Albemarle County Planning Commission

The Albemarle County Planning Commission held a meeting and a public hearing on Tuesday, October 29, 2002 at 6:00 p.m., at the County Office Building, Room 241, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Vice-Chairman; Rodney Thomas; Bill Edgerton; Jared Loewenstein, Chairman; and William Finley. Absent were Pete Craddock and Tracey Hopper.

Other officials present were David Benish, Chief of Planning & Community Development and Steven Biel, Planner.

Other Matters Not Listed on the Agenda from the Public:

Mr. Loewenstein invited public comment on other matters not listed on the agenda. There being none, the meeting proceeded.

Consent Agenda:

SUB 02-041 Thomas C. and Nelda B. Lull Waiver Request – Request to waive of Section 14-505, access from lot onto public roads abutting subdivision. (Stephen Waller)

Mr. Thomas moved for approval of the consent agenda as presented.

Mr. Rieley seconded the motion, which carried unanimously (4:0). (Finley - absent, Hopper - absent, Craddock – absent)

Work Session:

ZMA-02-10 Sandy Lane (Sign #54, 55, 69) - Request to rezone 68.96 acres from Residential (R-1) to Residential (R-6) to allow up to six units per acre. The concept plan shows 416 residential units in apartments and townhomes designed for university students. The property, described as Tax Map 76, Parcel 24 is located in the Samuel Miller Magisterial District at 400 Stribling Avenue Extended. The property is bordered on the north by the Norfolk Southern Railroad, on the west by Interstate-64, on the east by Moores Creek and on the south by Sunset Avenue Extended. The Comprehensive Plan designates this property as Neighborhood Density, recommended for 3-6 units per acre, in Neighborhood 5. (Margaret Doherty) ***APPLICANT REQUESTS DEFERRAL.***

Mr. Loewenstein stated that the applicant has requested deferral on this matter. He stated that the public hearing would not be opened tonight. He asked staff if they had a date for the deferral.

Mr. Benish stated that he did not have a date, but wanted to wait and discuss the issue with the Commission at the end of the meeting.

Mr. Loewenstein asked that they defer the item with the meeting date to be determined at the end of the meeting.

Mr. Edgerton moved for deferral of ZMA-02-10 as per the applicant's request with the meeting date to be determined at the end of the meeting.

Mr. Rieley seconded the motion, which carried unanimously. (4:0) (Finley – absent, Hopper absent, Craddock – absent)

Deferred Item:

SP-2002-025 Time Disposal Services - Request for a special use permit to allow for the outdoor storage of portable toilets in accordance with Section 10.2.2(31) and Section 5.2 of the Zoning Ordinance which allows for a Home Occupation, Class B. The property described as Tax Map 33, Parcel 47A2, contains 4.051 acres, and is located in the Rivanna Magisterial District on e west side of Route 640, approximately 1.5 miles northwest from the intersection of Route 640 (Gilbert Station Road) and Route 784 (Doctors Xing). (Steven Biel) **DEFERRED FROM AUGUST 20TH - APPLICANT REQUESTS DEFERRAL TO OCTOBER 29.**

Mr. Biel presented the staff report. He stated that this special use permit was deferred from the July 9th meeting and then from the August 20th meeting. At the August 20th meeting, the Planning Commission requested the applicant to provide additional information to specifically address the eight issues that are identified in the staff report. The applicant has submitted a more detailed sketch plan, which is Attachment J. The applicant also submitted requests for three waivers to Sections 5.2. The first waiver is for the size of the proposed storage building and the fenced area in proportion to the size of the dwelling. The current residence is approximately 1,386 square feet with the proposed Home Occupation containing a total of 8,000 square feet. This would exceed the 25 percent proportion to the dwelling by 5.77 times or 577 percent. The size of this business and the scale in relationship to the primary residence far exceeds the intent of the Home Occupation. Staff believes that this business is more consistent with more intensive industrial and commercial uses of development areas. The second waiver request is for the overall size limitation of 1,500 square feet as defined in Section 5.2.2.1.a. The proposed 8,000 square foot area for the storage building and fenced area exceeds the 1,500 square foot limitation by 5.33 times or 533 percent. Again, due to the scale of this business, staff believes that this application does not meet the intent of the Home Occupation and would be more appropriate in an area zoned for commercial or industrial uses. The third waiver request is for a change in the outside appearance of the buildings or premises. The Zoning Department has determined that outdoor storage, even when screened by a fence or landscaping, does not comply with Section 5.2.2.1.b. And furthermore, according to the Zoning Administration there have been no Home Occupations approved with outdoor storage of this scale. Staff is concerned if this request is approved that a precedent would be set that would allow future requests for large outdoor storage areas. He stated that the eight issues identified at the last meeting include the following:

