

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 12, 2011, at 6:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. Kenneth C. Boyd, Mr. Lindsay G. Dorrier, Jr., Ms. Ann Mallek, Mr. Dennis S. Rooker, Mr. Duane E. Snow and Mr. Rodney S. Thomas.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Larry W. Davis, Director of Planning, V. Wayne Cilimberg, and Senior Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. The meeting was called to order at 6:04 p.m., by the Chair, Ms. Mallek.

Agenda Item No. 2. Pledge of Allegiance.

Agenda Item No. 3. Moment of Silence.

NonAgenda.

Ms. Mallek said there are a few additional agenda items that need to be discussed that were not included on the final agenda. The first is a resolution regarding onsite sewage disposal systems. She did circulate to the Board a draft resolution for their consideration which was modified from one provided by the Eastern Shore. She asked if Board members had any feedback or needed any additional information.

Mr. Rooker asked if a letter was being prepared to go with the resolution.

Mr. Boyd asked what the timeframe for this is. Ms. Mallek responded that this was discussed at VaCo's Agricultural and Environment Committee meeting in November, and different parts of the state are getting organized.

Mr. Boyd asked if action needs to be taken on this tonight or can it wait until the next Board meeting. Ms. Mallek said that the General Assembly Session is moving quickly so she does not want to wait too long.

Mr. Boyd suggested discussing it at the end of the agenda.

Mr. Foley suggested that the additional items be added to the end of the meeting. Board members concurred.

Ms. Mallek then suggested that the Board reorder Agenda Items #7 and #8 and take them up in reverse.

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

Mr. Rooker distributed information on upcoming training sessions being hosted by the Thomas Jefferson Planning District Commission, which will occur in the first one-half of the calendar year and provide an opportunity for Board members or County staff to attend for free.

Ms. Mallek noted that those forums are also open to the public and are held in the conference center next to the offices on Water Street.

Mr. Thomas announced that the Fire and Rescue Ordinance meeting scheduled for last night was canceled due to icy road conditions and rescheduled to next Tuesday, January 18th, 6:00 p.m..

Mr. Boyd asked if Mr. Foley had made progress scheduling a joint water meeting with City Council. Mr. Foley replied that he informed City Council that Board members were available on Tuesday, January 18th, but has not received confirmation that Council was able to meet. The Board has the option of setting the date and time, and then see if they show up.

Mr. Boyd commented that timeliness is important. Mr. Foley said the Board would have to call a special meeting tomorrow if they do not adjourn to Tuesday tonight, as Friday and Monday are County holidays.

Ms. Mallek suggested continuing this discussion at the end of the meeting. She added that the Board could meet regardless if Council cannot because she has been trying to gather information on what costs go where and the Board could use the meeting for that kind of discussion.

Ms. Mallek asked if the Board adjourns to January 18th but do not meet, how it would go about cancelling the meeting. Mr. Davis responded that if the Board does not show up, there won't be a

meeting, and the next regular meeting day would still be February 2nd. For purposes of the public, the Board would want to notify the public if the meeting is cancelled.

Mr. Snow reported that the County met with the City for the final meeting on Social Services consolidation. They found that there are 16 major areas of cooperation on Social Services as well as some small areas. The team decided that combining facilities more than has already been done would yield no reduction on additional expenses. He added that a final report is being written and would be distributed shortly.

Ms. Mallek said that the joint City/County Fire and Rescue committee that she and Mr. Thomas serve would be meeting in mid-February to wrap that up also.

Ms. Mallek said that Albemarle County has launched a prescription drug card. Information is available on the County's website at www.albemarle.org/drugcard. This card is available to citizens and staff, and it could result in a 25% savings on prescription costs.

Mr. Thomas asked if this works with people's copayments. Ms. Mallek said she does not know, but suggested that more information can be found at caremark.com.

Mr. Foley added that Board members have been provided with additional Q&A information.

Ms. Mallek reported that there would be a workshop held here in the County Office Building on January 26 from 6:00 p.m. to 8:00 p.m., with displays available all day in the lobby, on "Carbon, Our Energy Future and You". Ms. Mallek said that this event is the community outreach meeting for the local Climate Action Planning Process Committee, comprised of City, County and University representatives.

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

Mr. Todd Nehimer, a member of the Rivanna Trails Foundation Board of Directors, said that the Rivanna Trails Foundation is a local nonprofit foundation dedicated to the creation, promotion and protection of footpaths, trails and greenways within the Rivanna River watershed. Mr. Nehimer said that the group was incorporated in 1992 and believes that the community's wild trails system serves as a resource for nature-related recreation and environmental education for individuals, teachers, bird watchers, walking clubs and other local groups with environmental concerns. He stated that well-maintained neighborhood trails also provide children with a safe setting in which to play, a setting for adults to exercise and a place for community members to get to know each other and enjoy the beauty of natural areas. Mr. Nehimer said that the Rivanna Trails Foundation's most important accomplishment to date is the establishment and maintenance of a footpath running through both the City and County and encircling the City by following Meadow Creek and Moore's Creek.

Mr. Nehimer said that in 2002 the Collegiate Hall apartments on Sunset Avenue Extended along southside of Moore's Creek were approved by the County and was later named Eagle's Landing. Mr. Nehimer pointed out that one of the conditions of approval was dedication of a greenway trail corridor to Albemarle County along Moore's Creek as well as dedication of a pocket park on the City's side of the creek. Despite the fact that these two parcels are of critical importance to the maintenance, protection and establishment of trail corridor in this portion of the urban area, it has been eight years since the final apartment complex approval, the apartments have all been built and these parcels have yet to be dedicated. Mr. Nehimer reported that City and County staff have now entered into discussions with the apartment owners to begin the process of dedicating the trail corridor and pocket park to make it a reality. The Rivanna Trails Foundation understands that the landowner is apparently now ready to make the dedication, and according to the City of Charlottesville's Bike and Pedestrian Trails Planner, Chris Gensic. He added that Charlottesville is prepared to pay \$4,500 for the survey of their pocket park and the incremental cost to survey the County's trail corridor would only be an additional \$1,000. Albemarle County Park's staff has told them that Parks and Recreation does not have the funds to cover this. The Rivanna Trails Board is requesting the Board make the dedication of this trail corridor a priority, allocate the needed funds for this project and authorize staff to contribute the funds necessary to have the property surveyed and dedicated as was required in 2002.

Ms. Mallek asked if it is standard for the County to pay for surveys for something that is proffered to it. Ms. Amelia McCulley, Zoning Administrator, responded that she is not certain but would look into it.

Mr. Rooker said that if the County does not typically pay for surveys, he would support spending \$1,000 to have it done so that there is not a big hole in the greenway. He added that the time to do it is while the surveyor is out there doing the other work.

Mr. Boyd commented that he could support it as long as it does not take money away from completing the Pantops trail.

Mr. Foley stated that this would be brought back to the Board as an agenda item.

Mr. Daniel Bowman, a County resident and member of the Board of Directors of Advocates for a Sustainable Albemarle Population, said as the Board continues to explore various ideas and proposals regarding growth issues in the County, he would suggest two important documents for their consideration.

One report is from 2010 from Evan Fodor entitled *Relationships Between Growth and Prosperity in 100 Largest U.S. Metropolitan Areas*. The report asserts that faster growth rates are associated with lower incomes, greater income declines and higher poverty rates. He said that the 25 slowest-growing metro areas outperformed the 25 fastest growing in every category and averaged \$8,455 more in per capita personal income in 2009. Mr. Bowman stated that the second item is from a news story in *The Daily Progress*, noting that Virginia's two largest industries in 2010 were agriculture and forestry, trends that are expected to continue in coming years. He stated that no more needs to be said to make the point that protecting the forest lands and agricultural lands of Albemarle County should be the Board's highest priorities in promoting a healthy economy for the County.

Agenda Item No. 6. Consent Agenda. Mr. Thomas **moved** for approval of the Consent Agenda. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

Item No. 6.1. Request from applicant to withdraw ZMA-2006-0008 – Berkmar Business Park.

The following letter, dated December 20, 2010, from Mr. Frank Stoner, Project Developer, Stonehaus Smart Solutions, to Ms. Elaine Echols, Albemarle County Planning Department, was received:

"I am writing to notify you that, on behalf of the property owners involved with the Berkmar Business Park rezoning, we would like to withdraw our current application which was scheduled to go to the Board of Supervisors in January, 2011.

Unfortunately, we have been unable to get unanimous support for the revised proffers and there is general concern among the owners about the prospect of increased taxes without viable sale or development projects.

Thanks for all your work on the project. I'm hopeful that we'll be able to submit a new application and fee at some point in 2011 and understand that we'll essentially have to start over at that point."

By the above recorded vote, the Board approved the applicant's request to withdraw ZMA-2006-0008, Berkmar Business Park.

Item No. 6.2. Housing Funds - Contingent Approval of Donations to Nonprofit Agencies.

The executive summary states that periodically, funding becomes available for completion of specific activities aimed at enhancing/maintaining affordable housing in the County. Over the past few years, these funds have supported construction of such projects as Crozet Meadows and Treesdale and have also provided down payment assistance to low-income homebuyers. The source of funds includes County general funds, proffered funds and repayments/recapture of loans from previously funded activities.

At its meeting on October 6, 2010, the Board approved a reappropriation of \$130,000 for the Community Development Loan Fund. In addition, the County has approximately \$90,000 in proffered funds designated for housing, \$64,345 in CDBG recaptured funds, and a balance of approximately \$10,300 in the Crozet Crossings Housing Trust Fund. The exact amount of proffered and CCHTF funds will be determined once accrued interest is added prior to requesting appropriation.

