Albemarle County Planning Commission
October 18, 2011

The Albemarle County Planning Commission held a regular meeting on Tuesday, October 18, 2011, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Staff present was Scott Clark, Senior Planner; Megan Yaniglos, Senior Planner; Claudette Grant, Senior Planner; David Benish, Chief of Planning; Bill Fritz, Director of Current Development; Wayne Cilimberg, Director of Planning; Stephanie Mallory, Community Development Assistant; 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. There being no comments, the meeting moved to the next item.

Consent Agenda:

Approval of Minutes: September 20, 2011

Mr. Zobrist asked if any Commissioner would like to pull an in item from the consent agenda.

Motion: Ms. Porterfield moved and Mr. Mr. Morris seconded to approve the consent agenda.

The motion was approved by a vote of 7:0.

Item Requesting Deferral:

ZMA-2010-00011 Estes Park
PROPOSAL: Rezone 12.75 acres on Tax Map/Parcel 03200000003300 and TMP 03200000003400 from R-1, Residential zoning district which allows 1 unit/acre to PRD, Planned Residential Development zoning district which allows residential (3 – 34 units/acre) with limited commercial uses and to rezone 0.56 acres on Tax Map/Parcel 046B4000000500 from R-1 Residential zoning district to R-1 Residential zoning district with proffers. Proposed number of units is 68 for a density of 5.33 units/acre.
PROFFERS: Yes
EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses.
ENTRANCE CORRIDOR: No
LOCATION: in the southeast quadrant of the intersection of Proffit Road (Rt 649) and Worth Crossing, approximately 800 feet south of Proffit Road in the Community of Hollymead.
TAX MAP/PARCEL: TMP 03200000003300, TMP 03200000003400, and TMP 046B4000000500
MAGISTERIAL DISTRICT: Rivanna
(David Benish)
DEFERRED FROM THE SEPTEMBER 27, 2011 PLANNING COMMIISSON MEETING.

APPLICANT REQUESTS DEFERRAL TO THE DECEMBER 13, 2011 PLANNING COMMISSION MEETING.

Mr. Zobrist noted the applicant requests deferral of ZMA-2010-00011, Estes Park to the December 13, 2011 meeting.

Mr. Morris questioned the reasoning behind the deferral request.

Mr. Benish replied that staff needs time to review the applicant's resubmitted plan, which reflects the Commission's direction with different unit types and road design.

Mr. Zobrist opened the public hearing and invited public comment. There being no public comment, the public hearing was closed and the matter before the Planning Commission.

Motion: Mr. Morris moved and Ms. Porterfield seconded to approve the applicant's request for deferral of ZMA-2010-00011 Estes Park to December 13, 2011.

The motion was passed by a vote of 7:0.

Mr. Zobrist noted that ZMA-2010-00011, Estes Park was deferred to December 13, 2011.

Deferred Item:

SDP-2011-00033 Dunlora Forest – Preliminary
PROPOSED: Request for preliminary approval of 93 units, including townhouses, single family, and duplexes at a density of 4.16 units per acre. Associated with this proposal are requests for a disturbance of critical slopes and bonus density increase for more units per acre than is allowed with the standard level development required for R4 zoning.
ZONING CATEGORY/GENERAL USAGE: R4- Residential- 4 units per acre standard level, and 6 units per acre bonus level; R6- Residential- 6 units per acre standard level, 9 units per acre bonus level.
SECTION: Section 32 Site Plan; Section 16 R-6 Residential; Section 15 R-4 Residential; Section 4.2.5 Modification or waiver of Critical Slopes
COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential- residential (3-6 units/acre); supporting uses such as religious institutions, schools, and other small-scale non-residential uses in Neighborhood 2
ENTRANCE CORRIDOR: No
LOCATION: Rio Road East at the intersection with Pen Park Road
TAX MAP/PARCEL: 062F00000000A0; 062D00100000A0; 06100000016600
MAGISTERIAL DISTRICT: Rio
(Megan Yaniglos)
DEFERRED FROM THE JULY 12, 2011 PLANNING COMMISSION MEETING.

Ms. Yaniglos presented a PowerPoint presentation and summarized the request.

This request was deferred at the July 12, 2011 meeting. The applicant has since revised the proposal per the comments and concerns raised at the meeting to address the critical slopes. The applicant has met with a number of the neighbors to address their concerns about the entrance on Pen Park and will be moving forward with the design at the entrance, which will be a right in/right out. They have reduced the number of units from 93 to 90. A density bonus is not being asked for at this time and not required. They have reduced the impact to the critical slopes. The applicant is now requesting a disturbance for Sections A and B. In addition, the applicant prepared an exhibit that overlaid the open space plan on the proposed plan that accurately determined that, in fact, Section

B was not identified as a critical resource in the Open Space Plan. They are also proposing to replant a significant area that is proposed to be disturbed with the trees needed in order to mitigate the disturbance.

