require a lot grading plan as part of the building permit application. Currently, building permit applicants are routinely allowed to use "Agreements in Lieu of a Plan" to satisfy erosion and sediment control requirements associated with building permits. The County's Water Protection Ordinance gives the Program Authority (Director of Community Development) the authority to either require lot grading plans or allow these agreements with these building permits. With this recommendation, the Program Authority would require the lot grading plan to address potential drainage concerns.

While the work team has made significant progress, there are remaining issues. The following are some examples:

- What is an acceptable flow of stormwater running from one yard to the next outside of a maintained drainage structure? The previous staff recommendation would have limited this to stormwater running across three yards before it is directed to either the street, open space, or a drainage structure. Many on the work team believe this requirement is excessive. Staff continues to believe that significant flows in homeowner's yards

create the perception that the drainage is not working and that perception will result in demands for future Boards to accept responsibility and improve the drainage through expensive retrofits. The team has not reached consensus on what is considered an acceptable flow.

- When should overland relief be required? Overland relief is grading such that the water will not flood houses even if the drainage structures are clogged or prove inadequate. For example, drainage structures are commonly designed to accommodate a 10-year storm event while the flood hazard mapping creates the perception for many homeowners that the home is safe from a 100-year storm event. The flows in excess of that handled by the drainage structures will flow into homes if there are not adequate areas for that water to flow around homes (overland relief). Staff's perspective has been homeowners should have reasonable assurance their homes will not flood even if a drainage structure becomes clogged. While the team has not resolved this issue, the work team does recognize this is an issue that needs to be addressed.
- What type of drainage ways are appropriate through yards? The primary focus of this issue is when should rip rap ditches be allowed through residential yards. If allowed, should there be any restriction on the size or location of rip rap ditches in yards? Beyond the safety concern, staff believes this type of drainage way will be considered an unacceptable nuisance by many homeowners and there will be considerable pressure placed on future Boards to assume responsibility for these ditches and retrofit the drainage ways with storm sewer. The team has not reached consensus on when rip rap ditches should be allowed.
- Finally, the team has not decided how best to codify the drainage requirements. There is not currently a requirement for this in either the Zoning or Subdivision Ordinance, nor with the Building Code.

It is anticipated it will take two or three more meetings to resolve the remaining issues and a team recommendation can be presented to the Board by September.

Budget impacts will be considered with the final team recommendation.

Mr. Graham said this executive summary is intended as a status report. If the Board has any guidance to provide the team, David Wyant and staff can carry it back to the team.

Mr. Wyant commented that the issues are not simple, but it has been good for the community to come together and discuss them at one table.

Mr. Dorrier asked if the issue of who pays for the drainage had been resolved.

Mr. Graham responded that all these improvements would be required of the developer or builder either as part of the subdivision or as part of constructing the house. He added that they have not delved into issues where it might be between developers, but they are concerned when individual lots are being bought by different builders, who are taking different approaches to how each house is built, which does cause drainage problems.

Ms. Thomas commented that that's exactly why an overlot grading plan is necessary. She added that she is glad that the delineation has not been county staff versus developers. Ms. Thomas noted that the public and future homebuyers are equally impacted. The land that was easy to build has sort of been developed. It is the land that's harder that's more likely to have the erosion and runoff problems. At the same time we have gotten to those pieces of property where we are telling developers to develop more densely, more compactly. She added that there are going to be major problems for the homeowners if this is not done correctly.

Mr. Wyant said that it has been very satisfying to be a part of the meetings, and group members have been very forthright in their comments and opinions. Mr. Graham acknowledged that it is a complicated subject, and consensus takes time.

Mr. Graham said that a rip-rap drain accommodates the same amount of water as the largest fire hose. Mr. Dorrier noted that Albemarle has lots of critical slopes as well which make drainage very difficult. Ms. Thomas said that the county gets complaints when the drainage is not working. The public wants solutions.

Mr. Bowerman stated that the Raintree development situation should be prevented if it all possible.

Mr. Graham said that staff will come back in September with a recommendation on an ordinance change, and will need to do a resolution of intent to make these changes.

Agenda Item No. 9. Discussion: FY 2006 Charlottesville Transit Service (CTS) Funding.