In response to the Board's action and in light of the availability of other designated affordable housing funds, the Office of Housing issued a request for proposals on October 6, 2010 to Albemarle Housing Improvement Program (AHIP), Piedmont Housing Alliance (PHA), Habitat for Humanity, the Thomas Jefferson Community Land Trust (TJCLT), Jordan Development Corp., and Jefferson Area Board for Aging seeking submittals on the use of approximately \$245,000 for eligible housing initiatives/projects. The following four proposals were received in response to this solicitation:

Thomas Jefferson Community Land Trust (CLT) - \$80,000

Funds would be used to meet match requirements from a private funder (1 to 1). The resulting \$160,000 would support the purchase of one or two houses. Houses would be sold to income-eligible households with the CLT retaining ownership of the land utilizing a 90-year leasehold interest. No specific properties were identified in the application.

Habitat for Humanity - \$200,000 for Southwood Mobile Home Park

Proposed uses include:

1. \$75,000 for electric repairs replacing underground wires between the meters and junction boxes. Habitat replaced breakers last year at a cost of \$80,000.
2. \$50,000 for repair of water and sewer lines.

3. \$40,000 for road repairs and installation of 2 weather-proof enclosures for bus stops.
4. \$35,000 for trimming limbs and removing trees

Piedmont Housing Alliance/Jordan Development Corp. - \$120,000

Funds would cover approximately one-third of the estimated cost of \$360,000 for renovations focused on energy improvements and exterior preservation of the Meadowlands Apartments which were constructed in 1993 and consists of 30 units of elderly housing in Crozet serving extremely-low income and disabled persons. Proposed activities include:

1. Replacing the roof with 30-year asphalt shingles
2. Installing new gutters and downspouts
3. Installing Hardi-plank siding and trim
4. Adding insulation in roof
5. Replacing refrigerators with Energy-Star models
6. Installing a solar hot water array on roof

It is estimated that this would reduce energy costs by 10% to 20%. PHA has "lined up" \$195,000 (\$6500 per unit) in weatherization funds from the stimulus and is seeking additional funds from local Foundations.

Albemarle Housing Improvement Program (AHIP) - \$245,000

Funds would support AHIP's rehabilitation program by providing approximately \$12,000 per unit for up to 20 substandard, owner-occupied homes. The typical rehabilitation project averages \$25,000 and takes several sources of funding to complete. Typical funding sources include HOME funds (\$125,000 in FY11), the Virginia IPR program, USDA Rural Development loans and grants, and program income. The funding sources typically approve funding on a job-by-job basis rather than committing a fixed annual amount. AHIP has 135 households on their waiting list.

Staff reviewed the proposals and submitted the following recommendations to the Housing Committee for review and comment at its November, 2010 meeting:

"Staff recommends providing \$75,000 to both PHA and Habitat for Humanity to support the proposed activities. Funding for PHA combined with weatherization funds would support completion of all activities with the exception of the installation of solar panels. Funding for Habitat for Humanity would be limited to the replacement of underground electrical wires. Staff also recommends that the balance of funds, (approximately \$150,000), be approved for housing rehabilitation projects to be completed by AHIP. Staff did not recommend funding the request from the CLT because no specific project was identified and the per-unit subsidy was significantly more than other proposals."

Although a quorum was not present and no action was taken, agencies submitting applications were available to answer additional questions.

All funds are available and designated for housing activities. Trustees of the Crozet Crossings Housing Trust Fund will first have to approve the use of available funding prior to requesting Board appropriation of CCHTF funds.

Staff recommends that the Board approve the proposed donations to the three nonprofit agencies listed above contingent upon appropriation of funds for this purpose and execution of agreements between the Office of Housing and the agencies. Staff will bring the proposed appropriations to the Board at a future meeting.

By the above recorded vote, the Board approved the proposed donations to the three nonprofit agencies (Habitat for Humanity, Piedmont Housing Alliance/Jordan Development Corporation and Albemarle Housing Improvement Program) contingent upon appropriation of funds for this purpose and execution of agreements between the Office of Housing and the agencies. Staff is also to bring the proposed appropriations to the Board at a future meeting.

Item No. 6.3 FY 2011 Budget Amendment and Appropriation.

The executive summary states that Virginia Code § 15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year as shown in the currently adopted budget; provided, however, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc.

The total of the requested FY 2011 appropriations itemized below is \$11,276.00. A budget amendment public hearing is not required because the amount of the cumulative appropriations does not exceed one percent of the currently adopted budget.

This request involves the approval of one (1) FY 2011 appropriation as follows:

- One (1) appropriation (#2011062) totaling \$11,276.00 to provide a part-time officer working under the supervision of the Sheriff's Office for Offender Aid and Restoration's Drug Court program.

The County and all parties associated with this appropriation have reached agreement on a Memorandum of Understanding (MOU) which clearly delineates responsibilities and protects the County and Sheriff from any liability for partnering with OAR on this project. The County Executive will execute the MOU after the Board approves this appropriation.

Staff recommends approval of the budget amendment in the amount of \$11,276.00 and the approval of Appropriation #2011062.

By the above recorded vote, the Board approved the budget amendment in the amount of \$11,276.00 and Appropriation #2011062.

**COUNTY OF ALBEMARLE
 APPROPRIATION**

APP # 2011062
DATE 1/12/2011
BATCH# _____

EXPLANATION: Drug Court Officer

					SUB LEDGER			GENERAL LEDGER	
TYPE	FUND	DEPT	OBJECT	DESCRIPTION	CODE	AMOUNT	DEBIT	CREDIT	
2	1000	33000	330240	OAR-DOJ-DRUG COURT PROGRM	J 2	\$11,276.00			
1	1000	21078	130000	PART-TIME WAGES	J 1	\$9,360.00			
1	1000	21078	210000	FICA	J 1	\$716.00			
1	1000	21078	600800	VEHICLE & EQUIP. FUEL	J 1	\$900.00			
1	1000	21078	600900	VEHICLE & EQUIP. REPAIRS	J 1	\$300.00			
	1000		0501	Est. Revenue			\$11,276.00		
			0701	Appropriation				\$11,276.00	
TOTAL						22,552.00	11,276.00	11,276.00	

Agenda Item No. 8. **PUBLIC HEARING: ZTA-2009-00012. Home Occupations.** Amend Secs. 3.1, Definitions, 4.15.2, Definitions, 4.15.6, Signs exempt from the sign permit requirement, 5.1, Supplementary regulations, 5.1.34, Accessory apartment, 10.2.1, By right, 10.2.2, By special use permit, 31.5, Zoning clearance, 35.1, Fees; amend, reorganize and rename Sec. 5.2, Home occupations, 5.2.1, Clearance of zoning administrator required, 5.2.2, Regulations governing home occupations, 5.2.3, Certain permits required; repeal Sec. 5.2.4, Revocation; and add Sec. 5.2.A, Home occupations in the rural areas zoning district, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to make minor amendments to the definitions of Class A and Class B home occupations (home occs) and the definition of nonconforming use to include certain home occs and to add definitions of major and minor home occs; amend Sec. 4.15.2 to change the definition of home occupation Class B sign to home occupation sign which includes signs for major home occs and adds a 4 square feet size limitation; amend Sec. 4.15.6 to change the reference from home occupation Class B sign to home occupation sign and delete the 4 square feet size limitation; amend Sec. 5.1 to not allow waivers or modifications when expressly prohibited; amend Sec. 5.1.34 to add references to major and minor home occs; amend, reorganize and rename the current regulations for home occs in Sec. 5.2, 5.2.1, 5.2.2 and 5.2.3 and place them in a single section and provide that Sec. 5.2's requirements apply only to home occs in zoning districts other than the rural areas (RA) zoning district; repeal Sec. 5.2.4 pertaining to revoking approved home occs; add Sec. 5.2A to establish regulations for home occs in the RA zoning district pertaining to the location and area occupied, exterior appearance, sales, traffic generated, parking, outdoor storage, days and hours of operation, open houses, number of vehicles, number of home occs, prohibited home occs, matters that may be waived or modified, obtaining a zoning clearance and notice; amend Sec. 10.2.1 to add major and minor home occs and delete Class A home occs in the RA zoning district allowed by right; amend Sec. 10.2.2 to delete Class B home occs in the RA zoning district as a special use; amend Sec. 31.5 to add major and minor home occs as commercial uses for the purposes of requiring a zoning clearance; and amend Sec. 35.1 to impose a \$25 fee for zoning clearances for major or minor home occs, which is authorized by Virginia Code § 15.2-2286(A)(6).
 (Advertised in The Daily Progress on December 27, 2010 and January 3, 2010.)

Mr. Cilimberg stated that the key points with this Zoning Text Amendment are that it will apply only to the Rural Areas zoning district. The existing Class A and Class B home occupation permits remain in the non-RA districts. Existing lawful home occupation in the rural area would become non-conforming uses and do not need to come in for additional zoning clearances.

Mr. Cilimberg said staff is proposing in the rural area a primarily administrative process for minor and major home occupations. The Planning Commission would only be involved in waivers when a request was made for a greater area than specified in the original permit, or if traffic would be above the level specified in the ordinance. Mr. Cilimberg added that there would be allowance for identification, directional signs, business signs, etc., and the Artisan Trail project is interested in having that kind of signage available.

