Albemarle County Planning Commission
August 17, 2010

The Albemarle County Planning Commission held a meeting, work session, and public hearing on Tuesday, August 17, 2010, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Joan McDowell, Principal Planner; J.T. Newberry, Code Enforcement Officer; Francis MacCall, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Loach, Chairman, 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. Loach invited comment from the public on other matters not listed on the agenda. There being no comments, the meeting moved to the next item.

Consent Agenda:

a. **Approval of Minutes**: June 22, 2010

b. **Fall 2010 additions**

- **AFD2010-9 Blue Run Additions** Planning Commission acceptance of applications for additions to the Blue Run District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed additions include the properties described as Tax Map 50, Parcels 41A, 41Q, 42A, and 43. The proposed additions include a total of 192.352 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)
- **AFD2010-11 South Garden Additions** Planning Commission acceptance of applications for additions to the South Garden District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed additions include the properties described as Tax Map 99, Parcel 102 and Tax Map 110, Parcel 10. The proposed additions include a total of 38.635 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)
- **AFD2010-13 Hardware Additions** Planning Commission acceptance of applications for additions to the Hardware District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed additions include the properties described as Tax Map 86, Parcels 16 and 16H. The proposed additions include a total of 59.977 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)
- **AFD2010-14 Keswick Additions** Planning Commission acceptance of applications for additions to the Keswick District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed additions include the properties

described as Tax Map 65, Parcels 31C1, 31C3, 31D, and 32. The proposed additions include a total of 31.49 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)

- **AFD2010-15 Fox Mountain Addition** Planning Commission acceptance of application for addition to the Fox Mountain District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed addition includes the property described as Tax Map 14, Parcel 26B. The proposed addition includes a total of 120 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)
- **AFD2010-16 Buck's Elbow Mountain Addition** Planning Commission acceptance of application for addition to the Buck's Elbow Mountain District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed addition includes the property described as Tax Map 38, Parcel 9. The proposed addition includes a total of 122.6 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)
- **AFD2010-17 Sugar Hollow Additions** Planning Commission acceptance of application for additions to the Sugar Hollow District; direction to the Community Development Department to provide notice of the applications pursuant to Virginia Code § 15.2-4307(1); and referral of the applications to the Agricultural and Forestal Districts Advisory Committee (as required in Section 3-201(B) of the County Code). The proposed additions include the properties described as Tax Map 26, Parcels 14F, and 14H. The proposed additions include a total of 8.867 acres. The area is designated as Rural Area in the Comprehensive Plan and the included properties are zoned RA Rural Areas. (Eryn Brennan)

Mr. Loach 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.

Ms. Porterfield noted that she would need to abstain if the items were considered together since she was not at the June 22, 2010 meeting.

Mr. Loach noted that the Commission would take separate actions on a) and b).

Motion: Mr. Franco moved and Mr. Morris seconded for approval of item a) on the consent agenda.

The motion carried by a vote of 5:0:1. (Porterfield abstained)

Motion: Mr. Franco moved and Mr. Morris seconded for acceptance of item b) of the consent agenda.

The motion carried by a vote of 6:0.

Mr. Loach noted the consent agenda was approved.

Committee Reports

- Mr. Franco reported the Fiscal Impact Committee set up meetings for November.
- Mr. Lafferty reported the Charlottesville-Albemarle Metropolitan Planning Organization passed a resolution endorsing MPO to work with localities in the Thomas Jefferson Planning District to connect trails, bikeways, paths, rails-to-trails, rails-with-trails, and greenways with neighboring localities and partner with local and national organizations to connect our trails, bikeways, etc. with national trails and greenways to set an example for other cities.

Work Sessions:

ZTA-2010-00002 Phase II Industrial Uses Part A, Performance Standards Update

Improve and expand opportunity for modern-day industrial uses by revising the light and heavy industrial zoning districts. (Amelia McCulley)

J.T. Newberrry handed out extra copies of an omission that staff would like to make and that would be reviewed in the presentation. (Attachment A – Draft 4.14.4 AIR POLLUTION, which was revised from the existing draft)

Ms. McCulley noted the team that worked on this ZTA included J.T. Newberry, who was a key researcher, and other members of the Planning Division, Engineering, Economic Development, and the County Attorney's Office. She presented a PowerPoint presentation, as follows.

Introduction

Purpose:

1. More practically address impacts of industrial uses, especially since we are broadening permitted uses;
2. Update references. (This is the first comprehensive amendment since 1980); and
3. Improve clarity of regulations and procedures

Background:

- This is part of a larger effort with our industrial districts, as recommended by the updated Economic Development Policy.
  - Initial effort added HI uses by Special Use Permit within the LI district by-right.
  - Performance standard updates are the 2nd phase.
  - Amendments to broaden uses, revise the intent, expand supplementary regulations, and to address setback, height and the like, are a 3rd phase that is also underway.

