

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 10, 2009, with an adjourned meeting beginning at 5:00 p.m., and the regularly scheduled meeting beginning at 6:00 p.m. in the Lane Auditorium of the County Office Building on McIntire Road, Charlottesville, Virginia. The adjourned meeting was from June 3, 2009.

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann H. Mallek, Mr. Dennis S. Rooker, Mr. David Slutzky and Ms. Sally H. Thomas.

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Clerk, Ella W. Jordan, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 5:02 p.m., by the Chairman, Mr. Slutzky.

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Item No. 1a. Closed Meeting. At 5:03 p.m., **motion** was offered by Ms. Thomas that the Board go into a Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to conduct an administrative evaluation; under Subsection (7) to discuss with legal counsel and staff specific matters requiring legal advice relating to the negotiation of a contract for services provided by the SPCA; and under Subsection (7) to discuss with legal counsel and staff specific matters requiring legal advice relating to the negotiation of an agreement related to the provision of public safety services.

The motion was **seconded** by Mr. Rooker. Roll was called, and the motion carried by the following recorded vote:

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

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Item No. 1b. Certify Closed Meeting. At 6:13 p.m., the Board reconvened into open meeting. **Motion** was offered by Ms. Thomas to certify by a recorded vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting. The motion was **seconded** by Mr. Slutzky.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

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

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Agenda Item No. 4. From the Board: Matters Not Listed on the Agenda.

Mr. Dorrier said that he has received many calls from people who want to save the Hatton Ferry. He stated that the Chairman has sent a letter to Butch Davies of the Commonwealth Transportation Board asking VDoT to reconsider discontinuing the service. This is the Board's last meeting in the month of June and VDoT has scheduled closing the Ferry on June 30<sup>th</sup>. He has received financial commitments from several organizations interested in saving the Ferry. The Charlottesville-Albemarle Retail Merchants Association has committed up to \$5,000. He has not contacted the Buckingham County Board of Supervisors, but has been in contact with a number of other organizations. He thinks that if the Ferry is discontinued, it will be more difficult to get it back in operation. He thinks a packet can be put together with at least \$21,000 to cover operation of the Ferry because there is a level of commitment out there from people that is pretty substantial and deep. He has not heard from anyone who wants to close the Ferry. He asked the Board if they would be willing to guarantee the money and give the public three to six months to raise the necessary funds, and then reimburse the County.

Mr. Rooker said that is a good suggestion. Mr. Davies has indicated to him that he had received no complaints from citizens nor had he received anything from Scottsville Town Council. The Town Council has since passed a resolution of support. It might be a good idea for Mr. Dorrier to talk with Mr. Davies in light of this information and the communication from Town Council. VDoT may be willing to keep it open for a couple months themselves if they feel there is significant interest out there and if there is a plan for taking it over in a few months. He offered to support as a last resort that the Board provide temporary funding, but encouraged an alternate solution with VDoT where the County would not be in the middle.

Ms. Thomas asked if VDoT has responded to the letter from the Board. Mr. Tucker noted that no response has been received from VDOT yet. He thinks it would be better if VDoT could carry the Ferry for a couple of months because the County would have to create new agreements to take over the operation, and he is not sure if the project would need to be bid if it were paid for in a different way.

Mr. Davis responded that the County would definitely have to procure it.

Mr. Boyd said that the operators would also have to agree to operate it on a month to month basis while the details are being worked out. He also supports VDoT continuing its operations for a couple of months until details of the private support are worked out.

Mr. Dorrier said that he would be happy to contact VDoT and Butch Davies directly, but as the end of June draws near action is needed soon and he would prefer that there be a safeguard in place.

Mr. Slutzky said the challenge is that VDoT has stated their discontinued support of and running of the Ferry effective June 30<sup>th</sup>. In the Board's letter, they asked VDoT if they would be the intermediary through which funding would flow. He does not think it would be practical for the Board to say the County is in a legal position to take over running the Ferry even if it is on a temporary basis. He does support pursuit of alternate funding and operation for it. If VDoT were to agree to be the recipient of funds from the Board on a stopgap basis or from private parties, that would be the way to solve this. He does not want to create an expectation in the public's mind that the Board is in a position to commit to operating and funding the Ferry beginning July 1<sup>st</sup>. He thinks the Board needs to talk with Mr. Davies to see if VDoT will make the decision. The Board can then choose to act on July 1<sup>st</sup> based on action by VDoT.

Mr. Davis agreed with Mr. Slutzky. He added that in order for the County to operate the Ferry, it would have to have an agreement with VDoT which would take months to get approved by VDoT and the Transportation Board since Albemarle does not own the Ferry. He thinks the only way the Ferry could continue in July is if VDoT continues to operate it and there could be a pledge or an agreement in place for the County to provide funding from some other source. He also thinks that would be problematic to work out by July 1<sup>st</sup>.

Mr. Tucker pointed out that there are also ongoing capital expenses, in addition to the operating expenses the Board is discussing now.

Ms. Thomas noted that VDOT spent \$40,000 last year to renovate the Ferry, and that is money down the drain if it doesn't continue to operate.

Mr. Dorrier said it would cost between \$5,000 and \$6,000 to operate the Ferry for three months. Mr. Davis said it is probably a little less than that. Currently it costs about \$280 per day, and they are only operating it on Saturdays and Sundays.

Mr. Rooker said that the cost is reasonable and he would be willing to commit County funds if it can be worked out with VDoT to continue to operate the Ferry, subject to County reimbursement, while private funding is secured to continue the Ferry's operation.

Mr. Slutzky commented that he would support that.

Ms. Mallek suggested a follow-up letter to get VDoT's attention with what Mr. Dorrier has informed the Board.

Mr. Rooker suggested Mr. Dorrier call Butch Davies.

Mr. Dorrier said he would do that as long as he can have some assurance from the Board that it would be willing to provide the funds to cover the first quarter operations which begins July 1<sup>st</sup>.

Mr. Slutzky said that he would be willing to support a measure whereby the County "guarantees" the risk VDOT incurs by continuing the operation, with the understanding that private funding would be secured effective July 1<sup>st</sup>. He is not comfortable using taxpayer dollars to fund this operation.

Ms. Mallek said she supports this guarantee based upon the \$280 per day amount.

Mr. Rooker stated that Mr. Sumpter was going to provide more information on the operating expenses.

Mr. Dorrier said that he spoke with Mr. Sumpter today and the plan was that he would send that information to Mr. Tucker.

Mr. Davis emphasized the importance of costs outside of operating monies, as VDoT also has administrative and inspection costs.

Mr. Rooker clarified that what's needed is a bottom line amount for another party to reimburse VDoT if VDoT continues to act as agent dealing with the contractor.

Mr. Dorrier then **moved** that the Board will guarantee funding to continue operating the Hatton Ferry for one quarter (beginning July 1<sup>st</sup>), subject to the expectation of reimbursement by private funds. Mr. Rooker **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

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Agenda Item No. 5. From the Public: Matters Not Listed for Public Hearing on the Agenda.

There were none.

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Agenda Item No. 6. Consent Agenda. **Motion** was offered by Mr. Rooker, **seconded** by Mr. Boyd, to approve the consent agenda. (Discussions on individual items are included with that item.)

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

NAYS: None.

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Item No. 6.1. Approval of Minutes: June 4, 2008 and April 2, 2009.

Ms. Mallek had read her minutes of June 4, 2008, pages 1-32 (end at Item #17), and April 2, 2009, and found them to be in order with the exception of some typographical errors.

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

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Item No. 6.2. Resolution of Intent to amend the Zoning Ordinance to improve processes for site plans.

The executive summary states that Engineering review staff has identified more efficient and predictable review processes for subdivision plats involving minor changes to the Subdivision Ordinance. These small improvements could benefit the public, applicants, staff, the Planning Commission and the Board by clarifying requirements and accomplishing the purposes of the regulations more efficiently.

The proposed process changes would provide a more efficient and predictable development review process for applicants, the public and staff. The recommended amendments to the Subdivision Ordinance are:

- Section 14-404 establishes the standards for subdivision lots having a single access from an internal street, shared driveway or alley and requires the county engineer to recommend an alternative standard when the Planning Commission is considering a waiver request. Staff recommends that the county engineer's recommendation no longer be required because the question of whether a lot should access an internal or an external street and the impacts therefrom is a planning, rather than an engineering, matter.
- Section 14-412 establishes the standards for private streets and authorizes the Planning Commission to waive minimum easement and right-of-way widths. Staff recommends that the scope of permissible waivers be expanded to include other private street standards (e.g., to allow one-lane bridges, narrow entry gates, and other common rural area features). Staff also recommends that the county engineer be authorized to act on the waivers, subject to appeal to the Commission.
- County Code Chapter 17, Water Protection, was recently amended to establish standards for lot access (stream crossings). Staff recommends that a new section be added to the Subdivision Ordinance to provide that a plat cannot be approved if it does not meet the stream crossing requirements in Chapter 17, and that this requirement apply to subdivisions, rural subdivisions, and family subdivisions.

Although no specific budget changes are anticipated, these proposed amendments would provide for a more orderly and organized process that ensures fairness to all applicants. It will allow for limited staff resources to be used most effectively and provide greater predictability for applicants and the public.

Staff recommends that the Board adopt the attached Resolution of Intent to initiate the text amendment discussed herein.

**(Discussion:** Ms. Thomas expressed concern with the plan to remove the County Engineer from considerations to use pervious surface in parking lots, as it seems to be an engineering issue.

Mr. Mark Graham, Director of Community Development, replied that the County Engineer still provides an advisory role on this, looking at it from the perspective of stability and water protection; that would still happen regardless of the ordinance.

Mr. Davis added that the design manual could include minimum design standards for those features.

Mr. Graham indicated that they already exist for adequate pavement design provisions for gravel parking lots.

Ms. Thomas said this issue came up at the Board's meeting last month when it was discussing a parking lot for a church. She was led to believe that County standards were such that that would not be acceptable.

Mr. Graham added that the engineering side of it is "easy," as you can adequately design a gravel parking lot to be stable, and address the water quality impacts. Sometimes a gravel parking lot is even better.

Mr. Davis added that the ordinance requires a hard surface.

Ms. Thomas asked if Section 4.12 is the place to tackle that issue.

Mr. Graham replied that some of that will be stipulated in the stormwater management regulations that are coming forward. He added that the State is requiring a 60-day public comment period on stormwater regulations beginning June 21<sup>st</sup>.

Ms. Thomas asked if other Board members wanted to tackle the issue of pervious pavement, even if the State requires it anyway.

Mr. Graham responded that his staff could take a look at it, and if the resolution needs to be amended they will just bring it back.