He said that staff has provided a chart for the Board showing a comparison of the current Class A and Class B regulations and the proposed minor and major home occupations for the rural areas, with the only special use permit for the home occupation Class B in other zoning districts. Mr. Cilimberg stated that the provisions are relatively comparable among the various types of home occupations with the provision that the major home occupations have a notice requirement because of the potential for the accessory structure's use, employees, and the possibility of customers coming to the residence and sales of goods produced on the premises sold to customers at the site. He said that open houses would be permitted in the major home occupations, adding that it is an administrative process beyond the notification and only when there would be a waiver necessary would it come to the Planning Commission for public input, with abutting neighbor notification.

Mr. Davis mentioned that there should be a sign posted on the property. Mr. Cilimberg commented that the sign is not required under the current ordinance provision.

Mr. Rooker expressed concern that only a few people in the neighborhood would know about the Commission hearing since there would be no legal advertisement.

Mr. Cilimberg reported that the waivers pertain to exceeding the size limits of 25% of the dwelling unit and 1,500 square feet total and cannot be more than 49% of the dwelling unit in the home occupation. He also said that there are standards for traffic generation that require a waiver if they are exceeded, adding that there is no limitation on how high that might go although the Commission will need to consider that in their decision. Mr. Cilimberg explained that the traffic figures are generated from the number of round trips per day and per week associated with a home occupation, noting that the limit is 30 per week or 10 per day.

Ms. Mallek asked about special sales days such as open houses when customers come in to a shop and visit and perhaps buy. Ms. McCulley responded that it is such an infrequent thing staff felt it should not be written into the ordinance as if it were a regular occurrence. The intent is that open houses would not be subject to traffic regulations because typically they might have an open house once a season.

Mr. Cilimberg pointed out that it would be different if there were open houses every Sunday then a waiver requirement would be required.

Mr. Rooker asked how that could be enforced realistically and whether it could be established in the beginning whether a business is likely to exceed the standard. Ms. McCulley responded that it is problematic now and staff can do the math with the information an applicant provides. She stated that obviously it is very difficult to observe and enforce this regulation. Ms. McCulley added that it is no different now, and it is complaint driven.

Mr. Rooker said he was wondering if there was a VDOT standard for traffic generation applied for certain kinds of home occupations which then determined if a certain type of waiver would be required.

Ms. Mallek said she wonders if 30 is an appropriate number to use as a threshold without any further requirement.

Mr. Cilimberg said the draft ordinance provided to the Board members is recommended for their adoption. The ordinance does incorporate adjustments based on the Commission's input.

Mr. Snow asked if there are provisions to ensure that someone storing materials outside does not turn their property into a junkyard. Mr. Cilimberg replied that there are some uses not covered under this ordinance as home occupations. This ordinance is not intended to be an opening for general contractors in the rural area but is more for rural-based businesses inside the home. There could be some storage related to the business.

Mr. Snow said he is just concerned about what the County might be doing to some of the neighborhoods.

Ms. Mallek said that she called and spoke with her trash hauler about the vehicle limitations within the ordinance and what that could mean in terms of waste generation.

Mr. Cilimberg added that personal use vehicles are not counted towards the total.

Ms. McCulley stated that Section 5.2A(g) addresses this issue. The ordinance states that storage of goods, products, equipment other than vehicles, or any materials associated with the home occupation other than natural landscaping materials such as mulch and plants outside of a closed structure is prohibited. Vehicles, trucks and trailers are allowed, but other materials outside of a building are not allowed.

Mr. Rooker commented that it is a question of how you read the language. He asked if the language was clear that any materials associated with the home occupation is prohibited. Ms. McCulley said that is the intent. Mr. Rooker said he could read the language either way. He does not know whether it is excluded or included. Ms. McCulley said it is prohibited except for natural landscaping materials.

Ms. Mallek suggested the language be more direct and state "natural landscaping materials are permitted, but all others should be in a building..."

Mr. Rooker said that in Section 5.2A(d1) where it defines major home occupations, it states that customers, clients and students may visit a major home occupation. The sale of goods by a major home occupation to a customer who comes to the site is prohibited except for goods that are handcrafted onsite and goods that are directly related to a major home occupation. He asked if there is anything that prevents this from becoming a retail business. If the home occupation is selling things, does this permit selling anything?

Ms. McCulley pointed out that the sales of non-handmade goods need to be a subordinate portion of the sales. She added that these are only accompanying items, such as special furniture oil that might go along with handmade furniture that a craftsman makes. The intent is not to open the door to general retail sales. She suggested that maybe it needs to be clarified that those other items are intended to be a subordinate portion of the sales on the site. She suggested amending the language to state: "...prohibited except for goods that are handcrafted on-site and accessory sales of goods that are directly related to a major home occupation..." Mr. Rooker said that would be fine.

Mr. Rooker asked how staff came up with the general list of items under section 5.2A.L, *Prohibited home occupations*.

Mr. Cilimberg said that there is the general language that the Zoning Administrator can determine that they are contrary to the purpose and intent of the section of the ordinance. Staff struggled to identify every potential use that would not be considered with the intended purpose and intent.

Mr. Rooker asked if staff was comfortable that the language is inclusive enough for the Zoning Administrator to make a determination. Ms. McCulley replied, "yes".

Ms. Mallek asked if there is a form that someone can download relative to a zoning clearance and the information that people will need to provide. Ms. McCulley replied, "yes". Staff had hoped to have done by now, but it will be completed very soon.

Mr. Boyd commented that this is not retroactive and does not apply to people who got approval or never got approval. Ms. McCulley said that if a home occupation never got permission but is legally there and in existence then it would qualify for a non-conforming use and could continue unimpaird.

Mr. Cilimberg pointed out that all of the Class A and Class B permits have gone through an application process and those who have not are operating illegally.

Mr. Snow commented that the ordinance amendment would be helpful in creating the economic environment that the County wants.

Ms. Mallek noted that the sign portion of the ordinance mentions a 10-foot setback limit, but in the country many people hang a sign on their fence that is just four or five feet off the road. Ms. McCulley said that she understands this point and would look into it.

Mr. Rooker asked her if there would be a sign posted when there is a waiver hearing. Ms. McCulley replied that if that is the will of the Board, staff would certainly do that.

Ms. Mallek asked for clarification on which signs would require a waiver. Ms. McCulley explained that a home occupation sign up to four square feet is allowed and is exempt from the requirement of the permits. They do not need to go through the County for approval with either a sign permit or zoning clearance. Separate from the home business sign, if they are in the Artisan Trail a sign can be posted as a directional, incidental sign that does not need a permit and can be up to four square feet.

At this time the Chair opened the public hearing.

Ms. Sherry Smith, Executive Director of the Artisan Center of Virginia, said the Center is working with Albemarle County on two initiatives - the Artisan Trail and the Studio School at Piedmont Virginia Community College which will begin courses in the spring. She thanked the Board for their support. She added that she thinks the proposed ordinance will have a great impact on a lot of the small businesses that they represent, including crafters, agricultural artisans, and related businesses that will be on the Artisan Trail. Ms. Smith said that there are 35 artists in Albemarle County who have inquired about the project. The Center will continue to provide opportunities for these groups to come together and learn more and provide connection to representatives who can help them go through the process to legitimize their businesses. Ms. Smith said that on January 28th there will be a luncheon and learn event held in the County Building, organized by the Center and Ms. Susan Stimart.

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

Mr. Rooker asked for clarification of the language to stipulate that a sign of notice be placed in the neighborhood in which the home occupation is applied for.

Mr. Davis said that language could be included in the ordinance or staff could do it as a matter of process. It is currently only required for zoning amendments and special use permits, which is in a different section of the Zoning Ordinance than this amendment.

Mr. Cilimberg explained that the only Commission action would be for waivers, and those would be fairly infrequent, so that could be handled procedurally by staff.

Mr. Thomas asked about the cost of putting up such a sign. Mr. Cilimberg responded that the signs are reused, but there would be a labor cost for staff.

Ms. Mallek said she would not recommend doing this for zoning clearances.

Mr. Rooker said his suggestion was to post the sign when the Commission is holding a hearing on a waiver. People should know that the hearing is taking place and the posting of the sign is the only way they will know.

Mr. Davis explained that such signs are not posted for subdivisions and site plans, which are a more similar proceeding to this than a zoning or special use permit, so to be consistent, these are not advertised public hearings.

Mr. Rooker said the difference is that a site plan is purely administrative. In this case the Commission would have discretion to approve or not approve a waiver.

Mr. Cilimberg pointed out that waivers and modifications under the site plan provisions go to the Planning Commission and signs are not put up.

Mr. Rooker stated that the difference is a site plan is being done when something has already been zoned and is in a commercial area. In this case the operation would take place in a neighborhood. He emphasized that this is a good concept, but he could see the possibility of someone coming in for a waiver where the decision is discretionary by the Planning Commission and people might be upset that the forum for comment was even available to them. It is fine with him if it is just a policy.

Mr. Cilimberg said staff will handle it that way.

Mr. Foley said that it could be added to operating procedures.

Ms. McCulley added that it would be for all waivers.

