Albemarle County Planning Commission
July 27, 2010

The Albemarle County Planning Commission held a public hearing, and meeting on Tuesday, July 27, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Russell (Mac) Lafferty, Duane Zobrist, Vice-Chairman; Ed Smith, Don Franco, Calvin Morris, and Linda Porterfield. Absent was Thomas Loach, Chairman. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Other officials present were Eryn Brennan, Senior Planner; Margaret Maliszewski, Principal Planner; Claudette Grant, Senior Planner; Summer Frederick, Senior Planner; Judy Wiegand, Senior Planner; Bill Fritz, Chief of Current Development; Sarah Baldwin, Senior Planner; David Benish, Chief of Planning; Wayne Cilimberg, Director of Planning; Mark Graham, Director of Community Development; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Zobrist 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. Zobrist invited comment from the public on other matters not listed on the agenda.

Morgan Butler, with the Southern Environmental Law Center, voiced his surprise in seeing that the Riverfront Townhomes item had been relegated to the consent agenda tonight as the proposal disturbs nearly a half an acre of critical slopes on a steep parcel that borders the Rivanna River, which is on the Virginia Department of Environmental Quality's list of impaired waters. Because of the very sensitive nature of this parcel he believed that the Planning Commission should be extremely reluctant to grant a critical slopes waiver to allow a greater disturbance than what can be done by right. He also urged the Planning Commission to have critical slope waivers for parcels that include or border impaired waterways like the Rivanna come before them as regular agenda items in the future rather than on the consent agenda.

There being no further comments, the meeting moved to the next item.

Review of Board of Supervisors Meeting – July 14, 2010

Mr. Cilimberg reviewed the actions taken by the Board of Supervisors on July 14, 2010.

Consent Agenda:

SDP-2010-00043 Riverfront Townhomes
PROPOSED: Construction of fourteen (14) townhomes on 5.344 acres. Waiver to allow disturbance of critical slopes. ZONING CATEGORY/GENERAL USAGE: HC-Highway Commercial: retail sales and service uses; and residential use by special use permit (15 units/ acre), and R15-Residential: high density residential use with various housing types. SECTION: 18-18.2.1(2) Semi-detached and attached single-family dwellings such as duplexes, triplexes, quadraplexes, townhouses, atrium houses and patio houses provided that density is maintained, and provided further that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall. 18-4.2.5(a) Request to waive requirements found in Sec. 18-4.2.3.2, and allow for disturbance of critical slopes. COMPREHENSIVE PLAN LAND USE/DENSITY: Greenspace in Urban Area 3. ENTRANCE CORRIDOR: No. LOCATION: The south side of South Pantops Drive, approximately 0.5 mile from its intersection with Riverbend Drive. TAX MAP/PARCEL: 78/20R. MAGISTERIAL DISTRICT: Rivanna. (Summer Frederick)

Approval of Minutes: June 15, 2010

Mr. Zobrist asked if any Commissioner would like to pull an item from the consent agenda for further review. There being none, the matter was before the Planning Commission for action.

Motion: Mr. Morris moved and Mr. Franco seconded for approval of the consent agenda.

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

Mr. Zobrist noted the consent agenda was approved.

Public Hearing Items

SP-2010-00008 Canine Dog Clipper. PROPOSED: Special Use Permit to allow a commercial kennel. ZONING CATEGORY/GENERAL USAGE: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots). SECTION: 10.2.2.17 Commercial kennel. 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: 5120 Burnley Station Road, approx. one mile west of Stony Point Road (20N) junction. TAX MAP/PARCEL: 03500000000500. MAGISTERIAL DISTRICT: Rivanna. (Eryn Brennan)

Ms. Brennan presented a PowerPoint presentation and summarized the staff report.

This is an application to allow operation of a dog day camp facility, a dog grooming business, and an overnight dog accommodation on the property.

The applicant was unaware that a Special Use Permit was required for the business use and has been operating the business on the property for thirteen years. In March 2010, an anonymous complaint was received and filed with the Zoning Division, resulting in this Special Use Permit application to relieve the zoning violation.

The applicant has provided specific information regarding the application as included in the staff report. Some of the more important elements of the application include:

- The grooming business operates daily from 9 a.m. to 5 p.m. and generates approximately 4 round trip vehicular trips per day.
- The applicant conducts roughly 20% of the pick-ups and drop-offs, and is requesting a maximum of 20 dogs per day be allowed on the property. For the kennel business, pick-ups and drop-offs occur only at specified times and the applicant carries out roughly 40% of these.
- The applicant is also requesting a maximum of 10 dogs be allowed for overnight boarding.

The area is characterized primarily by wooded lots and large single-family residential lots, and the dog care operation is surrounded by forest on all sides. On the presentation slide the green shaded area is under conservation easement, and the pink shaded areas show stream buffer areas.

The entrance to the property is gated, and a contiguous wood post and wire mesh fence encloses the main house, front yard, children's play yard, garage, two dog yards, and the board kennel and grooming station. The day camp and boarding dogs are only allowed in the yards located to the northeast and to the south of the kennel, both of which are identified as number 1 on the Concept Plan.

Staff has identified the following factors favorable to this application:

1. The nearest residence is 400 feet away from the kennel and the subject property is surrounded by wooded areas.
2. The applicant transports approximately 40% of the dogs for the dog boarding business; therefore, any adverse impact on traffic would be negligible.

Staff has identified the following factor unfavorable to this application.

1. The dog kennel facility does not meet the requirements of Section 5.1.11 (a) and (b); however, waivers of these sections are considered appropriate.

Minor revisions to two of the conditions were suggested after further discussion with the applicant and with Zoning.

- It was suggested that Condition 5 be simplified and clarified in order to meet the needs of both the grooming and boarding businesses. The proposed revised condition shows the hours of operation from 9 a.m. to 9 p.m. Monday through Sunday in order to account for all aspects of the business, such as later drop-off and pick-up times on Sunday.
- In Condition 6, it was suggested that "customer trips" be added to the condition so as not to limit the property owners' trips per day related to the business.
- Last, zoning suggested changing the number in the condition to reflect both the maximum number of pick-ups and drop offs generated from the dog grooming portion of the business, as opposed to the number of round-trip trips. So, based on the specifics of the proposal outlined on page 1, it was suggested that this number be changed to 8.

The applicant is also requesting waivers from Sections 5.1.11(a) and (b), as the dog kennel facility does not meet these requirements. In regards to section 5.1.11(a), outside areas where the dogs are allowed, as identified on Attachment B, do not meet the 500' minimum setback distance to agricultural or residential lot lines and the existing fencing materials consist of a 5' high wood post and wire mesh fence. Staff recommends approval of this waiver because seven of the nine adjacent property owners have submitted letters of support for this application, and the wire mesh fence is more in keeping with the rural character of the area than requiring construction of a solid 6' high fence on the property.

In regards to Section 5.1.11(b), the confinement areas for the dogs are inside the wire fenced areas and inside the existing residential and boarding and grooming kennel structures. These areas are not soundproofed and would not meet the 200' setback requirement. However, any barking that does occur is not anticipated to exceed the maximum fifty-five (55) decibels allowed at the property lines; therefore, staff also recommends approval of a waiver from this section of the zoning ordinance.

Mr. Zobrist asked if staff's changes were to make it 9 a.m. to 9 p.m. every day of the week and to place "customer" in front of trips with a limit of 8 customer trips per day.

Ms. Brennan agreed noting that the condition would allow four customers to visit, which would generate eight trips with one there and one back per day.

Mr. Zobrist invited questions for staff. There being none, he opened the public hearing and invited the applicant to address the Planning Commission.

Amy Peloquin, applicant, said that she did not anything to add.

Mr. Zobrist asked if there were any questions for the applicant.

Ms. Porterfield asked if it was necessary to start at 6 a.m. with the dogs outside since it was for 7 days per week.

Ms. Peloquin replied yes because her last out is around 9:30 p.m. to 10:00 p.m. and usually the dogs cannot make it past 6:00 a.m. The only way to make that later would be to basically allow her to let an old dog or a dog that would not be able to hold it out earlier. That is the reason for requesting 6:00 a.m. There may be days that she does 6:30 a.m. or 7:00 a.m. if all of the dogs being boarded are capable of holding it. But generally she knows which ones can or can't.

Ms. Porterfield clarified that if approved the special use permit goes with the land and not for this specific operator. Therefore people need to understand that once approved the applicant could stop the business, but somebody could buy her house and have the same business. That is why she wanted to see if there was any way to tighten the conditions a little bit for the neighbors. She felt that 6:00 a.m. every morning was too much.

Mr. Zobrist invited other public comment.

Michael Lavene, adjacent neighbor, said that his property was in a conservation easement. His biggest issue was that he was not aware that she was able to board dogs overnight to such a degree. If 20 dogs were left out over night he was concerned with the amount of noise that could be generated. If the special use permit is in perpetuity this business could be passed on to another potential owner. That is an issue for him and potentially other neighbors. He did not have any issues with the dog grooming, but was more concerned about multiple dogs up to 20 outside at night and naturally barking at deer or whatever that takes place in the county. His biggest concern is the noise, how much is 55 decibels, how do they maintain that and how does he address an issue if it becomes untenable.

Mr. Zobrist asked if he had had any noise problems.

Mr. Lavene replied no, but he heard dogs barking occasionally. It appears that there is a potential for this business to expand. What he really wants to address is that this business is just for clipping and maintaining dogs, but not for overnight kenneling dogs on a regular basis. That is his biggest issue.

Mr. Zobrist questioned if the applicant is currently boarding dogs overnight.

Ms. Brennan replied yes that the applicant is requesting ten dogs be allowed to be boarded overnight and 20 dogs during the day.

Mr. Cilimberg noted that the ten dogs boarded overnight will be inside.

Mr. Zobrist pointed out that is in the recommended special use permit conditions. If the applicant is not keeping up with the conditions he could pick up the phone and call the zoning department who will send an inspector out to check it. They will bring their sound equipment out and put it on the property line to see if it is over 55 decibels.

Mr. Lavene asked if the special use permit could be conditioned only to this particular owner or does it have to go with the land.

Mr. Kamptner replied that staff strongly discourages conditions that tie permits to particular owners. If there are impacts that need to be addressed it should not be based on faith in the owner. There should be a condition that deals with the particular impact.

Mr. Lavene asked why this special use permit should go to this land in perpetuity.

Mr. Kamptner replied that it was the nature of special use permits, which essentially rezone the land.

Mr. Morris pointed out that the conditions would also go with the land so any person would have to abide by the conditions of this.

Mr. Kamptner said that was correct.

Mr. Lavene said that he would prefer to maintain their quiet enjoyment as they have it now.

Mr. Zobrist pointed out that the applicant said that this is the current use and there is no change. He asked staff how many letters in support of the request had been received from adjacent neighbors.

Ms. Brennan replied with the last email sent it topped at 20 letters with 7 from adjacent owners and the rest from county residents.

Mr. Zobrist suggested that the Commission talk about the waivers, which was a separate issue than the special use permit. The special use permit requires the waivers. He invited other public comment.

Christy Larson said she had been an adjacent neighbor since the early 80's and lived 400' from the applicant's home. She had sent in a letter. The whole time the applicant has been operating this kennel she rarely, if ever, hears a dog bark just like one would in a regular neighborhood. There is not a traffic problem whatsoever. Her home actually faces the kennel itself and she has no objections whatsoever.

