Albemarle County Planning Commission
May 4, 2004

The Albemarle County Planning Commission held a meeting, work session and a public hearing on Tuesday, May 4, 2004 at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia. Members attending were William Rieley, Rodney Thomas, Chairman; Calvin Morris, Jo Higgins, Marcia Joseph and Bill Edgerton. Absent was Pete Craddock, Vice-Chairman.

Other officials present were Wayne Cilimberg, Director of Planning & Community Development; Tarpley Gillespie, Senior Planner and Greg Kamptner, Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Thomas called the regular meeting to order at 6:00 p.m. and established a quorum.

Other Matters Not Listed on the Agenda from the Public:

Mr. Thomas invited comment from the public on other matters not listed on the agenda. There being none, the meeting proceeded to the consent agenda.

Consent Agenda:

SDP 2004-00025 Forest Lakes Office Park – Critical Slopes Waiver - Request for a major site plan amendment approval to allow two new office buildings totaling 16,254 square feet. (Tax Map 46B4, Parcel 7) (Francis MacCall)

Approval of Planning Commission Minutes – March 2, 2004

Mr. Thomas asked if any Commissioner would like to pull any item off of the consent agenda for discussion. There being none, he asked for a motion.

Mr. Rieley moved to approve the consent agenda as submitted.

Mr. Morris seconded the motion.

The motion carried by a vote of (6:0). (Craddock – Absent)

Item Requesting Deferral:

ZMA-03-12 Stillfried Lane Townhouses (Sign #21, 51) - Request to rezone 6.53 acres from R-1, Residential to PRD, Planned Residential District to allow up to 25 dwelling units. The property, described as Tax Map 60, Parcels 32, 33, and 34, is located in the Jack Jouett Magisterial District on Stillfried Lane off Rt. 250W (Ivy Road) behind the Kluge Children's Rehab Center. The Comprehensive Plan designates this property as Office Service in Neighborhood 6. (Margaret Doherty) ***APPLICANT REQUESTS DEFERRAL TO MAY 18, 2004.***

Mr. Thomas stated that the applicant was requesting deferral to May 18, 2004. He opened the public hearing and asked if anyone was present to speak regarding this application. There being no one, he closed the public hearing to bring the matter before the Commission for discussion and action.

Ms. Higgins moved to accept the applicant's request for deferral of ZMA-03-12, Stillfried Lane Townhouses, to May 18, 2004.

Mr. Morris seconded the motion.

The motion carried by a vote of (6:0). (Craddock – Absent)

Mr. Thomas stated that ZMA-03-12 was deferred to May 18th.

Public Hearing Item:

SP-03-52 Larry Hawkins Home Occupation (Sign # 63,65) - Request for special use permit to allow a Home Occupation Class B for an Excavation Contractor in accordance with Section 10.2.2.31 of the Zoning Ordinance, which allows for a Home Occupation Class B. The property, described as Tax Map 94, Parcel 7B, contains 2 acres, and is zoned RA, Rural Area. The proposal is located on 3117 Hearns Lane, approximately .25 miles from the intersection of Hearns Lane and Running Dear Road (Route 808), in the Scottsville Magisterial District. The Comprehensive Plan designates this property as Neighborhood Density in the Village of Rivanna. (Tarpley Gillespie)