The charts showed the proposed plan disturbance versus what was previously proposed. Currently, the applicant was proposing 1.28 acres of critical slopes to be disturbed whereas before they were proposing 3 acres of the total 6.9 acres.

Staff has found the following favorable and unfavorable factors.

Favorable factors:
1. The property is located in the Development Areas which has been identified by the Board of Supervisors and the Planning Commission as the area where development should occur in the County.
2. The property is zoned R4- Residential, which permits this type of development.
3. The disturbance does not impact significant resources in the Open Space Plan.
4. The critical slopes to be disturbed do not make up a larger system of slopes.
5. The applicant has redesigned the proposed development to lessen the disturbance of the critical slopes.

Unfavorable factors:
1. Most of the critical slopes as well as other areas on the property have been identified in the Places29 Master Plan as Recommended Greenway Buffer.

Staff recommends approval of the critical slopes waiver request and the preliminary site plan, SDP-2011-00033 Dunlora Forest with the conditions listed in the staff report.

Mr. Zobrist opened the public hearing and invited the applicant to address the Commission.

Keith Lancaster, with Southern Development, represented the request. Others present included Charlie Armstrong, with Southern Development. Mr. Lancaster pointed out as staff noted that they went back and did a complete redesign of the site. On July 12th, they heard the comments pretty loud and clear that there was too much disturbance at the area C slopes. Additional information was request for the area B slope as well during that meeting. They were also looking for enhanced water quality and quantity on the site as well. The major concern was the traffic issue at that Pen Park interconnection from their site. Since then they have gone back, looked at the site and done a redesign. They met with a group from Dunlora and a group from River Run. The area C slopes now are completely left unchanged. The footprint has been reduced. Instead of continuing the road through, they have put in a cul-de-sac to work with the natural grades. Information was provided to staff that the area B slopes are not in the open space map. A field location was done of the intermittent stream that was shown on the Places29 Plan to be roughly up toward Rio Road. The field location is actually down at the bottom of the lowest basin and where that stream starts. The GIS picked up something much higher on the hill. He explained the storm-water enhancements. Due to the traffic concerns, they have agreed to go back with their engineer and look at and design a right-in and right-out at that site to limit the crossing of traffic over the operational area at the intersection. This property proposes 57 units that are to be universal design one-floor living units and 33 townhouse units. There is a great demand for this product in the growth area and he asked for approval of the request.

Mr. Zobrist invited questions for the applicant.

Ms. Porterfield asked if VDOT has agreed to the right-in and right-out.

Mr. Lancaster replied that he talked with Joel DeNunzio who said if the numbers worked he would be open to right-in right-out. They are going to work with VDOT for approval. They agreed to have a member of the River Run Association with them through the design process.

Mr. DeNunzio indicated that he was amendable to this.

Mr. Zobrist opened the public hearing and invited public comment.

Public comment was taken from the following persons:

Joseph Mahler questioned how they could build these homes when these people cannot navigate through the neighborhood.

Paul Wright, resident of River Run, former president of the Homeowner's Association and a current member of the Architectural Review Board, said his only comments are about the road and its entrance on River Run. The right-in right out makes no sense since the only way they could do so is coming from the park. He felt that 95 percent of the traffic would have to go down the road and make a U-turn to come back into that area. He had not heard that VDOT can be asked for a waiver on this particular part of the road. They do have to have two entrances, but they are not mandated if there is a waiver. He would ask that the Commission pass this along to the Board of Supervisors for a proper review since he was sure there would be accidents if it is allowed to happen. Or at the very worse, they could give a temporary entrance that is chained off and only used for emergencies. The reason for the two entrances is in case of an accident on the front. The only major concern is the road.

Bill Coburn, River Run homeowner and president of the Homeowner's Association, spoke on behalf of the homeowner association's board and a large number of residents. They support the revised application with the changes. His only concern is what Paul Wright expressed about the roads. The best solution would be not to have an entrance there.

Dr. John Graham, resident of River Run, suggested that the buffer line be marked. At some point there is a need to ensure that the buffer property near to the top of the slope is maintained and not rely on the property owner to keep that property in what he would refer to as a buffer-like state. Please look at that and allow this matter to be looked at more closely by residents who would like to come back and take a look at the situation and look at it in more detail to discuss it further with the developer.

Meryl Bishop, resident of River Run, noted he helped maintain the trail that was just downhill from this development with Dan Mahon of the County. That critical slope area behind the townhouses should be well looked at because there are landslides in there. There are some over 200-year-old beech trees in there that would be a sacrifice if they had to be torn out. There is a lot of natural mountain laurel on the site. He was worried about the overflow of water and erosion.

Laura Eckford, resident of River Run, asked the Commission to protect the area. She questioned the location of the road and that it would lower their property values and cause noise and lack of privacy. She asked that the natural area be preserved between the developments.