There being no further public comments, the public hearing was closed and the matter before the Commission.

Mr. Franco asked if the Commission grants the waivers on the construction side for the fencing and the soundproofing, and if noise does become a problem in the future, do they have the ability to reevaluate the special use permit. Or, do they need to make that a condition of the special use permit.

Mr. Kamptner replied that it needs to be made a condition of the special use permit so once the action is taken it is there.

Mr. Franco said that the proper phasing of that would be that the use needs to be contained to be in compliance with the noise ordinance.

Mr. Zobrist asked staff to put the two conditions up on the waivers.

Mr. Franco noted that the conditions will help mitigate the noise. If they grant the request he just wanted to make sure that there is a way to reevaluate the special use permit if it does become a problem in the future. He was looking for a condition.

Ms. Brennan pointed out that there are actually two components for each of the waivers. There is a 500' setback for the waiver a) and the fence. Then for waiver b) there is a 200' setback and the 55 decibels. She asked if the two could be broken apart so that they are voting to support identifying each of the aspects of the waivers for which they are choosing to vote in support of.

Mr. Franco said he was comfortable moving forward with the waivers, but he would like to have some kind of mechanism in the special use permit that gives the county the ability in the future if the dog noise becomes an issue that they can reevaluate either the waivers or the special use permit.

Mr. Lafferty said that would be normal recourse

Mr. Kamptner said the Board has done one thing a couple of times where they had uses that they were not fully confident that the conditions would be complied with that they put a life on the special use permit so that the applicant needs to reapply within a certain period of time. Also, compliance with the conditions and the nature of the activity if it has created problems requires a reevaluation.

Mr. Zobrist asked if that was a continuing obligation over time.

Mr. Kamptner replied that in the circumstances where that has happened usually it was the first special use permit that had the condition and then it went away after the one, two or three year period if there was confidence that the conditions were addressing the problem or new conditions were imposed to address the situation.

Mr. Zobrist asked if they could grant the waiver conditionally. He thought that was the right solution.

Mr. Kamptner replied yes.

Mr. Cilimberg noted in reality the second of the two waivers was really for the distance only because it is less than 200'. So it could not exist unless that waiver is granted. It was not for the 55 decibels.

Mr. Kamptner said if that was clear that the 55 decibel standard remains, that would be fine. Then this owner would be subject to that standard.

Ms. Porterfield asked if a reapplication would be required if there is a change in the ownership of the dog grooming business.

Mr. Kamptner replied that they have strongly discouraged against that. There was a brief period in the late 1980's where conditions like that were being imposed, which created problems down the road. The impacts need to be evaluated independent of who is actually conducting the use.

Mr. Zobrist pointed out that the first waiver was to waiver the 500' limitation. Since it is not soundproofed the second request is to waive the external solid fence not less than 6' in height located within 50' of animal confinement. He heard Mr. Franco saying that he would be more comfortable saying the Commission will waive the 500' conditionally so that any neighbors that have any problems can come back and ask the Commission to reevaluate it in the event that there are noise issues.

Mr. Franco noted that becomes difficult because he would not want to make an enforcement issue here. Maybe it does make more sense to give the special use permit a life of three years or something so that there is an opportunity to collect some data so the neighbors have an opportunity. The request came before the Commission tonight because it was complaint driven. They have heard at least one neighbor raise concerns about the potential in the future.

Mr. Zobrist reiterated Mr. Franco's suggestion that the waiver be for a limited time.

Mr. Franco suggested that the waiver be associated with this special use permit and it have a life of three years. Then the applicant would have to come back in three years. At that point they would have an opportunity to see if the neighbors have had any problems.

Mr. Zobrist asked if the Commission could do that.

Mr. Kamptner replied yes, that has been a practice before when impacts were not fully identified.

Mr. Morris pointed out that with all due respect they have 13 years of data that includes happy neighbors. Three more years will not give them any additional overwhelming data. He visited the property and it is an isolated piece of property surrounded by woods. As anyone knows foliage absorbs noise. It is soundproofed

Ms. Porterfield asked if they can put the 55 decibels in the conditions for the special use permit so that they could double it.

Mr. Franco questioned if they need to double it.

Ms. Porterfield said she wondered about that. They have gotten lots of good feedback, but she would feel better if they did not need to have these dogs go outside at 6 a.m. for 7 days a week. If there is a way to write a condition to move it to 7 a.m., except in very unusual circumstances so it would take care of the very old dog or something like that, she would support it.

Ms. Lafferty noted that they should not interfere with the way the applicant operates now. If they go over 60 decibels and the neighbors complain about it, then after it is measured it can be stopped.

Ms. Porterfield noted this was the second similar request within a year. The biggest problem is the special use permit traveling with the land.

Mr. Franco said that he had no problem with it.

Ms. Porterfield asked if they can tighten up anything that makes it a little bit easier if there are problems in the future and a neighbor has to come in and complain.

Mr. Lafferty said that they should not restrict the business practice just because the special use permit travels with the land.

Mr. Cilimberg noted that the Commission needs to take two actions with one on the special use permit and the other on the waivers. Also, they need to specify that they are using the conditions as recommended by staff if that is what they are proposing.

Mr. Franco asked if the noise ordinance was 60 or 55 decibels.

Mr. Kamptner replied that it depends on the hours of day.

Mr. Zobrist asked that discussion be held off until the waiver consideration.

Motion: Mr. Smith moved and Mr. Morris seconded to recommend approval of SP-2010-00008, Canine Dog Clipper subject to staff's recommended conditions in the staff report, as amended.

1. Development of the use shall be in accord with the conceptual plan titled "The Canine Clipper Composite Plan", prepared by the applicant and dated April 15, 2010 (hereafter, the "Conceptual Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in accord with the Conceptual Plan, the development shall reflect the following major elements within the development essential to the design of the development:
    - Kennel yard and house yard within fenced area
    - Entrance gate
    - Three structures: kennel, residence, and garage
    - Fence circumscribing the entire site, including the three structures and the kennel yard, house yard, and front yard

    as shown on the Conceptual Plan. Minor modifications to the Plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.
2. The number of dogs attending the Canine Clipper Dog Grooming and Boarding business during the day shall not exceed, in the aggregate for both the grooming and boarding activities, 20 at any one time (does not include personal pets owned by the applicant).
3. The number of dogs attending the overnight boarding business shall not exceed 10 (not including personal pets owned by the applicant), or one dog per run, at any one time.
4. Dogs boarding overnight shall be kept inside between the hours of 10:00 PM and 6:00 AM, except for occasional supervised trips outside.
5. The hours of operation for the Canine Clipper Dog Grooming and Boarding business shall not begin earlier than 9 A.M. and shall end not later than **9** P.M., each day.
6. The number of **customer** trips generated for the dog grooming business shall not exceed **eight (8)** trips per day.
7. All outdoor lighting shall be only full cut-off fixtures and shielded to reflect light away from all abutting properties. A lighting plan limiting light levels at all property lines to no greater than 0.3 foot candles shall be submitted to the Zoning Administrator or their designee for approval
8. Approval of Waivers from Sections 5.1.11 (a) and (b) shall be required.

The motion passed by a vote of 6:0.

Action on Waiver from Section 5.1.11(a) and Waiver from Section 5.1.11(b):

Motion: Mr. Smith moved and Mr. Morris seconded for approval of the waivers as listed for SP-2010-00008 Canine Dog Clipper.

Discussion:
Mr. Zobrist asked about the conditions. Regarding the limitation on Section 5.1.11b it is only limited to soundproof confinements. He asked about non-soundproof confinements. He asked if that was the 65 decibels during the day and 55 decibels at night.

Mr. Kamptner replied that in the Rural Area district the day time standard is 60 decibels and the night time standard 55 decibels.

Mr. Zobrist asked if 5.1.11.b does not apply because they don't have soundproof kennels.

Mr. Kamptner replied that is correct. The Commission can condition the granting of a waiver to address impacts. It is within the Commission's discretion if they are inclined to grant the waiver as to the soundproofing requirement in the first sentence and then establish a noise standard of 55 decibels as measured at the nearest agricultural or residential property line.

Mr. Zobrist asked if Mr. Smith would like to amend his motion.

Mr. Smith replied no, that the motion was as written.

Mr. Franco said having heard that the Noise Ordinance will still be standing in the Rural Areas and that it is 55 and 60 decibels that he was comfortable since there was another mechanism. The special use permit or business may still exist, but there will be an opportunity for the adjacent neighbors if concerned to call the county and to complain and have that go down as a zoning violation at that point in time. Therefore, he was comfortable with the motion.

Mr. Lafferty asked if 11b would preclude them from clear-cutting the land, and Mr. Kamptner replied no.

Mr. Lafferty noted that with clear-cutting they would be getting rid of the soundproofing.

Mr. Kamptner clarified that condition 1 of the special use permit refers to the composite plan and there were no trees shown on it. So there would be no limitation on removing trees.

Mr. Smith asked if the property was zoned rural agricultural, and Mr. Cilimberg replied yes.

The motion passed by a vote of 6:0.

Mr. Zobrist noted that the waivers were approved, which did not go to the Board of Supervisors. Also, SP-2010-00008 Canine Dog Clipper would go to the Board of Supervisors on a date to be determined with a recommendation for approval.

SP-2010-00006 Baugh Auto Body. PROPOSED: Special Use Permit to renovate existing building for auto body shop; no residential units proposed. ZONING CATEGORY/GENERAL USAGE: LI - Light Industrial - industrial, office, and limited commercial uses (no residential use). SECTION: 27.2.2 (11) Body Shops. COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service -- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) in the Community of Piney Mountain. ENTRANCE CORRIDOR: Yes. LOCATION: 4257 Seminole Trail (US 29), just north of the North Fork of the Rivanna River on the east side of US 29, directly opposite the intersection of Camelot Drive and US 29. TAX MAP/PARCEL: 32-5B. MAGISTERIAL DISTRICT: Rivanna

AND

SP-2010-00011 Baugh Auto Body – Outdoor Storage. PROPOSED: Special Use Permit for outdoor storage of rental cars in association with a proposed auto body shop. ZONING CATEGORY/GENERAL USAGE: Light Industrial (LI) - industrial, office, and limited commercial uses (no residential use); Entrance Corridor (EC) - overlay to protect properties of historic, architectural or cultural significance from visual impacts of development along routes of tourist access. SECTION: 30.6.3.2.b Outdoor storage, display and/or sales in the Entrance Corridors. COMPREHENSIVE PLAN LAND USE/DENSITY: Industrial Service -- warehousing, light industry, heavy industry, research, office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre) in the Community of Piney Mountain. ENTRANCE CORRIDOR: Yes, LOCATION: 4257 Seminole Trail (US 29), just north of the North Fork of the Rivanna River on the east side of US 29, directly opposite the intersection of Camelot Drive and US 29. TAX MAP/PARCEL: 32-5B. MAGISTERIAL DISTRICT: Rivanna (Judy Wiegand)

Ms. Wiegand presented a PowerPoint presentation and summarized the staff report two special use

permits, SP-2010-006 and SP-2010-011, for Baugh Auto Body.