Ms. Gilliespie summarized the staff report. The applicant, Mr. Hawkins, has requested an approval of a special use permit for a Home Occupation, Class B to allow for his Excavation Contractor business to occur on his property. The proposed use would include outdoor storage of up to seven pieces of large excavating equipment. The applicant does not have any employees who report to his home occupation site, but he has employees who meet him on various job sites. With this request Mr. Hawkins is also requesting two modifications to Section 5.2 of the Zoning Ordinance known as the section that provides standards for home occupations. Attachment B is a concept plan. This plan is not drawn to scale. The plan is in your staff report and gives you the general idea of the orientation of the storage area relative to his house and his driveway. The two acre parcel was divided from an adjacent parcel in 1986 and the house was constructed in 1989. In January, 2003 the Zoning staff visited the site and determined that there was an existing Excavation Contractor business on site as well as several inoperable vehicles and miscellaneous debris. Again, staff is working with the applicant to try to bring the site into compliance with the Zoning Ordinance. In March, 2004 a notice of violation was issued for two specific violations for a junk yard on the site with a contractor's equipment and storage yard. These two violations are currently outstanding. The approval of a Home Occupation, Class B permit for the Excavation Contractor would remedy the violation for the use, but not for the junk yard. The Comprehensive Plan designates this property for Neighborhood Density Residential Development in the Village of Rivanna. The Neighborhood Density Residential recommends 3 to 6 dwelling units per acre and anticipates some nonresidential neighborhood service type of uses. Staff believes that the proposed home occupation would not serve or relate to the surrounding residential uses and would exceed the scale of the neighborhood service use. Therefore, staff does not find the use consistent with the Comprehensive Plan designation. As mentioned, the applicant is requesting two specific modifications to Section 5.2 of the Zoning Ordinance. Section 5.2.2.1.a requires that the home occupation be 25 percent or less of the square footage of the residence and that it be located within a structure. Mr. Hawkin's home is 2,304 square feet, which includes the first floor and the full walk out basement. That would allow him 576 square feet without this modification to be devoted to his home occupation. A site visit was made by herself and an Engineering staff person who took some measurements and determined that in order to safety maneuver each of these vehicles in and out of the parking storage area and around the driveway that he would really need 2,100 square feet of storage space, and that was the modification that he was requesting. That would be 91 percent of the floor area of his house. She noted that was quite a bit over the 25 percent that he would be allowed without a modification. In staff's opinion the storage area of this size would be the dominate use on the site and home occupations are really intended to be incidental to the residential use on the site. He is also requesting a modification to Section 5.2.2.1.b which requires that there be no change in the outside appearance of the buildings or premises and that any activity be conducted inside of a structure that is built to be compatible with the site. The equipment associated with this home occupation must be stored within a building or else this condition has to be modified. The applicant is seeking this modification. The applicant justifies his request by the fact that his

property is bordered by woods on three sides and that it is really a low density rural setting at the moment. He has offered three rows of white pine trees strategically placed on his site. Those are found on the concept plan attached to your staff report. Staff is concerned that the storage will be visible from various points as well as from residential properties to the west of the site. There are some houses under construction at Glenmore, which is just west of this site. Those houses can be seen from his site. Staff does not feel that the storage will be screened from that future development. In summary, staff has identified one factor that is favorable to this request and that is that this special use permit would remedy one of the existing violations on the site, which is the contractor's storage yard use. Staff has identified several unfavorable factors to this request.

1. The proposed use is incompatible with the land use designation of the Neighborhood Density Residential.
2. The proposed use conflicts with the intent of the Home Occupation, Class B permit that the use be subordinate to the residential use on the site.
3. The proposal would create a negative visual impact on adjacent and nearby properties.
4. There is an outstanding violation for the use of a junkyard on this property. The applicant has worked to clean up the site, but she was told by the Zoning staff that this junkyard is currently still an outstanding violation.

Staff believes that the proposed use goes beyond the intention of a home occupation as intended in the Ordinance. Staff believes that the use could be substantially detrimental to the adjacent properties and have negative impact on the character of the district. Therefore, staff is not recommending approval. However, if the Planning Commission is inclined to approve this home occupation, staff has offered several potential conditions which would help reduce the scale of this proposal and therefore reduce its impacts to the surrounding properties. Those conditions relate to not permitting either of the modifications and requiring the entire use be contained to a 576 square foot shed located on the site and that any repair maintenance of vehicles occur within the shed. It would not allow any outside storage of equipment or parts, etc. be permitted on the site. Any existing storage that is occurring on that site shall be remedied within thirty days of the Board of Supervisors approval of this special use permit. The new structure should meet the minimum yard requirements for commercial structures found in 21.7.2 of the Zoning Ordinance. The storage structure meet the minimum landscaping and screening requirements for commercial and industrial uses found in Section 32.7.9 of the Zoning Ordinance. Therefore, this would allow them significantly less area and intensity than the applicant is actually asking for. Mr. Hawkins is here and can answer any questions that she cannot answer.

Mr. Thomas asked if any Commissioner has questions for Ms. Gillespie.

Ms. Higgins stated that staff indicated that she went out with one the Engineering staff to measure what it would take to accommodate this and came up with approximately 2,100 square feet. She asked if staff meant that would include all seven pieces of equipment. She questioned whether staff's recommendation for a shed of 576 square feet was a realistic limitation if it takes 2,100 square feet.