Mr. Snow then **moved** for approval of ZTA-2009-0012 with the addition of the word "accessory" before "goods" as stated in the discussion. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

(The adopted ordinance is set out in full below:)

ORDINANCE NO. 11-18(1)

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

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

By Amending:

Sec. 3.1	Definitions
Sec. 4.15.2	Definitions
Sec. 4.15.6	Signs exempt from the sign permit requirement
Sec. 5.1	Supplementary regulations
Sec. 5.1.34	Accessory apartment
Sec. 10.2.1	By right
Sec. 10.2.2	By special use permit
Sec. 31.5	Zoning clearance
Sec. 35.1	Fees

By Amending, Reorganizing, Renaming and Incorporating the Substance into Another Section (old section number first, followed by section number in which substance incorporated):

Sec. 5.2	Home occupations in zoning districts other than the rural areas zoning district
Sec. 5.2.1	Sec. 5.2 Clearance of zoning administrator required
Sec. 5.2.2	Sec. 5.2 Regulations governing home occupations
Sec. 5.2.3	Sec. 5.2 Certain permits required

By Repealing:

Sec. 5.2.4	Revocation
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By Adding:

Sec. 5.2.A	Home occupations in the rural areas zoning district
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Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

Home Occupation, Class A: An occupation, not expressly prohibited by section 5.2, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit to engage in the occupation. (Amended 8-5-09)

Home Occupation, Class B: An occupation, not expressly prohibited by section 5.2, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or to any accessory structure to engage in the occupation. (Amended 8-5-09)

Home Occupation, Major: An occupation, not expressly prohibited by section 5.2A, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or to any accessory structure to engage in the occupation.

Home Occupation, Minor: An occupation, not expressly prohibited by section 5.2A, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit to engage in the occupation.

...

Nonconforming Use: The term "nonconforming use" means a lawful principal use of the lot or a Class A, Class B, major or minor home occupation existing on the effective date of the zoning regulations applicable to the district in which the use is located, or a more restricted use, that does not comply with the applicable use regulations of that zoning district. A nonconforming use may have accessory uses, but an accessory use, other than a Class A, Class B, major or minor home occupation, shall not be eligible to be a nonconforming use. A use that is seasonal on the effective date of this chapter shall be eligible to be a nonconforming use. A use that is casual, intermittent, or temporary on the effective date of this chapter shall not be eligible to be a nonconforming use. (Amended 6-14-00)

...

Article II. Basic Regulations

Sec. 4.15.2 Definitions

The following definitions shall apply in the interpretation and implementation of this section 4.15:

...

(25) *Home occupation sign.* The term "home occupation sign" means a sign on the premises of a dwelling unit that has an authorized Class B or major home occupation that does not exceed four (4) square feet in sign area and only states the name of the person occupying the dwelling and identifies the product or service offered by the home occupation.

...

Sec. 4.15.6 Signs exempt from the sign permit requirement

The following signs are exempt from the sign permit requirement set forth in section 4.15.4 provided that they comply with the regulations set forth below and all other applicable regulations of this section 4.15:

...

(7) *Home occupation sign.* A home occupation sign.

...

Sec. 5.1 Supplementary regulations

The following supplementary regulations apply to referenced uses in all districts whether or not such uses are permitted by right or by special use permit. These supplementary regulations are in addition to all other requirements of this chapter, the Code, and all other applicable laws. Unless a waiver or modification is expressly prohibited, any requirement of section 5 may be modified or waived in an individual case, as provided herein:

- a. The commission may modify or waive any such requirement upon a finding that such requirement would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare or that a modified regulation would satisfy the purposes of this chapter to at least an equivalent degree as the specified requirement; and upon making any finding expressly required for the modification or waiver of a specific requirement; except that, in no case, shall such action constitute a modification or waiver of any applicable general regulation set forth in section 4 or any

district regulation. In granting a modification or waiver, the commission may impose conditions as it deems necessary to protect the public health, safety, or welfare.

- b. The board of supervisors shall consider a modification or waiver of any requirement of section 5 only as follows:
 1. The denial of a modification or waiver, or the approval of a modification or waiver with conditions objectionable to the developer may be appealed to the board of supervisors as an appeal of a denial of the plat, as provided in section 14-226 of the Code, or the site plan, as provided in sections 32.4.2.7 or 32.4.3.9, to which the modification or waiver pertains. A modification or waiver considered by the commission in conjunction with an application for a special use permit shall be subject to review by the board of supervisors.
 2. In considering a modification or waiver, the board may grant or deny the modification or waiver based upon the finding set forth in subsection (a), amend any condition imposed by the commission, and impose any conditions it deems necessary for the reasons set forth in subsection (a).

(12-10-80; 9-9-92; Ord. 01-18(4), 5-9-01)

Sec. 5.1.34 Accessory apartment

Each accessory apartment shall be subject to the following:

- a. An accessory apartment shall be permitted only within the structure of the main dwelling to which it is accessory. Usage of freestanding garage or other accessory structure for an accessory apartment is expressly prohibited. Not more than one (1) accessory apartment shall be permitted within any single-family detached dwelling.
- b. The gross floor area devoted to an accessory apartment shall not exceed thirty-five (35) percent of the total gross floor area of the structure in which it is located.
- c. The gross floor area of an accessory apartment shall not be included in calculating the gross floor area of the main dwelling unit for uses such as home occupations as provided in sections 5.2 and 5.2A and other similar uses in this chapter whose area within a dwelling unit is regulated.
- d. An accessory apartment shall enjoy all accessory uses availed to the main dwelling, except that no accessory apartment shall be permitted as accessory to another accessory apartment.
- e. Any single family dwelling containing an accessory apartment shall be provided with a minimum of three (3) off-street parking spaces, arranged so that each parking space shall have reasonably uninhibited access to the street, subject to approval of the zoning administrator.
- f. A single-family dwelling which adds an accessory apartment shall be deemed to remain a single-family dwelling and shall be considered one (1) dwelling unit for purposes of area and bulk regulations of the district in which such dwelling is located.
- g. A guest or rental cottage shall not be deemed to be an accessory apartment, but shall be deemed to be a single-family detached dwelling, whether or not used as such, subject to area and bulk regulations of the district in which such cottage is located. No accessory apartment shall be permitted within any guest or rental cottage.
- h. The owner must reside in any dwelling to which the apartment unit is accessory or the apartment unit itself.
- i. The provisions of section 4.1.6 notwithstanding, for lots not served by a central sewer system, no accessory apartment shall be established without written approval from the local office of the Virginia Department of Health of the location and area for both original and future replacement fields adequate to serve the main dwelling and accessory apartment.
- j. An accessory apartment shall be deemed to be a dwelling unit for the purposes of sections 14-234 and 14-410 of the Code. (Added 8-10-94)

Sec. 5.2 Home occupations in zoning districts other than the rural area zoning district

Each home occupation authorized in a zoning district other than the rural areas zoning district shall be subject to the following:

- a. *Purpose and intent.* The purpose for authorizing home occupations in zoning districts other than the rural areas zoning district is to encourage limited home-based economic development, balanced with the need to protect and preserve the quality and character of the county's residential neighborhoods. The regulations in this section are intended to ensure that authorized home occupations will be compatible with other permitted uses and the residential neighborhood by regulating the scale, hours, external activities, external appearance and other impacts that may arise from a home occupation.

- b. *Location and area occupied by a home occupation.* A home occupation shall be located and sized as follows:
 - 1. *Class A home occupations.* A Class A home occupation shall be conducted entirely within the dwelling unit, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the gross floor area used for the home occupation shall not exceed one thousand five hundred (1500) square feet.
 - 2. *Class B home occupations.* A Class B home occupation shall be conducted within the dwelling unit or an accessory structure, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative gross floor area used for the home occupation shall not exceed one thousand five hundred (1500) square feet.
- c. *Exterior appearance.* The exterior appearance of a parcel with a home occupation shall be subject to the following:
 - 1. *Class A home occupations.* There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a Class A home occupation.
 - 2. *Class B home occupations.* There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a Class B home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation.
- d. *Sales.* No home occupation shall sell goods to a customer who comes to the site except for goods that are hand-crafted on-site and goods sold that are directly related to a beauty shop or a one-chair barber shop home occupation.
- e. *Traffic generated by a home occupation.* The traffic generated by a home occupation shall not exceed the volume that would normally be expected by a dwelling unit in a residential neighborhood.
- f. *Parking.* All vehicles used in a home occupation and all vehicles of employees, customers, clients or students shall be parked on-site.
- g. *Performance standards.* All home occupations shall comply with the performance standards in section 4.14.
- h. *Prohibited home occupations.* The following uses are prohibited as home occupations: (1) tourist lodging; (2) nursing homes; (3) nursery schools; (4) day care centers; and (5) private schools.
- i. *Zoning clearance required.* No home occupation shall commence without a zoning clearance issued under section 31.5, subject to the following:
 - 1. *Class A home occupations.* Prior to the zoning administrator issuing a zoning clearance for a Class A home occupation, the applicant shall sign an affidavit affirming his understanding of the requirements of section 5.2.
 - 2. *Class B home occupations.* Prior to the zoning administrator issuing a zoning clearance for a Class B home occupation: (a) there shall be a valid special use permit for the Class B home occupation; (b) the applicant shall provide the zoning administrator evidence that the Virginia Department of Transportation has approved the entrance to the site; and (c) the applicant shall sign an affidavit affirming his understanding of the requirements of section 5.2.