Performance Standards, which are standards to how a use operates:

- Apply to uses of an industrial character and home occupations;
- Are utilized to control and limit the impacts generated by the use of land; and
- Address operations such as noise, water and air pollution, vibration, dust, electrical impulses.

Environmental Regulations

- Local environmental regulation through zoning is limited by enabling authority from Virginia Code.
- The Virginia Statewide Fire Prevention Code addresses standards to safeguard against fire and explosion.
- The majority of environmental regulation relating to industrial operations is through state and federal agencies such as Virginia Department of Environmental Quality.

Purposed Revisions to Performance Standards

- Expand "Glare" to include "Heat" and add requirement that venting chimneys and stacks be oriented away from adjoining residential and rural properties;
- Update the vibration standards to be more practical and enforceable;
- Add the requirement that the applicable state and federal permits be provided as part of the engineer's report;
- Add "Spill Containment and Waste Management Plan" section referencing applicable local, state and federal regulations;
- Establish the requirement for the violator to reimburse the County when we have hired 3rd party experts and determined a violation of the standard exists; and
- Update various references and standards and refer to applicable local, state, and federal agencies.

Recommended Change from Draft Revisions to Performance Standards: (handed out)

<u>Odor</u>

- Omit sentence: *"No use shall be permitted which emits any discernible obnoxious odor outside the lot on which the use is conducted."*
- Draft: Would establish a standard that would be problematic. Most localities do not address odor and those who do, commission a panel of independent experts. Odor is already addressed by DEQ through air regulations.

Recommendation:

- Omit the odor standard in the draft as impractical, AND
- Proceed to public hearing with the ordinance amendments relating to performance standards

Mr. Loach invited questions for staff.

Ms. Porterfield noted that staff had left the word odor in. She asked if that is so if they do have someone in the community who objects to something it gives them the ability to go check on it.

Ms. McCulley replied no, it is actually in the existing ordinance in the context that it is regulated by DEQ. Therefore, staff did not want to omit that.

Ms. Porterfield said it would be only obnoxious toxic odor. She remembered the property the Commission looked at in the Pantops area and it happened to be the day she was over there and she was amazed at the odors from the restaurant, which was about eight lanes away totally across 250. She asked if those types of odors are not going to be regulated.

Ms. McCulley replied that she did not think DEQ takes on or regulates those types of odors that come from restaurants.

Ms. Porterfield said that she was just making the assumption that someone could have an entity and whatever odor is coming out of it could waft over numerous acres.

Ms. McCulley replied it could except as it would be regulated by DEQ.

Ms. Zobrist pointed out that they also have the nuisance. There are plenty of remedies for people if they are emitting something that is too noxious. Therefore, he was not too bothered by the elimination of the sentence.

Mr. Lafferty said in Attachment B under vibration he suggested instead of “produce” it should be “product.”

Mr. Zobrist agreed that was a typo.

Mr. Morris asked how are they going to get a handle on all of these things. He commends staff that they are now being covered in some manner, shape or form, but asked if all of this is really being controlled by DEQ and the Feds.

Ms. McCulley replied to a great degree yes. The vast majority of the standards are controlled by them. The ones controlled locally that the County Engineer would have to approve often require testing to show they can meet those standards, which would be noise and vibration.

Mr. Morris recommended that a member of staff be sent for schooling on ISO 1400 Environmental Management, which is a three to five day program. At least they would have someone on staff that has the latest upgrades on international environmental standards. Of course, they also use DEQ and the Feds actually to come in and handle it. As Ms. Porterfield was saying, it would probably require a complaint before they would come in and check the odors.

Ms. McCulley agreed to look into additional training.

Mr. Morris noted it would be money well spent. It would provide staff some knowledge as to what to look for and to acquire a group of persons they could call and contact.

Mr. Morris noted that the training is available at the British Training Institute in Arlington.

Mr. Loach noted that he had a process question. Regarding the permitting requirements, do any of these conditions require a follow up that the conditions have been met.

Ms. McCulley replied that staff would check and get data that are more accurate for the public hearing on this. She understood that the Fire Prevention Office permits persons having different quantities of hazardous and flammable materials to have annual inspections. A permit is required to have over X number of gallons of fuel on your property. Therefore, that would be an ongoing inspection kind of thing. She thought that DEQ does annually permitting, too, for things such as waste in excess of 200 pounds of hazardous materials and other types of things. She was not sure what their inspection impetus is and whether they do that with the permits or that is complaint based, too. She would find out more about that.

Mr. Loach noted not only are we careful about getting the permit obtained, but the follow up is just as important for protecting the public.