Ms. Gillespie stated that it was her understanding that he does not own at this time all seven pieces of equipment. She pointed out that he owns the trailer, dump truck and the chipper. Therefore, staff was looking for a compromise that they felt would be in keeping with the intention of the home occupation section of the ordinance.

Ms. Higgins asked if two of the items on the list are licensed and on the road vehicles, which includes the dump truck and the trailer, if they fall would within the category that has to be controlled like off road equipment in talking about volume of equipment.

Ms. Gillespie stated that she consulted with the Zoning staff and they determined that those vehicles counted towards the area dedicated for the home occupation. If it was a personal station wagon used to go to the grocery store, then that vehicle would not count. Since these vehicles are specifically part of the excavation contractor business, they would count towards that area.

Ms. Higgins asked if there was any work being done on equipment at this site or was it just a base for him to work out of.

Ms. Gillespie stated that her understanding was that it was really being used for storage, but he would bring the equipment home occasionally to clean it or to service it. There will no employees coming to the site and there would be no construction activity on the site.

Mr. Kamptner stated that it would be akin to a contractor's storage yard. On a smaller scale this use is the same use as Faulconer Construction, and that use is allowed in the industrial zoning district.

Mr. Rieley stated that normally when Zoning becomes involved in these types of violations it is a result of a complaint from nearby. He asked if there was any history on the violation.

Ms. Gillespie stated that it was not generated by a neighbor's complaint, but was something that zoning staff just stumbled upon.

Ms. Joseph stated that there are some people in the rural areas who have dump trucks and equipment that they use on their farms.

Ms. Higgins stated that most of that equipment would have farm use on it.

Mr. Thomas pointed out that it was the size of the lot compared to what is on it.

Mr. Thomas opened the public hearing and asked the applicant to come forward and address the Commission.

Larry Hawkins stated that he was applying for this permit because he had a little excavating company that was not very large. He pointed out that all he does is grade around houses, dig basements, and put in little driveways to the house. He stated that on many construction sites they throw away a lot of lumber and that sometimes he loads stuff up and brings it home. He pointed out that he did not realize how much stuff he had accumulated. When the County staff came down and saw it they said that he had to clean it up, which he had done. The only thing left on the property today is two cars which don't have license on them. That is the biggest violation right there. He handed out pictures to show the size of the equipment. He noted that no equipment was wider than 7 ½ feet. He pointed out that the only equipment he had was a pick up, trailer with a loader on it, a backhoe and dozer. He noted that his brother was the only employee that he had. The equipment is kept on the job site. He stated that he brings the equipment home about once a month to wash them, clean them up and send them back out. He pointed out that no maintenance was done on the site because he sends the equipment to the factory to be worked on. He pointed out that he did not have any oil barrels, fuel barrels or anything like that. He stated that he had a bunch of aluminum that he brought home on his dump truck which he dumped off without taking the time to stack it. He noted that was what the Zoning staff had seen. He pointed out that he had a signed sheet from all of the residents from Route 250 to Route 808. He pointed out that his father had previously owned this business.

Mr. Thomas asked if he could get rid of the two vehicles.

Mr. Hawkins stated that the two vehicles were collector's items. He pointed out that he had two 1967 Buick Skylarks and was using one for parts to restore the other one. Since he went into business he noted that he has not had the time to work on the vehicles. He asked if he could put the vehicles in a shed. He stated that he really did not want to get rid of his old cars. He pointed out that he was told that if he put license and insurance on the cars that he could have them. He stated that he could get antique license on them, but then he would have to put insurance on them and the cars were not ready to be put on the road. He offered to get a canvass and cover

the cars. He stated that the two vehicles sit behind his house and are not visible because it is over 1,000 feet through the woods to the house. He noted that when the leaves are off of the trees it might be seen a little bit.

Ms. Higgins asked how many unlicensed vehicles you can have.

Mr. Kamptner stated that Zoning could provide him with the guidance that he needs to be in compliance with that.

Ms. Joseph pointed out that was another issue.

Mr. Kamptner stated that the two vehicles were not related to this permit.

Mr. Hawkins stated that the only equipment that he had on site was mostly what he pulled behind his pick up truck and dump truck. He stated that he parks his dump truck and tree chipper on the site. Most of the equipment stays out on the job site all of the time. He pointed out that he had been working in this business since he was a little boy.