1. The applicant should work with staff and neighbors to satisfy their concerns;
2. Determine the building and fence area;
3. List the type of materials to be used in the construction of the shed and fence;
4. List and show the objects to be stored in the storage;
5. Abate the current zoning violations;
6. Determine the size of the operation;
7. Provide a proposal as to what the minimum size of the building and fenced area would be and still operate the business;
8. Identify how the 2 tractors and 4 trucks in the fenced area relate to the home occupation.

Staff will now examine the issues that were raised by the Planning Commission. The applicant has retained the services of an attorney to help resolve the issues mentioned above. Staff has met with Mr. McCauley and the attorney and discussed each issue and how to address the issues.

1. The applicant should work with staff and neighbors to satisfy their concerns: The applicant apparently has been in contact with neighbors in the general vicinity of the home occupation and has submitted a petition that supports the request for a special use permit (Attachment L). Two people that signed the opposition petition have requested their names be withdrawn, Mr. Case Mitchell and Mr. James English.

2. Determine the building and fence area: The storage building is proposed to be 1,500 square feet and the fenced area is proposed to be 8,000 square feet.

3. List the type of materials to be used in the construction of the shed and fence: This item has been addressed by showing the building elevations and the materials that would be used. The applicant is proposing to use vertical oak fencing boards for the construction of the fence, which would be 8 feet high. The storage building would be constructed with natural tone wood.

4. List and show the objects to be stored in the storage: The applicant has listed and shown the locations of the equipment to be stored in the storage building and fenced area (Attachment M shows a list of supplies).

5. Abate the current zoning violations: At this time, the current zoning violation has not been abated. Approval of this application would abate the violation.

6. Determine the size of the operation: The size of the operation is shown by the number of vehicles, portable toilets, and related equipment that are stored in the storage building and fenced area (Attachments J and K).

7. Provide a proposal as to what the minimum size of the building and fenced area would be and still operate the business: By arranging all the vehicles and listing the equipment to be stored in the building, the applicant has shown the minimum size of building and fenced area that would be required to operate the business (Attachments J and K).

8. Identify how the 2 tractors and 4 trucks in the fenced area relate to the home occupation: The applicant has explained the relationship of the equipment to the home occupation in Attachment K. The applicant now states in the letter dated 10/10/02 that the dump truck and backhoe are not part of the home occupation but notes that it makes sense to store them within the fenced area. However, the applicant has expressed a willingness to remove the dump truck and backhoe if so instructed.

In previous conversations with the applicant prior to receiving Attachment K, the applicant has stated that the dump truck and backhoe are used for the portable toilet business. The Zoning Administrator has determined that the applicant may either agree to remove the equipment from the property, within a specified period of time, or request deferral of this application in order to revise it to include the dump truck and backhoe as an additional business (Attachment N). If the dump truck and backhoe are removed from the property, the square footage of the fenced area may be able to be reduced. However, this reduction would not significantly reduce the proposed use to a level that would bring it into compliance with the intent of a home occupation. As this equipment is connected with a commercial business, the future location of this equipment must be consistent with the zone in which it is stored.