Mr. Lafferty asked if this would require that anybody that is going to be using LI or HI get an engineer's sign off on whatever they put in.

Ms. McCulley replied in most cases yes, unless they are using one of the softer uses that really is not industrial such as office. However, something that is truly an industrial use to the extent that there are procedures, machines, by products and materials involved in it yes, they would have to submit some type of report. There are exemptions at the home occupation level where they don't need an engineer to certify it. At the level of an industrial use, she did not think the County Engineer allows anything short of a Certified Engineer's Report.

Mr. Lafferty said it stipulates that a professional engineer has to have a stamp of approval. He asked if they have a number of engineers in Charlottesville that are qualified.

Ms. McCulley replied that she did not think it is a very common certification amongst engineers. She thought that people have sometimes had to go out of this area to get a certified engineer's report. There are a few in the area, but not all engineers are comfortable with doing that.

Ms. Porterfield asked what type of home occupations it would apply to.

Ms. McCulley replied that it currently applies to home occupations. That aspect would not change. The County Engineer has done a matrix and has figured out a way to determine when it applies. If all someone is doing is an office use for a home occupation, it does not apply. If it is a photo lab, it does apply. It depends on the use.

Ms. Porterfield asked staff to bring a list of potential home occupations to the public hearing that would require a certified engineer's report.

Ms. McCulley replied that staff could do that. She noted that this had been brought up to the Board level by a concerned citizen a couple of years back. Staff did an executive summary for the Board and explained how they checked these things at the home occupation level.

Mr. Loach noted that would be important especially as opposed to storing. If someone just parked over night, but it is still there.

Motion: Mr. Morris moved and Mr. Lafferty seconded to move ZTA-2010-00002 Phase II Industrial Uses Part A, Performance Standards Update to public hearing.

The motion passed by a vote of 6:0.

Mr. Loach noted that staff is to move forward to address the changes brought up and to set the public hearing date.

In summary, the Planning Commission asked staff to move ZTA-2010-00002 forward to public hearing with staff's recommendation as amended. Staff was requested to address the changes and questions brought up related to performance standards, as follows:

- Under Attachment B under vibration, change the word "produce" to "product."

- Recommended that a member of staff be sent to an ISO 1400 Environmental Management class, which is a three to five day program to have someone on staff have the latest upgrades on environmental standards.
- Regarding permitting requirements, do any of these conditions require a follow up that the condition has been met?
- Staff to bring a list of potential home occupations to the public hearing that would require a certified engineer's report.

Work Session

ZTA-2009-00012 Home Occupations
Discuss amendments pertaining to Home Occupation Class A and Class B in the Rural Areas zoning district and to any other regulations of the Zoning Ordinance deemed appropriate. (Joan McDowell)

Ms. McDowell noted this is the Commission's second work session dealing with home occupations. She explained the proposed amendments to Home Occupation Class A and Class B in a PowerPoint presentation.

Purpose:
- Implement the Comprehensive Plan
  - Re-evaluate by-right uses and uses by special permit, such as home occupations
- Provide clarification, flexibility, and a streamlined process for home occupations in both the Rural Area and the Development Area, while continuing to protect the neighborhood character and the quality of life for all residents

Previously:
- June -- First Planning Commission Work Session resulted in several requests for additional information
- August -- Second Work Session -- staff addressed Commission comments and requests for information

Issues:
- *Concern* that some Home Occupations in some locations would impact neighbors/area; consider establishing thresholds

Response:
  - HO text amendment for RA zoning district only/ retain existing for other districts that allow HOs;
  - Establish Major and Minor HO regulations within new HO text amendment
  - Major HO required notification of adjacent neighbors
  - Waivers subject to PC approval

- *Minor Home Occupations (zoning permit required)*
  - *Similar to current Class A: no employees, no customer visits, conducted entirely inside residence, no limit on hours/days of operation, no direct sales from site, waivers available for number of truck trailers, size HO within residence.*
- *Major Home Occupations (zoning clearance required)*
  - *Two employees*
  - *Customer visits*
  - *Two trucks/trailers - unlimited size*
  - *Notices sent to adjacent neighbors*
  - *Operate six days/week; 7 AM to 8 PM*
  - *May require Certified Engineer's Report*
  - *Vehicle trips - 30 roundtrips / week (no more than 10 in any one day*

(See Chart on Page 2)

Waivers -- subject to Planning Commission approval
Reviewing potential criteria: type of equipment used, size of the use, setbacks, number of employees, traffic, nature of the business, location in terms of structures, nature of structure (existing barn), consistent with the character of the neighborhood