Mr. Foley summarized the following executive summary which was forwarded to Board members. In April of 2005, the Board of Supervisors adopted the FY2005-2006 (FY06) budget, allocating \$265,972 for the Charlottesville Transit Service (CTS) to provide bus service to parts of the County's urbanized area. This adopted figure was based on the Board's direction to increase CTS funding by 10 percent for FY06 and was significantly less than the \$470,201 originally requested by CTS. After adoption of the budget, CTS informed the County that service would need to be reduced if no additional funding was approved for FY06. As a result, a meeting was held between the County and City to discuss how transit operating costs and revenues might be shared differently in the current and future fiscal years. This meeting was attended by Chairman Rooker, Mayor Brown and County and City staff. At the conclusion of

that meeting, it was agreed that County and CTS staff would meet to discuss development of an objective method to share costs and revenues in the future.

While the primary purpose of discussion among staff was to consider long term options for funding CTS, due to the City's need to make final decisions on CTS service for FY06, the City proposed a revised cost sharing arrangement in June that would also make service level adjustments. These changes in service levels were primarily the result of the recently completed study conducted to identify improvements to current CTS service. In addition to implementing these recommended improvements, the City's proposal also reduces the County's cost for the improved routes by providing a credit for federal and state revenues received by CTS. Because staff believes this latest proposal addresses needed route improvements and also recognizes federal and state revenues as an offset to County costs, staff felt consideration of a change to the FY06 appropriation should be brought before the Board for consideration.

Below is staff's analysis and recommendations regarding the City's proposal to change daytime bus service and to address two new issues related to funding CTS night service and long-term route planning. Staff asks the Board for direction as to whether additional CTS funding for FY06 should be provided. Staff will continue to work with CTS over the next few months regarding long term alternatives for CTS funding.

Staff has been working with CTS to address concerns in FY06 regarding CTS day and night-time service as well as planning for future bus routes. It should be noted the while the City has proposed a credit for federal and state revenues, their proposal was based on a three year arrangement with the credit beginning at 40 percent in FY06 and decreasing to 35 percent in FY07 and 30 percent in FY08. Rather than a three year arrangement as proposed, staff believes agreement should be limited to FY06, while discussion continues on the long term funding of CTS. These issues are outlined below for the Board's consideration.

Day-time Service Issues

CTS's original budget request of \$470,201 was based on a formula that allocated direct costs on a per hour basis and gave no consideration to sharing state and federal transit operating revenues with the County. CTS has now proposed a 40 percent credit for state and federal transit operating revenues in FY06. This credit is approximately equal to the percent of state and federal revenues compared to all revenues received by CTS. Again, staff believes this is a reasonable solution for FY06 and will continue to work with CTS in the coming months to develop an objective long-term method to allocate costs and revenues.

In FY06, CTS will implement changes to their routes based on the Charlottesville Transit Improvement Study. These changes are illustrated in Attachment A and Attachment B. As the maps show, Routes 5 and 7 are combined to create a new Route 5 and service on Route 10 is extended to Martha Jefferson, and Westminster Canterbury. Each route will also see changes to its headways, or the time intervals between stops on round trips. Route 5 will run on a 45 minute headway, where in the past headways were one hour on Route 5 and 7, except for 7 daily peak service hours Monday – Friday, where headways were 30 minutes on Route 5. Route 10 will continue to run on one hour headways, but buses will travel downtown once every hour instead of half-hour. Funding for changes to Route 5, 7 and 10 with a 40 percent credit for state and federal revenues will require an additional appropriation of \$16,430, which represents a 16.8 percent increase over the FY05 budget.

Night-time Service Issues

In the past, CTS night service has been funded by two grants (each accounting for 50 percent of Night Service costs) which required no local match. However, after the Board's FY06 Budget Work sessions in March of 2005, it became evident that one of the two grants will be lost, resulting in only 50 percent of CTS night service being funded by a grant. To continue this service at its current level, the remaining 50 percent of the cost must be paid for by localities. CTS has asked the County to fund 50 percent of the cost for Route 20 and 25 percent of the cost for Route 23 (the City will also contribute 25 percent of the cost to Route 23). See Attachment C (copy on file) for the location of these Night Service routes.