The applicant has previously agreed that if this request was approved there would be no more than twenty portable toilets stored on the site. The submitted sketch plan shows a capacity for 16 total portable toilets. The accompanying text that was submitted with the letter requesting the three waivers notes there would be a total of 28 portable toilets with no more than 24 being stored on the premises.

Code Enforcement has found the applicant has also operated a trash business, also called Time Disposal, from two different locations in the Development Areas, one on Gasoline Alley (Community Service) and one on Route 29 North, past the airport (Industrial Service). Staff believes the portable toilet business is similar in nature to a trash business and should be located in a more appropriate zoning district, such as the Time Disposal trash business had attempted to locate.

RECOMMENDED ACTION: Staff recommends the request for the special use permit and the accompanying three waivers be denied due to the scale and scope of the use for a home occupation. Staff believes this business would more appropriate in an industrial/commercial area.

Should the Planning Commission recommend approval of SP 2002-025, the following conditions of approval are offered for consideration:

1. All outdoor storage shall be screened in accordance with Section 32.7.9.8 of the Zoning Ordinance and, all outdoor storage shall not be visible from adjoining properties and from Route 640.
2. This special use permit shall be for the outdoor storage of no more than 20 portable toilets only.
3. The outdoor storage of portable toilets shall occur only on Tax Map 33, Parcel 47A2.
4. The applicant's improvements and the scale and location of the improvements shall be developed in accord with the sketch plan entitled "Boyd & Michele McCauley", prepared by T. Hale, and dated 9/6/02.
5. The tree line located on the southern, western, and northern boundary of the property (Tax Map 33, Parcel 47A2) shall be preserved to help maintain a natural buffer from adjoining properties.
6. If an application is filed to amend this special use permit to include the storage of construction equipment and materials, a site plan and a certified engineer's report (not provided by the County) shall be submitted for review and approval by the Planning Commission.
7. VIO 2001-266 shall be abated prior to the issuance of a clearance for this use.
8. Only empty portable toilets shall be stored in the proposed storage building, as shown on the sketch plan entitled "Boyd & Michele McCauley", prepared by T. Hale, and dated 9/6/02.
9. The dump truck and backhoe shall be removed from the applicant's property (Tax Map 33, Parcel 47A2) and shall not be considered part of this special use permit.
10. A certified engineer's report detailing how the standards of Section 4.14 will be met shall be required. The report shall be prepared by a professional engineer licensed in the Commonwealth of Virginia (the Albemarle County Department of Engineering will not serve in this capacity).

Mr. Biel stated that he would be happy to answer any questions.

Mr. Finley arrived at 6:15 p.m.

Mr. Loewenstein asked if there were any questions for staff.

Mr. Rieley stated that Attachment G specified the area for the proposed enclosure. In this application, there is another sketch submitted by the applicant that seems to be a little different. He asked if the one dated 9-6-02 is the current proposal.

Mr. Biel stated that the plan contained under Attachment J dated 9-6-02 is the most current one.

Mr. Loewenstein asked if there were other questions. There being none, he opened the public hearing on SP-2002-025 and asked if the applicant would like to address this.

Richard Armstrong, attorney, stated that he represented Mr. McCauley of Time Disposal Services. He stated that from the staff report, this sounds like an extraordinary application in that it really does not exceed anything that was contemplated under the statute. He pointed out that what they were really talking about, however, was that the enclosed area is included in the calculations and that is how staff came up with 577 percent greater than the size of the home. However, the actual structure itself is significantly smaller than that. The fencing really serves to improve the appearance of the structure and the land. While it does encompass a lot of space, they believe that it has been narrowed down as much as possible and still be able to operate a business from there. One of the things that has come out loud and clear from previous discussions is that Mr. McCauley was instructed to work with the Planners. As you can see,

basically on every one of the eight points he has worked with the Planners to meet their desires. In fact, they were given an indication of how to plant around the fence. They discussed the dump truck, which has not been used for this business. They agreed to move it off the property if that was required. He noted that Mr. McCauley of Time Disposal Services has shown a willingness to work with the Planning Commission, the Planners and anybody that has an issue with this. He stated that if the Planning Commission were to approve this, they could place specific and verifiable conditions on the business that we would be able to work with and you would be able to see in three months or whatever date you put on it that it would occur. Just for one clarification, he stated that the layout on the back shows clearly the use of the space. The color codes show where each set of portable toilets would go. The one outside of the striped lines is the trucks or roll off bodies that carry the materials to and from the site. He presented photographs of the trucks that dispose of the waste. He noted that there was no disposal of waste on the property.