Purpose of Special Use Permits SP 2010-00006 and SP 2010-00011:

1. To allow the redevelopment of a portion of this site into an auto body shop with rental cars as an accessory use.
2. To permit outdoor storage of the rental cars in an Entrance Corridor

Tonight a copy of a letter from Mr. Larry McElwain has been distributed to the Commission along with a packet of material from the applicant, Mr. Baugh, that details information on how he conducts his business. Mr. Baugh has been the owner and operator of an auto body shop in Richmond since 1982. (Attachment – Letter dated July 20, 2010 to Judy Wiegand regarding Baugh Auto Body from Larry McElwain)

Location: The former Badger-Powhatan Building on Route 29 North
Subdivision of the parcel has been approved. It's now two properties with a boundary running north-south through the building. The proposed auto body shop would be in the front or western half closest to US 29. The actual boundary line is shown on the layout plan.

The proposed auto body shop use is a place where a car that has been damaged is restored. They work on the exterior of the car, the upholstery inside and things like that. This is not a place where they do engine, transmission and other repairs to the working parts of the car. The majority of the cars that are handled at an auto body shop like this one are drivable; only a small percentage must be towed in. Drivable vehicles are brought in for an estimate; then brought back at a scheduled time for restoration. Most vehicles are not parked on the site waiting to be worked on. There are occasions when the car has to be towed in and there are spaces designated on the site plan for those cars to be parked.

COMPREHENSIVE PLAN
The Comprehensive Plan designates this parcel as Industrial Service. The auto body shop property is at the southern end of an area designated Industrial Service. The designation runs north up to and including the Rivanna Station military facility—NGIC/GIC. An auto body shop is compatible with the Comprehensive Plan designation.

ZONING
This parcel is zoned Light Industrial and located at the southern end of an industrially zoned area that continues north to the NGIC facility area. An auto body shop is compatible with a light industrial district and is expected to serve employees of area businesses and residents. The proposed auto body shop is effectively buffered from surrounding residential uses by US 29 North and by the North Fork of the Rivanna River.

Staff explained the application plan and noted that the parking lot would be like the one at the mall. There simply would be cars that are parked there. This is not a place for cars to be parked that are not drivable except in the case of an occasional one sitting while waiting to be fixed.

This was an industrial facility in the past. So reuse of the site and the building will be a benefit to the county as well as to potential customers. It also preserves the site as a continuing industrial property. The Virginia Department of Transportation has indicated they are not expecting any traffic impacts beyond what was there when it was the Badger-Powhatan facility.

The applicant has indicated he does not intend to do any site work over in the ravine area or work on that at all. The applicant is not planning on making any changes to the building or to the parking area except for restriping some of the areas. He is not required by county ordinance to do anything with the storm water. So basically the facilities that are there will continue.

Factors Favorable (SP 2010-00006):

1. The auto body shop would preserve the industrial character of the area and would enable reuse of an industrial building.
2. The location will provide convenient service to businesses and residents of the area.

Factors Favorable (SP 2010-00011):

1. The ARB has no objection to the proposed use and, with the recommended conditions of approval; no detrimental impacts to the Entrance Corridor are anticipated from allowing the outdoor storage at the rental cars.

Factors Unfavorable (both SPs):
Staff has identified no factors unfavorable to these applications.

Staff considered proximity to other industrial and residential uses. They considered the possibility of traffic concerns. They also considered the site and the way the business is operated.

Recommendation:
Staff recommends approval of the Special Use Permits subject to the ten conditions outlined in the staff report.

- The first condition is the standard development is to be in general accord with the conceptual plan.
- The second condition ties the outdoor storage SP to the auto body shop SP. If the auto body shop use ceases, then the outdoor storage SP would end—unless another auto body shop came in. The rental cars may be rented only to customers at the body shop because it is an accessory use.
- The fourth condition concerns the hours of operation. In the event of inclement weather the applicant has explained to staff that he would like the option of remaining open 24 hours per day from 6:00 a.m. on Monday morning through 6:00 p.m. the following Saturday. Under normal circumstances the auto body shop would not be open 24 hours per day. Because in extreme weather when tow trucks are bringing in cars they just hauled out of ditches and things like that the applicant may wish to be open longer hours so that he can keep up with the flow of vehicles and work on them. It is not a frequent thing, but he wanted people to be aware that it may be open more than normal business hours. That is the reason for this condition.
- The remaining conditions have been recommended by the Architectural Review Board and will be taken care of at the time the project is reviewed by the ARB. The last condition about the fencing the date of the Board of Supervisor approval will be inserted in that condition.

Mr. Zobrist invited questions for staff. He asked why they are not requiring a certificate of appropriateness as part of the conditions.

Mr. Cilimberg replied they don't need to have the condition because it is automatic since the site plan requires the certificate of appropriateness.

Mr. Porterfield asked if the applicant is going to be doing any lighting since they are going to be open 24 hours a day.

Ms. Wiegand replied that they will use the existing parking lot lights, which would be reviewed by the Architectural Review Board.

Ms. Porterfield asked if the lights meet current lighting requirements.

Margaret Maliszewski, Principal Planner, replied that there is no new lighting proposed. The existing lighting will continue on.

Mr. Zobrist said that unless they make a change to the lighting it is grandfathered.

Ms. Maliszewski replied that was correct in that what is there is meant to stay and not be changed. So the lighting stays as is.

Mr. Lafferty said as he remembered that lighting was terrible coming down 29. The lights were very bright.

Ms. Porterfield asked if the Commission has the ability to condition this.

Mr. Kamptner replied that the Commission could address an impact from the use under the special use permit.

Ms. Porterfield said it seemed that if they want to be open 24 hours a day, they ought to meet today's lighting requirements because that is going to make it different from the previous use.

Ms. Maliszewski noted that would be an improvement.

Ms. Porterfield asked if the Commission could do that.

Mr. Cilimberg replied that the Commission can address it in their action.

Ms. Porterfield asked if staff could draft the condition. She had another question regarding the letter the Commission just received from Mr. Larry McElwain. Staff was saying that everything was staying the same, but Mr. McElwain's letter indicates there is definitely a storm-water problem.

Ms. Wiegand said that staff had received the letter on Friday. Basically the county regulates storm water, but since the applicant is not changing the site they don't have the authority to ask him to change that. She asked Mark Graham who was acting for the county engineer to answer that question further.

Mark Graham, Director of Community Development, said that the county already under its Water Protection Ordinance in section 5 regulates discharge of any chemicals or anything into the storm water. That is clearly prohibited. From his perspective there is no difference in this use versus any other use. The fact a use is a quarter mile or a half mile away from a river makes no difference when they have storm sewers involved. It clearly transports whatever is there. They do not permit discharge into streams or rivers. The state clearly reserves that authority unto itself. They have Virginia Pollutant Discharge Elimination System Permits, which are administered by the Department of Environmental Quality. So it is pretty clear that they have no authority to regulate discharge into streams, but they can prohibit those chemicals from entering into storm water.

Ms. Porterfield asked if he feels comfortable that since there were parking lots before and parking lots now that will be the same.

Mr. Graham replied that he did not see an appreciable difference in impact, if any.

Mr. Morris requested to ask Ms. Maliszewski a question. Recalling when this particular site was owned by Badger-Powhatan they had some hazmat situations there that they contained. He asked would it be any greater with an auto body shop.

Mr. Graham suggested that the applicant speak to his particular methods of operation. He would say that staff has seen a tendency for auto repair and body painting shops to find much greener ways of doing business primarily because of costs. It just got to the point where the environmental regulations were so strict it was cheaper to find a more environmental way to do it than to try to comply with the regulations.

Mr. Morris noted his point in asking that is that the previous occupant had concerns as far as waste and they handled it very well. He would imagine that the auto body shop will have no greater waste.

Mr. Graham said with respect to that they will not be allowed to store the waste outside. That is already clearly covered. For the materials stored within the facility our Fire Rescue Department already inspects those facilities to assure safety with them. Then if it is truly a hazardous material that is going to be regulated by the Department of Environmental Quality and there is a chain of custody that goes with

those materials, a quantal to grave approach, to make sure that everybody knows where those hazardous materials are at all points in their life.

There being no further questions for staff, Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Gerry Baugh said that he had been operating an auto body shop since 1982. Their philosophy is reflected in the values that the Baugh family has put their name on for over 36 years. These values include the integrity and the quality and their responsibility to take care of the environment in which they live, play and work. They strive to provide high-quality seamless auto body service to their customers while constantly seeking ways and opportunities to reduce our carbon footprint. He noted the following:

- To be successful in this endeavor, they must meet the needs of their customers without sacrificing the well-being of future generations. They take their responsibility to care for the environment seriously. With that being said he had been in this business since he was 15 years old and had seen a tremendous improvement in the way their business is operated. They now take a tremendous effort to reduce the waste from the start. In the materials he passed out there was a commendation from the Department of Environmental Quality that his business had received. It is a green stamp approved and signed by the EPA for the strides that they have already made in their industry. They have paint recycle equipment and equipment to clean their paint guns in. From that standpoint when this material is cooked, it has tremendously reduced their waste. Now when they paint a car if there is any products left in their paint guns they pour it into the recycle machine along with any solvent that is left over.
- This material is cooked in this machine to a high temperature. It is the solvents that come out of the paint and the solvents in there evaporates and comes back as a recyclable solvent in another part of this machine. The paint is cooked down to a dried powder and dropped down into another separate part of the machine that is stored in a plastic bag. When they are finished with that they refer to it as a biscuit. It is about the size of a pizza. They store this material in a 15-gallon drum, which is picked up once a month. This drum is only about one-half full on a monthly basis. So theoretically it would take two months to fill up a 15-gallon drum. Consequently, their waste has been reduced to about 7½ gallons of material a month, which was less than 100 gallons a year. Back in the old days a lot of shops would very easily have several hundred gallons of waste in a month's time. They realized in an early stage that they could no longer continue to do this not only for the costs but for the environment. At that point in time this material is picked up by a hazardous waste vendor. In his case it is safety cleaned. That material is labeled and as they can see he has given them an indication of the manifest that they give them when they pick this material up to dispose of it and take it off the property. All of this material is stored and properly labeled in drums with waste labels on it. They do not purchase large quantities of any of this material. In the old days they would buy them in 55-gallon drums or whatever, but that same solvent they use today they only purchase them in 5-gallon drums. The drums are stored in an area that has to be fire proof and approved not only by the fire department, but also by OSHA.
- The second part of this, which was the stride of their industry, is that when they mix the paint for each one of these cars it is mixed on what they refer to as a smart scale. The smart scale is just simply a computer that is hooked into a scale to measure the amount of paint that they mix per car. When it comes up on the computer screen it actually has a picture of the car on it. All the paint technician has to do at that point if he is going to paint a door is to touch the screen for the door. If he is going to paint a door and a fender he touches the screen for the door and the fender. That scale would then calculate to the ounce how much he has to mix for that particular car. Back years ago they would mix a half a pint or pint, or a quart or a half quart of material to do whatever they needed to fix a car with. Now they are mixing these materials by the ounce. They are tremendously costly. They have reduced their carbon footprint with that tremendously.
- There is a lot of training they have one on one along with continuous training with him, the painters and the paint manufacturers, which in his case is DuPont. This is not only a requirement of the EPA and the DEQ, but all of their partners require this as well as the insurance industries and the people they do work for. Obviously these people do not want any spill over or any problems as well. They have a lot of checks and balances in that system. He was very proud of where they are today in their industry.
- The packet provides a good background and information regarding training they have already had

with regards to going green. The CR40-40crf-63 rule, which was put out for them to follow, is not scheduled to take place until 2012. The state of Virginia has asked for an extension for that. He added that his staff and he had already completed this two years earlier than what he had to be, which is just the way that they conduct their business. They want to be a good business and community partner and a good steward of the environment.