Sonny Knight, a retired RN, voiced two concerns regarding the traffic from two schools in the area and the right-in right-out turn lane. He was concerned with the amount of traffic increase from the duplexes.

D. D. Hudson, property owner of River Run, voiced concern with the problems created from the traffic increase to the neighborhood.

Deborah Gilbert, resident of River Run, questioned how the residents of River Run were going to be able to get out onto Rio Road without coming through Pen Park. That is just not safe. She suggested an alternative entrance.

Ann Williams, resident of River Run, voiced concerns about the increased traffic problems, particularly the right-in and right-out proposal.

Leo Casey, resident of the area, said the right-in right-out proposal is not a solution to the traffic problem.

Gera Coniston, resident of the County, voiced concern about there being no pedestrian walks or places to ride a bicycle to Pen Park from Rio Road. There is no place for someone to walk to the store. The traffic is too congested in this area, and this proposal will add to it.

There being no further public comment, Mr. Zobrist closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Mr. Morris requested Joel DeNunzio to come forward and address the entrances proposed.

Joel DeNunzio, VDOT representative, noted the entrance onto Pen Park Road seems to be the one most people are concerned about. The previous VDOT comments made on this development are they need a traffic analysis of that specific area before VDOT can make any sort of commitments to what type of intersection that could be there if there could be any intersection. The most minimal intersection would be a one-movement intersection, a right-in or a right-out or a right-in and right-out. Another concern he heard is traffic coming up Pen Park Road and trying to take a left into the neighborhood. He is also concerned with the stacking back toward the Rio intersection. At this point, they don't have the information they have requested. It probably is too early to be able to analyze that information and come up with a good safe solution for this intersection. In any case, that intersection is going to require a design exception for spacing requirements from VDOT. Ultimately, it has to go to their district office for approval.

Ms. Monteith asked if the right-in and right-out is not approved, how would that affect the primary entrance and the road.

Mr. DeNunzio replied that VDOT regulations require multiple entrances and multiple connections similar to what the County requires. VDOT's requirements are based more on providing multiple places of connectivity. The County's requirements are based on emergency reasons. In this case, there might be a waiver on VDOT's part. If they remove some of the requirements and they don't get an exception for it, then these roads may not qualify for state maintenance. If it is an unsafe movement, VDOT is not going to give the waiver for those reasons. He noted that a signal at this location would be a spacing-exception requirement. A signal being that close to Pen Park would have big impacts on Rio Road. He thought that a right-in and right-out would work, but he had not seen the data that supports there not being congestion from it. If that congestion can be adequately addressed, then it can be a safe movement. If it can't be, then they have to look at other solutions.

Mr. Zobrist invited rebuttal comments from the applicant.

Mr. Lancaster replied that timing was an issue for this project since they have to figure out the design, which is what they are working toward. Obviously as this project goes through the final approval process, financing, earthwork and finally putting units on the ground, Meadow Creek Parkway comes into play, which drops the Rio Road traffic nearly in half. There are solutions coming down the road as this continues to go through the process. They have a hurdle beyond this to meet the final requirements. This is a preliminary approval.

Mr. Franco said based on the fact that it is a preliminary, the action that is actually before the Commission right now is the critical slopes waiver.

Mr. Zobrist closed the public comment to bring the matter before the Planning Commission for action.

Action on Critical Slopes Waiver:

Motion: Mr. Franco moved and Mr. Smith seconded to approve the modification request of Section 4.2.5 Critical Slopes for SDP-2011-00033 Dunlora Forest – Preliminary based on the findings in the staff report.

Mr. Zobrist invited discussion.

Ms. Porterfield said the problem is they are approving the ability to put many units in this location on a road that currently does not seem to be able to handle very well the traffic that is on it. What they are going to do is increase that traffic without a known solution. She was really concerned about that. She thought they had the cart before the horse. She would feel better if they had done a traffic study. She was torn because she understands what they are saying, but yet again this allows by granting the critical slopes waiver a lot more development than would be allowed if they held them to not being able to have that waiver.

Mr. Morris supported the motion because it was a preliminary site approval.

Mr. Zobrist recommended the Commission look at condition 6 concerning VDOT approval that is required to go forward.

Mr. Kamptner clarified that this motion deals just with the critical slopes waiver.

Mr. Loach said he understands Ms. Porterfield's concerns regarding the VDOT representative stating that he did not know if these problems could be solved until he had the data. To some extent he felt that Ms. Porterfield is right when she said in this case it was putting the cart before the horse. That said, because it is preliminary and it has to go forward with these problems being solved before the final plan based on the critical slopes can be approved, he would support the motion reluctantly.

The motion was passed by a vote of 6:1. (Porterfield – nay)

Action on Preliminary Site Plan:

Mr. Franco suggested the Commission ask that the final site plan be pulled for future review. That way it would let the public know the Commission would take another look at this. This traffic is an important issue to all of us.