Mr. Thomas asked if he could operate his business out of a 576 square foot building.

Mr. Hawkins stated that he was not sure, but he would do whatever he had to do.

Mr. Thomas asked how long he had been doing business at this site.

Mr. Hawkins stated that the business had been going on for five years. He pointed out that he had a permit which was approved for a Class A, Home Occupation in 2000, which stated that he could park his dump truck, trailer and low boy on his property at that time. What had happened was that he had a short bed dump truck and it was too small to haul stumps. Therefore, he purchased a bigger dump truck, which he had sitting in the edge of the woods. He pointed out that was what started that part of it. He asked that the Commission approve his request.

Mr. Thomas opened the public hearing and asked if anyone in the audience would like to speak on this application. There being no one, he closed the public hearing to bring the matter back to the Commission for more discussion and possible action. He asked if they could massage the conditions in some way, particularly for the 576 square foot building.

Ms. Joseph asked if that condition could be modified.

Ms. Gillespie stated that they could modify that as much as they wanted to.

Ms. Higgins stated that this says storage shed/garage. She asked if it would be appropriate to look at a little squared fence area where the equipment could be backed in and covered on three sides. She stated that the tree chipper was pulled behind a regular pick up and could be backed in allowing them more efficiency to do that. She pointed out that a roof structure could create problems with the unloading of the equipment and asked if an opaque fenced area could be used.

Mr. Edgerton suggested that they take Mr. Hawkins's plan and require a fence around the area to store his equipment.

Ms. Higgins suggested limiting it to just the equipment that they were talking about. She pointed out that the applicant's business was low key. He was not operating a shop on site or doing any work there. She asked if there was a way that he could go to and from work and then come in and park the equipment so it would not be obtrusive.

Mr. Thomas stated that the conditions cover all of those concerns.

Mr. Edgerton stated that he met all of the conditions except the first one because there was no way that he could fit the equipment that they saw in a 20' by 30' space. Then the question is, even if they modify the size, do they require him to cover it. He asked if they could allow it to be shielded in a modified way without a top.

Mr. Thomas suggested that they modify the conditions to allow a larger building.

Mr. Rieley stated that this was difficult because when you read down the list of unfavorable factors in the staff report that every one of them is correct. He stated that he was sympathetic to an ongoing use that does not have objection from any neighbor on any side. There is a benchmark to consider as Ms. Joseph pointed out that there are activities that one expects in the rural areas that often have equipment associated with it such as big tractors and hay bailers.

Ms. Higgins pointed out that was usually for parcels with larger acreages.

Mr. Rieley suggested that condition #1 be amended from 576 to 1500 square feet, make the changes suggested by Mr. Kamptner in #2, add construction to materials in #3, for clarity take out the parenthetical clause in #4 in case the minimum side yard requirements changes.

Ms. Higgins stated that it would be what it is today even if it does change.

Mr. Kamptner stated that this condition would restrict it to 50 feet without Section 21.7.2 being modified to 25 feet. Without deleting the parenthetical clause it gives Mr. Hawkins the flexibility or it could be nonconforming if he had at least established the use.

Mr. Rieley stated that in that case he would leave condition #4 as it was because if it changes County wide then that standard should exist. Condition # 5 was unchanged. On condition #6 add the language that Mr. Kamptner suggested. He moved for approval of SP-2003-52, Larry Hawkins, with the conditions as amended.

1) A storage shed or garage, not to exceed 1500 square feet shall be constructed for the purpose of storing all equipment and materials related to the approved use.
2) All on site repair or maintenance of vehicles or equipment related to the approved use shall occur within the storage shed or garage.
3) No outside storage of equipment, parts, mulch, inoperable vehicles, scrap or other construction materials shall be permitted. Any outdoor storage existing on the date of the approval of this permit by the Board of Supervisors' approval shall comply with this condition within 30 days of the Board of Supervisors' approval of this special use permit. .
4) The new storage shed or garage shall meet the minimum yard requirements for commercial structures, found in Section 21.7.2 of the ordinance. (No portion of any structure shall be located closer than 50 feet to any residential or rural areas district.)
5) The storage shed or garage must meet the minimum landscaping and screening requirements for commercial and industrial uses, found in Section 32.7.9 of the ordinance.
6) Before this permit may be used, the zoning administrator shall confirm that no junk is being stored on the property.