Mr. Zobrist invited questions for the applicant.

Mr. Morris asked if he could see any problems with the portion of the existing building towards the rear of the property that he was not going to be using since they would be going through his parking lot and so on to get access to it.

Mr. Baugh replied that he did not anticipate any problems with that. Under that subdivision they have a deeded 30' easement on the northern portion of the property. That is an exclusive right of ingress and egress for them. That is the only part that is in combination with anything on the frontage on 29.

Mr. Zobrist asked if he had bought or leased the property.

Mr. Baugh replied that they were going to purchase the front portion of the property. He would have nothing to do with the back parcel, which had been recently subdivided.

Mr. Zobrist asked if the part staff showed behind was part of the same building and they have just made a common wall.

Mr. Baugh replied yes, but it was two separate properties. This entire property was 16 acres. The front parcel is 4.75 acres.

Mr. Smith asked if he would be using his own wrecker.

Mr. Baugh replied that he did not have a wrecker at this time.

Mr. Smith assumed that they were talking about a secure lot on the south side of the building for cars coming in.

Mr. Baugh replied that is correct.

Mr. Smith asked how many rental cars he would have.

Mr. Baugh replied that it was about 23 parking spaces for rental cars.

Ms. Wiegand noted that along the northern border of the site was a fenced area for 18 parking spaces.

Mr. Smith asked how many employees he would have.

Mr. Baugh replied there would be somewhere in the neighborhood of about 25.

Mr. Smith asked if he would have 10 or 15 repair bays.

Mr. Baugh replied that inside there would probably be more than that. This building is 352' long. There is plenty of room inside to do what they need to do.

Ms. Porterfield noted that she did not have history of when it was the Badger Powhatan building. From what was said, it sounds like the current lighting is not very good.

Mr. Baugh said to address her concerns when he was not there at night the dome lights in the parking lot will be for security. He certainly did not want to pay a utility bill for lights that he has no need for. The reason they did that for the hours was from year to year they get some extremely inclement weather,

heavy snows and so forth. It gets to be an extremely hectic time in his business. To accommodate everybody normally in those times he usually stays late or as late as he needs to try to get all of these cars in and out. The traffic gets a lot heavier than what it normally is under normal conditions. That is why he did that. He does not want to be in any violation. He is not going to work 24 hours a day if he did not have to. But he would like the ability to accommodate in these inclement conditions when times come to pass for that.

Ms. Porterfield said with that ability to accommodate was he willing to upgrade the lighting for their parking lots to the current standard.

Mr. Baugh replied that he would but frankly he did not see that is necessary. If he leaves at night under normal conditions and the lights are cut back for security reasons there certainly would not be six, seven or eight lights on out there at night. He would not want to pay a light bill at a period of time that he did not need that.

Ms. Porterfield replied that she understood that, but was guessing that the problem with the lights is that they are unshielded.

Mr. Lafferty noted that the lights that he recalled on Badger Powhatan coming south down 29 North was that almost blinding. The lights had no shielding at all and were right on the edge of the building. It was not what he would have called parking lot lighting. It was vicinity light to light up the whole place.

Ms. Porterfield asked if they could cure some of that evil by the ones that were a problem being replaced.

Mr. Baugh replied yes that he would be happy to replace the problem lighting.

Mr. Zobrist said that the question is if he was willing to replace those six or seven fixtures with lighting that is currently up to the standard of the Lighting Ordinance.

Mr. Baugh pointed out that he had no problem with adjusting the lighting.

Mr. Franco asked if the ARB staff had any comment.

Ms. Maliszewski noted in the photographs pulled from the file there were pole lights and building mounted lights. Unfortunately, the photos are small. It may be simply that the fixtures just need to be tilted down to be horizontal. But since she could not see the fixture she did not know if that would make it meet the ordinance. .

Mr. Zobrist said since the applicant said that he would be happy to make the lighting conform to current lighting standards he was all for it. It was good enough for him.

Mr. Zobrist invited other public comment.

Larry J. McElwain, writer of the letter, said that he was a real estate lawyer who has appeared in front of the Commission many times as an advocate for his clients. He was appearing here this evening as a private citizen. He moved into Rivers Edge in the mid-'60's. That parcel of land is intermediately on the other side of the bank of the river. He has spent many years on that river. The owner was a very near and dear close friend. As his family has grown up they continue to use that stretch of the river on a frequent basis to fish and wade the stream. It is amazing how quiet and scenic the river is regardless of how close to the combustion and all of the noise and activity that they have in this area. While it is not a spiritual area it is a special place. It is extremely attractive back there. While he commends the applicant for all of the efforts he has done to construct a green business there is enviably in the site plan that has been afforded to them some gaps in that coverage. He noted his concerns, as follows.

- He has two particular concerns. One is the storage area shown in the upper left hand corner of the sketch. While it is fenced off, which is good, the applicant has said that he does not have a tow truck. What is going to be happening is that there are going to be wrecks in the middle of the night and the cars are going to be towed in there. In wrecks there are going to be disruption in

the systems of cars. So they will have spillage of oil, gasoline, and transmission fluid. All sort of nasty stuff is going to come out of those cars. The cars are going to be outside for a while. Rain is going to happen. If they look at the way this is constructed that water runoff is going to go straight down into the river. It is unabated, untreated and will foul the river. That is as sure as they are sitting here today.

- The second problem, having represented people in the same business, is that once the work is done on the auto bodies they clean the cars. They take the cars and wash them generally speaking. What comes off from that wash is going to be the paint and all kinds of other stuff that is nasty to the environment. The way that he understands this is set up there is one drainage area, which is to the right of the building itself. He presumed that is where the washing is going to be done. Having walked that river and being very familiar with it, it is his understanding that runoff will go unabated, untreated and directly into that drain area through a pipe, which will come directly out into the river. It is going to have all sorts of toxic substance in it. Right now there are two different sites that are going to dump toxic substances into that river. They are going to have a problem with it.
- He understands that they have to get a permit by the DEQ. That is fine. What his understanding is for the proposal today is that they give a conditional approval subject to the DEQ's recommendations. It seems that they ought to delay the Commission's approval today until they see what DEQ has to say with respect to the treatment. Those are two rather significant conditions that he has not heard a word nor has he seen it addressed in any of the work. He commends staff for their work. But staff's expertise in this area is naturally limited. That is why they have the DEQ. Special use permits are just that and are special. There is no particular reason that one has to rush to judgment in this particular matter. He would urge them to reframe from giving conditional approval until after they have had an opportunity to see what the DEQ has to say with respect to the operation of this particular facility.

Mr. Zobrist asked if there was anyone else present to comment on this matter. There being none, he asked Mr. Baugh if he had anything else.

Mr. Baugh said that in all due respect he will not be washing any cars on this facility. There is no chance of anything washing into the river from this car. They try to utilize car washes. He can pay $7 for a wash, which is cheaper than he can pay someone to clean the car. Then he would not have to fool with that element. In regards to cars being towed in at night it is customary where he works now in Richmond and would be customary at this site that no cars will show up in the middle of night when nobody is there. This lot will be locked and they cannot get into it. They do that for security reasons so somebody can't walk in and fool with any of the cars. In regards to the parking lots and water runoff he asked where the water is going now coming off of 29. It is running right down into the river. They are not going to put anything on this parking lot to allow that. They don't take cars that have been in a train wreck that has been torn apart and so forth. That operation and that gate will be locked when he leaves at night. Anytime something comes in that is suspected of having fluids or whatever that is leaking they come inside the building. This building is 352' long. They don't do these things on the outside of the property. As far as the storm water coming across this parking lot that same storm water is running down 29. It is no more. In fact, he thought the traffic count on this property is in the neighborhood of 3,800 cars a day. There are 3,800 cars riding down 29 potentially just dripping something. He generates no more than that on his parking lot and he has control over it. He does not have any control over these 3,800 cars that are crossing in front of his building day and night.

Mr. Zobrist noted that is not the issue they were talking about. The issue he was hearing was that he does not want to put any wrecks on the outside and they will all go inside the building.

Mr. Baugh replied that the way they operate is to bring those cars inside the building to do what they call a tear down. From an efficiency and production standpoint they don't like tearing these cars down and moving them twice. These cars come in on a rollback. It is easier to bring the cars inside the building to do that tear down.

Mr. Zobrist pointed out that he was trying to respond to Mr. McElwain's comment. He said that if wrecks are brought in and put on that outside lot there will inevitably be spill from that.

Mr. Baugh said that is not necessarily true. All cars that come into his facility are not leaking something.

Mr. Zobrist asked how he would respond to Mr. McElwain.

Mr. Baugh relied that if they have a car that comes into this facility and it is in a condition leaking something they will bring it inside so they can control that situation. They have different mats that they put down for spill. They have pans that they put under the cars to catch this. It is not something that they leave on the outside of the building.

Mr. Zobrist reiterated that he would not allow any car that is leaking to be parked outside.

Mr. Baugh agreed.

Mr. Smith asked if he does not do any mechanical work.

Mr. Baugh replied no, they do not do any mechanical work other than if a car is hit in the rear they might have to put a bearing or hub in it or something of that nature. He does not do any engine or transmission work. They just fix the cars and paint them. He pointed out that about 90 percent of his business drive in, get an estimate and either leave the car or come back another day.

Mr. Zobrist invited other public comment. There being none, the public hearing was closed and the matter before the Commission.

Ms. Monteith asked Mr. Kamptner what is the process if they were going to go through some kind of review with the DEQ.

Mr. Kamptner deferred the question to Mark Graham since he did not deal with the state agencies.

Mark Graham, Director of Community Development, said first off he was not sure there was any storm water or industrial discharge permit required here. The applicant is containing his material so there would be no VPDESP, Virginia Pollutant Discharge Elimination System Permit required. An auto body shop was one of the things specifically excluded from that industrial permit requirement by DEQ. Auto salvage yards are not, which is where they saw the risks as far as storm water. But they did not really see a significant risk with auto body shops, which are not even required to get a permit from DEQ.

Mr. Cilimberg noted that Ms. Wiegand has provided a new condition if the Commission wants to use that as part of the recommendation.

Mr. Zobrist asked to make some comments. As he understands the applicant, wrecks are going to be very temporarily stored outside. He thought that they should make that a condition since they don't want wrecks accumulating outside. He asked if wrecks would be stored outside for more than 24 hours. He asked if they move the wrecks inside within 24 hours, which would be permanently store. He asked to add another condition that no wrecks shall be stored outside if leaking materials.

Ms. Wiegand suggested that there would be no damaged or unrepaired vehicles to be stored outside if leaking.

Mr. Franco noted that he thought that was changing what he heard. He suggested that the better term would be that all vehicles stored outside need to be operational. He asked if that goes far enough to address it.

Mr. Zobrist noted that he had two issues. The leaking cars are not going to be stored outside, which addressed Mr. McElwain's concern about the outside storage. His concern was that he did not want the cars outside the building at all except for a very, very temporary nature. He thought that the cars could be unsightly and he did not know what the view shed was out there. It is not the applicant's intent anyway.

He would like to clarify the condition that damaged vehicles will not be stored outside of the building for more than 24 hours and not at all if they are leaking any fluids from the car.