Mr. Franco noted the Commission could only take another look if they require it.

Mr. Fritz pointed out there should be an additional condition added that the final site plan come back to the Planning Commission.

Motion: Mr. Franco moved and Mr. Morris seconded to approve SDP-2011-00033 Dunlora Forest – Preliminary Site Plan with staff's recommended conditions in the staff report, as amended, to add that the final site plan come before the Planning Commission.

The Department of Community Development shall not accept submittal of the final site plan for signature until tentative final approvals for the following conditions have been obtained. The final site plan shall not be signed until the following conditions have been met:

1. Community Development Planner approval to include:
    a. Meet all the requirements in Chapter 18 Section 32 for site plans, including landscaping and lighting plans.

2. Community Development Engineer approval to include:
    a. Additional provisions and easements for drainage across three or more lots may be required for final approval. "Dense development where fencing, decking, etc is expected should provide yard inlets and pipes rather than ditches. Narrower easements for private yard drains may be acceptable and will be reviewed for adequacy."
    b. The plan must meet all engineering requirements of the Water Protection, Subdivision, and Zoning Ordinances in addition to all engineering standards detailed in the County's Design Manual.
3. E911 approval to include:
    a. The applicant should contact Community Development E911 staff with a list of three (3) road names for "Road A," "Road B" and the 34-foot access and utility easement for approval before the final plans are submitted.
4. Albemarle County Service Authority approval to include:
    a. Water easement for future interconnection will be required by ACSA before final site plan approval.
5. Fire and Rescue Division approval to include:
    a. Adequacy of fire flow
    b. Location of fire hydrants
6. Virginia Department of Transportation approval
7. Final site Plan to be reviewed by the Planning Commission prior to final site plan approval.

The motion was passed by a vote of 6:1. (Porterfield – nay)

Mr. Zobrist noted that the critical slopes waiver and SDP-2011-00033 Dunlora Forest Preliminary Site Plan was approved with the added condition that the final site plan comes back to the Planning Commission. This item does not require review by the Board of Supervisors.

Public Hearing Items:

SP-2010-00034 Glenn A. Hall
PROPOSED: Request for one additional development right for the creation of a new parcel for a family member.
ZONING CATEGORY/GENERAL USAGE: RA -- Rural Areas: agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots);
SECTION: 10.2.2.28, Divisions of land as provided in section 10.5.2.1.
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: 4399 Braxton Road, approximately 430 feet from the intersection with Gilbert Station Road (Route 640).
TAX MAP/PARCEL: Tax Map 34 Parcel 74B (Scott Clark)

Mr. Clark presented a PowerPoint presentation and summarized the request.

Specifics of the Proposal: The parcel does not have any additional development rights. The applicant is requesting an additional development right in order to be able to transfer a portion of the parcel to his daughter so that she can build a home there.

Planning and Zoning History: In August, 1983, Mr. Hall purchased the subject parcel from the previous owner, who had divided a 23.5-acre parcel into four lots. On the same date, relatives of Mr. Hall purchased the other

three resulting lots, which are adjacent to his property, to the north, south, and east. Neither Mr. Hall nor other members of his family had owned this land prior to the subdivision.

Policy History:
Past decisions by the Board of Supervisors on requests for additional development rights in the Rural Areas have followed a consistent pattern.

- Applications for family-owned parcels whose **development rights have been exhausted through family subdivisions** have generally been **approved**.
- Other applications have generally been **denied**.

In this case, the land was subdivided by a previous landowner before purchase of the lots by Mr. Hall and members of his family. Approval of an additional development right in this case would therefore be inconsistent with past decisions.

Conformity with the Comprehensive Plan: The Comprehensive Plan designates the subject properties as Rural Areas, emphasizing the preservation and protection of agricultural, forestal, open space and natural, historic and scenic resources as land-use options.

The Rural Areas chapter of the Plan states that:

"To be consistent with the Guiding Principles, the County's land development policies must be changed to stop the ongoing trend toward fragmentation and loss of rural character."

And that the County should:

"Reduce the level and rate of residential development in the Rural Areas, and minimize the impacts of permitted development."

Approval of this request would be contrary to these policies.

SUMMARY:

Staff has identified the following factors favorable to this application:
1. If the request is approved, the parcel has the necessary buildable space to accommodate the additional dwelling

Staff has identified the following factors unfavorable to this application:

1. The requested dwelling unit would increase development in the Rural Areas, which is contrary to the County's land-use goals as expressed in the Comprehensive Plan
2. Approval of the request would not be consistent with previous actions on requests for additional development rights in the Rural Areas.

RECOMMENDED ACTION:

Staff recommends denial of SP-2010-00034 Glenn A. Hall.