- *Concern* that the HO regulations would have more stringent standards than allowed by-right for personal use
  Response:
  - HO is a business located in a residence with the potential to have impacts on neighbors
  - All personal uses would not be affected (can have both personal and HO uses)
  - Attachment D -- chart (under proposed - major HO)
- *Concern* trucks and trailers may impact neighbors/character of area
  Response:
  - Only in RA zoning district
  - Major HO would require notice to adjacent neighbors
  - Zoning records do not indicate any issues regarding large trucks/trailers allowed by HO Class A
  - Major – maximum two trucks/trailers - no size restriction
  - Minor - one truck/trailer - no size restriction

- *Concern* that limiting the area that could be used in an accessory structure would not be useful
  Response:
  - *25% of residence could be used for HO*
  - *all or part of accessory structure could be used for HO*
  - *TOTAL area (residence / accessory structure) that can be used for HO is 1,500 s.f.*
  - *Concern* that hours/days of operation should not include HOs conducted entirely within residence, with no customers or employees

  Response:
  - No change necessary, as the June proposal addressed this concern

- *Concern* include list of uses that would be allowed or prohibited
  Response:
  - A list of potential prohibited uses is included as attachment E

Home Occupations -- Prohibited Uses, The following uses shall not be considered home occupations:

1. Abattoir (custom slaughterhouse)
2. Agricultural museum
3. Antique shops
4. Amusement center
5. Animal rescue center/shelter
6. Assembly uses, including places of worship
7. Automobile graveyard
8. Barber shop – more than one seat
9. Beauty shop – more than two seats
10. Camp, boarding
11. Camp, day
12. Clubs, eating or drinking establishments
13. Congregate care facility
14. Contractors storage yard
15. Day care, child care, or nursery facility (six or more children)
16. Dismantling junk, scrap or storage yards
17. Funeral chapel or funeral home
18. Gift shops (gifts not created on premises, as part of the HO)
19. Group home
20. Gun sales (except guns made by the applicant)
21. Industrial uses
22. Inn, tourist and boarding houses (Bed and Breakfast)
23. Kennel
24. Medical center facility
25. Monastery, retreat, or similar religious facility
26. Pet grooming
27. Private school
28. Public garage / body shop

29. Recreation uses
30. Renting of equipment, trailers, vehicles, machinery
31. Residential care facility
32. Retail/wholesale nursery (plants not grown on property)
33. Sawmill
34. Shooting range
35. Stable, commercial
36. Rummage / garage sales (not occasional)
37. Veterinary clinic/hospital

- Other
  Information/applications for Certified Engineers Report and Zoning Clearance are included as attachment

Next Steps
- Develop ordinance
- Schedule a Planning Commission public hearing

Mr. Loach invited public comment. There being none, public comment was closed to bring the matter before the Planning Commission.

Ms. Porterfield expressed concern about firearm sales, which was not supported by the other Commissioners.

The Planning Commission reviewed and discussed staff's proposal for changes to Home Occupations in ZTA-2009-00012. The Planning Commission provided direction, as noted below, for staff to draft the ordinance with waiver criteria and schedule a public hearing for ZTA-2010-00013 Home Occupations.

1. Request for additional consideration of places of worship as a Home Occupation.

2. Define "small engine repair" to refer to lawnmower/snowblower and the like; should be allowed as a home occupation; define "public garage/body shop" to clarify that they are intended for motorized vehicles and would include engine repair.

3. Include the following information in an application for Home Occupation:

- Request for information regarding hazardous, flammable chemicals/materials, which would trigger sending the Home Occupation application to the Fire Department.
- Major Home Occupation – property owner must sign the application in addition to the person who will be engaged in the home occupation.

4. Add "fireworks, manufacture and sales" to the prohibited Home Occupation list.

5. Change of ownership of property would require Home Occupation to be renewed (similar to the requirement for a zoning clearance when the occupation of a commercial use changes).

6. Notices to adjacent property owners – increase to two weeks (five days not enough time); put date when they have to respond or application may be approved. Expand other notices that are "policy" to two weeks department wide. For Home Occupation ordinance, put in two weeks and do the others later.

7. Consider placing lots less than two acres into Major Home Occupation category (concern regarding truck/trailer in driveway) to see if there are any performance standards that need to be added that would ensure that the neighbors of those smaller parcels would at least know when major home occupations came through.

8. Staff will develop criteria for waivers.

The Planning Commission provided direction and requested staff to set public hearing to bring back the proposed ordinance addressing their concerns and proposed changes. No formal action was taken.

Old Business

Mr. Loach asked if there was any old business.

- Joint City/County meeting scheduled for September 28. The location has not been determined.
- Staff to provide date, time, and location of the joint City/County Planning Commission meeting.

There being no further old business, the meeting proceeded.

New Business

Mr. Loach asked if there was any new business. There being none, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 7:25 p.m. to the Tuesday, August 24, 2010 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

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V. Wayne Cilimberg, Secretary

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