Based on the FY04 route ridership and service hour data CTS provided, staff does not believe continuation of Route 20 is justified and does not recommend the Board fund this route in FY06. Route 20 is the poorest performing route when compared to other night service routes on a rider per service hour basis, serving only 2.72 riders per service hour in FY04. Staff does not feel it is justified to fund a \$54,284 route with such low ridership.

However, staff does recommend providing funding to continue service on Route 23. Although this route does not perform particularly well relative to other night service routes, serving 4.38 riders per service hour, staff believes it is justifiable based on its considerably lower cost of \$14,152. Furthermore, because Route 23 would be jointly funded and clearly serve both County and City citizens, staff believes that maintaining this route as a regional service is appropriate. It should be noted that none of the grant funding for night service is certain at this time and the City may choose to make other changes to this service depending on the amount of grant funding ultimately approved.

Long-term Planning Issues

An additional issue to be addressed is the long-term planning of CTS services. CTS requests the County contribute \$20,000 in FY06 towards an update of the Transit Development Plan (TDP) for FY07-FY11. The funding for this study was not part of CTS's original budget request. The City of Charlottesville has indicated they will contribute a minimum of \$60,000 towards this update and has also requested and

will receive \$20,000 from the University of Virginia. The update of the TDP will help CTS appropriately address public transportation needs in the Charlottesville/Albemarle area. Staff believes that a County expenditure of \$20,000 to update the TDP would be justified as the County strives to be a partner in working to fund CTS and solve the area's transportation challenges.

Service to 5th Street Extended/Southwood area

Finally, CTS requests the County again consider providing service to the 5th Street Extended area of the County. The original CTS estimate of \$169,147 for this proposed route did not include any credit for state and federal revenues and provided service every half-hour. Under a new proposal, the route would travel between Downtown and the County Office Building on 5th Street Extended with buses running every hour Monday through Saturday, from approximately 6:30 a.m. to 7:00 p.m. CTS estimate the cost of this route would be \$49,204. Staff did not include this route in the recommended FY06 budget and still does not recommend implementing this route in FY06. However, staff does believe further consideration should be given to this route in the coming budget process and as a part of the long-term approach to be developed with CTS.

The budget impact of staff's recommendations is \$16,430 to support the improved day-time service on Routes 5 and 10; \$14,152 to continue night service on Route 23; and \$20,000 in one-time funds to support the update of CTS's Transit Development Plan for FY07-FY11, for a total of \$50,582.

Mr. Foley said staff recommends that the Board approve additional funding for FY06 as outlined in the 'Budget Impact' section of this executive summary. Staff will continue to work closely with CTS in the next few months to further consider alternatives for long-term funding of CTS. An appropriation for the amount approved will be submitted next month.

Mr. Dorrier stated that the ridership should indicate whether or not the system is working or not. Mr. Foley replied that the study would look at where the demand would be in the future, as well as where new routes would go and encouraging future ridership.

Mr. Cilimberg said, "ridership affects routing, but routing also affects ridership. He added that with the Neighborhood Model outlining build out of the development areas, they are looking at routing as important as it might be integrated into future development.

Mr. Wyant asked if the county would be involved in the study in ways other than funding. Mr. Cilimberg replied that staff is already involved.

Mr. Boyd commented that the Places 29 Study is also covering mass transit.

Ms. Thomas said that she hopes the studies work together.

Mr. Boyd said that he wants to make sure that the studies are actually used and not shelved.

Mr. Cilimberg stated that the county has made requests each year based on previous studies, but the county's ability to fund them has determined whether or not the requested routes actually get funded.

Mr. Foley added that if a partnership is desired, there needs to be some basis to decide where the new investments ought to be made. He added that this study would become that basis, noting that the University is already on board with their \$20,000.

Ms. Thomas said that the county is going to have to put up their share if they really want partnership.

Mr. Wyant commented that it is important for the county to participate to identify stops the city and University may not be aware of.

Mr. Dorrier asked if this was being integrated with JAUNT. Mr. Foley responded that CTS is working in cooperation with JAUNT. Mr. Cilimberg noted that there is also a distinction in what they provide, as they cannot be duplicating because of their funding structure. He pointed out that JAUNT is more rural, and CTS is more urban.