Sec. 5.2A Home occupations in the rural areas zoning district

Each home occupation authorized in the rural areas zoning district shall be subject to the following:

- a. *Purpose and intent.* The purpose for authorizing home occupations in the rural areas zoning district is to encourage limited home-based economic development, balanced with the need to protect and preserve the quality and character of the county's agricultural areas and residential neighborhoods in the rural areas zoning district. The regulations in this section are intended to ensure that authorized home occupations will be compatible with other permitted uses, the agricultural areas, and the residential neighborhoods by regulating the scale, hours, external activities, external appearance and other impacts that may arise from a home occupation.
- b. *Location and area occupied by a home occupation.* A home occupation shall be located and sized as follows:

1. *Major home occupations.* A major home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g), shall not exceed one thousand five hundred (1500) square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the one thousand five hundred (1500) square feet limitation.
 2. *Minor home occupations.* A minor home occupation shall be conducted entirely within the dwelling unit, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the gross floor area used for the home occupation shall not exceed one thousand five hundred (1500) square feet.
- c. *Exterior appearance.* The exterior appearance of a parcel with a home occupation shall be subject to the following:
1. *Major home occupations.* There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a major home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation.
 2. *Minor home occupations.* There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a minor home occupation.
- d. *Visitors and sales.* Visitors and sales related to a home occupation shall be subject to the following:
1. *Major home occupations.* Customers, clients and students may visit a major home occupation. The sale of goods by the major home occupation to a customer who comes to the site is prohibited except for goods that are hand-crafted on-site and accessory goods that are directly related to a major home occupation, including but not limited to tools for pottery making and frames for artwork.
 2. *Minor home occupations.* No customers, clients or students may visit a minor home occupation for a purpose related to the home occupation. The sale of goods or the provision of services by the minor home occupation to a customer, client or student at the site is prohibited.
- e. *Traffic generated by a major home occupation.* The traffic generated by a major home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site.
- f. *Parking.* All vehicles used in a home occupation and all vehicles of employees, customers, clients or students related to a major home occupation shall be parked on-site.
- g. *Outdoor storage.* The storage of goods, products, equipment other than vehicles used in a home occupation, or any materials associated with a home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited.
- h. *Days and hours of operation for major home occupations.* Major home occupations may operate up to six (6) days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.
- i. *Number of vehicles used in a home occupation.* The number of vehicles that may be used in a home occupation that are parked or stored on-site shall not exceed two (2) motor vehicles and two (2) trailers.
- j. *Number of home occupations.* More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply.
- k. *Performance standards.* All home occupations shall comply with the performance standards in section 4.14.
- l. *Prohibited home occupations.* The following uses are prohibited as home occupations: (1) any use requiring a special use permit under section 10.2.2; (2) animal rescue centers; (3) automobile graveyards; (4) restaurants; (5) storage yards; (6) gun sales, unless the guns are made on-site by one or more family members residing within the dwelling unit; (7) on-site pet grooming; (8) body shops;

(9) equipment, trailers, vehicles or machinery rentals; (10) shooting ranges; (11) commercial stables; (12) rummage or garage sales other than those determined by the zoning administrator to be occasional; (13) veterinary clinics or hospitals; (14) pyrotechnic (fireworks or bomb) device manufacturing or sales; and (15) any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A.

- m. *Waivers and modifications.* The waiver or modification of any requirement of section 5.2A is prohibited except as provided herein:
1. *Area.* The area requirements in section 5.2A(b) may be waived or modified, provided that the waiver or modification shall not authorize the home occupation to occupy more than forty-nine (49) percent of the gross floor area of the dwelling. In granting a waiver or modification of the area requirement, the commission shall make the following findings in addition to those findings in section 5.1: (1) the nature of the home occupation requires storage or additional space within the dwelling unit to conduct the home occupation; (2) the primary use of the dwelling unit as a residence is maintained; and (3) the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
 2. *Traffic.* The traffic limitation in section 5.2A(e) may be waived or modified. In granting a waiver or modification of the traffic limitation, the commission shall find, in addition to those findings in section 5.1, that the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
- n. *Zoning clearance required; notice of request.* No home occupation shall commence without a zoning clearance issued under section 31.5. For each zoning clearance requested for a major home occupation, the zoning administrator shall provide written notice that an application for a zoning clearance has been submitted to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice shall identify the proposed home occupation, its size, its location, and whether any waiver or modification is requested. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five (5) days prior to the action on the zoning clearance as provided in section 32.4.2.5.

Article III. District Regulations

Sec. 10.2.1 By right

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

...

7. Accessory uses and buildings including major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and storage buildings.

...

Article IV. Procedure

Sec. 31.5 Zoning clearance

The zoning administrator shall review requests for zoning clearances as follows:

- a. *When required.* A zoning clearance shall be required in the following circumstances:
 1. *New use.* Prior to establishing a new non-residential, other than an agricultural, use.
 2. *Change or intensification of existing use.* Prior to changing or intensifying an existing non-residential, other than an agricultural, use.
 3. *Change of occupant.* Prior to a new occupant taking possession of an existing non-residential, other than an agricultural, use.
 4. *Specific buildings, structures or uses.* Prior to establishing any building, structure or use for which a zoning clearance is required under section 5.
- b. *Approval.* If the proposed building, structure, improvements, and site, and the proposed use thereof, comply with this chapter, the zoning administrator shall issue the zoning clearance.
- c. *Circumstance when zoning clearance shall not be issued.* The zoning administrator shall not issue a zoning clearance if, after review of any site, the zoning administrator determines that additional improvements are necessary to protect the public health or safety, regardless of whether the improvements are shown on the site plan. (Added 9-9-92; Amended 10-3-01) (§ 31.2.3.3, 9-9-92; Ord. 01-18(6), 10-3-01)
- d. *Commercial and industrial uses defined.* For the purposes of this section 31.5, production agriculture is not a commercial or industrial use, and a class A, class B, minor or major home occupation is a commercial use. (Added 9-9-92; Amended 10-3-01)

- e. *Effect of renumbering and renaming.* Any other section of this chapter that refers to section 31.2.3.2 or to a zoning compliance clearance shall be deemed to be a reference to section 31.5 or a zoning clearance.

(§ 31.2.3.2, 9-9-92; Ord. 01-18(6), 10-3-01)

Sec. 35.1 Fees

Each applicant shall pay the following applicable fees, provided that neither the county nor the county school board shall be required to pay any fee if it is the applicant:

...

- g. Matters considered by the zoning administrator or other officials:
1. Official determinations regarding compliance: \$185.00
 2. All other official determinations, including development rights: \$100.00
 3. Zoning clearance for tourist lodging: \$100.00
 4. Zoning clearance for a home occupation, class A, a major home occupation, or a minor home occupation: \$25.00
 5. Zoning clearance for temporary fundraising activity: No fee
 6. All other zoning clearances: \$50.00
 7. Sign permits under section 4.15.4; no ARB review required: \$25.00
 8. Sign permits under section 4.15.4; ARB review required: \$120.00

...

The fee shall be in the form of cash or a check payable to the "County of Albemarle." An application presented without the required fee shall not be deemed to be submitted and shall not be processed.

(Amended 5- 5-82; 9-1-85; 7-1-87; 6-7-89; 12-11-91 to be effective 4-1-92; 7- 8-92; Ord. 10-18(7), adopted 8-5-10 to be effective 1-1-11)

Agenda Item No. 7. **PUBLIC HEARING: PROJECT: SP-2010-00029. Hungarian Bakery (Sign #65).**

PROPOSED: Special Use Permit for a Home Occupation Class B to allow a bakery within an existing barn; no customers on-site.

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 (31) Home occupation, Class B (reference 5.2).

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: 1850 Brown's Gap Turnpike (Rt. 680) at intersection with Luxor Terrace Dr.

TAX MAP/PARCEL: 057000000001A0.

MAGISTERIAL DISTRICT: White Hall.

(Advertised in *The Daily Progress* on December 27, 2010 and January 3, 2010.)

Mr. Cilimberg said that with the Board's approval of ZTA-2009-0012, this special use permit is no longer necessary. A public hearing is no longer required and the applicant is aware of that. Mr. Cilimberg noted that the County would refund some of the applicant's money spent in the special permit process and this request will be handled through a zoning clearance.

Mr. Davis noted that this application would have been a rural areas major home occupation under the ordinance just adopted.

Ms. Mallek **moved** to cancel the public hearing for SP-2010-0029. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Rooker, Ms. Mallek, Mr. Snow, Mr. Thomas and Mr. Boyd.

NAYS: None.

Agenda Item No. 9. **PUBLIC HEARING: ZTA-2010-00007. Body Shops.** Amend Sec. 24.2.2, By special use permit, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 24.2.2 by adding body shops as a use permitted by special use permit in the Highway Commercial (HC) zoning district.

(Advertised in *The Daily Progress* on December 27, 2010 and January 3, 2010.)

Mr. Ron Higgins, Chief of Zoning, said that this Zoning Text Amendment is intended to fix an omission in the ordinance that was discovered in the review of a building permit application for an addition to a dealership that had changed. He said that staff discovered that in the HC zoning district there was a dealership that also did body work and repair that was incidental to the primary use, but the dealership left and the body shop activity remained, thus becoming a primary use. Mr. Higgins noted that amendment to the Zoning Ordinance as far back as 1992 allowed body shops by special permit in C-1, which in theory is a less intense commercial use. He added that body shops are also allowed by special permit in LI and by-right in heavy industrial. He said that by allowing this use in HC by special permit, staff looked at the

relative intensity of the district for appropriateness and determined that some of the by-right uses are as intense.

Mr. Higgins stated that the Planning Commission agreed with staff's recommendation and unanimously recommended approval of the proposed ZTA.

The Chair opened the public hearing. No one came forward to speak and the public hearing was closed.

Mr. Thomas **moved** for approval of ZTA-2010-00007. Mr. Snow **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

(The adopted ordinance is set out in full below:)

ORDINANCE NO. 10-18(2)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article III, District Regulations, is hereby amended and reordained as follows:

By Amending:

Sec. 24.2.2 By special use permit

Chapter 18. Zoning

Article III. District Regulations

Sec. 24.2.2 By special use permit

The following uses shall be permitted by special use permit in the HC district:

...

17. Body shops.

Agenda Item No. 10. **PUBLIC HEARING: ZMA-2010-00014. Hollymead Town Center (A-1) (Signs #33,36&37).**

PROPOSAL: Rezone 59.162 (portions) acres from Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/acre) to Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/acre), in order to amend the existing proffers.