Ms. Mallek asked if the paragraph under Section 32.7 helps with the codifying the phasing and planting of grass that have become part of the process.

Mr. Graham replied that it is separate, and there will be a request to advertise a change in the water protection ordinance coming forward in July.)

**By the above-recorded vote, the Board adopted the following Resolution of Intent to initiate the text amendment discussed herein:**

#### **RESOLUTION OF INTENT**

**WHEREAS**, Subdivision Ordinance § 14-404 establishes the standards for subdivision lots having a single access from an internal street, shared driveway or alley, allows its requirements to be waived by the Planning Commission, and requires the county engineer to recommend an alternative standard when the Commission is considering a waiver request; and

**WHEREAS**, Subdivision Ordinance § 14-412 establishes the standards for private streets and authorizes the Planning Commission to waive easement and right-of-way widths; and

**WHEREAS**, in 2008, Chapter 17, Water Protection, of the County Code was amended to establish standards for lot access (stream crossings); and

**WHEREAS**, in order to improve efficiency in development review processes, it is desired to amend Subdivision Ordinance § 14-404 to eliminate the requirement that the county engineer recommend an alternative standard to the Planning Commission when it is considering a waiver from the single access requirement since the question of whether a lot should access an internal or an external street and the impacts therefrom does not require engineer review and comment; to amend Subdivision Ordinance § 14-412 to expand the scope of permissible waivers to include not only easement and right-of-way widths but also other private street standards and that the county engineer should be authorized to act on these waiver requests, subject to appeal to the Planning Commission; and to add a new section to provide that a plat cannot be approved if it does not meet the lot access (stream crossing) requirements in Chapter 17, Water Protection, of the County Code, and that this requirement should apply to subdivisions, rural subdivisions, and family subdivisions.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good land development practices, the Board of Supervisors hereby adopts a resolution of intent to amend Albemarle County Code §§ 14-206, 14-207, 14-208, 14-404, 14-412 and any other regulations of the Subdivision Ordinance, and to add any new sections, deemed appropriate to achieve the purposes described herein.

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the subdivision text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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Item No. 6.3. Resolution of Intent to amend the Subdivision Ordinance to improve processes for subdivision plats.

The executive summary states that Engineering review staff has identified more efficient and predictable review processes for site plans involving minor changes to the Zoning Ordinance. These small improvements could benefit the public, applicants, staff, the Planning Commission and the Board by clarifying requirements and accomplishing the purposes of the regulations more efficiently.

The proposed process changes would provide a more efficient and predictable development review process for applicants, the public and staff. The recommended amendments to the Zoning Ordinance are:

- Section 4.12 regulates parking and authorizes the county engineer to review and approve alternative approaches to providing parking and travelway design. Staff recommends that county engineer review of the alternative approaches be deleted because alternative approaches are already provided in the county's parking regulations and, by their nature, do not raise engineering issues. Staff also recommends that case-by-case engineer review of alternative travelway designs be replaced by minimum design standards.
- Section 32.7.4 establishes requirements for erosion and sediment control and stormwater management as part of site plan review. Most of the subject matter of Section 32.7.4 and its subsections is now addressed in County Code Chapter 17, Water Protection. Staff recommends that Section 32.7.4 be amended to cross-reference Chapter 17.

Although no specific budget changes are anticipated, these proposed amendments would provide for a more orderly and organized process that ensures fairness to all applicants. It will allow for limited staff resources to be used most effectively and provide greater predictability for applicants and the public.

Staff recommends that the Board adopt the attached Resolution of Intent to initiate the text amendment discussed herein.

**(Discussion:** Ms. Thomas said that staff is recommending that the County Engineer have authorization to act on waivers subject to appeal to the Commission, but appeal can only be made if the applicant is unhappy with the County Engineer's decision – not by the public of such a decision. She said that the other sections are fine, but Section 4-14.12 is troublesome to her.

Mr. Rooker stated that his concern would be whether there would be objective standards set out for the waivers.

Mr. Graham responded that that definitely is the intent and staff is saying it is a technical question rather than a policy question. They are obviously going to have to have technical standards to judge it by.

Mr. Rooker said based upon Mr. Graham's explanation, he would support this approach because these are the kinds of issues that there should be objective standards rather than discretionary decisions.

Ms. Thomas said she supports staff moving forward, but she is still concerned about it.)

**By the above-recorded vote, the Board adopted the following Resolution of Intent to initiate the text amendment discussed herein:**

#### **RESOLUTION OF INTENT**

**WHEREAS**, Zoning Ordinance § 4.12 regulates parking and authorizes the county engineer to review and approve alternative approaches to providing parking and travelway design; and

**WHEREAS**, Zoning Ordinance § 32.7.4 establishes requirements for erosion and sediment control and stormwater management as part of site plan review; and

**WHEREAS**, in order to improve efficiency in development review processes, it is desired to amend Zoning Ordinance § 4.12 because alternative approaches are already provided in the county's parking regulations and, by their nature, they do not raise engineering issues, and because alternative travelway designs can be stated as minimum standards without case-by-case review; and it is desired to amend Zoning Ordinance § 32.7.4 because most of the subject matter of that section and its subsections is already addressed in Chapter 17, Water Protection, of the County Code.

**NOW, THEREFORE, BE IT RESOLVED THAT** for purposes of public necessity, convenience, general welfare and good zoning practices, the Board of Supervisors hereby adopts a resolution of intent to amend Zoning Ordinance §§ 4.12 and 32.7.4 and any other regulations of the Zoning Ordinance deemed appropriate to achieve the purposes described herein.

**BE IT FURTHER RESOLVED THAT** the Planning Commission shall hold a public hearing on the zoning text amendment proposed by this resolution of intent, and make its recommendation to the Board of Supervisors, at the earliest possible date.

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**(The next two agenda items were discussed jointly.)**

Agenda Item No. 7. **PUBLIC HEARING: 09-03( ) – Agricultural and Forestal Districts –** Amend Secs. 3-201, Creation of district, 3-205, Withdrawal of land from district, 3-301, Creation of district, and 3-305, Withdrawal of land from district, of Chapter 3, Agricultural and Forestal Districts, of the Albemarle County Code, to revise references to County departments and officers. *(Advertised in the Daily Progress on May 25 and June 1, 2009.)*

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Agenda Item No. 8. **PUBLIC HEARING: 09-A.1( ) – Acquisition of Conservation Easements** – Amend Secs. A.1-103, Definitions and construction, and A.1-104, Designation of program administrator; powers and duties, of Appendix A.1, Acquisition of Conservation Easements Program, of the Albemarle County Code, to revise references to County officers. (*Advertised in the Daily Progress on May 25 and June 1, 2009.*)

Mr. Tucker said the phased reorganization of the former Department of Planning and Community Development, Department of Zoning Services and Department of Engineering and Public Works into a single Department of Community Development began July 1, 2003. Since the reorganization, amendments to the County's Subdivision, Water Protection and Zoning Ordinances have updated references to the former departments and officers as substantive changes were made to those ordinances. The updates to the Subdivision and Water Protection Ordinances are completed. The updates to the Zoning Ordinance are ongoing as sections of that ordinance are substantively amended.

Staff has identified County Code Chapter 3, Agricultural and Forestal Districts, as one of the final chapters whose references to the former development departments and officers requires updating. In addition, staff has identified County Code Appendix A-1, Acquisition of Conservation Easements Program, as one of the final chapters whose references to the former development departments and officers requires updating.

The proposed ordinances would amend County Code Chapter 3 to revise the references to County departments and officers so that it conforms to current department names, officer titles and assignments, and County Code Appendix A-1 to revise the references to County departments and officers so that it conforms to current department names, officer titles and assignments.

Mr. Tucker said after conducting the public hearings, staff recommends that the Board adopt the proposed ordinances.

At this time, the Chairman opened the public hearing on an ordinance to amend the County Code in Chapter 3 to revise the references to County departments and officers so that it conforms to current department names, officer titles and assignments. Since no one came forward to speak, the public hearing was closed.

Mr. Rooker **moved** to adopt the proposed ordinance to make technical amendments to the County Code Chapter 3. Ms. Thomas **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

#### **ORDINANCE NO. 09-03(1)**

AN ORDINANCE TO AMEND CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, AND ARTICLE III, DISTRICTS OF LOCAL SIGNIFICANCE, 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 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, and Article III, Districts of Local Significance, are hereby amended and reordained as follows:

#### **By Amending:**

|            |                                  |
|------------|----------------------------------|
| Sec. 3-201 | Creation of district             |
| Sec. 3-205 | Withdrawal of land from district |
| Sec. 3-301 | Creation of district             |
| Sec. 3-305 | Withdrawal of land from district |

### **Chapter 3. Agricultural and Forestal Districts**

#### **Article II. Districts of Statewide Significance**

##### **Division 1. Procedure**

#### **Sec. 3-201 Creation of district.**

Each agricultural and forestal district of statewide significance shall be created as provided herein:

A. *Application.* On or before November 1 of each year, an owner or owners of land may submit an application to the department of community development for the creation of a district. An application shall be signed by each owner of land to be included within the district. The application shall be made on a form developed and provided by the director of planning. The application form shall comply with Virginia Code § 15.2-4303(D). Each submitted application shall be accompanied by: (i) a United States Geologic Survey 7.5 minute topographic map that clearly shows the boundaries of the district and each addition, and the boundaries of the properties owned by each applicant; (ii) a Virginia Department of Transportation general

highway map for the locality that shows the general location of the proposed district; and (iii) the fee required by section 3-206.

B. *Initiation of application review.* Upon receipt of an application for a district, the planning commission shall:

1. Accept the application at a regularly scheduled meeting;
2. Direct the department of community development to provide notice of the application pursuant to Virginia Code § 15.2-4307(1); and
3. Refer the application to the advisory committee for review and comment.

C. *Evaluation criteria.* Each application shall be evaluated as provided in Virginia Code § 15.2-4306.

D. *Advisory committee review.* Upon referral of an application by the planning commission, the advisory committee shall review and make recommendations concerning the application and any proposed modifications to the planning commission.

E. *Planning commission review.* Upon receipt of the report of the advisory committee on an application, the planning commission shall conduct a public hearing on the application and any proposed modifications, and thereafter report its recommendations to the board of supervisors, as provided herein:

1. In conducting its review, the planning commission shall evaluate the application as provided in paragraph (C), and also shall consider the potential effect of the district and any proposed modifications on the county's planning policies and objectives.
2. Upon conclusion of the public hearing, the planning commission shall direct the department of community development to publish and provide the notice required by Virginia Code § 15.2-4307.