Mr. Morris seconded the motion.

The motion carried by a vote of (6:0). (Craddock – Absent)

Mr. Kamptner pointed out that the provisions of the conditions address the first modification so the Commission was granting that modification, but would not be granting the second modification that deals with the outdoor storage.

Ms. Gillespie suggested that the Commission made separate motions for the waiver requests even though it is covered in their conditions.

Ms. Higgins pointed out that in conditions #1 and #2 that the words were changed to storage shed or garage, but that later on it states the new storage structure and then the storage structure. She suggested that the language be consistent in all of the conditions.

Mr. Kamptner agreed that the language should be changed to storage shed or garage in all of the conditions to be consistent.

Mr. Thomas asked if he would like to amend his motion.

Mr. Rieley amended his motion to include the consistent language of storage shed or garage in all of the conditions.

Mr. Morris seconded the motion.

Mr. Kamptner suggested that the Commission go ahead and deal with the special use permit and then do separate motions on each of the modifications.

The motion carried by a vote of (6:0). (Craddock – Absent)

Ms. Higgins made a motion to grant the first waiver request to adjust the 25 percent limitation from the 576 square feet up to 1500 square feet to be consistent with condition #1 in the special use permit approval.

Mr. Rieley seconded the motion.

The motion carried by a vote of (6:0). (Craddock – Absent)

Mr. Kamptner suggested that the Commission take an action on the second waiver request because it could be appealed to the Board of Supervisors.

Ms. Joseph moved for denial of the request for the modification to Section 5.2.2.1.b.

Mr. Morris seconded the motion.

The motion carried by a vote of (6:0). (Craddock - Absent)

Mr. Thomas stated that the motion carried for SP-03-52 which would go to the Board of Supervisors on June 9th. In addition, the motion carried for approval of the waiver request regarding the area requirement, but failed for the request for the modification to Section 5.2.2.1.b.

Ms. Joseph asked that staff go over what they had approved for clarity to the applicant.

Mr. Cilimberg stated that the Planning Commission was recommending to the Board of Supervisors that they approve the special use permit with conditions which he would elaborate. Secondly, the Commission approved a modification to Section 5.2.2.1.a which has to do with the size of the accessory structure and that was accomplished in the first condition of the special use permit. The Commission denied the request for modification of 5.2.2.1.b which would have allowed for outdoor storage. Those two modification actions belong to the Commission under the ordinance. The applicant could potentially appeal the denial of the second modification.

Ms. Joseph stated that in essence what Mr. Hawkins has to do according to their approval is to build a structure of 1,500 square feet to put these pieces of equipment in and then there will also be some kind of screening required, which would probably be vegetation, and that he has to make sure that all of the violations on the site are cleared before he gets the special use permit that allows him to store his equipment on the site.

Mr. Cilimberg agreed with Ms. Joseph, which would also be included along with several other things that the conditions require.

Ms. Higgins pointed out that he did not have to build a 1500 square foot garage, but that would be the maximum size and he only has to build what he needs.

Mr. Edgerton pointed out that any equipment for the business has to be stored in the building.

Old Business:

Mr. Thomas asked if there was any old business.

Ms. Joseph stated that seeing the original plan of The Rocks last week was very helpful. She suggested to staff that if they are amending anything that has a prior approval that the Commission sees whatever it was that was approved before because it makes it a lot easier to figure out what they were amending. The other thing has to do with the open space in The Rocks. One of the things that the Commission was told last week is that we as staff don't know what to do with open space because there is really no provision for it. Therefore, staff would just make it one great big lot. She felt that the public and the Commission were being misled when they see something like that because the assumption is that is open space and that nothing would be built on it and it was not going to be a big lot. Therefore, if there is no provision for open space then the Commission and public needs to know that.

Mr. Rieley suggested that it was something that the Commission needs to be thinking about in their discussion of the Rural Areas and preservation tracts since that was the framework.

There being no further old business, the meeting proceeded.

New Business:

Mr. Thomas asked if there was any new business. There being no further new business, the meeting proceeded.

Adjournment:

With no further items, the meeting adjourned at 7:15 p.m. to the next meeting on May 11, 2004.

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V. Wayne Cilimberg, Secretary

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