Mr. Loewenstein stated that he has two people who have signed up to speak on this matter. The first is Janie Goldberg. He asked if she would like to come forward.

Janie Goldberg stated that Mr. McCauley should continue to be a responsible business owner and not put an industrial business in their backyard. She noted that everyone moved to this area to be in a rural residential neighborhood. She noted that she continually passes his trucks on the gravel road to get to and from her house. She felt that it was a dangerous situation for the children in the area. If Mr. McCauley has been in violation for over a year, what makes imposing more conditions upon him now stop him from continuing to violate the conditions once he gets a waiver. She felt that it would continue to be a junkyard and therefore she opposed the request.

Deborah Fredrikson stated that she lives next door to Mr. McCauley. The photographs taken previously were taken from her driveway. She stated that she has never had any problems with the McCauley's as neighbors, but felt that she did not have any recourse concerning the business. This summer she found out that was not the case when Mr. McCauley was found in violation on several occasions. She did not feel that Mr. McCauley was dumping waste since she did not have any odor on her property. She voiced concern since the purchase of her home was a big investment and it was located 200 feet away from this business. The privacy and country life was the reason she chose this area, and now all of a sudden this business was located right next door. She felt that her property values would be lower due to Mr. McCauley's business.

Graydon Fredrikson, father of Deborah Fredrikson, stated that he owned ten acres adjoining this property. He pointed out that he was retired from the service and was blind. He stated that the zoning laws are there for a purpose and should be preserved. He noted that a law is for everyone to abide by. He voiced concern if the Board approves this business that it would be a double standard to allow him to conduct this business. He voiced concerns about the financial loss he would incur if he chose to sell the property with this undesirable business located on the site.

Mr. Loewenstein asked if there was anyone else present who wished to speak. There being none, the public hearing was closed and the matter brought back to the Commission for action.

Mr. Thomas stated that waivers are a part of the system to allow the rules to be bent. He noted that this was a hard one to look at and to make the right decision.

Mr. Finley stated that the home occupation is something that ought to be looked at in the Rural Areas. He noted that there are a lot of people who stick to their farms to survive and make a living. He pointed out that there were portable potties aligned all the way down the road for Foxfield and nobody seems to be offended. He stated that he felt that somebody has to bring them there. This young man has built up a business here and is making a living. He asked what he is going to do if you close him down. He understands that he has a large fenced in area and a shed, but he was still going to vote for him since he has been at it for fourteen years.

Mr. Thomas stated that he had a portable potty sitting in his parking lot on Harris Street due to the water shortage.

Mr. Finley stated that he could take you to numerous places that have dump trucks, school buses, tractors, and boats. He noted that people go to work and bring back their truck and park it in their lot. He pointed out that he could point out a dozen in his immediate area.

Mr. Edgerton stated that Mr. McCauley has only been in the portable storage business for 3 ½ years according to his statement. There was some suggestion by staff that perhaps Mr. McCauley owns other property that is zoned to accept this type of activity. He respected Mr. McCauley's right to make a living, but the question that was before them now was if the use was appropriate for him to make a living in the Rural Areas. He stated that he was unable to support this because they could not figure out a way to make the use work. He felt that this was not an appropriate use in the Rural Areas and he was going to vote against it for that reason.