F. *Hearing by board of supervisors.* After receiving the reports of the planning commission and the advisory committee, the board of supervisors shall hold a public hearing on the application as provided in Virginia Code § 15.2-4307.

G. *Action on application.* After a public hearing, the board of supervisors may by ordinance create a district as applied for or with any modifications it deems appropriate, as provided herein.

1. The ordinance shall be adopted pursuant to the conditions and procedures provided in Virginia Code § 15.2-4309, and shall be subject to section 3-202(A).

2. The board of supervisors shall act to either adopt the ordinance creating the district, or reject the application, or any modification to it, by the May 1 following the November 1 by which the application was received.

(§ 2.1-2; 6-8-83, §§ 3, 4, 5; 12-16-87; 12-11-91; 7-1-92; Code 1988, § 2.1-2; Ord. 98-A(1), 8-5-98; Ord. 09-3(1), 6-10-09)

**State law reference**--Va. Code §§ 15.2-4303 through 15.2-4309.

### **Sec. 3-205 Withdrawal of land from district.**

An owner of land within an agricultural and forestal district of statewide significance may request that his land be withdrawn from the district, as provided herein:

A. *Withdrawal by right by owner.* After the planning commission initiates the review of a district and before the board of supervisors acts to continue, modify or terminate the district, an owner of land may withdraw the land from the district by filing a written notice of withdrawal with the department of community development.

B. *Withdrawal by right by certain successors to deceased owner.* Within two years of the date of death of an owner of land within a district, any heir, devisee, surviving co-tenant or personal representative of a sole owner of any fee simple interest of land may, upon the inheritance or descent of such land, withdraw the land from the district by filing a written notice of withdrawal with the department of community development and the department of finance.

C. *Withdrawal in discretion of board of supervisors.* At any time after the creation of a district, an owner of land may request the board of supervisors to withdraw all or part of the land from the district, as provided herein:

1. *Filing of written request.* The owner shall file a written request for withdrawal with the department of community development. The request shall identify the owner of the land, identify the land or part thereof proposed to be withdrawn, state the reason for the request, and address the criteria for review set forth in paragraph (C)(2). The request shall be accompanied by the fee required in section 3-206.

2. *Criteria for review.* A request to withdraw land from a district may be approved only if the withdrawal satisfies all of the following criteria:

(a) The proposed new land use will not have a significant adverse impact on agricultural or forestal operations on land within the district;

(b) The proposed new land use is consistent with the comprehensive plan;

(c) The proposed land use is consistent with the public interest of the county in that it promotes the health, safety or general welfare of the county, rather than only the proprietary interest of the owner; and

(d) The proposed land use was not anticipated by the owner at the time the land was placed in the district, and there has been a change in circumstances since that time.

3. *Advisory committee review.* Upon receipt of a request to withdraw, the advisory committee shall review the request and report to the planning commission its recommendations. In conducting its review, the committee shall evaluate the request as provided in paragraph (C)(2).

4. *Planning commission review.* Upon receipt of the report of the advisory committee on a request, the planning commission shall conduct a public hearing and evaluate the request as provided in paragraph (C)(2). The planning commission shall report to the board of supervisors its recommendations, together with the advisory committee's recommendations.

5. *Hearing by board.* After receiving the reports of the planning commission and the advisory committee, the board of supervisors shall hold a public hearing on the request.

D. *Effect of withdrawal.* Land that is withdrawn from a district shall be subject to roll-back taxes as provided in Virginia Code § 58.1-3237, and subject to all local laws and ordinances otherwise prohibited from applying to land within a district, as provided in section 3-202(C). The withdrawal of land from a district shall not itself terminate the district.

(Ord. 98-A(1), 8-5-98; Ord. 09-3(1), 6-10-09)

**State law reference**--Virginia Code §§ 15.2-4307, 15.2-4314.

### **Article III. Districts of Local Significance**

#### **Division 1. Procedure**

##### **Sec. 3-301 Creation of district.**

Each agricultural and forestal district of local significance shall be created as provided herein:

A. *Application.* On or before November 1 of each year, an owner or owners of land may submit an application to the department of community development for the creation of a district. An application shall be signed by each owner of land to be included within the district. The application shall be made on a form developed and provided by the director of planning. Each submitted application shall be accompanied by: (i) a tax map showing the boundaries of the proposed district and each addition, and the boundaries of properties owned by each applicant; and (ii) the fee required by section 3-306.

B. *Initiation of application review.* Upon receipt of an application for a district, the planning commission shall:

1. Accept the application at a regularly scheduled meeting;

2. Direct the department of community development to provide notice of the application pursuant to Virginia Code § 15.2-4405(C)(1); and

3. Refer the application to the advisory committee for review and comment.

C. *Evaluation criteria.* Each application shall be evaluated as provided herein:

1. All land within the district shall be devoted to agricultural, horticultural, forestal or open space use at the time of the application, except that a reasonable amount of residential or other use, not exceeding five (5) acres per district and related to the agricultural, horticultural, forestal or open space use, may be included.

2. If the land is located in the rural areas identified in the comprehensive plan, then the owner shall have first attempted to include the land in a new or existing agricultural and forestal district of statewide significance.

3. If the land is located in a development area identified in the comprehensive plan, then a district shall be created only to protect either:

(a) Open space resources including stream valleys, mountains, wooded areas, buffer areas, or civic or cultural features, as identified on the growth areas open space composite maps; or

(b) Existing, bona fide agricultural and/or forestal operations as evidenced by a history of investment in farm or forest improvements, such as the regular production and sale of farm and/or forest products from the property during the last five (5) years, or other commitments to continuing agricultural or forestal use in the district. In the event such evidence of commitment is not available, the owner shall submit a notarized affidavit which describes the existing, bona fide agricultural and/or forestal use of the property. In addition, if the land is used for agricultural or horticultural purposes, the owner shall have obtained, or shall make or have made a request for, a current conservation plan with the Natural Resource Conservation Service. If the land is used for forestry, the owner shall have obtained, or shall make or have made a request for, a current conservation plan with the Virginia Department of Forestry or a private consultant.

4. Whether the land is currently enrolled in the land-use value assessment program.

D. *Advisory committee review.* Upon referral of an application by the planning commission, the advisory committee shall review and make recommendations concerning the application and any proposed modifications to the planning commission.

E. *Planning commission review.* Upon receipt of the report of the advisory committee on an application, the planning commission shall conduct a public hearing on the application and any proposed modifications, and thereafter report its recommendations to the board of supervisors, as provided herein:

1. In conducting its review, the planning commission shall evaluate the application not only as provided in paragraph (C), but also shall consider the potential effect of the district and any proposed modifications on the county's planning policies and objectives.

2. Upon conclusion of the public hearing, the planning commission shall direct the department of community development to publish and provide the notice required by section Virginia Code § 15.2-4405(E).

F. *Hearing by board of supervisors.* After receiving the reports of the planning commission and the advisory committee, the board of supervisors shall hold a public hearing on the application as provided in Virginia Code § 15.2-4405(E).

G. *Action on application.* After a public hearing, the board of supervisors may by ordinance create a district as applied for or with any modifications it deems appropriate, as provided herein.

1. The ordinance shall be adopted pursuant to the conditions and procedures provided in Virginia Code § 15.2-4406, and shall be subject to the conditions provided in section 3-302.

2. The board of supervisors shall act to either adopt the ordinance creating the district, or reject the application, or any modification to it, within one year from the November 1 by which the application was received.

(9-15-93; Code 1988, §§ 2.1.1-2, 2.1.1-4; Ord. 98-A(1), 8-5-98; Ord. 09-3(1), 6-10-09)

**State law reference--**Va. Code § 15.2-4405.

### **Sec. 3-305 Withdrawal of land from district.**

After the planning commission initiates the review of a district and before the board of supervisors acts to create, continue, modify or terminate the district, an owner of land may withdraw the land from the district by filing a written notice of withdrawal with the department of community development.

(Ord. 98-A(1), 8-5-98; Ord. 09-3(1), 6-10-09)

**State law reference--**Va. Code § 15.2-4407.

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At this time, the Chairman opened the public hearing on an ordinance to amend the County Code Appendix A-1 to revise the references to County departments and officers so that it conforms to current department names, officer titles and assignments. Since no one came forward to speak, the public hearing was closed.

Mr. Rooker **moved** to adopt the proposed ordinance to make technical amendments to the County Code Appendix A-1. Ms. Thomas **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

**ORDINANCE NO. 09-A.1(1)**

**AN ORDINANCE TO AMEND APPENDIX A-1, ACQUISITION OF CONSERVATION EASEMENTS PROGRAM, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA**

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Appendix A.1, Acquisition of Conservation Easements Program, is hereby amended and reordained as follows:

**By Amending:**

- Sec. A.1-103 Definitions and construction  
Sec. A.1-104 Designation of program administrator; powers and duties

**Appendix A.1 Acquisition of Conservation Easements Program**

**Sec. A.1-103. Definitions and construction.**

A. The following definitions shall apply in the interpretation and implementation of the ACE program:

(1) *Conservation easement.* The term "conservation easement" means a nonpossessory interest in one or more parcels of one or more qualified easement holders under section A.1-109(E) acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase pursuant to the ACE program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestal, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.

(2) *Division rights.* The term "division rights" means the number of parcels into which a parcel could be divided and developed with a dwelling and all associated improvements and utilities, counting both those parcels less than twenty-one (21) acres in size and those twenty-one (21) acres in size or greater that could be created, by a by-right conventional development under the rural areas zoning district regulations stated in Section 10 of Chapter 18, Zoning, of the Albemarle County Code, where each potential parcel could comply with all applicable requirements of Chapter 14, Subdivision of Land, and Chapter 18, Zoning, of the Albemarle County Code. Each division right represents the right to build a single dwelling, regardless of whether it is a primary or secondary dwelling.

(3) *Forced sale.* The term "forced sale" means a sale of a parcel with unused development rights in a manner prescribed by law that is conducted under a judgment, order or the supervision of a court of competent jurisdiction, other than a sale arising from a partition action; a sale resulting from foreclosure under the laws of the Commonwealth of Virginia; or, a sale that is not the voluntary act of the owner but is compelled in order to satisfy a debt evidenced by a mortgage, judgment, or a tax lien.

(4) *Hardship.* The term "hardship" means an economic hardship, other than a circumstance causing a forced sale, experienced by the owner of the parcel so as to compel him to place a parcel with unused development rights for sale or to use such development rights.

(5) *Immediate family.* The term "immediate family" means an owner's spouse and his or her offspring residing in the same household as the owner.

(6) *Owner.* The term "owner" means the owner or owners of the freehold interest of the parcel.

(7) *Program administrator.* The term "program administrator" means the director of planning.