PROFFERS: Yes.

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.

ENTRANCE CORRIDOR: Yes.

LOCATION: Hollymead Town Center Area A-1, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive in the Hollymead Development Area.

TAX MAP/PARCEL: 032000000042A0, 04600000000500, 03200000004400 (portion), 03200000004500 (portion)

MAGISTERIAL DISTRICT: Rio.

(Advertised in The Daily Progress on December 27, 2010 and January 3, 2010.)

Mr. Cilimberg reported that this item was originally scheduled to be heard by the Commission in December but due to a staff error it was not heard until last night, so to accommodate the applicant the item is now before the Board. He said that the amendment would be to existing proffers related to road improvements and public transit operating expenses, noting that Hollymead's original approval had several areas, but the purview of the Board's consideration tonight are the proffers associated with area A-1, which went to Planned Development/Mixed Commercial when it was approved. Mr. Cilimberg stated that the area encompasses the parcels on the south side of Town Center Drive west of Route 29 where the Kohl's is currently under construction, and A-2 is Planned Development/Neighborhood Model. He explained that the request regarding the road is in the A-1 area and for part of Meeting Street south of the traffic circle that ultimately would extend to become part of Berkmar Drive Extended. The current proffers required this section to be built as of December 31, 2010 based on the plan approval for the Kohl's store on December 31, 2008. Mr. Cilimberg said that the proffers specifically state that the road be built within two years of that site plan approval, and the new proffer language would have the road to the boundary of A-1 built within one year of the County requesting that to be built. He emphasized that the road is not necessary to serve the A-1 area and Kohl's as there is access from Town Center Drive and from Route

29, but when A-2 is developed the road will need to be built to the point where access is provided for A-2 at the theater and into Kohl's. Mr. Cilimberg said the proffer language would have that construction of Meeting Street to the south boundary of A-1 within one year of the County requesting it.

Mr. Rooker pointed out that technically the road was supposed to be built last year. Ms. Mallek commented that it has already been requested.

Mr. Cilimberg responded that Mr. Rooker is correct, noting that the ramifications of that are that Kohl's cannot get a certificate of occupancy until that road is built. He said that because it is not a necessary road in association with this particular development, having it constructed would leave it without any VDOT acceptance.

Ms. Mallek said that it would be a matter of months before it is needed for the next project - the movie theatre complex. Mr. Cilimberg responded that it is the same owner, but a different set of proffers.

Mr. Davis pointed out that it would be required for A-2 by the site plan requirements, rather than by this proffer.

Mr. Cilimberg mentioned that the proffers are different in terms of what was provided in the Board's packets in terms of the wording of this road's construction and for the transit. He presented the new language in the proffers as signed today, with the construction of Meeting Street within one year of the County accepting it.

Ms. Mallek asked what the trigger would be for the County to accept it and why it was agreeable to the applicant when they got permission to build Kohl's and now it suddenly is not.

Mr. Cilimberg replied that he cannot speak to the applicant's intent previously, but he does know where things stand now as far as certificates of appropriateness for Kohl's when they will be open as it is known that the road is not necessary to serve that building.

Mr. Rooker said that he wants to make sure Meeting Street is open before the certificate of occupancy is granted.

Mr. Graham explained that Town Center Drive is the road that runs vertically coming off of Route 29 and going up. The proffer requires that it be completed all the way to Dickerson Road. He said that the applicant is aware that no certificate of occupancy would be granted for Kohl's until the road is ready for VDOT acceptance, and similarly Meeting Street north of Town Center Drive also must be completed prior to the issuance of a certificate of occupancy for Kohl's. Mr. Graham added that the applicant is aware that those issues must be resolved.

Mr. Thomas asked if there was any flexibility granted because paving cannot be done in winter weather. Mr. Graham responded that there is not, but the applicant/owners informed him today via email that the final course of pavement has been put on Town Center Drive.

Mr. Boyd asked why Meeting Street would not be accepted by VDOT if it were completed now.

Mr. Cilimberg explained that the only part that would be accepted would be the stretch from Meeting Street south to the entrance that would serve the theatre as well as the entrance to Kohl's. He said that it is not required to have access off of Meeting Street to Kohl's, but it will have access once the theatre is developed as part of another site plan, essentially serving as a second entrance to theatre.

Mr. Boyd asked about the timeframe for the theatre. Mr. Cilimberg responded that he did not know, but added that the applicant does have a site plan in and another rezoning for A-2 that would likely come to the Board in March. That request is scheduled to go to the Commission in February.

Mr. Rooker asked if staff is satisfied that the road system would be built, with these modified proffers.

Mr. Cilimberg responded that one assurance is that the Kohl's certificates of occupancy are contingent on completion of Town Center Drive and Meeting Street North. He added that Kohl's is advertising its opening for March.

Mr. Graham stated that staff has been meeting with the applicant, who is highly motivated to get this completed because of the acceptance by VDOT of the roads prior to the issuance of a certificate of occupancy for Kohl's.

Mr. Rooker said that without those connector roads this never would have been approved. He added it was extremely material to approval of this rezoning. Mr. Rooker stated the applicants would not have had the votes, clearly, and they know that, if this whole connector road situation, which was carefully worked out by staff, had not been proffered at the time of the development.

Mr. Snow stated that he does not have a problem with going forward as long as the other two roads are done and approved by VDOT.

Ms. Mallek asked who would build from the Kohl's/theatre junction to the property line, because it was supposed to go to the property line in the original agreement.

Mr. Cilimberg responded that the proffer reads that within one year of the County requesting the owner would need to build the road to the property line, but the County would not request it unless VDOT would take it in for maintenance. He added that with A-2, construction of the rest of the road should be revisited and it can be tied to any subdivision or development that occurs in the lower portion of the property. Mr. Cilimberg pointed out that there is a proffer in A-2 for a public area for a transfer station or some other public use, and if that use was to be established the road would need to be further built and maintained by VDOT.

Mr. Rooker commented that he is comfortable with what staff has worked out, but he just wants to be certain that Berkmar is not brought north without a connection there.

Mr. Thomas asked what the trigger mechanism would be for one year. Mr. Cilimberg responded that the County would establish when the road would need to be built, whether for Berkmar or for other reasons.

Mr. Davis said that it could be triggered in order to establish use of the proffered public use parcel.

Ms. Mallek asked if the location of the road has already been established. Mr. Cilimberg stated that it was established with the Kohl's site plan. Mr. Graham said that it is partially in right now and is well-established.

Mr. Cilimberg said there was a second proffer that came in regarding public transit.

Ms. Mallek said that she would like the consideration for the new public transit proffer to be separate from the new road proffer.

Mr. Davis explained that it is a package because it is a proffer amendment that needs to be accepted or not.

Mr. Boyd said that he does not understand that approach, as staff has said they support the Meeting Street proffer but not the transit proffer.

Mr. Davis stated that that would require a new signed proffer.

Mr. Rooker asked if a new, revised proffer could be signed tonight. Mr. Davis replied that it could.

Mr. Rooker said that he supports staff's recommendation for the new road proffer, but he does not support what would essentially mean cutting out \$250,000 contribution in transit money. He noted that the proffers are different with every approval, and it seems that all of the sudden the County is saying it would give back what was promised to be public money. He thinks the Board is being very accommodating to deal with this request the night after the Planning Commission dealt with it, but he does not support that change.

Mr. Cilimberg said that the current proffer does not have a sunset, with an agreement of \$50,000 for ten years. When the applicant made his proffer re-submittal reflecting the change on the road as well as this change he proffered a July 1, 2012 sunset which staff felt was practically going to remove any possibility for funding public transit. Mr. Cilimberg said that staff recommended \$50,000 for 10 years with a January 1, 2021 sunset, as it seemed more reasonable to consider transit possibilities for the future in that area. Last night, the Commission recommended \$25,000 per year for 10 years with a July 1, 2018 sunset to reflect seven years from a certificate of occupancy granted this year on Kohl's. Mr. Cilimberg said that staff tried to provide comparables, but none of the proffers from other developments are really the same and the conditions are different depending on location.

Mr. Boyd commented that he does not understand the language of the sunset provision.

Mr. Cilimberg explained that the sunset is based on when the first year's proffer is contributed, adding that it is a 10-year commitment that needs to start within that time period.

Ms. Mallek stated that this was a contract made with citizens who were mostly very concerned that there was a lot of cost associated with this project and not much being put forth except for their tax dollars. She added that a commitment has been made to the County and to the citizens and she does not think this proffer should be changed.

Mr. Boyd commented that the proffer system has been inequitable across the Board.

Ms. Mallek emphasized that the per-unit proffer for this facility was \$300 per unit, and that went to \$3,000 per unit for North Pointe and \$17,000 for Albemarle Place. She stated that proffers are floating, but the County made that commitment.

Mr. Cilimberg mentioned that this rezoning came along two or three years after the first three rezonings at Hollymead Town Center. He added that it was probably three years after this rezoning that the cash proffer policy was adopted. He added it has been a work in progress over 10 years.

Mr. Rooker said that the applicant has a terrific deal when compared to other developments. This development was less than \$1,000 per unit.

Ms. Mallek pointed out that Orange County was using a \$30,000 proffer while the County was figuring all this out.

Mr. Rooker noted that the only reason this is even before the Board is because the applicant cannot meet the street requirements, and it is not really fair for the developer to tack on a provision to get out of contributing \$250,000 to public transit. He just does not support it.