However, if the Planning Commission decides to recommend that the Board of Supervisors approve this request, staff recommends that the following condition, which has been used in previous approval, be applied in this case:

1. The proposed subdivision of Tax Map 34 Parcel 74B shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code.

This condition would make the division subject to section 14-212 of the subdivision ordinance, which requires that land transferred by a family division remain under the ownership of the family member for at least four years.

Ms. Porterfield pointed out that the Commission had approved similar requests for family divisions with an increased holding period of ten years.

Mr. Zobrist invited questions for staff.

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

Tiffany Taylor spoke on behalf of her father, the applicant. She noted that the division is for herself due to her handicapped daughter. To upgrade their house is a huge amount of money. Her daughter was confined to a wheel chair and needed handicapped facilities because she was now able to come home from the hospital. The house needs to be handicapped accessible. She asked that the request be approved.

Mr. Zobrist invited questions for the applicant.

Ms. Porterfield asked the applicant if they were willing to accept a motion that would make this a family division and that they would have to maintain and own the property for at least ten years.

Ms. Taylor agreed that they would accept that condition.

Mr. Smith asked about the driveway and how many acres the parcel would be.

Ms. Taylor replied that the County requires a certain amount of square feet.

Mr. Clark noted that it was a six-acre parcel and currently it would be a minimum of two acres. They measured the existing parcel and determined that can work.

Ms. Taylor noted that there was adequate space for this.

There being no further questions for the applicant, Mr. Zobrist invited public comment. There being no public comment the public hearing was closed and the matter before the Commission.

Mr. Morris agreed with staff completely that this request is against the Comprehensive Plan. However, the Commission has been quite consistent if it is a family subdivision and if the applicant was willing to accept the stipulation that it will remain in the family for a minimum of ten years, then he was for it completely. Therefore he supported the approval of the request.

Motion: Mr. Morris moved and Mr. Smith seconded to recommend approval of SP-2010-00034 Glenn A. Hall with the condition that the parcel be a minimum of two acres, that it be treated as a family subdivision, and that it be retained in ownership by a member of the intermediate family for ten years.

Ms. Porterfield suggested they put something in about it being a unique circumstance because of the health and welfare of a family member who really needs to have this happen.

Mr. Zobrist added that they were making this decision based upon the health and welfare of a family member.

The motion was passed by a vote of 7:0.

Mr. Zobrist noted that SP-2010-00034, Glenn A. Hall would be forwarded to the Board of Supervisors with a recommendation for approval to be heard on a date to be determined with the following conditions.

1. The proposed subdivision of Tax Map 34, Parcel 74B shall only be permitted as a "family subdivision" as provided by Chapter 14 of the Albemarle County Code.
2. The family division period to retain the property shall be extended to ten (10) years.

The Commission noted that its decision was based upon the health and welfare of a family member.

The Planning Commission took a break at 7:07 p.m. and the meeting reconvened at 7:12 p.m.

ZMA-2011-00006 Albemarle Health and Rehab Center
PROPOSAL: Rezone 5.38 acres from R-1 zoning district which allows residential uses at a density of 1 unit per acre to PD-MC Planned Development Mixed Commercial zoning district which allows large-scale commercial uses; residential by special use permit at a density of 15 units/acre and special use permit under Section 24.2.2(7) of zoning ordinance for hospitals, nursing homes, convalescent homes uses. No dwellings proposed.
ENTRANCE CORRIDOR: No
PROFFERS: No
COMPREHENSIVE PLAN: Transitional – neighborhood-scale commercial uses, offices, townhouses and apartments (6.01-34 units/acre) and Urban Density Residential – residential (6.01-34 units/acre); supporting uses such as religious institutions, schools, commercial, office, and service uses and located in Neighborhood 4 in the Development Area.
LOCATION: 91 Galaxie Farm Lane
TAX MAP/PARCEL: 09100000001200
MAGISTERIAL DISTRICT: Scottsville

AND

SP-2011-00014 Albemarle Health and Rehab Center
PROPOSAL: Rezone 5.38 acres from R-1 zoning district which allows residential uses at a density of 1 unit per acre to PD-MC Planned Development Mixed Commercial zoning district which allows large-scale commercial uses; residential by special use permit at a density of 15 units/acre and special use permit under Section 24.2.2(7) of zoning ordinance for hospitals, nursing homes, convalescent homes uses. No dwellings proposed.
ENTRANCE CORRIDOR: No
PROFFERS: No
COMPREHENSIVE PLAN: Transitional – neighborhood-scale commercial uses, offices, townhouses and apartments (6.01-34 units/acre) and Urban Density Residential – residential (6.01-34 units/acre); supporting uses such as religious institutions, schools, commercial, office, and service uses and located in Neighborhood 4 in the Development Area.
LOCATION: 91 Galaxie Farm Lane
TAX MAP/PARCEL: 09100000001200
MAGISTERIAL DISTRICT: Scottsville
(Claudette Grant)

Ms. Grant presented a PowerPoint presentation and summarized the request.