(8) *Parcel.* The term "parcel" means a lot or tract of land, lawfully recorded in the clerk's office of the circuit court of the County of Albemarle.

(9) *Retained division rights.* The term "retained division rights" means the number of parcels into which a parcel subject to a conservation easement may be divided as provided in section A.1-109(A).

B. *Construction.* Because a conservation easement may contain one or more parcels, for purposes of the ACE program the term "parcel" shall include all parcels covered by, or proposed to be covered by, the conservation easement.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 07-A.1(1), 12-5-07; Ord. 09-A.1(1), 6-10-09)

**Sec. A.1-104. Designation of program administrator; powers and duties.**

A. *Designation.* The director of planning is hereby designated as the program administrator.

B. *Powers and duties.* The program administrator, or his designee, shall administer the ACE program and shall have the powers and duties to:

1. Establish reasonable and standard procedures and forms for the proper administration and implementation of the program.
2. Promote the program, in cooperation with the ACE committee, by providing educational materials to the public and conducting informational meetings.
3. Investigate and pursue, in conjunction with the county executive, state, federal and other programs available to provide additional public and private resources to fund the program and to maximize private participation.
4. Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and make recommendations thereon to the ACE committee.
5. Determine the number of division rights existing on each parcel subject to an application, after obtaining the number of theoretical development rights from the zoning administrator.
6. Coordinate the preparation of appraisals.
7. Provide staff support to the appraisal review committee, the ACE committee and the board of supervisors.
8. Provide educational materials regarding other land protection programs to the public.
9. For each conservation easement, assure that the terms and conditions of the deed of easement are monitored and complied with by coordinating a monitoring program with each easement holder, and if the other easement holders are either unable or unwilling to do so, monitor and assure compliance with the terms and conditions of the deed of easement.

(Ord. 00-A.1(1), 7-5-00; Ord. 02-A.1(1), 12-11-02; Ord. 09-A.1(1), 6-10-09)

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Agenda Item No. 9. **PUBLIC HEARING: PROJECT: SP 2007-052. Nortonsville Church of God Facility Expansion.**

PROPOSED: Addition of 14,000 square foot Family Life and Music Center for up to 500 attendees to existing church.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre).

SECTION: 10.2.2.35 Church building and adjunct cemetery.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre).

ENTRANCE CORRIDOR: No.

LOCATION: 1550 Simmons Gap Road (Route 663), 0.67 miles southeast of the intersection with Route 810.

TAX MAP/PARCEL: Tax Map 9 Parcel 4.

MAGISTERIAL DISTRICT: White Hall.

*(Advertised in the Daily Progress on May 25 and June 1, 2009.)*

Mr. Cilimberg said that this application is for an existing church in the northwestern part of the County to add a family life and music center. He said that the facility is located on Simmons Gap Road near the Greene County line. He noted the location of the existing buildings on a schematic and an aerial photograph of the property. Mr. Cilimberg stated that staff recommended approval to the Planning Commission, which also recommended approval but included an additional condition to provide screening from adjacent parcels on either side of the church. Staff is unaware of any significant physical conditions that would prevent the expansion of the church. It is a large church facility; however, it is intended to accommodate the church's existing activities for which they currently do not have space to accommodate.

Mr. Slutzky asked how large is the current facility? Mr. Cilimberg suggested the applicant respond to that question.

Mr. Cilimberg stated that the staff report includes the conditions as recommended by the Planning Commission and included in the action letter to the applicant. There are two additional sentences under the first condition regarding parking; the second condition includes language that limits the building footprint to not more than 14,500 square feet; the tenth condition is the new condition for the buffering; and there was a suggestion for a condition nine to reference an actual date – in an effort to keep this consistent with other recent special permits – putting the commencement of activities as needing to occur by June 10, 2014.

Ms. Thomas asked if this parking lot could be gravel. Mr. Cilimberg responded that he is not in the review process for that area. He said that there are possibilities for alternative surfaces that are more permeable, but he isn't sure if that applies in this case.

Mr. Glenn Brooks, County Engineer, stated that the Zoning Ordinance includes a specific statement that allows gravel in parking lots for rural churches, adding that in the last five to six years there haven't been many churches that don't ask for a gravel lot. In most cases, staff supports the request.

Mr. Slutzky noted that the South Plains Presbyterian Church asked for impervious asphalt because they thought they had to. Mr. Brooks responded that he wasn't aware of that, but would review the application. It could have been that the church was of a size that staff did not think it was appropriate.

Mr. Rooker asked if the total square footage would be around 28,000 square feet – given that the building is two stories. Mr. Cilimberg confirmed that it would be because it has a basement.

Referring to condition #10, Mr. Rooker asked who makes the determination that the plantings are to be arranged in a density that mitigates views of the parking area. Mr. Cilimberg replied that it would be determined as part of the site plan with Zoning's review, because they are responsible for enforcement of special use permit conditions. This condition was developed by the County Attorney's office, Zoning and Planning staff to address the concern.

Mr. Rooker asked if at the time the site plan is submitted there will be a proposed planting plan associated with the site plan. Mr. Cilimberg replied that there would need to be an actual landscaping plan that shows how they are going to plant.

Mr. Rooker asked if staff has the ability to require changes to the site plan that are necessary to meet the requirement. Mr. Cilimberg noted that the condition indicates that the plantings would need to be arranged in a density that would mitigate views of the parking area with spacing allowing the natural form habitat of the plant material to be recognized. It's not specifying a specific planting.

Mr. Davis explained that typically that condition would say it would be a requirement of site plan approval and subject to the Planning Director or designee's approval.

Mr. Rooker said that including that language would satisfy his concerns.

Mr. Cilimberg pointed out that the screening may end up being a fence rather than plantings, as it was discussed at the Planning Commission review as being more effective for screening. He said that the condition essentially indicates that there should be a buffer that satisfies the condition.

Mr. Davis suggested language that stipulates: "This condition shall be guaranteed pursuant to a screening plan, which shall be submitted with the site plan application subject to the approval of the Planning Director or the Planning Director's designee."

At this time, the Chairman opened the public hearing.

Mr. John Grady, addressed the Board, representing the church. He stated that the church's proposal is for its members only, not as a plan to increase membership or generate money. Mr. Grady emphasized that the building and its facilities would be available for emergency situations. The church supports the recommendations by the Commission. The church's engineers are also available to answer any questions.

Mr. Dorrier asked if the building would be the largest in the area, and if it would be a community facility.

Mr. Grady responded that it is the largest he is aware of, and this is not a civic center or community activities center. It is solely for the people of the church, and the proposed additions are solely for the members of the church. He added that the youth group within the church is very active with music and other activities that would use the new room. This building is a full gymnasium and will be used solely by its members.

Mr. Slutzky asked if the church was supportive of the language suggested by Mr. Davis. Mr. Grady responded, "yes".

Ms. Mallek asked about the proposed stormwater facilities.

Mr. Jim Taggard, of TCS Engineering, addressed the Board. He stated that the stormwater areas are two separate areas designed to capture the runoff, and would be transformed into sediment traps during the construction period then retrofitted as bio-filters to accomplish water quality and quantity. He agreed to accommodate impervious parking surface as much as possible in the development.

Mr. Grady said that he was under the impression that the Zoning Ordinance requires an impervious surface when more than four to six spaces are planned.

Mr. Davis stated that the Ordinance requires surfaced parking, but the County Engineer has the ability to approve alternative surfaces if he deems them equivalent in "strength, durability, and sustainability in the long term."

Mr. Brooks said that it is done routinely with rural churches, but where complications arise is when the applicant wants to put the drain field under the parking lot – then the Soil and Water Conservation District requires paving in that case so the drain field isn't compacted. He added that they regularly allow gravel parking areas for rural churches.

Mr. Cilimberg noted that the South Plains Presbyterian Church was proposing porous pavers that would need to be approved by the County Engineer during site plan review.

Mr. Brooks pointed out that he has objected to the porous plastic cylinder grass paving, as there haven't been successful applications of that. They have allowed other kinds of pavers.

Ms. Barbara Hutchinson, a resident of Earlysville and member of the church, addressed the Board. She stated that this is something the church looks forward to as a way to address the issues they have as a congregation. The church seems to attract a great membership of families. This facility would bring indoors some of the activities that now must occur outdoors. Ms. Hutchinson said that the proposal would help address neighbors' concerns about noise and visual aspects, as the activities intended for the new gymnasium are currently held outside. This will be an asset to the community.

Mr. David Wyant said that he has attended functions at the church and there are a large number of children who attend and have to run around outside because the church interior is too small. This is a community church that attracts people from Greene County, Earlysville and the Nortonville area. He said that the addition is badly needed. Mr. Wyant said that porous pavement can actually hold water and thus break up more easily. In his opinion gravel is a better surface than pavement in this case.

Mr. Nelson Morris, a member of the church, expressed support for the new facility. Their Pastor, who is not present, is also in favor of the addition. He added that if it wasn't for the fact that they were having services at the church tonight, the whole congregation would have been present for tonight's meeting in support of the addition. This will be an asset to the community and there is a great need for the facility.

There being no further public comments, the public hearing was closed.

Ms. Mallek **moved** for approval of SP-2008-052 subject to the ten conditions as presented tonight and an addition to condition #10 as follows: "This requirement for screening shall be documented in a screening plan that shall be submitted with the site plan application and shall be subject to the approval of the Planning Director or his designee and shall be a condition of final site plan approval." Mr. Slutzky **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

NAYS: None.