Ms. Mallek stated that the Board was also convinced at the time that there would be millions of dollars in tax revenue coming in every year to help offset all of the County's expenses.

Mr. Davis explained that this is an application to amend a proffer and under normal proffer rules a signed, written proffer has to be received by the Board prior to opening the public hearing. That signed proffer was submitted today but with a version that relieves the commitment to transit. After the public hearing begins, no material changes can be made to the proffer without another public hearing being advertised and held. Mr. Davis added that the General Assembly has amended State law regarding proffer amendments that allows Boards of Supervisors to waive the required public hearing necessary for an amended proffer if the proffer amendment does not involve a change in use or change in density. This particular proffer does not involve a change in use and a change in density. If the Board opens the public hearing on this particular proffer amendment and determines that a change to the proffer is required before it would be willing to approve it, the process would allow the Board tonight to waive the additional public hearing and accept a changed proffer before it took action. He added that is a discretionary decision of the Board.

Mr. Rooker said that he does not think another public hearing should be required. He added that changes could be made before the public hearing is opened so that the public is commenting on the actual proffers.

Mr. Davis responded that the applicant would have to make the decision on whether he wants the Board to consider a changed proffer prior to the public hearing opening or roll the dice.

Mr. Rooker suggested that the Board take a break to give time for staff to speak with the applicant.

The Board then recessed at 7:27 p.m., and reconvened at 7:49 p.m.

Mr. Davis reported that the applicant has now made a change to the proposed amended proffer so that the transit funding proffer is back to the original language of the proffer. The only change before the Board at this time is the change to the road proffer, which is the same as what staff presented earlier. He added that it is now appropriate to open the public hearing on the proffer which is amending only the proffer related to the road.

At this time, the Chair opened the public hearing.

Mr. Wendell Wood, the applicant, said that he finds what just happened very disturbing. He signed off on the proffers with the understanding that he has the right to come back at a later date to present his case. Mr. Wood said that he is disturbed at statements Board members made that are not correct. He did not make these proffers but the previous owner did who went broke because of the proffers. He stated that he does not agree that this project has not paid its fair share, noting that he himself has paid \$11.0 million for offsite improvements. The night this project got approved, it was approved for a secondary road from behind Harris Teeter to Dickerson Road with Meeting Street as a two-lane road with that approval. Mr. Wood said that the County subsequently requested that Meeting Street be converted into a four-lane divided road, which is in place today. He pointed out that Mr. Rooker's condition on approving the rezoning was to extend Town Center Drive to Dickerson Road, which he agreed to doing. Mr. Wood said that road today is built as an entirely different structure, curb, gutter, sidewalk, and 60-foot right of way. He added the road got changed at a later date at an additional cost of \$1.5 million.

Mr. Rooker commented that his memory is a little bit different than what Mr. Wood is stating here. He said that he does not think that the profile of the road was approved that night one way or another.

Mr. Wood replied that it was approved as a secondary road, with no curb and no gutter, and no sidewalks. He added the road got changed.

Mr. Wood also said that Albemarle Place is paying \$7,000 a year for transit for five years, a total of \$35,000; North Pointe is paying \$250,000 for 10 years, and Martha Jefferson Hospital is paying a total of \$50,000. He said that when \$500,000 is added to a project without a business assessment done and when no one else around the project is paying a penny - nothing else in Hollymead Town Center has an assessment to contribute anything - that puts a burden on this portion that makes rent go up \$1.10 per square foot. The bus service to this project would have to bring in \$3,600 per day just to support paying for it. Mr. Wood said that is okay if everybody else is in the same ballpark. Everyone should be on a level playing field, but the tenants beside this project are not having to paying these costs. He added that Ms. Mallek contends that this project has \$300 proffered per residential unit, but he thinks it is closer to \$17,000 per residential unit.

Ms. Mallek commented that the \$300 was presented at the public hearing in 2004. Mr. Wood said he never heard that number.

Mr. Rooker said that Albemarle Place is \$3,000 per unit and his recollection is that this development is about a one-third of that. He added that every development has different impacts and every development has different road connections necessary to serve it. He asked for the total commercial square footage of this property. Mr. Wood said the area has 250,000 square feet of commercial. Mr. Rooker said that the cost for transit is about \$1 per square foot as a one-time cost.

Mr. Wood said that it is a cloud on the title when you try to get financing. He stated that the cost increase is based on revenue, and just to stay neutral it has to be additional revenue.

Mr. Rooker pointed out that raising the rent \$1 per square foot would pay for it in one year.

Mr. Wood attempted to explain that the cost for transit would not come from rent, but would instead come from the revenue. It would take sales revenue of approximately \$1.5 million for the store to cover it. He also said that the County should not air this type of attitude toward Kohl's. The Board's position has put Kohl's in jeopardy.

Mr. Rooker responded that this has nothing to do with Kohl's. It has to do with giving back \$250,000 of public money that was proffered with respect to this and is not necessary for Kohl's to open its doors in March. He added they are not going to get this money.

Mr. Wood said that this is not giving him money back. He did not agree to these proffers, but he got the property back from the previous owner and is trying to fulfill these obligations. He added there has not been one project in this County that has moved forward since the Board instituted these proffers; they do not work.

Mr. Rooker stated that Mr. Wood's project was approved and moved forward, Albemarle Place is getting ready to break ground, and a number of other smaller projects have been approved with higher proffers than this property carries.

Mr. Wood contended that this is one section of commercial, and there is no residential in this section, whereas Albemarle Place is twice as large and only paying \$35,000 total for transit.

Mr. Rooker pointed out that they are also paying \$3,000 per residential unit and are contributing to have an extra lane on Route 29.

Mr. Wood responded that he spent \$11.0 million on offsite.

Mr. Jeff Werner, speaking on behalf of Piedmont Environmental Council, said that PEC has worked for years on getting transit built without having the community fund all of it. He said that the Board has spent the past several weeks talking about a growth area expansion in this area, and a key argument Board members have made is that it would send a message to developers and encourage them to help, or even construct entirely, the Berkmar Extension. Mr. Werner stated that the trigger to have the road with the development in question tonight developed was pulled when Kohl's was started, and now that they need a certificate of occupancy the County is being asked to be accommodating and establish a new trigger. He said that this proffer provision was in place before the construction of Kohl's so if they cannot get its occupancy because that provision was not met that is not a matter between Kohl's and the residents of Albemarle County; that is a matter between Kohl's and the developer that did not build the road. Mr. Werner urged the Board to go ahead and get the road built even if it does not connect with anything yet. He added that this portion of Berkmar Extension is critical.

Mr. Morgan Butler, speaking on behalf of the Southern Environmental Law Center, thanked the Board for its resolve in this matter. He stated that the County needs to enforce the proffers because to do otherwise shifts the burden to the taxpayer. He encouraged Board members not to proceed this way in the future, as this project is getting pushed through in the dark without the public having adequate time to review the new proffers and respond. These type situations need to be avoided at all costs.

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

Mr. Thomas asked if Mr. Wood was the original applicant on this piece of property. Mr. Davis responded that Octagon Corporation was the applicant for the proffers that are being amended, and an entity that Mr. Wood owned sold the property to Octagon, and then Route 29 LLC purchased the property back.

Mr. Rooker clarified that when the original rezoning was done, there was a requirement that Meeting Street north be completed. There is somewhat of a combination of what was originally proffered and what was proffered when A-2 was approved. Mr. Rooker said he has no problem with what the Board has done tonight to accommodate the request to make certain that the certificate of occupancy goes forward.

Mr. Thomas said that he supports the road. He asked if the proffers transfer with sales of the property. Mr. Davis explained that proffers run with the land, not the owner of the land.

Mr. Boyd asked if this proffer only pertains to A-1. Mr. Davis responded that the proffer is a requirement of the A-1 development. The County does not know how the costs get shared, but before the A-1 can happen the proffers must be complied with.

Mr. Graham added that this section of Meeting Street was only proffered with A-1. Mr. Davis added that there is an interrelation between the different sections.

Ms. Mallek said that one of the things that was praised back in 2004 was the fact that there were four landowners who came together and did this joint application.

Mr. Thomas commented that he is leaning towards \$25,000 in proffer money for transit.

Mr. Davis explained that it cannot be done that way, as the proffer is proposed at \$50,000. The applicant has withdrawn his request to amend proffer #4 which dealt with the transit funding. He added that Mr. Wood can make another application to come back and amend the proffer at a separate date.

Mr. Rooker said that the proffer tendered tonight includes the transportation component as presented by staff earlier tonight.

Mr. Thomas **moved** for approval of the proffers pertaining to ZMA 2010-00014 as signed and dated January 12, 2011, incorporating the changes made tonight. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

(The proffers are set out in full below:)

Amended Proffer: X
Amendment: 1

PROFFER FORM

Date: January 12, 2011

ZMA #: ZMA 2010-00014 Hollymead Town Center Area A-1

Tax Map Parcel Numbers: 32-42A, 32-44 (portion), 32-45 (portion) and 46-5

59.162 Acres to be rezoned from PD-MC to PD-MC

Tax Map Parcel Numbers: 32-42A, 32-44 (portion), 32-45 (portion) and 46-5, comprising approximately 59.162 acres are subject to rezoning application ZMA 2010-00014 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled "ZMA Application Plan for PD-MC Portion of Hollymead Town Center Area A, Sheets A1, A2, A3, A4, A5, Exhibit A, and Exhibit B," approved September 12, 2007, hereinafter referred to as "the Project," prepared by Dominion Development Resources LLC, (the "Application Plan"). The Owner of the Property is Route 22, LLC, a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Planned Development Mixed Commercial (PD-MC) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. These proffers supersede those accepted in conjunction with ZMA 2005-015 provided that, if rezoning application ZMA 2010-00014 is denied, these proffers shall immediately be null and void and of no further force and effect, and the proffers accepted in conjunction with ZMA 2005-015 shall remain in full force and effect.