Mr. Morris pointed out that was the mode of his operation anyway.

Ms. Porterfield said she was concerned that they were going to back him into a corner. The biggest thing is to make sure that they don't have anything outside that is damaged to the point that it is leaking oils, gasoline or something like that. But for somebody who has a crumpled fender that the applicant is not ready to take the car inside to do that fender, it does not seem that is a problem in putting that car in the lot.

Mr. Zobrist pointed out what Mr. Baugh was saying was he does not store anything there for more than 24 hours. He wanted to make a limitation that nothing is stored on the premises for more than 24 hours.

Ms. Porterfield asked Mr. Baugh if that is really what he does or was he just talking about the damaged vehicles that are leaking.

Mr. Baugh replied that they constantly are moving these vehicles inside. He alluded to this building as being 352' long. So they can get the majority of these cars inside. He can't say sit here and tell them that every single day in a snow storm or whatever that he would not have the need for storage capacity outside.

Mr. Zobrist asked if 24 hours for temporary storage outside was long enough.

Mr. Baugh requested 48 hours.

Mr. Zobrist pointed out that no vehicles will be stored over 48 hours except inside and none will be stored outside if leaking any liquids from the vehicles.

Mr. Franco asked if staff was comfortable with that as something that could be enforced.

Ms. Wiegand replied that staff will need to write it down and make sure to have what they said.

Ms. Porterfield noted that they were talking about an individual vehicle. Therefore, they could have numerous cars stored outside since each car has a 48 hour limitation, which will rotate.

Mr. Zobrist said that he did not have any objection to the cars being stored outside for up to 48 hours in that lot. As long as there are no leaking vehicles out there that would address Mr. McElwain's concerns. Since no car can stay outside more than 48 hours they may have cars in and out, but they were not going to have a junk yard out there.

Mr. Cilimberg reiterated his intent for the two conditions was that any vehicle awaiting repairs should be outside no more than 48 hours and that any vehicle awaiting repair with any leaking fluid should be intermediately put indoors.

Mr. Zobrist replied that was correct.

Mr. Morris noted that this is what he heard the applicant saying was the normal mode of his operation anyway. He asked if that is correct.

Mr. Baugh replied yes that is correct. But they will still have some rental cars there.

Mr. Zobrist noted that they were not referring to rental cars, but just cars that have been damaged that are brought in for repair in a secure lot.

Mr. Franco asked if staff is comfortable with their ability to enforce this provision as written.

Mr. Cilimberg replied that Sarah Baldwin was here for the enforcement staff and could answer the question.

Ms. Wiegand noted that Sarah Baldwin with zoning was present. There are several options. One condition was that no vehicle awaiting repair shall be located on any portion of such property so as to be visible from any public road or any residential property and shall be limited to locations designated on the site plan. In this case it would be inside. She asked what the Commission's pleasure was on this proposed condition 12.

Mr. Zobrist said that proposed condition 12 covers what they were looking for and both conditions take care of the problem.

Sarah Baldwin, Senior Planner with Zoning, pointed out that in the staff report as an existing condition in the ordinance on page 6 the Commission already has that condition in front of them in some form that might be acceptable to them.

Mr. Morris noted that b) says no vehicle awaiting repair shall be located on any portion.

Ms. Baldwin replied yes.

Mr. Zobrist noted that they need to add the other limitations. As a condition of the condition the applicant has to comply with all the regulations and then they are going to add to condition #12.

Mr. Cilimberg noted that letter b) applies, which was a supplementary regulation of the zoning ordinance. So condition #12 needs to cover whatever the Commission thinks is not covered.

Mr. Zobrist noted that condition #12 should contain the 48 hours and the leaking fluids.

Ms. Porterfield noted that they don't have something regarding the cars being visible from the road.

Mr. Cilimberg noted that was already in the ordinance under b).

Ms. Porterfield asked if the site is adequately screened.

Ms. Wiegand replied yes, that the applicant is working with the Architectural Review Board on the fencing for that area.

Mr. Kamptner noted that if there was consensus for both special use permits the Commission can take them in one motion since the conditions are the same. He suggested that condition #11 be revised so that the reference is in the second line "into conformance with section 4.17 of the Zoning Ordinance", which was the lighting regulations.

Motion: Mr. Morris moved and Mr. Lafferty seconded for approval of SP-2010-00006 Baugh Auto Body and SP-2010-00011 Baugh Auto Body – Outdoor Storage subject to staff's recommended conditions as amended.

1. Development of the use shall be in general accord with the conceptual plan entitled, "Baugh Auto Body II, Special Use Permit Plan," prepared by Engineering Design Associates, and dated May 25, 2010 (hereinafter, the "Special Use Permit Plan"), as determined by the Director of Planning and the Zoning Administrator. To be in conformity with the plan, development shall reflect the following major elements within the development essential to the design of the development:

- *location of parking areas*
- *relation of buildings and parking to the street*

as shown on the Special Use Permit Plan, except that the landscaping and fencing location and design may be modified to meet the requirements of the Architectural Review Board (ARB).

Minor modifications to the plan that do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The rental of passenger vehicles under SP-2010-00011 is permitted as an accessory use associated with SP-2010-00006, Baugh Auto Body Shop.
3. Rental cars available on the site may only be rented to customers of the auto body shop.
4. The hours of operation for the auto body shop and accessory rental car use shall not begin before 6:00 a.m. on Monday and shall not end later than 6:00 p.m. on the next Saturday.
5. The US 29 frontage and the perimeters of parking areas shall be improved with landscaping to meet the Entrance Corridor guidelines. The landscaping shall be shown on a plan, to be approved with the site plan amendment. The plan shall include identification of existing trees and shrubs on the site, although trees and shrubs in the heavily wooded area on the south side of the parcel need not be individually identified.
6. The design of the screening fence shall be subject to ARB approval. The fence shall be supplemented with landscaping, which shall be subject to ARB approval. Sufficient area for planting shall be provided, as determined by the ARB.
7. A planting island shall be added at the west end of the rental car parking row with plants as determined by the ARB. The island and planting shall be shown on a plan, to be approved with the site plan amendment.
8. Vehicles shall not be elevated anywhere on the parcel outside of the building.
9. Rental vehicles shall be parked only in the area indicated for rental car parking shown on the Special Use Permit Plan. Rental car parking shall be only in designated striped parking spaces, as identified on this plan. No parking shall occur in travelways. No sign identifying the rental car use shall be visible from offsite locations.
10. No chain link, barbed wire, razor wire, or other similar fencing or attachments other than that existing on the site on [date of Board of Supervisors approval] shall be installed on this parcel.
11. Existing site and exterior building lighting shall be brought into conformance with Section 4.17 of the Zoning Ordinance.
12. No damaged vehicle awaiting repair shall be outside the building for longer than 48 hours, and no damaged vehicle leaking fluids shall be stored outside.

The motion passed by a vote of 6:0.

Mr. Zobrist noted that SP-2010-00006 Baugh Auto Body and SP-2010-00011 Baugh Auto Body – Outdoor Storage would go to the Board of Supervisors on a date to be determined with a recommendation for approval.

The Planning Commission took a break at 7:30 p.m. The meeting reconvened at 7:39 p.m.

ZMA-2007-013 Fontaine Research Park Expansion (Sign # 34 & 35) PROPOSAL: Rezone approximately 54 acres from CO Commercial Office - offices, supporting commercial and service uses; and residential use by special use permit (15 units/ acre) to PDMC Planned Development Mixed Commercial - large-scale commercial uses; and residential by special use permit (15 units/ acre) to allow for an increase from 565,000 square feet to 875,000 square feet of office, laboratories, medical or pharmaceutical, research & development activities, hospitals, and supporting commercial space permitted in the research park. Three parking garages are proposed. No residential units are proposed. The following Special Use Permits are in conjunction with this rezoning: SP200700055, SP200900010, SP200900011, SP200900013, and SP200900014. PROFFERS: Yes. EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Office Service - office uses, regional scale research, limited production and marketing activities, supporting commercial, lodging and conference facilities, and residential (6.01-34 units/acre). ENTRANCE CORRIDOR: Yes. LOCATION: Adjacent to the intersection of Ray C. Hunt Drive and Fontaine Avenue in Neighborhood Six. TAX MAP/PARCEL: TM 76, Parcels 17B, 17BW, 17BX, 17B1, 17B2, 17B3, 17B4, 17B5, 17B6, 17B7, 17BB, 17BA and 17B8. MAGISTERIAL DISTRICT: Samuel Miller

AND

SP-2007-0055 Fontaine Research Park - Parking Structures (Sign # 34 & 35). PROPOSED: Parking Structures in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00010 Fontaine Research Park - Research & Development Activities (Sign # 34 & 35)
PROPOSED: Research and development activities in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00011 Fontaine Research Park - Laboratories, Medical or Pharmaceutical
PROPOSED: Laboratories, medical or pharmaceutical in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA2007-00013.

AND

SP-2009-00013 Fontaine Research Park - Hospitals
PROPOSED: Hospitals in Planned Development - Mixed Commercial Zoning District. This SP is in conjunction with ZMA200700013. 17B3, 17B4, 17B5, 17B6, 17B7, 17BB, 17BA & 17B8. MAGISTERIAL DISTRICT: Samuel Miller

AND

SP-2009-00014 Fontaine Research Park - Supporting Commercial Uses (Sign # 34 & 35).
PROPOSED: Supporting commercial uses in Planned Development - Mixed Commercial Zoning District.
Ms. Grant presented a PowerPoint presentation and summarized the staff report for rezoning request ZMA-2007-13 Fontaine Research Park, and five concurrent special use permit SP-2007-055 Parking Structure, SP-2009-010 Research & Development, SP-2009-011 Laboratories, Medical or Pharmaceutical, SP-2009-013 Hospitals, and SP-2009-014 Supporting Commercial Uses.

The property is adjacent to the intersection of Ray C. Hunt Drive and Fontaine Avenue.

Purpose of Hearing: The applicant requests to rezone approximately 54 acres from Commercial Office (CO) zoning district to Planned Development Mixed Commercial (PD-MC) to allow for an increase from 565,000 square feet to 875,000 square feet of office, laboratories, medical or pharmaceutical, research & development activities, hospitals, and supporting commercial space permitted in the research park. Three parking garages are proposed.

There are eight existing buildings in the Research Park that provide medical services and health related research. As shown in the slide the applicant is requesting additional developable square footage shown in the forum of three building envelopes as shown in the application plan. The three building envelopes is where expansion is proposed to occur and three parking envelopes are where surface or structured parking expansion could also occur. The expansion would allow the Foundation to continue providing health related services and research and office space within the Research Park. The applicant originally requested an increase in square footage from 565,000 square feet to 1,290,000 square feet of office and supporting commercial space. As detailed in the staff report a Planning Commission work session covered several pertinent points, which included concern related to the protection of environmental features, the need for a level of supporting commercial use that would be suitable for the Research Park and the major issue was the need for a traffic study. The applicant responded with the following changes:

A decision to rezone from Commercial Office to Planned Development-Mixed Commercial was made in order to provide a level of flexibility relating to building height and setbacks for proposed buildings.

Also, a proffer limiting the amount of supporting commercial uses to 20,000 square feet was provided.