**(Note: The conditions of approval are set out in full below:)**

1. The development of the site shall be in general accord with the "Conceptual Site Plan" prepared for Nortonville Church of God by TCS Engineering Co., LLC, dated April 3, 2009 (hereinafter, the "Conceptual Plan"), provided that the maximum building size shall be governed by Condition 2 rather than the Conceptual Plan. Minor variations from the Conceptual Plan may be approved by the Zoning Administrator in conjunction with site plan review to ensure compliance with the Zoning Ordinance. The arrangement of parking spaces may be altered so that County standards for safe and convenient access may be met. The total number of parking spaces shall be in accord with a parking study approved by Zoning staff before approval of the preliminary site plan for this use;
2. The footprint of the building identified on the Conceptual Plan as "Proposed Multi-Purpose Building" shall not exceed fourteen thousand five hundred (14,500) square feet;
3. A dwelling used by the church's staff, located within the church, may be permitted as an accessory use;
4. All structures shall meet commercial setback standards as set forth in Section 21.7(b) of the Albemarle County Zoning Ordinance. The tot lot is not subject to this condition;
5. A fire-suppression water supply meeting the approval of the Albemarle County Fire/Rescue Department shall be required before approval of the preliminary site plan for this use;
6. Health Department approval of well and/or septic systems;
7. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval;
8. There shall be no day care center or private school on site without approval of a separate special use permit;
9. If the use, structure, or activity for which this special use permit is issued is not commenced by June 10, 2014, the permit shall be deemed abandoned and the authority granted thereunder shall thereupon terminate; and
10. The applicant shall install and maintain a vegetative buffer, a fence, or a combination thereof, along the shared boundary line between TMP 9-3 and TMP 9-4, from the intersection of the boundary lines of TMP 9-3, TMP 9-4, and the Simmons Gap Road public right-of-way, to a point where the paved parking area on TMP 9-4 along the shared boundary line ends, and along the shared boundary line between TMP 9-4 and TMP 9-6C parallel to Silver Lace Lane, from the intersection of the boundary lines of TMP 9-4, TMP 9-6C, and the Simmons Gap Road public right-of-way. The purpose of the vegetative buffer and the fence is to provide visual screening of the uses and structures on TMP 9-4 from TMP 9-3 and TMP 9-6H, and to minimize dust and debris moving from TMP 9-4 onto TMP 9-3 or TMP 9-6H. Any vegetative buffer shall consist of a naturalistic pattern of multi-species trees and shrubs, as listed in the brochure titled "Native Plants for Conservation, Restoration, and Landscaping: Piedmont Plateau," published by the Virginia Department of Conservation and Recreation. These plantings are to be arranged in a density that would mitigate views of the parking area, with a spacing allowing the natural form/habit of the plant material to be recognized. Any fence installed along these boundaries shall be at least four (4) feet tall and shall be opaque. The vegetative buffer, the fence, or a combination thereof shall

be installed before the certificate of occupancy is issued for the building identified on the Conceptual Plan as the "Multi-Purpose Building." This requirement for screening shall be documented in a screening plan that shall be submitted with the site plan application and shall be subject to the approval of the Planning Director or his designee and shall be a condition of final site plan approval.

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Agenda Item No. 10. **PUBLIC HEARING: PROJECT: SP-2008-048. Matheny Development Right Request.**

PROPOSED: Request for one additional development right for a family subdivision.

ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

SECTION: 10.2.2.28, Divisions of land as provided in section 10.5.2.1.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: No.

LOCATION: 2839 Craigs Store Road (Route 635), approximately 2000 feet south of the intersection with White Mountain Road (Route 736).

TAX MAP/PARCEL: Tax Map 84 Parcel 14E.

MAGISTERIAL DISTRICT: Samuel Miller.

*(Advertised in the Daily Progress on May 25 and June 1, 2009.)*

Mr. Cilimberg said that this request would allow one additional development right for a family member, and by conditions recommended by staff that would be through a family division. He said that this property is located in the southwestern part of the County, close to the Nelson County line, on Craig's Store Road. He presented a schematic of the proposed location of the second house – noting that the property of roughly two acres would be provided to a grandson. Mr. Cilimberg said that the other three lots have houses occupied by the children of the parents – who live on Parcel 4. He stated that the proposal can be accommodated without significant health or safety impacts to the area, and staff plans to address concerns about additional development rights – which are limited in accord with the purposes of the rural area zoning district – with a condition of approval that would require the subdivision to be processed as a family division, which would keep the land in the family for at least four years.

Mr. Cilimberg reported that staff was able to identify 20 applications for additional development rights such as this one since 1981; 10 were approved and 10 were denied. The Board typically made findings in their approvals that the applications adequately met the criteria of Section 10.5.2.1 of the Ordinance. He said that in each case there was either a development located next to or near a development area existing development, or an additional right for a family member or other unique circumstance such as the additional land given for the North Garden Fire Station. Mr. Cilimberg mentioned that the Board approved all five applications that were intended to provide lots for family members, according to the history staff researched.

He stated that staff recommends approval with one condition. The Planning Commission was concerned about this application being inconsistent with rural area purpose as it adds development rights in the rural area; they have recommended denial of the special use permit with a 4-2 vote.

Mr. Dorrier asked for clarification of the site size.

Mr. Cilimberg responded that the parcel is 4.9 acres, but the lot to be created is around 2 acres with the description from the applicant putting it at 2.17 acres. He said that the lot to be subdivided has one house on it now, and they are requesting another home that would be on the "new lot."

Ms. Mallek asked about the opportunities to build an accessory use on the original lot.

Mr. Cilimberg replied that it couldn't be done as a dwelling, as it would need a development right.

Ms. Mallek asked how the Board would not be rewriting zoning on this property if it approves this request unless they do not find it unique. Mr. Slutzky said the Board in effect is being asked to upzone the property by adding a development right. They are being asked to view this as a special circumstance as a family subdivision.

Mr. Cilimberg said that he recalls one family division increase request that was approved in the 1990s, and the most recent one was with the fire station in North Garden.

Ms. Mallek expressed concern that there is not a situation here where there is a public purpose, uniqueness, or hardship.

Mr. Cilimberg stated that with previous approvals there have been cases of hardship – where there are more family members than they had lots they could provide for.

Ms. Mallek commented that there are thousands of families in that situation.

At this time the Chairman opened the public hearing.

Ms. Janie Matheny said that she and her husband gave their children the four lots and now their grandson needs a place to live. She emphasized that it is the only other place that can be divided on their land here. She confirmed that the existing house is also being occupied by a family member.

Mr. Dorrier asked about the roadway.

Ms. Matheny stated that it is the longest site distance on the whole road from Batesville all the way through Route 635, and there is already a driveway that has been cut back onto the parcel.

Mr. Ronald Matheny commented that 800 feet can be seen from either direction.

Mr. Boyd asked how many houses are in the area. Ms. Matheny said the only people who live there are family members.

There being no one else from the public to speak, the public hearing was closed.

Mr. Cilimberg pointed out that accessory apartments are allowed in all of the districts, and they are considered as "connected to the existing house" and thus do not require another development right.

Mr. Slutzky asked if the applicant could add to the existing structure as an accessory unit and not create an additional development right.

Ms. Amelia McCulley, Zoning Administrator, said that it must be within the single-family detached dwelling to which it is accessory; it can't be a free-standing independent or detached unit – it must be physically attached and part of the main single-family dwelling.

Mr. Davis read from the Ordinance that the definition of an accessory apartment "is a separate independent dwelling unit contained within the structure of, and clearly subordinate to, a single-family detached dwelling as distinguished from a duplex or other two-family dwelling." He clarified that it must be a unit within a structure; it couldn't be a duplex.

Ms. McCulley noted the size limitations from the supplemental regulations: "the gross floor area for the accessory apartment shall not exceed 35 percent of the total gross floor area of the unit".

Ms. Thomas said that although this application is in her district, she is not going to vote for approval because she has never been in favor of increasing rural development rights. She visited the site and it is a nice place for the family to have all their houses together. She stated that there are many families in this situation, and the Board "has to think about hundreds of families and not just one."

Mr. Boyd said he also worries about setting a precedent, but this Board also has to show a little compassion and use common sense at times. Considering the number of houses there, this would not be a detractor from the rural area character. He supports the request. He said that family subdivisions are a "great thing" for families, and are worth accommodating in this case.

Mr. Slutzky said that generally he would be in favor of family subdivisions, but he does not want to accommodate families at the expense of careful rural protection strategies. He said that it's a "slippery slope" to add upzoning in the rural areas to accommodate a particular situation. It gives rise to when you choose not to do it. Mr. Slutzky stated that it's bad policy from a planning perspective.

Mr. Boyd noted that there have only been 20 applications in 20 years, and just because this is approved it doesn't mean everyone would start asking for them.

Mr. Dorrier said that the family already has five residential lots, there is good site distance on the road, the additional lot would match the existing pattern of the surrounding lots, the addition of one home would not change that pattern of land use, and the proposal can be accommodated without significant health or safety impacts on the area. He does not see that the request is going to deviate that substantially from the Comprehensive Plan. He supports the request.

At this time, Mr. Dorrier **moved** for approval of SP-2008-048 subject to the one condition recommended by staff.

Mr. Rooker said that this particular family has a compelling story, but this approval would be contrary to the Comprehensive Plan – which is focused on limiting development in the rural areas to protect natural resources and for other reasons. He thinks this is a slippery slope once you start down it. He will not support approval of the request.

Ms. Mallek stated that there are valid alternatives within the Ordinance that would allow for all of the family's plans to be achieved without adding an extra lot, an extra well, and an extra septic plan, and also maintain zoning requirements. She is very concerned about zoning by parcel when the Board needs to be looking at the rules that apply across the entire area. County citizens rely upon the Board's consistency so that they feel protected. She is not in favor of this request.

Mr. Boyd **seconded** the motion. He commented that this is not a rezoning; it is a special use permit.

Ms. Mallek said that it's changing the density.

Ms. Thomas added that it's requesting another development right.

Mr. Rooker also mentioned that the lot size here is almost the minimum lot size allowed in the rural areas; it's not a 50-acre parcel with someone seeking a five-acre piece.

Roll was then called and the motion **failed** by the following recorded vote:

AYES: Mr. Boyd and Mr. Dorrier.

NAYS: Ms. Thomas, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

Ms. Thomas then **moved** for denial of SP-2008-048. Mr. Rooker **seconded** the motion.

Roll was then called and the motion **passed** by the following recorded vote:

AYES: Ms. Thomas, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

NAYS: Mr. Boyd and Mr. Dorrier.

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Agenda Item No. 11. **PUBLIC HEARING: PROJECT: SP-2008-058. Harris Garage.**

PROPOSED: Amend SP 00-49 Thomas Harris Garage to expand the public garage on approximately a .60 acre portion of a 3.17 acre property.

ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots).

SECTION: 10.2.2 (37) Public Garage.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/density (.5 unit/ acre in development lots).

ENTRANCE CORRIDOR: No.

LOCATION: 6929 Markwood Road, approx. one-half mile north of Davis Shop Road.

TAX MAP/PARCEL: 00800000035A0.

MAGISTERIAL DISTRICT: White Hall.

*(Advertised in the Daily Progress on May 25 and June 1, 2009.)*

Mr. Cilimberg reported that the request is for amendment of a special use permit for a previously approved garage, located in the northwestern part of the County, near the Greene County line on Markwood Road. He explained that the special use permit was originally approved through SP-2001-049 to correct violations and bring into compliance Harris Auto. He said that in May 2000, Zoning determined that the garage addition to enclose an outside lift and provide storage would not constitute an expansion of the special use permit. There were new violations discovered in December 2008 and a notice of violation was mailed. He clarified that this request is to amend the original special use permit in order to correct the violations and make the plan current. He noted a comparison of aerial photographs of what existed in 2002 and then in 2007 – which shows the additions and increased activity with the garage. He also provided some comparative pictures of 2001 and 2009. Mr. Cilimberg said that there are a number of existing development features that would be part of the special use permit, and additional changes that would be proposed under the special use permit – including a new storage building. He said that a critical slopes waiver was also requested, and that was granted by the Planning Commission.