Purpose of Hearing:

To rezone 5.38 acres from R-1 zoning district to PDMC Planned Development Mixed Commercial zoning district and to request approval of a special use permit to allow a nursing home facility. Staff described the proposed application plan and the zoning of the site.

There are several outstanding issues as noted in the staff report. Some of the outstanding things are easements and proffers. The applicant has requested four waivers. With these outstanding issues, staff's conclusion at this time is that additional information is needed to fully evaluate the waiver requests. Section 8.2 can be referred to for findings regarding the waivers.

For clarification, the applicant is requesting a rezoning in a planned district with a specific plan. However once this is rezoned a Planned Development Mixed Commercial, unless specific uses are proffered out any of the permitted uses allowed in this district could potentially go on this site. There may be site restrictions that make certain uses more difficult to work on the site. But there are many possible uses that are allowed in the PD-MC District. One of the primary concerns is not so much the proposed use on this site, but the fact that they have a plan showing the need for permission and agreements from adjacent property owners for grading and easements and other issues as noted in the staff report. Staff has not seen any permission to allow this from the neighboring properties. This is among many other concerns described in the staff report.

Factors Favorable

- Development of the property as a nursing home is consistent with the Comprehensive Plan designation.
- This rezoning request provides a need and service for the elderly in a portion of the County that does not have a similar use.

Factors Unfavorable

- The proposal for the site is so overdeveloped that the design requires grading, and easements on the adjacent properties for retaining walls, access road, and storm-water management.
- No permission has been received from adjacent property owners allowing permission for the necessary grading/easements on the subject property. Without permission, this project will not be able to be developed as proposed.
- The applicant is requesting a waiver to provide over 20 percent more parking on the site than what is required by the Zoning Ordinance.
- Multiple waiver requests for buffer, landscape and minimum yard requirements (along with off-site storm-water management and grading) indicates the proposal overdevelops the site.

Staff's Recommendation

- Staff recommends denial of ZMA 2011-00006, Albemarle Health and Rehab Center based on the factors noted in the staff report as unfavorable.
- Staff recommends denial of SP2011-00014, Albemarle Health and Rehab Center based on the factors noted in the staff report as unfavorable.
- Staff recommends denial of waivers, based on the factors noted in the staff report as unfavorable.

Mr. Zobrist opened the public hearing and invited the applicant to address the Planning Commission.

Bruce Hedrick, Vice President of Development for Medical Facilities of America, said the company was a second-generation family-owned business proudly celebrating its 40th year of serving the elderly in Virginia. He made the following presentation.

- They currently have 41 centers in Virginia and North Carolina. Locally they have Charlottesville Health and Rehabilitation located on Rio Road. They purchased that facility three years ago and this past spring finished a 1.5 million dollar renovation to the center. Since their inception they realized that the greatest assets they have are their people. To be successful tomorrow they need to invest today in terms of their professional development, work place enhancements and competitive wages and benefits. They come from a family culture of values that is doing the right thing at the right time the right way and for the right reasons. They focus their attention on customer-service excellence, which is not just caring for their patients but more importantly caring about them. They are leaders in their industry in terms of purposeful

programming for their patients, cutting-edge technology and equipment, as well as culture changing building environment. They are active community members facilitating training and research opportunities in their facilities. As a for-profit entity, they are contributing to the local tax base in term of current as well as future services. They donate locally to area charities.

- The current age of their patients is approximately 82 or 83 years old. Some folks are there for a short-term stay after a hospital surgery or illness. The majority are long-term residents. Overall, 70 percent of their patients will be Medicaid or indigent care. Those are the retired teachers and fire fighters that unfortunately outlive their savings; and through our taxes, we take care of those folks. The state, however, does not reimburse them for the total cost of their care. But it is part of their principles and mission to care for those that are less unfortunate. Besides providing quality care of loved ones to families and friends, one of the most important things they can do is provide accessible care. Family of their patients lead very busy lives, and having a facility that is close and easy to get to ensures the continuity of support that patients need both in their short-term recoveries as well as their long-term care stays. It is also important that their care services are approximate to the other health care providers in our community.
- They have a recommendation from the State Department of Certificate of Public Need for a nursing home in southern Albemarle County. The reasons for this are many including the last time that there were new beds added to Albemarle County was in 1984. The 70-plus population in Albemarle County is going to increase 33 percent between 2010 and 2020. There is a high occupancy in the existing facilities that limits access to care. Their building will be completely dually certified providing equal access for all payer sources. One of the most important criteria in selecting and approving their application was their location. Currently there are no nursing homes south of Interstate 64. They like the accessibility they had to health care, but more importantly the community at large. They are close to Piedmont Community College, which is an opportunity for clinical rotations for the college's aspiring nurses as well as future employees for their center. They are fortunate to have three schools in close proximity that help facilitate their intergenerational programs.
- He would not go into the floor plan unless asked to do so. He pointed out there are actually four different neighborhoods as part of their facility. Each one of those 30-bed neighborhoods has their own dining area and activity area. Their certificate of need is for 120 beds. They would not be developing one of those neighborhoods as part of this first phase. One of the critical key points is that all of their patients will have a private bedroom. That is unique in this area and in the Commonwealth. There are many merits for this project. It is compatible and complimentary to the existing nonresidential uses. It is an efficient use of the growth area land for job creation. They will create 90 permanent jobs as well as over 200 construction related jobs. They have broad support from many associations. They have a recommendation from the Commonwealth to build a new nursing home.