The traffic study revealed that the Research Park could propose an additional 310,000 square feet instead of 725,000 square feet in order to mitigate traffic impacts in the revised plan as now preserves the natural resources discussed that were discussed during the Commission work session. In addition, the traffic study determined that using Stribling Avenue as a second entrance to the Research Park and/or as a separate connector road would be a problem because this entrance will require a signal and there is not significant space for two signals on Fontaine Avenue.

As shown in the next two slides off site mitigations include adding improvements to the ramps of the

Route 250 Bypass, lanes under the bridge, and the signal at the southbound interchange ramp.

Figure 1A provides the construction of a new shared through and left turn lane along with the restriping of the existing lane as an exclusive second left turn lane for the southbound ramps. The areas for improvements were highlighted in the presentation. Figure 1B provides two exclusive left turn lanes for the southbound ramps with the construction of one new through lane. Additional improvements would include construction of a new lane on the southbound ramp to receive dual left turns and the extension of the outside through lane heading west on Fontaine Avenue from the city boundary to Ray C Hunt Drive. In the Research Park an extension of the right turn lane on Racy C. Hunt Drive heading north is also proposed.

As detailed in the staff report the percentage of supporting commercial use on the site decreases as the total allowed square footage of the development increases. Staff believes that increasing the percentage of supporting commercial use square footage within the site could provide employees and visitors using the site some appropriate uses and options that could help eliminate some of the additional traffic impacts in and out of the Research Park.

The Comprehensive Plan proposes the Sunset/Fontaine Connector to be accommodated on the site. Proposed Sunset/Fontaine Connector is shown on the application plan in an area that is east on the site that comes off of Fontaine Avenue and runs along the existing Stribling Avenue alignment. As noted on the plan the area is reserved for future secondary entrance or future connector road alignment. Outside of showing this area on the application plan the applicant has made no commitment elsewhere to address this Comprehensive Plan recommendation. Staff believes an alternative location would be to utilize parts of Natural Resources Drive, which accesses the Department of Forestry building, which area is to the west of the site. This would necessitate relocation of a part of this road, which the applicant has indicated they are not supportive of because this would generate too much traffic going through the Research Park. The proposed application plan also shows building and parking envelopes located in areas where Natural Resources Drive could be relocated. While this complex issue remains unresolved staff has recommended that the applicant reserve this area for this possible relocation and participate in a Fontaine/Sunset Connector alignment study that the Thomas Jefferson District Commission will be undertaking.

Related to the proffers the applicant has been asked to change some wording to the proffers prior to the Board of Supervisors hearing. Specifically, staff believes that the square footage limitation for supporting commercial uses should be addressed as a condition instead of a proffer and that a higher cap of up to 5 percent of the total allowable square footage should be allowed.

The applicant requests a modification of the requirement of section 21.4 which relates to height regulations. The Zoning Ordinance states that buildings may be erected up to 65'. The applicant is requesting that instead of limiting the height of structures within the Fontaine Research Park to 65' per section 21.4 in the Zoning Ordinance they would like to have the flexibility of constructing buildings up to 90' in height within the business park. Staff had reviewed this and recommends approval of this modification.

Factors Favorable
- The rezoning and special use permits are consistent with the Land Use Plan.
- The rezoning and special use permits will provide the research park an opportunity to expand which will provide health services and jobs for the community.

Factors Unfavorable
- Feasibility of the Sunset-Fontaine Connector needs to be determined and location resolved.
- The proffers need to be technically accurate.
- The minimal square footage of supporting commercial uses is proffered.

Staff's Recommendation

Staff cannot recommend approval of this rezoning until the following issues are addressed:

1. Reservation of area for a potential Sunset-Fontaine Connector through the Park is made so as to not preclude a future viable alternative.
2. Commitment is provided by the applicant for the study by the Thomas Jefferson Planning District Commission on the Sunset-Fontaine Connector.
3. Acceptance of an adequate ceiling for supporting commercial use.
4. The proffers are revised to be technically and legally acceptable.
5. Staff recommends approval for modification of Section 21.4 of the Zoning Ordinance regarding height regulations with conditions.

Staff also recommends approval for SP-2007-55 Parking Structure, SP-2009-010 Research & Development, SP-2009-011 Laboratories, Medical or Pharmaceutical, SP-2009-013 Hospitals with conditions and SP-2009-014 Supporting Commercial Uses with condition once the rezoning is approved.

Staff recommends approval of SP-2009-013 Hospital with the following conditions:
- The hospital use shall be limited to 60 beds;
- The use shall not commence until such time as appropriate state and federal approvals have been obtained;
- Site plan shall not be signed until fire official approval has been obtained;
- The use shall be for inpatient medical rehabilitation and shall not provide emergency services.

and SP-2009-014-Supporting Commercial Uses with the following condition:
- The supporting commercial uses shall be limited to five (5) percent of the square footage allowed in the park.

Mr. Zobrist invited questions for staff. There being none, he opened the public hearing and invited the applicant to address the Commission.

Valerie Long, representative for the applicant the University of Virginia Foundation, presented a PowerPoint presentation. Several representatives of the University Foundation present included Tim Rose, Chief Executive Officer; and Fred Missel, Director of Design and Development. Also present were Emily Moser, with the traffic engineering firm of Kimberly Horne, and Mr. Sandridge, representative for the University. She made the following comments.

- Ms. Grant covered the basics of the application pretty clearly. Everybody knows the location of the research park fairly well since it sits on the City/County border. The existing conditions exhibit shows what is there now. She pointed out an issue that was helpful to understand in terms of the ownership of the various sections of the research park. Several people have asked questions about that. Essentially there are three owners within the park: The University Foundation serves essentially as the applicant on behalf of all three owners. It is the University of Virginia Foundation, the University of Virginia itself; and also the Health Services Foundation. The easiest one is the Health Services Foundation who owns their own building and some of the parking. The University owns other buildings and all the land around it. One is actually a building underneath a parking lot. The Foundation owns the other buildings and all of the other land around it. That is why there are three owners listed on the proffers.
- She noted the proposed application plan. The research park has been rezoned several times over the past few years with small incremental increases in the permitted density of the park. The current limit is 565,000 square feet. The park is essentially at full build-out right now. They have requested an increase for an additional 310,000 square feet. As shown on the prior plan they do have three separate building envelopes and a number of parking envelopes. Those could use either structured parking or service parking or perhaps a combination thereof. The proposal is to essentially try to redevelop the park and add density to it in a way that does not involve expanding the envelope of the research park essentially making it even more compact and urban to be consistent with the Comprehensive Plan. As the park has developed over the years there has been a very consistent and conscientious focus on making sure that it is consistent with all of the goals and objectives of the Comprehensive Plan particularly with regard to the pedestrian orientation of it and the incorporation of supporting commercial uses, new elements involving shuttle buses and traffic demand management plans and so forth to ensure that the park can

function well and be a good place for people to work, for patients to come for their medical care, for administrative tasks to take place, and essentially a combination of three types of uses in the Park. It would be clinical and medical uses; research and development; and administrative uses.

- As Ms. Grant indicated they are reserving an area on the application plan for the future Sunset/Fontaine Avenue Connector. This is the so called alternative 4 alignment that was the recommendation of the Area B Study that was approved in 2004 and was adopted by the Planning and Coordination Committee also known as PACT. Some may not be as family with PACT. It is a tri-party organization - the City, County and University - that meet quarterly to discuss issues of particular importance to all three entities. So at the PACT meeting several years ago there was discussion of the Area B Study, which took a look at a number of different alignments for the research park recommended and the alternative 4 alignment was selected. So ever since then the University is committed to do two things. One is to accommodate the Sunset Avenue/Sunset Fontaine Avenue Connector Road on its property and also to actually fund the construction at its expense of the portion of the road on its property. So they have committed over the years to build the road essentially from where it would intersect with Fontaine Avenue down to the edge of its property line right before the railroad or to the base of any bridge or underpass that would be part of the complete road.
- Again, there has been a strong emphasis on developing the park in a fashion that is consistent with the Comprehensive Plan for a place that people want to work, and where they want to come for their health care services. They are concerned with some of the proposed other alternatives that were originally considered as part of the Area B Study, but were not selected as the preferred alternative. In particular there are alternatives that would come through the middle of the park where there is open space, and preservation/conservation area on the application plan. Another alternative, as Ms. Grant suggested, would utilize natural resources and bifurcate the park. There are some strong concerns about the impact that bifurcation would have on the pedestrian nature of the Park, on the ability to maintain appropriate levels of service at the intersections and the all around functioning of the park in terms of both pedestrian orientation, the delivery of health care services, the conducting of research activities and just the management of traffic. The idea of combining the connector road traffic with the research park traffic is not something that their traffic engineers or anyone at the University has been able to figure out how that would actually work without significantly degrading the quality of life within the park and the actual functioning of the park.
- To reiterate, the Foundation is continuing its long commitment to accommodate the Connector Road in the Alternative 4 location. They want to reiterate commitment of the University and the Foundation to actually fund the portion of the Connector Road on its side of the line. Ms. Grant is correct that they have not actually proffered the funding element of that, but they are more than happy to do so prior to the Board of Supervisors hearing. If the Commission thinks that is appropriate to do so, then they are willing to do so. The timing for building the road would be at the time that the rest of the road and the bridge or underpass was ready to be built as well. They would work in concert with the other owners and anyone else who was participating in funding.
- Regarding the traffic improvements it did not seem that the Commission had any questions or confusion. She was happy to walk through the proffers they were making. Essentially there were spot improvements in several areas to help keep the traffic moving by adding a turn lane in one area, an additional turn lane under the bridge, the second turn lane, a signal on the Southbound lanes, and an extra lane to accommodate what will now be dual left turn lanes. They have Figure A and Figure B. They are still working with VDOT on the exact design of the striping and turn lanes of the intersection. VDOT says they are agreeable to whichever option. They will figure out which option at the site plan stage actually works best. There is a slight variation in the striping. It is about whether it is called a split phased signal or a standard signal.
- They have worked out all of the other issues with Ms. Grant and the other members of the staff. They are agreeable to the cap on the supporting commercial uses. They are working hard to increase the amount of supporting commercial uses in the park at an appropriate pace. They are comfortable with the building height waiver and want to work with the staff to just tweak the standards a little bit. The intent on the building height waiver standards involves some additional setbacks for buildings that are taller, which they are generally fine with. The intent is that they did not intend the new setbacks to apply to buildings that are internal, but only those that are sort of on the edges of the park. It refers to Ray C. Hunt Drive, which actually goes all the way through

the park. The way it is written now it would actually apply that setback to all of the buildings in the park. They want to work with the staff to phrase that technically so that it does not have that unintentional impact. Otherwise, they are comfortable with the concept of setbacks from Fontaine Avenue and other primary roads. Other than that they would request the Commission's support all of the special use permits. They are comfortable with the conditions of approval recommended by the staff. They do have some proffers. There are a couple of minor technicalities they are working through, but nothing substantive. She would be happy to answer any questions.

Mr. Zobrist invited questions for the applicant. There being none, he invited other public comment.