Mr. Cilimberg stated that there are a number of existing development features that would be part of the special use permit, and additional changes that would be proposed under the permit – including a new storage building. He explained that the particulars of this proposal include garage expansion, storage buildings, relocated dumpsters, an outside lift, carports, etc. – some of which already exist. Mr. Cilimberg noted that it is a public garage that provides service to the surrounding community, and at the Planning Commission hearing a number of people spoke in support of it. He stated that the applicant has made improvements to the garage and the parking area. The use can be consistent with the rural area if all impacts of the use are mitigated in the sense that it would be supporting the surrounding community and would no longer be in violation and some of the issues regarding how it's been improved over time be addressed.

Mr. Cilimberg noted that unfavorable factors include a compromising of the character of the Rural Areas district, given the conditions at the garage, and there is a question as to how those are allowed to grow over time until their use is more appropriate in a development area commercial district. He stated that the Commission recommends approval with conditions. There was an original hearing held but signs were not posted so signs were posted at the site and a second hearing was held last night. Mr. Cilimberg noted that between the two meetings, the recommended conditions addressing hours of operation were changed, as the applicant originally requested the hours to be 8:00 a.m. to 8:00 p.m. but modified them to be 10:00 a.m. to 10:00 p.m. He added that under condition #8 a buffering requirement for cars that would be parked in the area that is "personal vehicle parking" has been removed; original conditions recommended screening that area as well as service areas. The Commission has recommended nine conditions of approval.

Mr. Slutzky asked why the Commission modified condition #8 to remove screening of all the vehicles. Mr. Cilimberg responded that the Commission agreed with the applicant that those were private vehicle spaces and why that would be different from other owner's cars that were parked on their property.

Mr. Slutzky asked how many cars would be a part of the personal vehicle parking area.

Mr. Cilimberg responded that he would like the applicant to answer that. He pointed out that the prior special use permit required a 20-foot deep landscaping of evergreen screening, but what is new is the minimum height requirement of that planting and how it should be staggered.

Mr. Slutzky asked if this applicant has built structures without permit.

Ms. McCulley explained that the building was originally built as a private garage and was taken as an accessory residential permit when it was actually used for commercial purposes. After the building was built, she said, the applicant went through the special use permit and site plan process to obtain the proper zoning approval to use it as a commercial garage. Ms. McCulley noted that the garage addition was approved by the County. The original approval allowed an outdoor vehicle lift so staff reasoned that interior workspace was acceptable and they granted a building permit to do that addition. She said that the carports in the parking area do not have permits that are consistent with the special use permit and site plan, as they are currently not permitted that way. Although she does not recall the timing, the applicant subsequently applied for permits for the carport.

Ms. McCulley clarified that there are three components to the current violation – one relating solely to special use permit conditions: repair can only be done within the garage; there will be no outdoor storage of vehicle parts, equipment, or materials. If this special permit is approved, the applicant will be allowed to build a new storage building immediately to the right and side of the existing garage. The third violation relates to the number of vehicles awaiting repair. This has been a constant struggle in that they have a high number of their own personal vehicles and it has been difficult trying to determine how many were personal versus business vehicles. Through this process, staff decided to clearly delineate on the ground, with pavement markings and signage on the property, and then on the approved plan which vehicles and what areas are going to be counted towards business vehicles. She said that everything in the special use permit area that would be parked in that area in the future would count as a vehicle, and the new condition would allow for 15 customer vehicles. Ms. McCulley stated that the reason for the addition to be allowed was to put the lift inside, and the applicant essentially expanded the parking area. She added that the second area of violation relates to the site plan and the third relates to critical slopes disturbance.

Mr. Slutzky asked if enforcement of the existing non-compliance would put the garage out of business.

Mr. Rooker replied that they have an approved garage and an approved special use permit that would require them to operate within the parameters of the special use permit.

Ms. McCulley said that the proposed conditions are much more specific and will assist Zoning with further enforcement.

Mr. Slutzky said he is disturbed by this pattern of violation. The concern is even if the Board approves this request, will there be compliance. If this is not approved, do they have any structures that do not have occupancy permits? Ms. McCulley said she is not aware of any structures that do not have occupancy permits. The carports would have to be removed. She suggested the applicant respond as to whether they can continue to conduct business.

Ms. Thomas said one of her concerns was critical slopes.

Ms. McCulley explained that there are two areas of critical slopes – one on the side property line immediately behind the garage building, disturbed sometime in 2008; and one done after the special use permit was applied for. The applicant's intent was to even out some grading he had done. Ms. McCulley noted that it took out some of the stream buffer, and that's why there is a mitigation requirement with the critical slopes approvals. She added that the condition of approval for the first critical slopes disturbance requires a retaining wall at the rear of the garage building at least three feet high with topsoil, matting, and permanent cedar mulch and shrubs to provide adequate stabilization.

Mr. Cilimberg mentioned that the Planning Commission's action (as set out in their letter dated May 18, 2009) removed the first staff-recommended condition for the critical slopes waiver, but the second one remains, and the Commission's action under the third just removes the parenthetical sentence.

Ms. Mallek asked if there will remain above the three foot wall, a fairly steep slope with plantings, barricaded, etc. Ms. McCulley said that is correct. She believes they are going to have to pull that slope back to better stabilize it at less of an angle.

Ms. Mallek asked if the space between the wall and building will be narrower than shown. Mr. Brooks said that the intent is to keep the slope as it is and keep it stable so the portion that is vertical would have a wall and come up a little higher than the vertical part so the slope above it could be stabilized.

Ms. Thomas asked Zoning if they feel comfortable that these conditions will be enforced, if the Board approves this tonight. Ms. McCulley replied that the conditions will better allow Zoning to enforce an agreement and an understanding, whereby the Department will make spot checks when they're in the area instead of just being responsive to complaints. She said that they are hopeful the applicant has learned that the proper process is not just building and grading at will. She thinks these new conditions of approval are better tools.

At this time the Chairman opened the public hearing.

Mr. David Wyant, serving as the applicant's engineer, addressed the Board. He said that this garage has been in operation since the late 1970s, and the Harris family has operated it during that time. Mr. Wyant stated that the site needs a bay to be able to do body work, and currently there is a "paint booth" onsite to be able to restore parts and body parts. He indicated that the Harris garage has been through DEQ permitting and has already completed a groundwater assessment study. Mr. Wyant said that the only cars that can be parked outside of the work area are the Harris family's car, adding that screening for that is not necessary and the Commission agreed. He also indicated that the runoff is being sent to the least steep area of the slopes and is being contained. Mr. Wyant stated that all adjacent property owners support Mr. Harris' change in hours and all of the repairs would occur inside the garage. One of the violations had to do with the dumpster which was located on the front edge of the property. People were coming by putting their trash in the dumpster so Mr. Harris moved it to another location on the property. They had a gravel driveway but did not know that was a violation. Mr. Harris wants to do this right. He added that the soil on the critical slope is very shallow, and the trees were falling onto the roof of the shop so Mr. Harris removed them and now is planning for a three-foot retaining wall, sloped at 2:1 with shrubs.

Ms. Mallek said it looks like the driveway access goes over onto the neighbors' property. She asked if that was customary and acceptable to everyone. Mr. Wyant said that issue was addressed with the original special permit request in 2001.

Ms. Mallek asked if there will be deliveries. Mr. Wyant said there are not many deliveries; parts are normally picked up by Mr. Harris. Work is normally done in the afternoon.

Mr. Slutzky noted that the condition does not prohibit customers from dropping off vehicles outside of the hours of operation, but the way it is written implies that a vehicle may not be dropped off on days of non-operation, such as Sundays. Mr. Wyant commented that that is the reason the defined parking areas are important because people drop off vehicles all the time.

Ms. Mallek asked about test driving in the evenings. Noise from high speed acceleration impacts the neighbors. Mr. Wyant said that should not be a problem.

Mr. Slutzky commented that he is not very comfortable with the 10:00 p.m. operating time. If this owner were to sell this garage to someone else, the new owner may not be as accommodating. Also, this has historically been a noncompliant applicant.

Mr. Wyant said the Harris family has been in this area all their lives and he does not foresee them selling this property. None of the neighbors have a problem with this request.

Mr. Slutzky commented that the hours of operation were changed last night at the Commission meeting and there may be folks who are not aware that the time was changed.

Ms. Thomas asked how the runoff from the parking lot that goes down into the creek would be handled, citing concerns about oil from the shop operations.

Mr. Wyant replied that there is a low spot at the bottom of the slope with a berm above the stream so that it doesn't run into the water. A biofilter could be installed at the lower part of the ditch to catch any runoff. He confirmed that the runoff flows toward the east side, and there is room for treatment before it reaches that point. Mr. Wyant also emphasized that they do the automotive work inside and petroleum products are contained in barrels and recycled – which is required of all garages now.

Mr. Preston Gentry said Mr. J. R. Harris runs a very clean and respectable business. When the oil hits the lot, he's wiping it up. He said that Mr. Harris is very knowledgeable of both gasoline and diesel engines. He is a very honest person which is wonderful to have in the community as well as being one of the best mechanics. Mr. Harris is also the mechanic for the City of Charlottesville. He asked for Board approval of the request.

Mr. Ronnie Morris said that he is here to support Mr. Harris, who has done a lot of repairs to his vehicles and those of his family members. Mr. Harris is an honest and reasonable businessman, and also does "house calls." He is sure Mr. Harris will comply with the very stringent County ordinance requirements. He encouraged the Board to support the request. Harris Garage is a valuable community asset and deserves the extended hours.

Mr. Fred Borrelli said Mr. Harris is an asset to the community. One of the main reasons that Mr. Harris business is so busy is because Western Albemarle and that portion of the County is growing. It is a great convenience to have this shop in this location.

Mr. Scott Borrelli said he is a facilities management supervisor and the grounds of Mr. Harris' property are "right up there with U.Va.'s grounds." Changing the hours would be helpful to people like his wife – who works odd hours. Mr. Harris is a great asset to the community.

Mr. Marcus Shifflett said he lives approximately seven miles from Harris garage in the Dyke area of Green County. He is the Chief of the Dyke Fire Company. He often gets home late and Mr. Harris is amenable to helping after-hours. Mr. Shifflett also said that Mr. Harris has done a lot of work for the fire company and never charges. He asked the Board to approve the request.