Mr. Bowerman said that his concern is there has not been a great history of cooperation with the city, and he hopes that this can be part of an overall improvement in that relationship. Mr. Boyd agreed, but said that this appears to be fairly collaborative.

Mr. Dorrier said that people in the county do not know much about the CTS routes. He thinks the county has an obligation to make sure it is well publicized.

Ms. Thomas mentioned that she picked up a booklet from Fairfax that shows in alphabetized form the businesses along each route, and she hopes the studies being done now include this information.

Mr. Boyd added that he also hopes attention is paid to the aging population in the county.

Mr. Foley clarified that there are several items for funding approval: staff recommends an additional \$16,430 for improvements to Route 5 and Route 10; an additional \$16,942 for continuation of night service on Route 23; and \$20,000 for the comprehensive study of future CTS routes through the Transit Development Plan Update. Mr. Wyant noted the total as \$53,372.

Mr. Foley said that the funding would need to come from the Board reserve or general fund balance.

Motion was then offered by Ms. Thomas moved to recommend that an appropriation be brought forward to the Board for \$16,430 for improvements to Route 5 and Route 10; an additional \$16,942 for continuation of night service on route 23; and \$20,000 for the comprehensive study of future CTS routes through the Transit Development Plan Update. Mr. Wyant **seconded** the motion.

Mr. Foley clarified that the Board did not support Route 20 because of low ridership. Board members agreed.

Roll was then called, and the motion carried by the following recorded vote:

AYES: Mr. Wyant, Mr. Bowerman, Mr. Boyd, Mr. Dorrier and Ms. Thomas.

NAYS: None.

ABSENT: Mr. Rooker.

Agenda Item No. 10. Appointment: Commission on Children and Families.

Motion was offered by Mr. Bowerman, **seconded** by Mr. Wyant, to appoint Sara Dansey to the Commission on Children and Families with said term to expire June 30, 2007. Roll was called, and the motion carried by the following recorded vote:

AYES: Mr. Wyant, Mr. Bowerman, Mr. Boyd, Mr. Dorrier and Ms. Thomas.

NAYS: None.

ABSENT: Mr. Rooker.

Agenda Item No. 11. From the Board: Matters Not Listed on the Agenda.

Mr. Dorrier said the reflector lights on the center line on Route 20 to Scottsville are making a big difference. VDOT has installed "Slow" signage at the Walton School entrance which will help. Carter's Bridge is still being repaired.

Ms. Thomas informed the Board that the League of Women Voters will be hosting an informational meeting on July 20, 2005, 7:00 p.m. in the Main Conference Room at COB-5th Street with DEQ representatives concerning the Moores Creek Sewage Treatment Plant, and the affect of point source nutrients that run into the Chesapeake Bay. It is not a public hearing but open to all citizens.

Mr. Boyd asked about two budget items that were set aside while staffing was working on a proposal. One was the continuation of health insurance for retirees. Mr. Foley said the Office of Management and Budget is still working on that issue. They hope to have that information in September.

Mr. Boyd then asked about the requests for improvements to the Stony Point Fire Department building. Staff is supposed to be working on a formula on how the County might deal with that. Mr. Foley said staff has been through a first draft and decided to get more input from the chiefs and captains before coming forward to the Board. Staff plans to bring it forward to the Board in September.

Mr. Boyd inquired about a work session on Belvedere Subdivision. Mr. Foley said the Clerk is working on scheduling that.

Mr. Davis said staff is concerned that if changes are requested, those would not be able to be implemented and reviewed before the public hearing on September 10th.

Ms. Thomas noted that the request might have to go back to the Planning Commission.

Mr. Davis commented that the revised proffers from the applicant have not been received, and there are major unresolved issues regarding right of way.

Mr. Cilimberg added that the ownership issues have been resolved.

Mr. Davis pointed out that it would be difficult for the Board to cancel the public hearing after the meeting on September 3rd. One option is to hold the public hearing, defer it and then advertise for another public hearing.

July 13, 2005 (Regular Night Meeting)
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Agenda Item No. 13. Adjourn. At 7:40 p.m., there being no further business to come before the Board, the meeting was immediately adjourned.

Chairman

Approved by Board
Date: 11/02/2005
Initials: DM