- I. **Road Improvements** - To the extent not currently completed, the Owner shall design, construct and dedicate to public use for acceptance by VDOT the roads listed in Proffer 1(B) as provided herein:
 - A. **Design and construct.** The roads shall be constructed in accordance with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT"). All of the foregoing improvements shall be constructed to VDOT design standards pursuant to detailed plans agreed to between the Owner, the County and VDOT.
 - B. **The roads and the time of their completion.** The following roads shall be designed and constructed by the milestones provided herein:
 1. **Within two years from the date of approval of the first site plan or subdivision plat.** The road plans for the following roads will be submitted to VDOT and the County with the first site plan or subdivision plat, and the following roads shall be will be constructed and accepted by VDOT within two years from the date of approval of the first site plan or subdivision plat:
 - a. A continuous right turn lane on Route 29 southbound from the intersection of Town Center Drive to the southern boundary of Area A. This proffer, identified as Proffer 1A from ZMA 2005-00015, has been satisfied.
 - b. An entrance to Route 29 southbound (right in / right out only) in the area to the south

of building B, as shown on the Application Plan. This proffer, identified as Proffer 1C from ZMA 2005-00015, has been satisfied.

2. Within one year after the date of approval of ZMA 2005-00015. Within one (1) year after the date of approval of ZMA 2005-00015, the following roads shall be completed:
 - a. Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking.
 - b. Town Center Drive (previously Access Road A) from the eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the County and VDOT in a minimum 60-foot wide right-of-way.
3. Within one year after request by the County. Within one (1) year after request by the County, Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property.

C. When construction deemed complete. For purposes of Proffer 1(B)(2) and (3), construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

2. Regional Transportation Study - The Owner shall contribute \$59,000.00 cash to the County or VDOT for the purposes of funding a regional transportation study for the Route 29 corridor. The \$59,000.00 cash contribution shall be made, prior to the first site plan approval for Area A-1. This proffer, identified as Proffer 2 from ZMA 2005-00015, has been satisfied.

3. Public Transit Stop Construction - The Owner shall construct one public transit stop within Hollymead Town Center Area A-1. The location of the public transit stop shall be identified on the approved Application Plan and retained in the County files. The location shall be approved by the Director of Planning, prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-1. Construction of the public transit stop shall occur in conjunction with improvements for the first site plan or the public street plans which include the area for the transportation stop. The design of the public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. Public Transit Operating Expenses - Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute ~~\$25,000~~ cash to the County to be used for operating expenses relating to such service, and shall contribute ~~\$25,000~~ cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total ~~Two Hundred Fifty Thousand Dollars (\$250,000)~~. The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution. ~~If public transit service is not provided to the Project by July 1, 2018, this proffer shall be null and void.~~

MM
1-19-17

FIVE

\$59,000 \$50,000

\$500,000

5. Intersection Analysis - The Owner shall submit an analysis of the Conner Drive and Town Center Drive intersection with the first site plan for the Project. The analysis shall be prepared by a qualified traffic engineer for the purpose of determining when the intersection would need to be signalized. The analysis should take a five (5) year projection to determine, based on the submitted site plan, when the intersection would require a signal. The analysis shall be submitted for review and approval by the County Engineer. If that analysis concludes the need for the intersection to be signalized within the five (5) year projection period, the Owner shall pay for the cost of the signal and synchronization when VDOT determines the signal is needed. This proffer, identified as Proffer 5 from ZMA 2005-00015, has been satisfied.
6. Community Development Authority - Upon the request of the County, the Owner shall petition for and consent to a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, *et seq.* of the Code of Virginia ("Code") to be created for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.
7. Critical Slopes, Erosion and Sediment Control and Stormwater Management
 - A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

- B. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)
 - C. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.
 - D. Stormwater. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.
8. **Greenway Dedication** - The Owner shall dedicate in fee simple a minimum 4.5 acre "Greenway" to Albemarle County. The land to be dedicated as the Greenway is identified on the Application Plan as "Greenway Area dedication to Albemarle County," and shall include all flood plain area along Powell Creek. The Owner shall complete the improvements shown on the Application Plan and shall dedicate the Greenway to the County at the time of the first site plan or subdivision plat approval. The Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County.
 9. **Greenway Connection** - Upon the request of the County, the Owner shall contribute \$50,000 cash to the County to provide pedestrian access to and costs for a signalized, at-grade pedestrian crossing across Route 29 to connect Hollymead Town Center with Hollymead Drive. The final location and construction elements for the trail shall be determined by the Director of Parks and Recreation in consultation with the County Engineer. The location for the at-grade crossing and signal shall be determined by the County Engineer in consultation with the Director of Parks and Recreation and VDOT. This proffer, identified as Proffer 9 from ZMA 2005-00015, has been satisfied.
 10. **LEED Standards for Core and Shell Development** - The Owner shall cause the commercial buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit, the Owner shall submit a certification from a LEED certified architect to the Director of Community Development that the buildings meet LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.
 11. **Additional Public Space** - The Owner shall construct a plaza area, as identified as "Plaza Amenity" on the Application Plan, within the Project of no less than 5,000 square feet for the purpose of public gathering and passive outdoor recreation. The plaza shall contain areas of permanent outdoor seating, a water feature, and landscaping, the design and construction which shall be subject to final site plan review and subject to the satisfaction of the Director of Planning.

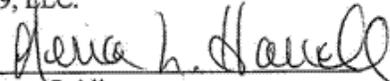
WITNESS the following signature:

ROUTE 29 LLC

By: 
Wendell W. Wood
Operating Manager

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 12th day of January, 2010, by Wendell W. Wood, Operating Manager for Route 29, LLC.

My Commission expires: April 30, 2013 
Notary Public

Notary registration number: 112181

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

Ms. Mallek asked if the Board had had a chance to review the resolution for alternate sewer systems, or if it should be postponed.

Mr. Boyd said that it does not obligate the County to any fees, but just leaves the authority locally rather than at the State level.

Other Board members agreed that they support the measure.

Ms. Mallek **moved** to adopt Resolution Regarding On-Site Sewage Disposal Systems. Mr. Rooker **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

NAYS: None.

(The adopted resolution is set out in full below:)

RESOLUTION REGARDING ON-SITE SEWAGE DISPOSAL SYSTEMS

WHEREAS the Albemarle County Board of Supervisors acknowledges that the Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States and that the CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States; and

WHEREAS the Albemarle County Board of Supervisors acknowledges that major portions of the Chesapeake Bay and its tidal tributaries within Virginia have been identified as not meeting water quality standards and that Virginia has submitted a Chesapeake Bay TMDL Phase 1 Watershed Implementation Plan to correct this; and

WHEREAS Albemarle County is beginning to see properties and neighborhoods with substantial reliance on On-Site Sewage Disposal Systems (OSDS) and drinking water wells; and

WHEREAS clean water is vital for long-term economic viability and health of the population in Albemarle County; and

WHEREAS the Commonwealth of Virginia has adopted laws and regulations that encourage the proliferation of engineered OSDS; and

WHEREAS the net effect of these laws and regulations has been to reduce local control over land use and water quality at the same time localities are being charged by the Commonwealth of Virginia with improving water quality in the Chesapeake Bay;

NOW THEREFORE BE IT RESOLVED THAT the Virginia Department of Health be required to develop effective monitoring, expedited enforcement, and effective repair protocols; and the General Assembly provide necessary funding to accomplish these actions before any additional engineered OSDS be approved; and

BE IT FURTHER RESOLVED THAT the Albemarle County Board of Supervisors requests that the General Assembly reaffirm local zoning and land use authority to manage the location and timing of the installation of engineered Onsite Sewage Disposal Systems and that General Assembly specify in the Code of Virginia that the presence of each engineered OSDS must be recorded on the deed for the land where it has been installed so a prospective buyer is aware of specific maintenance requirements, the transfer of ownership is transparent, and the localities can track the installation of such devices in their areas of responsibility.

Mr. Foley said the VACo recently made a request for a special assessment of at least \$3,000 to help protect the current standard of proof in real estate and property assessment. This funding would help offset contractual services for tax, real estate and property assessment consultants recently hired by VACo/VML to assist in fighting legislation expected during this year's General Assembly session. Fighting this legislation is one of the priority issues identified by the Board in this year's legislative program. Funding for this could come out of the Board's reserve. If the Board approves the request, an official appropriation would come back on a future Consent Agenda.

Mr. Rooker **moved** to authorize the \$3,000 special assessment allocation from the County. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

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

NAYS: None.

Agenda Item No. 12. Adjourn to January 18th, 2011 for joint meeting with City Council.

Ms. Mallek stated that the Board has been provided with a time for the joint meeting with the City, which is Tuesday, January 18, 2011 at 2:00 p.m., in Room 241 in the County Building.

Mr. Foley said that the City had suggested the meeting be held in City Space which is available.

Board members expressed concern about the parking fees and the accessibility for citizens as the County Office Building is on the bus route and has free parking.

Mr. Boyd commented that it should not be a deal breaker.

Mr. Davis commented that the Board needs to adjourn to a specific time and place.

At 8:17 p.m., Ms. Mallek then **moved** that the Board adjourn to January 18, 2011, 2:00 p.m., Room 241 of the County Office Building. Mr. Thomas **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

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

NAYS: None.

Chairman

Approved by Board
Date
Initials