Mr. Julian Taliaferro said that Mr. Harris is a "great individual" who is very compassionate and helps people who can't pay. He hopes the Board will look favorably on the application.

Mr. Joel Snow said the Board, the Commission – as well as staff – have done their job very well, perhaps too well in the case of Mr. Harris' garage. County planners and staff have been overzealous in enforcing every little bit of compliance for Harris garage. The County needs to find someone else to pick on. Harris garage has spent thousands of dollars in attorney fees, engineering fees, and construction and landscaping to comply with County mandates. He said that the Harris family works continuously to keep their property pristine, and perhaps staff should spend their time on businesses that don't do this. There are a number of other areas in the County where the staff should be enforcing County requirements. He cannot believe the intent of County regulations are meant to continually harass a citizen in the manner that Albemarle has displayed towards Harris' garage. He does not know of any citizens who have addressed the garage with negative comments. Let the majority of the citizens have what they want. He asked the Board to approve the request.

Mr. Donnie Rea said he is a lifelong resident of the County and worked for DMV for 30 years. He knows the entire Harris family and they are valuable to the community. Mr. Rea said that firemen and rescue squad members have had car trouble, and Mr. Harris has helped them out to get them to work and "answer the community's needs." He stated that the garage is immaculate. He wishes that all garage owners were as honest as Mr. Harris. Mr. Harris wants to do the right thing. He asked the Board to approve the request. He is here to serve the community.

Mr. Tom Scala, a resident of Bentivar, said he has known Mr. Harris for over 25 years. Mr. Harris is "the tops" as a car or fleet mechanic. Mr. Scala noted that his truck has over 420,000 miles on it – which is a tribute to Mr. Harris. Mr. Harris is an honest man who wants to do the right thing. The site is pristine and a lot better than many other places. Also, traffic isn't a problem in the area.

Mr. John Knight, of Crozet, said that Mr. Harris does all the work on his vehicles and returns them to customers' homes so they won't stay on his lot. He encouraged the Board to support the application.

Mr. Rick Morris said that he lives on the property across from Mr. Harris' garage and he has no issues with it. He said that the screening prevents him from even seeing what's going on at the garage, and he has no problem at all with the application. Mr. Morris said he wonders how other people would comply with all these restrictions. With regard to traffic and speed of cars, Mr. Harris does test drive cars. The speed limit on the road has been changed to 45 mph, but when cars come speeding by it does not always mean that someone is test driving a car, it could be an ordinary County resident. Mr. Harris has been a good neighbor and he has no problem with the hours of operation.

Mr. Nelson Morris said he lives two doors down from Mr. Harris. He encouraged the Board to approve the application. He does not have any problem with the traffic. In many cases, Mr. Harris delivers the vehicles to his customers so that he does not exceed the numbers he is supposed to have on the property. He is trying to stay in compliance with County regulations. Mr. Harris is an asset to the community and he asked the Board to approve the request.

Mr. Gary Shifflett said he is a resident of Dyke. Mr. Harris does all the work on the vans for his business. He supports Mr. Harris' application and the change in the hours of operation.

Mr. Scott Borrelli said this establishment is so vital to the community that he would volunteer his assistance to help bring Mr. Harris up to County regulations.

Ms. Ruth Jones said that she uses Mr. Harris' garage. He often does repairs for her at little or no cost. She said that the facility is an absolute asset to the community. She asked the Board to approve the request.

Mr. Frank Chapman, a resident of Greene County, said that because of his hours at U.Va., he appreciates the later hours with Mr. Harris' garage. Mr. Harris is an honest person and he asked the Board approve the request. Some of the violations are out of Mr. Harris' control especially the number of cars because people will just come and drop them off. Mr. Harris is a great asset to the community.

Mr. David Jones, a resident of Greene County, said he has known Mr. Harris for 19 years. There have been times when he hasn't been able to pay and the garage arranges a monthly payment plan. He also said that he has had family members to visit the area and when their vehicle broke down, Mr. Harris repaired it. He asked the Board to approve the request.

Mr. Mike Collier said that he has left his vehicles at the garage before and he didn't know he was "part of the problem." He asked the Board to approve the request.

There being no further public comments, the public hearing was closed.

Mr. Boyd asked about the origin of the 15-vehicle limit. Ms. McCulley replied that it's very common and is a standard condition used to limit the scale of a public garage. Many of the others have fewer numbers of parking spaces for vehicles awaiting repair.

Mr. Cilimberg noted that this size limit is fairly large compared to other rural area garages. Part of the consideration is what is appropriate in a rural area location.

Mr. Slutzky commented that from the comments, it appears Mr. Harris is seriously trying to comply with the restrictions.

Mr. Rooker commented that Mr. Harris is a fortunate man because “usually a person has to die to have this many good things said about him.” It seems to him that the approval of this puts the Zoning Department in a better position than they were previously to deal with the garage. Staff has indicated that the use is consistent with the rural area if all impacts are mitigated by the conditions. It seems this is an appropriate use and a needed service in the rural area. He supports approving the request.

Ms. Thomas said this is a valuable public service and she originally voted for its approval. As long as the conditions are agreeable, they should be precise enough so that the applicant can follow them without damaging the business.

Mr. Slutzky noted that people in the community have the highest regard for Mr. Harris’ honesty and integrity, which is a “highly valued attribute.” The staff report focused on the technical issues of compliance and noncompliance over a long period of time, and it is hard for Board members to read between the lines and understand whether that history of noncompliance is the result of a bad attitude on the part of the applicant or if it is a result of confusion and misunderstanding, and perhaps imperfect rules. It seems that from staff’s recommendation for approval, this is an opportunity to give clarity to the rules that makes it possible for the applicant to be in compliance. He supports the request.

With respect to the hours of operation, Mr. Rooker said he would be concerned if the neighbors complained, but there have been no complaints. He thinks the request should be approved.

Ms. Mallek commented that businesses like this provide an essential service for people in the rural area, and aren’t the types of commercial enterprises that draw new people to the rural area. She added that this application is a great example of how the process works. There have been great dialogue and with staff’s assistance, a plan has been developed that will work. She is glad to hear that the chemicals and paints are being done properly.

Ms. Mallek then **moved** to approve SP-2008-058 subject to the conditions as presented and modified tonight.

Mr. Cilimberg said the proposed language has been modified to reflect the availability of vehicles delivered outside of hours of operation.

Mr. Rooker **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

NAYS: None.

**(Note: The conditions of approval are set out in full below:)**

1. Development of the use shall be in accord with the conceptual plan titled “Amended Site Plan Harris’ Garage”, prepared by DW Enterprises, and dated March 16, 2009 (hereinafter, the “Conceptual Plan”), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the plan, development shall reflect the following major elements within the development essential to the design of the development:
  - The size, height and location of the proposed buildings (16’ X 30’/maximum 24’ high);
  - The area designated for the special use (public garage);
  - The size, height and location of the existing buildings/structures (original garage – 1,936 square feet/24 feet high/3 vehicle bays; garage expansion – 1,496 square feet/24 feet high/1 vehicle bay; enclosed compressor room; paint mixing room; one outside lift; one dumpster pad/fence enclosure; 3 parking spaces carport; 2 parking spaces carport);
  - The number (maximum 15 spaces public garage) and location of the vehicle parking spaces;
  - The two (2) signage locations at the entrance to the special use permit area. The signs shall state, “All vehicles beyond this point must be placed in a marked parking space” and be a maximum of four (4) square feet.
  - The sign location at the area designated as “Parking for Private Vehicles.” The sign shall state, “Parking for only personal vehicles of the Harris Family” and be a maximum of four (4) square feet.
2. Gasoline sales are prohibited;
3. The sale or rental of vehicles or other motorized equipment is prohibited;
4. All repairing or equipping of vehicles shall take place inside the existing garage, with the exception of vehicles being repaired on the vehicle lift located adjacent to the garage;
5. The outdoor storage of parts, equipment, machinery and junk is prohibited;
6. Only personal vehicles may be parked in the area marked “parking for personal vehicles” on the Conceptual Plan. No more than fifteen (15) vehicles associated with the public garage use shall be located outside the garage. All vehicles associated with the public garage use shall be parked in the spaces shown as “for garage only” on the Conceptual Plan. Any vehicles parked outside the area marked “parking for personal vehicles” shall be considered to be associated with the public garage and are counted in the fifteen (15) vehicle maximum.
7. The hours of operation shall be between 10:00 A.M. and 10:00 P.M., Monday through Saturday. These hours of operation do not prohibit customers from dropping off vehicles outside of operating hours; and
8. Within three (3) months following approval of the site plan or site plan waiver, the permittee shall install and thereafter maintain a minimum twenty (20)-foot deep landscape evergreen-screening

- buffer to shield the view of the garage and garage parking from Markwood Road. This landscape screening shall supplement existing landscape approved with SP 2001-49 and consist of Eastern Red Cedar or other material approved by the Planning Director, a minimum four (4) feet high at planting, and planted in staggered rows with a maximum of ten (10) feet on center spacing between the landscape materials. The permittee shall also submit a landscape plan with the site plan application that will be subject to the approval of the Planning Director or the Planning Director's designee; and
9. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan (for new lighting) limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval.

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**(At 8:49 p.m., the Board took a recess and then reconvened at 8:57 p.m.)**

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Agenda Item No. 12. **PUBLIC HEARING: PROJECT: SP-2008-061. Slingluff Dock.**

PROPOSED: Construction of a private floating dock on the South Fork Rivanna Reservoir.  
ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots); FH Flood Hazard - Overlay to provide safety and protection from flooding.

SECTION: 30.3.05.2.1(2): Water related uses such as boat docks, canoe liveries, bridges, ferries, culverts and river crossings of transmission lines of all types.

COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/ density (.5 unit/acre in development lots).

ENTRANCE CORRIDOR: No. LOCATION: 256 Woodlands Road (Route 676), approximately 0.3 miles north of the intersection with Earlysville Road (Route 743).

TAX MAP/PARCEL: TMP 45-6D1 and TMP 45-67A.

MAGISTERIAL DISTRICT: Jack Jouett.

*(Advertised in the Daily Progress on May 25 and June 1, 2009.)*

Mr. Cilimberg reported that this is a floating dock request for property located on the Reservoir off of Woodlands Road. The design is subject to approval and permitting from the Rivanna Water and Sewer Authority. He said that staff has not identified any direct impact to the water supply or neighboring properties, or increase in flood levels. Mr. Cilimberg stated that it is supported by the City – which owns the property within which the dock would be located – and meets requirements of the RWSA for residential boat docks. He added that if there are a significant number of these requests, there could be proliferation of boat docks on the Reservoir, and it's an issue that staff will need to revisit next year during the Comprehensive Plan review. Mr. Cilimberg noted that staff recommends approval with conditions, the third of which was a request of the Planning Commission in taking their action.