Justin Shimp, with Shimp Engineering, said he was present to answer questions regarding to site-related items brought up in the staff report.

- There are four waivers with one for parking and three related to basically the same thing in that all the properties around them are zoned R-1. This was zoned in 1980 as part of the county wide zoning. Surrounding properties include Cale Elementary, Albemarle Service Authority, the fire/rescue station, County-owned property thought about for a potential school and several houses. They are basically building a light commercial use among a bunch of largely institutional, industrial and utility uses. As a matter of technicality because they have these residential properties, there are certain buffers required to those in the zoning ordinance. They feel as those uses are much more institutional or commercial in nature, those buffers (a screening fence with a 20' setback) are not appropriate between them and really are not necessary. The waivers are there as a technicality of the zoning because of where they are rather than such a function of the development of the site. If the surrounding property was zoned commercial as it could be for these uses, then they would not have these waivers at all.

- The issue of the uses was brought up. That was his mistake since he thought the application plan said nursing care facility. That was what they were going to build. That has always been the intention and nothing else has been considered. They were happy to proffer out every other use to make sure that is clear.
- As far as the easements he asked to put a little different perspective on this. They have one easement document ready for the Service Authority to sign, which is the lot in front of their property with the tank. The other two easements include the main one along the school. That is not a necessary easement. They have talked to the school and tried to work with them as far as storm water and grading. They are still working on that and don't know if they will get it. The fact is they are not actually showing grading there other than the storm-water pond. They have an on- site alternative that he supplied to the County just today to do underground storage with bio-filters on site. They have crunched the calculation and it can be done. That is nothing that limits the development of their parcel. It just has to be done a little differently, but it still is in conformance with the ordinance.
- The other discussion that came out with some of the Commission members was the parking. From the standpoint of Monticello, he met with the Monticello's Associate Director. This site could not be seen from Monticello. There is a little bus loading area in front for JAUNT accessibility. The parking waiver requested was a function of a couple of things. They find that the zoning ordinance requires way too little parking for a nursing facility. As Mr. Hedrick indicated, they operate 41 facilities and are familiar with the parking needs for a facility. Based on that is the generation of the 90 parking spaces proposed. On average they have 98 spaces for a 120-bed facility for their other homes throughout the state. One issue that came up was a question about the parking, which is mixed with some in the front and rear, and could that be done differently. The answer is yes. They looked at adjusting it. He would view this as in general accord of the application plan that is submitted. If the Commission feels it is important to have the parking around to the front rather than in the rear they would not object to a condition of approval that required some percentage or number in the front if that was deemed to be appropriate.
- The last issue is the access road. He referred to the approved plan for the fire and rescue station. Around ten years ago, it was conceived that a road would access the County-owned property for a potential school. It was called the middle school road. He did not know if that was still on the table. They have proposed to take the center line alignment of that and follow it with their access road. For now it would just be an access road going up to their property. They would do the grading, but build more of a travel way than a true road to access it. That is more than adequate for their small parking and small traffic that they produce from off site. Basically, they are starting work that the County conceived. He talked with the Facilities Development Director about this and they did not have an objection. That is all of the items he had to discuss.

Mr. Zobrist invited questions for the applicant.

Mr. Lafferty asked how they are going to handle the run off going toward the fire station.

Mr. Shimp replied they would need to have some sort of storm sewer system along that road that would tie into the storm-sewer system that is down there. At the fire station there is a ravine off to the side where there is a big pipe that goes under Mill Creek and on. That will all be addressed. Chapter 7 of the zoning ordinance requires the storm water, and they will have to comply with all of those things.

Mr. Zobrist asked if the property is under contract with the applicant and, if so, do they have permission from the owner to proceed.

Mr. Shimp replied that was correct and they had permission from the owner to proceed.

Mr. Zobrist asked what happens if the property gets rezoned and the applicant does not buy the property.

Mr. Benish replied that if the rezoning is approved, it becomes the zoning on that property. The application is valid.

Mr. Zobrist asked if the applicant can offer proffers. The applicant has suggested they will proffer away all uses except for hospital.