Jeanne Chase, a member of the Fry's Spring Neighborhood and a resident at 223 Old Lynchburg Road, said that she was present to speak on behalf of the Fry's Spring Neighborhood Association Board of Directors, which she was the corresponding Secretary. She was here on behalf of Peter Headland who is their President and the rest of the Board. A representative from the University of Virginia Foundation spoke at the July Fry's Spring Neighborhood Association meeting in an effort to explain the details and motivation for this rezoning. The aspect of this project that is of the most concern to the FSNA is how this will affect the long proposed Sunset/Fontaine connector. Approval of this rezoning will lock the University's portion of the Connector Road into one alignment, Alignment Alternative 4. Because the county is on record supporting this connector road by approving this rezoning they are also approving and committing to that eventual realignment of the Sunset/Fontaine connector. The need for this connector road was recognized by the Southern Urban Area B Study jointly sponsored by the County, City and University as early as the late 1980's. Any argument that uses the logic that because the Biscuit Run housing development is no longer built this connector road is no longer necessary is ignoring the fact that its need was recognized before the Biscuit Run project was ever conceived. Traffic traveling from the County to the University is only going to increase as the hospital complex continues to grow denser and the student enrollment increases. Relying on neighborhood roads as a convenient cut through to the University is not sustainable. Please make sure that this rezoning request does not interfere with the future Sunset/ Fontaine Connector.

Mr. Zobrist invited other public comment. There being none, the public hearing was closed and the matter before the Commission.

Mr. Morris said the one thing that boggled his mind is requesting that they reopen the question of where the Fontaine Connector is going to be. It was talked about in the '80's. This Commission talked about it time and time again in dealing with Biscuit Run. It was set for the location that is on the plan right now. Especially those good folks in Fry's Springs it is a way to assist traffic that currently exists and will increase very probably out of their neighborhood and along this thoroughfare. He understands that the proffers are asking the University for $20,000. He would like to see that $20,000 just be put in escrow to go to the construction of this road where it has been set for the entire time.

Mr. Lafferty asked why this question has come up about the alignment again and why there seems to be a need for another study.

Mr. Cilimberg replied that very honestly it was about the engineering feasibility of building it in that particular location. There were several alignments looked at from a planning perspective, but they were never looked at from an engineering perspective per say. David Benish may be able to speak to this better than he. While Alternative 4 has been identified in the Area B Study, the Comprehensive Plan adoption refers to the Area B Study, but does not refer specifically to Alternative 4 only because the Board wanted to make sure that it could be built where ever it needed to be built. Very frankly for the applicant he thinks it is an issue of the disruptive to their park if it were to be in a location other than Alternative 4. They recognize that. But there is an engineering challenge and feasibility question regarding Alternative 4 actually ever being built through that may not be as challenging using the other alternative they identified with the applicant. They probably should let Mr. Graham speak to the challenge from an engineering standpoint.

Mr. Zobrist invited Mr. Graham to address the issue.

Mark Graham, Director of Community Development, noted that he was standing in for the County Engineer who is on vacation. The real issue here is obvious. It is the separation between the existing entrance to Fontaine where this would be with Stribling Avenue. It is just from a traffic standpoint. It is not going to meet the standards. There is going to be congestion here. The reality is if this Sunset Connector gets built they are actually going to see the level of service on Fontaine go down rather than up because more traffic comes to Fontaine as a result of that. It is creating a future potential conflict. There are no answers at this point in time on how that is going to be addressed.

Mr. Lafferty noted they have a request in front of them to build more buildings and more people in the park and he was saying that one of the alternatives is to put more traffic through the park, too. He did not see how that was acceptable.

Mr. Graham replied that he was saying with Alternative 4 that has been proposed it is not going to put more traffic into the Park.

Mr. Lafferty noted that the alternative was going through the Forestry Department.

Mr. Graham said if they can get it down to one intersection where they have this traffic introduced versus two major intersections within that short distance the traffic management would become simpler. It is that separation for those two intersections that is the real issue there.

Ms. Porterfield said actually she thought there was more of an issue than that. She had 87 and 89 year old parents who get a goodly amount of their health care there and they drive. There are a lot of patients that are going in and out of there all of the time. To bring in a connector road that is going to run through what is a healthcare park just does not make any sense. Visualize the speed that people might be going and visualize the fact that the connector road is going to cut off the site's northwest quadrant unless it is built something like the downtown post office in Chicago that has a road right through it when coming in from the west side. She just did not see this. She was not here when they studied the other side of this site. But if that is what was agreed to and the University is willing to build it, she would think that the University could work with the traffic people and make the best of the intersection. It has got to be better than burdening a healthcare facility.

Mr. Franco agreed with everybody else in what they have said. He thought that if nothing else Places29 is probably good example of this where they had routes going through Forest Lakes that were reserved in the future. Then all of a sudden the residents come in whether it be living there or operating a business there and say they don't want that alternative. Then it is lost. He sees this route being outside that building envelope and something that could be preserved into the future. He did not know when this connector road is going to be built, but it makes sense to have it outside the uses.

Mr. Smith said if it was in his front yard he would not want everybody driving through the park.

Mr. Zobrist pointed out that he had a question for Ms. Long. What he has always understood from the last time they did this several years ago is that the University has always accepted this alternative as one to reserve the spaces and was willing to pay for it. He asked if a different agreement is done will they put the same resources to what a different agreement is in the future. This is a long way off. He asked if they have any idea as to when this will ever be built.

Ms. Long replied that the University Foundation has said they will build it at the time the rest of the road and the bridge or tunnel is also ready to be built. So really it becomes an issue of funding, which is certainly the multi-million dollar question. These days there is lots of uncertainty of future transportation funding resources. Certainly the Foundation has said that it will not hold it up if others are ready to go they will work with them. But they also are not in the position to build it before the other owners are ready to build it.

Mr. Zobrist agreed that they should not build a road to nowhere when they don't know what is going on. He would probably change the proffer a little bit and say they are proffering that or any other acceptable route and costing similar dollars so they could cover this. He thought that something will be worked out

eventually. He thinks this is kind of like Jarman's Gap Road in Crozet. He did not know if they will ever get that road improved. He did not know if they are going to get this built. It certainly looks less likely in the short term than in the longer term. He thinks that it is very wise to reserve space for it and to get the funding commitment from the University now. He did not think they should hold up what they are doing because of that and would like to work the language of the proffer a little bit to make sure that money is available whether that is what they all agreed upon or whatever else they agree upon. But he did not think they want them to hold up this zoning while they wait for what the staff thinks is going to be an agreement which may never come.

Ms. Long thanked him because that is certainly the case. They definitely would like to move forward and appreciate their understanding of that situation.

Mr. Zobrist asked if they would broaden the proffer.

Ms. Long replied that they would certainly need to talk with the Foundation's and University's representatives. Part of it is that obviously it would have to be conditioned on an alignment that was acceptable to the University. If that is an off-site alignment, then that should be fine.

Mr. Zobrist suggested by agreement that the same land, the same resources and the same cost to the University be maintained regardless of what is eventually agreed upon. He agreed that if the ownership does not agree upon it, then he did not think they can condemn through the middle of the building. He thinks that it is has to be something that reasonable minds will figure out when something comes up along Sunset that is going to make enough sense where somebody is going to want to build this thing. Then they will all agree that it will either be here or they will agree to something else even if it is off-site.

Ms. Long asked that Mr. Rose be allowed to speak.

Mr. Zobrist asked Mr. Rose to address the Commission.

Mr. Tim Rose said what he thought he heard Mr. Zobrist say is would they be willing to broaden the proffer so that they committed to paying for the connector road should it be built in a different place.

Mr. Zobrist replied that was correct and being limited to the same resources that would be required with what they have proffered. He was not suggesting that they increase their commitment.

Mr. Rose said in their current plan at some point in the future they would be building, if they come back for a second rezoning, from generally this area with the assumption that they could work out a waiver for a second entrance back down in this area. That is a cost that they anticipate incurring at some point anyway. What they would like to do based on what he said is broaden the proffer and agree that the distance from here to here for that construction price could be applied to some other portion at the time that the connector was built with the assumption that the connectors was not going through the middle of their park.

Ms. Monteith asked to also add that if they were going to take that approach that they should make sure that the development plan shown is not going to be impacted by any change in the future in terms of the alignment.

Ms. Porterfield said that she was not asking the applicant, which was another part of Ms. Grant's report, to maintain the northwest portion without doing anything to it.

Mr. Zobrist said no, not at all.

Ms. Porterfield said in other words that right now his idea is simply that either it is going to come down the alignment on the east side or potentially some place outside of their property, but this is the only place on their property that they have to maintain open.

Mr. Zobrist said that he did not see any reason to hold up them moving ahead with their plans while they wait to figure that out because he thinks that would be acceptable.

Mr. Morris agreed completely.

Mr. Franco agreed and that the only qualifications he would put on that is there may be improvements during that initial stretch of road that would be above and beyond what they might be installing that would have been required if the connector road went in. For instance, they may only require two lanes but the connector road might be four lanes. So he would want that proportion of funding to go with the back half.

Mr. Rose said that if this had to go from two to four lanes at the time that the connector road in totality is being constructed they would put in at the same point.

Mr. Franco noted or with the same funds if the road went somewhere else, and Mr. Rose agreed.

Mr. Zobrist asked if there was a motion.

Mr. Kamptner noted that there needs to be one motion on the zoning map amendment. If there was consensus the special use permits can be taken together noting that two of those special use permits have conditions recommended by staff. There is also the one modification to section 21.4 with a condition. Also in their direction on the ZMA they can recommend the further revisions to the proffers as recommended by staff and as discussed here.

Mr. Zobrist asked if the Commission can have the written proffers back on the consensus agenda to look at before it goes to the Board.

Mr. Cilimberg said that is not normally what they have done because that holds up the process for it getting to the Board. If they feel like they want to see the proffers first staff can do that.
.
Mr. Zobrist suggested that was something they need to think about to get it right even if it slows them down a few weeks. He really thought they need to see the proffers finished.

Mr. Morris suggested that they do it by email.

Mr. Zobrist said that he was happy to do it by email, but would prefer taking action after seeing the final proffers.

Mr. Cilimberg pointed out that if they were just interested in seeing the final proffers they can provide that information. But if they feel they need to see them and take some kind of action then that has to be done in a meeting. The next Commission meeting is on August 17, but taking an action then would move the Board date to October.

Mr. Rose said if they approve it tonight then they can draft proffers to the extent that they don't say exactly what they want them to say then the Board of Supervisors can weigh in at that point. But they are committed to drafting the proffers precisely the way they just discussed with the Commission. They encourage the Commission to vote tonight so that they can move forward to the Board.

Mr. Cilimberg pointed out that staff could work with the County Attorney and applicants to get the proffers signed and advertised. They would be able to capture everything intended with that work and normally don't come back. Staff can provide that information, but the Commission cannot act again on it. He deferred the question to Mr. Kamptner since he works on the proffers in the end. Staff wants to make sure the substance is captured.

Mr. Kamptner said that they reach a point of finality and sometimes finality is reached hours before the Board meeting, but they strive to get things wrapped up as soon as possible and can share that with the Commissioners. If they have any concerns or comments the Commissioners can pass them on to staff. Staff can pass that on to the Board.

Mr. Zobrist said that he was in agreement with that.

Mr. Cilimberg noted that actually the process is that they are supposed to have the proffers complete and signed before the Board advertises. That is a little different than it used to be.

Mr. Kamptner said that they would have the substance nailed down on the proffers by the time it is ready to be advertised. There may be some minor editing things.

Mr. Zobrist said that any member of the Commission can comment and staff will look at the comments and decide if they want to follow them or not. He was okay with that.

Ms. Porterfield said before they make a motion she would like to ask a question about proffer 12. Should the Commission give some type of a recommendation as to whether they are going with Plan A or Plan B.