Ms. Thomas said that there is a condition that has been applied to other docks on the Reservoir – “vegetation shall be allowed to naturally regenerate in the buffer area between the normal pool elevation and the edge of the floodplain where mowing has historically taken place.” She viewed the site and the area where the proposed dock location is does not have any trees and she would like to discuss with the applicant the possibility of allowing the natural vegetation to regenerate. She is not as concerned with the dock, but is concerned about having a buffer.

Mr. Cilimberg mentioned that the second condition attempts to address the buffer going into the property 200 feet – “no removal of vegetation of earth disturbance within that area should be occurring in association with the installation of the boat dock.”

Ms. Thomas responded that she thinks that's a bit different. She referenced the “blue line” on the slide Mr. Cilimberg presented and said it seems to correspond to where the trees are, adding that a 200-foot tree buffer would take half the property. She thinks the earlier condition might deal with the immediate treed area.

Mr. Boyd asked if Ms. Thomas is suggesting the Board let the area vegetate naturally so that access to the dock would be potentially through high grass, or would a pathway be allowed.

Ms. Thomas said the reason she brought this up was to get some reaction and to see what was possible.

At this time the Chairman opened the public hearing.

The applicant, Mr. Craig Slingluff, addressed the Board. He moved onto this property about 15 years ago and asked RWSA officials to walk around the property with him to see what he could and could not do. RWSA said it was fine to have a pathway to get down to the water for recreational use. He uses it for kayaking and rowing. His motivation for the dock is partly for convenience and to preserve the land. He has preserved the growth around the Reservoir except this one area. He didn't take down trees except for small weed trees to preserve access and there is a lot of poison ivy that grows in the area. He usually sprays the poison ivy once a year to keep it under control and to allow him safe access to the area. He emphasized that he wants to preserve the land and the Reservoir. RWSA informed him that he is not allowed to remove trees that are larger than four inches. He tries to keep the area pruned so that it is not widely overgrown with weeds.

Ms. Thomas asked how wide a path he would like to keep clear. Mr. Slingluff responded that the path is currently about 10 to 15 feet wide. He likes it the way it is and there is a lot of vegetation there which he also wants to preserve. He added that he keeps his kayak underneath some trees at the water's edge. He also would not keep his boats in the water routinely.

Mr. Slutzky asked if the path has trees alongside of it that are larger than four inches in diameter. Mr. Slingluff replied that there are larger trees, a random accumulation of evergreens and other trees. They provide shelter for the boats and keep them from being visible to people who come by.

Ms. Thomas said that the County encourages people to keep a riparian buffer of trees, and it is evident on the aerial photo and in person that there is a cleared area. She stated that the dock will be a big improvement to any erosion that's taking place, adding that she would like to have the vegetation condition to be on this piece of land. The issue is whether to exempt a pathway to get to the boat dock.

Mr. Slingluff indicated that he hopes to allow the natural growth at the edge of the water to come back, adding that there has been a lot of erosion there. He is open to suggestions from RWSA or others.

Mr. Rooker said that he didn't understand the inclusion of the language "where mowing has historically taken place."

Mr. Cilimberg pointed out that the language would be dropped in this case, as it was simply carried over from another application where there was not much vegetation and the applicant in that case just mowed down to water's edge.

Mr. Rooker suggested letting it grow naturally except for the maintenance of a reasonable path width.

Ms. Mallek said that it would be good to protect trees outside the path, except for invasive species.

Ms. Thomas commented that he's already doing that.

Mr. Slutzky suggested language that states, "non-invasive vegetation should be allowed to naturally regenerate in the buffer area."

Ms. Thomas agreed with that suggestion.

Mr. Jeff Werner said that he spoke at the Planning Commission meeting when this item was considered. Mr. Werner said that he gets concerned with the watershed being treated as a private amenity where landowners can remove trees and use pesticides with the City or RWSA signing off on it. There is the capacity for a proliferation of these boat docks on the Reservoir. In terms of the path, he suggested using a similar process to conservation easements, with base survey photographs so there is a record of what vegetation is there. He asked the Board to not leave it to speculation. Mr. Werner reiterated his concerns about removing vegetation on land that is not owned by a private landowner.

There being no further public comment, the public hearing was closed, and the matter placed before the Board.

Mr. Rooker **moved** for approval of SP-2008-061 with the recommended conditions, including the fourth condition as modified today. Ms. Mallek **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.

NAYS: None.

**(Note: The conditions of approval are set out in full below:)**

1. There shall be no lighting within twenty-five (25) horizontal feet of the Reservoir, measured from the elevation of normal pool, which is Elevation 382 (North American Vertical Datum of 1988);
2. There shall be no removal of vegetation or earth disturbance within the two hundred (200)-foot stream buffer associated with the installation of the boat dock. The stream buffer is measured from the edge of the floodplain, which is Elevation 391;
3. Structures and improvements located in the two hundred (200)-foot stream buffer shall be limited to those shown on the Schematic of Dock Design and Schematic of Dock Design, Side View, including a set of up to five steps without railings located directly adjacent to the dock; and
4. Non-invasive vegetation shall be allowed to naturally regenerate in the buffer area between the normal pool elevation of the Reservoir (Elevation 382) and the elevation of the edge of the floodplain (Elevation 391), except for a pathway of not wider than ten (10) feet leading to the dock.

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Agenda Item No. 13. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Thomas said that she sent around a notice about the High Growth Coalition meeting, and asked if there was interest in carpooling.

Mr. Cilimberg indicated that Mr. Graham may attend. Mr. Davis said that Mr. Kamptner will be attending as well.

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Mr. Boyd **moved** to authorize that the Fire Rescue Ordinance Review Advisory Committee reconvene to further review and discuss a draft ordinance built upon the collaborative fire chief model ordinance for operation of the County's fire and rescue system. He also **moved** that the Committee specifically examine the creation of a third-party mediation panel to review appeals of system policy decisions of the County's Fire Chief in this collaborative model. He further **moved** that the Board of Supervisors cancel their June 17, 2009 work session with representatives of the Albemarle County Fire and Rescue Advisory Board. Ms. Mallek **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

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Mr. Rooker noted that there was a resolution distributed to request VDOT to acquire right of way along Route 29. This relates to something the Board had previously discussed. A letter was sent to VDOT explaining the County's position on this; VDOT responded by saying they would move forward if the County provides an appropriate resolution of request from them to do so. He said that the resolution addresses approximately 654 square feet of right of way. The land is a very narrow strip along the Comdial property. Mr. Rooker explained that this is to facilitate the installation of a continuous right turn lane that is also a precursor to adding a lane from Hydraulic Road down to the Route 250 bypass, and eventually an additional ramp at Best Buy. Mr. Rooker noted that there is an opportunity to have almost all of this done with private money.

Mr. Slutzky asked if the 18,864 square feet of temporary construction easements are on the same property.

Mr. Rooker responded that they are, and there is an offer to completely landscape however the party wants it done. At this point it enables VDOT to begin discussions with the landowner.

Mr. Boyd asked if anyone knows the reason the landowner did not want to give or sell the easement to the County. Mr. Rooker said he is not certain why the landowner did not want to grant the easement initially, adding that a similar problem has arisen with a sewer easement that this same landowner owns; that goes underneath properties on the other side of Route 29 and the pipe is in a decayed state. Albemarle Place people have offered to build an entirely new pipe that would be large enough to serve all the landowners. Everyone wants it removed but Comdial wants to be paid some "significant sum of money" to abandon an old pipe there.

Mr. Rooker then **moved** to approve the resolution as presented. Ms. Mallek **seconded** the motion.

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

AYES: Ms. Thomas, Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker and Mr. Slutzky.  
NAYS: None.

#### **RESOLUTION TO REQUEST VDOT ACQUIRE ROUTE 29 RIGHT-OF-WAY**

**WHEREAS**, in conjunction with the Virginia Department of Transportation ("VDOT"), the County of Albemarle ("County") and the City of Charlottesville have strongly pursued public/private partnerships to make critical road improvements to Route 29; and

**WHEREAS**, part of this joint effort currently involves substantial improvements to southbound Route 29 from Greenbrier Drive to the Route 29/250 Bypass; and

**WHEREAS**, a key element of these improvements is to put in place a continuous turn lane from Greenbrier Drive to Hydraulic Road; and

**WHEREAS**, construction plans and funding are in place to pay for over \$3.5 million dollars of these Route 29 road improvements including this continuous turn lane; and

**WHEREAS**, construction of the continuous turn lane could commence within the year provided all right-of-way can be acquired; and

**WHEREAS**, all necessary right-of-way has been acquired except for approximately 654 square feet of right-of way and approximately 18,864 square feet of temporary construction easements on the frontage of Tax Map # 61W-3 Parcel 18; and

**WHEREAS**, although the conversion of this small portion of property would have no significant impact to the remainder of the property, efforts to acquire this right-of-way and the temporary construction easements have not been successful; and

**WHEREAS**, after careful review, engineers have found no viable alternative that would allow the construction of the continuous turn lane improvements without this right-of-way and the temporary construction easements; and

**WHEREAS**, this right-of-way, when acquired and improved, would be owned and maintained by VDOT as part of the Virginia Primary Road System and would be a VDOT public improvement rather than a County public improvement; and

**WHEREAS**, the continuous turn lane improvement is a necessary Route 29 improvement regardless of whether any additional development is constructed on this segment of Route 29; and

**WHEREAS**, VDOT rather than the County has required this improvement as part of the overall road improvements necessary to improve the capacity and safety of the Route 29 corridor; and

**WHEREAS**, it is essential that VDOT use its authority and expertise to acquire this right-of-way and the temporary construction easements to allow for these significant and necessary public road improvement to proceed in a timely manner; and

**WHEREAS**, the County can assure the payment to VDOT of all costs associated with the acquisition of this property and the construction of the associated Route 29 improvements.

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby formally requests that VDOT acquire the right of way and temporary construction easements on Tax Map #61W-3 Parcel 18 necessary for the construction of the continuous turn lane proposed for construction on Route 29 from Greenbrier Drive to Hydraulic Road .

**BE IT FURTHER RESOLVED** that the County will assure that VDOT will be paid for all its costs associated with that acquisition and the construction of the associated Route 29 improvements on that property.

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Agenda Item No. 14. Adjourn. At 9:27 p.m., there being no further business to come before the Board, the meeting was adjourned.

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Chairman

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| Approved by Board |
| Date: 08/05/2009  |
| Initials: EWJ     |