Mr. Rieley stated that his main issue of concern was the large scale of the business. The first time it came before us he had expressed a great deal of sympathy to Mr. McCauley's situation and a willingness to try to make this work if it were anyway to do it. It was when it came back the second time that he became fully aware of the magnitude of the scale and the impact that it would have on the adjoining properties. That also came in conjunction with the neighbors speaking in opposition to this. He noted that it was their hope that this could be worked out in a way that would be agreeable to the neighbors. He agreed with much of what Mr. Finley said including taking a hard look at what is permissible in the Rural Areas. He stated that the bottom line was that this was an activity that was more suitable for an industrial area. He pointed out that this was not an ongoing business that they were somehow responsible for shutting down. This business is operating illegally and has been for some time. They were just reaffirming the Zoning Ordinance. He wished that there were a way that they could have made this to work. He felt that they gave it a good try. He noted that it was apparent last time that it was before the Commission that the scale of it was just completely out of character for a Rural Area.

Mr. Loewenstein agreed with Mr. Rieley that the scale was the major issue. He felt that it is a shame that there was not some way to work this out. The applicant has attempted to work this out. The Planning staff has tried to do whatever possible to make this a workable arrangement. Clearly the way things stand and the way the Ordinances are written for Rural Areas and Home Occupations, he felt that it was just not possible to cram this size of business into this site. He stated that there were a number of people who signed petitions protesting this as well as others who signed petitions in favor of this. He noted that the petition in favor does not really point out the scale of this thing. He stated that he was uncertain that the people who signed the petition realized how large this business was going to be because none of that was really addressed. Once waivers supporting an application of this size in the Rural Area as a Home Occupation are approved, then this really opens up some doors to consider for future things that will not make it any easier for us. He noted that they were really upholding the existing Zoning Ordinances. He felt that was something fundamental that they have to focus on.

Mr. Thomas agreed that there should be a way that he can downscale it to make it more workable as a Home Occupation.

Mr. Loewenstein stated that on the face of this, it seems like a pretty hard thing to do. He stated that there are places where it would fit very well, but he did not think that this was it. He asked for two separate motions.

Mr. Edgerton moved for denial of SP-2002-025.

Mr. Rieley seconded the motion, which carried (3:2). (Finley – No, Thomas – No)

Mr. Loewenstein stated that SP-2002-025 was denied by a (3:2) vote.

Mr. Rieley moved for denial of the three waivers.

Mr. Edgerton seconded the motion, which carried (3:2). (Finley – No, Thomas – No)

Mr. Loewenstein stated that the waivers were denied (3:2). He noted that the Board of Supervisors would hear the application on December 4th.

Old Business:

Mr. Benish stated that the applicant requested deferral of ZMA-02-10 Sandy Lane and staff wanted to schedule a date. Next week staff had hoped to schedule the meeting for a presentation on the Rural Areas. He suggested that they add this application.

Mr. Loewenstein stated that no meeting had been scheduled for next week, which was Election Day. He felt that the following week's meeting had an item that would probably take a long time. He suggested that they start the meeting early on that week.

Mr. Rieley stated that he would be out of town next week.

Mr. Benish stated that the applicant requested a deferral in order to have a full Board present.

Mr. Edgerton stated that he would be out of town the following week.

Mr. Loewenstein stated that he could not ever remember the Commission meeting on Election Day.

Mr. Benish suggested that the Commission defer the request to the November 12th meeting. He noted that they would plan on having the Rural Areas presentation individually during the day with no more than two Commissioners at a time. Staff would be notifying the Commissioners of the particular date and time.

Mr. Loewenstein stated that the Commission would not be meeting next week, November 5th.

Rural Areas Comprehensive Plan Review:

Mr. Finley asked if the handout distributed on Public Participation Meetings for the Rural Area Comprehensive Plan Review was what Ms. Hopper had asked to be posted in the Country stores.

Mr. Benish stated that it was and that if anyone needs copies made that staff would be able to provide them.

Adjournment:

With no further items, the meeting adjourned at 6:50 p.m. to the next scheduled meeting on November 12, 2002.

V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Recording Secretary)