Ms. Grant replied no that will be determined later during the site plan process.

Ms. Porterfield noted since she does not always show up at the site plan meeting she would like to throw her idea out. She thought that it would help with the football traffic if they had the one straight through and the two lefts to try to get as much traffic off of Fontaine as they can. That is a huge bottle neck, which she knows because her parking space is near there. She has gotten trapped in that and it is bad news. It is just a thought to note.

Mr. Morris noted one point of clarification. Based upon what they have said they are not going to be asking the University to contribute $20,000 to a study that does not need to be created.

Mr. Zobrist replied not right now.

Mr. Cilimberg noted that actually there will need to be further analysis for some of the purposes that Mr. Graham described. That is why he thought there could be some other alternative maybe not even involving their site that would have to accommodate the connection. That is why Mr. Zobrist has indicated that there might need to be an alternative in the future. It would be based on a later study. But, the Commission is not expecting them to participate, which is what he was hearing.

Motion on ZMA-2007-013:

Motion: Mr. Morris moved and Mr. Lafferty seconded to recommend approval of ZMA-2007-013 Fontaine Research Park Expansion with the amendment to the proffers as discussed.

Mr. Cilimberg noted for clarification so staff can represent this properly before the Board that would mean with acceptance of the connector as shown on their plan and at their participation in that connector or an alternative as discussed tonight. There was no anticipation for participation in the traffic study. The rest is the legal and acceptable technical wording of the proffer. They will cover the commercial use sealing as part of the special use permit.

The motion passed by a vote of 6:0.

Mr. Lafferty asked if the Commission could take action on all five special use permits at one time.

Mr. Kamptner replied that if there is consensus the Commission could take action on all five special use permits at one time.

It was the consensus of the Planning Commission to take action on all five special use permits at one time.

Motion on SP-2007-0055, SP-2009-00010, SP-2009-00011, SP-2009-00013 and SP-2009-00014:

Motion: Mr. Morris moved and Ms. Porterfield seconded to recommend approval of all five special use permits (SP-2007-0055, SP-2009-00010, SP-2009-00011, SP-2009-00013 and SP-2009-00014) as reflected in the staff report with the conditions as recommended by staff.

The motion passed by a vote of 6:0.

Motion on Modification from Section 21.4 of the Zoning Ordinance regarding height regulations:

Ms. Porterfield asked if they have to change it because of the interior versus the exterior.

Ms. Monteith said that is actually a clarification of the road name more than anything else rather than getting into the interior and exterior. She thought it was misunderstood that Ray C. Hunt is the road that both comes into the park and moves through the park. What they would want to say is to condition it so that staff can work it out so that they get that appropriately worded.

Mr. Cilimberg noted it was a recommendation in this case since the Board takes the final action on that particular modification. Staff can get the roads properly referenced if they so move to.

Motion: Mr. Morris moved and Mr. Lafferty seconded to recommend approval of the modification of Section 21.4 of the Zoning Ordinance regarding height regulations with conditions so that staff can get the roads properly referenced.

The motion passed by a vote of 6:0.

Mr. Zobrist noted that ZMA-2007-013 Fontaine Research Park Expansion, the five special use permits and the modification of Section 21.4 would go to the Board of Supervisors on a date to be determined with a recommendation for approval, as summarized and noted below:

Action on ZMA-2007-013:

The Planning Commission recommended approval of ZMA-2007-013 Fontaine Research Park Expansion subject to the following:

1. Revisions of proffers to provide that either: 1) the owner will construct the Sunset-Fontaine Connector in the alignment reserved on the Application Plan at such time that the remainder of the road is constructed off of the Fontaine Research Park property or 2) the owner shall contribute cash to the County that is equal to the value of constructing the alignment onsite if the Sunset-Fontaine Connector is not established in a location that utilizes the alignment reserved on the Application Plan, and the cash would be applied to the cost of the acquisition, design, engineering and construction of the Connector in the new alignment.
2. There is no requirement for a cash contribution proffer for further study of the Fontaine-Sunset Connector.
3. Revisions of proffers to incorporate legal and acceptable technical wording recommended by staff shall be completed before the ZMA goes to the Board of Supervisors.
4. The Applicant commits to a five (5) percent ceiling for supporting commercial uses as a condition of SP-2009-014 Supporting Commercial Uses. There is no minimum amount required.

Action on Five (5) Special Use Permits:

- The Planning Commission recommended approval of the five (5) special use permits -**SP-2007-055; SP-2009-010; SP-2009-011; SP-2009-013; and SP-2009-014**, as reflected in the staff report, with the conditions as recommended by staff.

SP-2009-013 Hospital with the following conditions:

1. The hospital use shall be limited to 60 beds;
2. The use shall not commence until such time as appropriate state and federal approvals have been obtained;

3. Site plan shall not be signed until fire official approval has been obtained;
4. The use shall be for inpatient medical rehabilitation and shall not provide emergency services.

SP-2009-014-Supporting Commercial Uses with the following condition:

1. The supporting commercial uses shall be limited to a maximum of five (5) percent of the square footage allowed in the park. There is no minimum amount required.

Action on Modification:

The Planning Commission recommended approval of modification of Section 21.4 of the Zoning Ordinance regarding height regulations with the expectation that the relationships of building heights to the roads will be properly referenced.

Closed Meeting:

Motion: Mr. Franco moved that the Planning Commission go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (7) to discuss with legal counsel and staff specific legal issues regarding the case styled as Kent Sinclair v. Albemarle County Board of Supervisors, Albemarle County Planning Commission, and other defendants.

Mr. Morris seconded the motion, which was unanimously approved 6:0.

The Commissioners left the auditorium at 8:32 p.m. and went into the Executive Board Conference Room.

Certify Closed Meeting:

The Planning Commission returned to the auditorium and reconvened the meeting at 8:43 p.m.

Motion: Mr. Franco moved that the Planning Commission certify by a recorded vote that, to the best of each Commission member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed or considered in the closed meeting.

Ms. Porterfield seconded the motion, which was unanimously approved 6:0.

Old Business:

Mr. Zobrist asked if there was any old business.

CPA-2009-00002 Crozet Master Plan 5 Year Update (Elaine Echols)

Mr. Benish noted that staff has incorporated all of the changes based on what they heard from the Planning Commission. Those items shown in the bright yellow are actually the word changes.

Mr. Lafferty noted a typo on page 28.

Mr. Zobrist noted that Ms. Echols indicated that she would fix all typos before the draft got to the Board.

Mr. Lafferty noted that it was actually a couple of words that changed the whole meaning.

Mr. Benish noted that the mistake caught was a "not" that should not be in there.

Ms. Cilimberg noted that staff will take any typos directly from each Commissioner to finish this up. Anything of substance that they have which is different than what was recommended in the replacement pages is what they would need to discuss before making their decision.

Mr. Benish offered to go over any of the changes if there were any questions.

Mr. Zobrist asked if anybody had any questions for Mr. Benish or any comments to make on the document.

Ms. Porterfield noted that Ms. Echols had asked her to do her usual editing, which she had done and would give to staff.

Motion: Mr. Morris moved and Mr. Lafferty seconded to approve the changes made to CPA-2009-00002 Crozet Master Plan 5 Year Update and recommended approval of the Crozet Master Plan as redrafted to the Board of Supervisors.

The motion passed by a vote of 6:0.

Ms. Porterfield made a request to reopen the Yancey proposal to allow the applicant an opportunity to make a presentation to the Planning Commission including additional information to address concerns of the Crozet community and to call attention to the economic development policy in the Crozet Master Plan to see if there are other things they can do to increase jobs and the bottom line in the County.

The Commission discussed allowing the applicant for the Yancey Business Park CPA to make a full presentation of his proposal to the Commission. While there was no consensus to do this, the Commission did agree that consideration of the Yancey proposal should be part of an overall study of the interstate interchange policy for all I-64 interchanges. Staff indicated that the interstate interchange policy will be coming to the Commission for review as a result of Board of Supervisors' initiatives.

- Joint City/County PC Work Session scheduled for **Tuesday, September 28** to receive the CHART transportation presentation

There being no further old business, the meeting moved to the next item.

New Business:

Mr. Zobrist asked if there was any new business.

- NO MEETING ON AUGUST 3, AND AUGUST 10, 2010
- NEXT MEETING ON AUGUST 17, 2010

There being no further new business, the meeting moved to the next item.

Adjournment:

With no further items, the meeting adjourned at 9:02 p.m. to the Tuesday, August 17, 2009 Planning Commission meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

_____

V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)

Attachment to
PC July 27, 2010
Minutes – Baugh Auto
Body

July 20, 2010

Ms. Judy Wiegand-Senior Planner
County of Albemarle
401 McIntire Road
Charlottesville, VA, 22902

Re: Application SP201000006 / Baugh Auto Body

Dear Ms. Wiegand:

It has come to my attention that Baugh Auto Body has made application to the County for a special use permit to operate an automobile body repair shop at 4257 Seminole Trail, in what used to be referred to as the Badger-Powhatan property. For several years beginning in the 1960s I lived on the property that lies to the south of the subject property on the opposite bank of the North Fork of the Rivanna River. After it flows below the bridge on Route 29 the river cuts a wide horseshoe, wrapping around the property where I lived. While living at Rivers Edge I fished that portion of the River dozens of times each year, however I never ate the fish I caught as I was very concerned about the discharge being dumped into the River via a pipe that emanated directly from the plant. I assumed that the white, foamy discharge would be absorbed by the fish, and would be harmful if consumed. Nonetheless, due in part to the beauty and serenity of that portion of the River I continued to fish it long after I moved elsewhere in the City.

When my children were born I sadly refrained from taking them with me during the time that the plant was in operation due to my concerns about the discharge. After waiting a suitable time subsequent to Badger-Powhatan having ceased operations I felt sufficiently comfortable with the water quality to begin having my sons join me in walking the horseshoe. I have many, many fond memories of these times. I am now about ready to introduce my granddaughter (who is one and a half) to this convenient, yet remarkably peaceful part of the County, so you can imagine my consternation when I learned of the current plans for use of the subject property.

I am well aware of the property's zoning designation, and of the need for local jobs. I'm not advocating against the applicant's intended use of the property (although it does grieve

me). My chief concern is the lack of attention paid to date to the required storm water pollution plan and storm water permit.

The applicant's proposed storage yard for damaged vehicles as set forth on its site plan is located on the southern portion of the property. It appears to me that the hazardous fluids which will inevitably be released by these vehicles, such as transmission fluid, antifreeze and oil, will be washed directly into the River.

From my reading of the site plan, it appears that the balance of the property other than the storage yard will remain paved in a manner designed to channel all rain water runoff into a single storm drain which empties unchecked into the river. Presumably the applicant will be washing vehicles on site, which will of course only add to the pollutant discharge into the River. These are legitimate, serious concerns, the answers to which should be taken into account by the Commission in arriving at its decision.

Let me be clear. I'm not seeking a denial of the application. Again, I'm aware that jobs are badly needed in this area. Rather I'm advocating that the Commission defer any action on this application until such time as the DEQ has made its evaluation of a storm water pollution plan and issued a storm water permit. I trust that the Commission would rather have the applicant "get it right" rather than "get it quickly." Thank you for your attention to my request.

Very truly yours,

Larry J. McElwain

cc: Planning Commission Members