Mr. Kamptner noted that the actual property owner would have to sign the proffers. A contract purchaser with the consent of the owner can be an applicant for a rezoning.

Mr. Benish noted they have a lawful application for the property. Staff has no evidence of whether those adjacent property owners are agreeable to those improvements.

Mr. Zobrist said they can make it a condition of the approval that they get the neighbors' consent before they do anything.

Mr. Benish replied they can't condition a rezoning request. They have to review the rezoning based on the information before them and act on that zoning. They can propose proffers that will address some of the issues that they have brought forth. Staff would presume eventually they were going to proffer the application plan. If they are interested in a plan of development for the site, then that is usually proffered as part of that plan.

Mr. Zobrist said the applicant just has not gotten that done yet.

Mr. Shimp pointed out that the special use permit application could be conditioned.

Mr. Zobrist invited other questions.

Ms. Monteith noted she did not understand how if they don't have approval from the neighbors, how the Commission was supposed to act on this. If the proposal can't be built without approval from the neighbors and they don't have it, then there is a problem.

Mr. Shimp replied that the approval they need is from the County because they have to go through the County property with the road. The Planning Commission represents the County of Albemarle. The other entities they don't need. They would like to have them, but they can develop without their consent. The Service Authority is ready to sign the documents. The grading plan does not show any grading on the school property. It was envisioned there as a matter of making it easier to construct. It is not required to build the site the way they have it on the application plan.

Ms. Monteith asked staff to clarify.

Ms. Grant replied based on the plan before the Commission, the applicant would need approval from the neighboring properties. The plan shows grading and easements on the adjacent properties.

Mr. Kamptner noted the Commission can at least make a recommendation one way or the other without all of these issues being tied down. Part of the recommendation could be that the Board not approve the project unless these conditions are resolved by the time the Board takes action.

Mr. Franco asked Mr. Shimp what about the area along the property line they share with the adjacent residential units.

Mr. Shimp replied that there is an out parcel proposed between their property and the two houses. They are proposing to purchase a portion of the property excluding the out parcel.

Mr. Franco asked if they are grading on that out parcel.

Mr. Shimp replied that they show a temporary grading easement on that parcel as well.

Mr. Franco asked of the waivers requested for yard disturbance and screening, do any of those apply to that property line.

Mr. Shimp replied that they would as it sits today. That remains zoned R-1. So if it was approved and they submit the site plan without the waiver it would be a 20' buffer from that line.

Mr. Franco asked from the out parcel line or from the adjacent property.

Mr. Shimp replied from the out parcel line unless the waiver is approved.

Mr. Franco asked if that buffer is left whether it is in his parcel or the out parcel to this adjacent property.

Mr. Shimp replied that it is left. There is a 20' strip between their property line and the adjoining single-family home on the out parcel.

Steve Blaine, attorney for the applicant, said they understand that the applicant would have to sign any proffers. That issue of the uses really just came up the last day or so. They understand the owner has to join in that proffer as he did in the application. The status of the easements is those are all still in negotiation, but they would accept a condition of the Commission's recommendation that those be put in place by the time there is final action. The proffers have to be reviewed by Greg and signed before they go to the Board.

Mr. Benish noted that there are general public uses that they generally don't proffer out.

Mr. Kamptner noted that the general ones would be the class of public uses and the class of public utilities. There may be a couple of others staff routinely keeps in.

Mr. Blaine asked if they keep cell towers in.

Mr. Benish replied that he was not sure.

Ms. Porterfield asked if the public uses are compatible with being next to an elementary school.

Mr. Benish replied that public uses are subject to a compliance with a Comprehensive Plan review, which substitutes for a legislative review. The Planning Commission determines whether the public use is appropriate for that site. There is another review process. In terms of the proposed use and the land use designation there may be other uses that may be appropriate as well because it is shown as transitional use, which did call for some limited activities. So staff will look at other uses that may be consistent with the comp plan that may be appropriate for the site. It does allow for Neighborhood Service type of development as well.

Ms. Porterfield pointed out that she met with the applicant Friday and this came up. She contacted Ms. Grant because she was not sure what the answer was. Ms. Grant said there were all these other uses that could go there. She personally felt if they were going to adopt this to give them this change in the zoning that it be specific. The site is not terribly accessible because they were only building an access way and not a true road into this site. There is a huge list of uses.

Mr. Zobrist noted that right now the applicant was proffering it all. It was staff suggesting the other uses. He was not going to argue with the applicant.

Mr. Franco felt there were some uses on the site they ought to eliminate. There were ones that just don't make sense. However, he did not think they should be so restrictive. This is a rezoning and not a special use permit. The special use permit will allow that one use. He did not think they should limit every other use in that category. He thought some of the public utilities and some of those others would make sense and should not require a rezoning to allow those in the future.

Mr. Zobrist opened the public hearing and invited public comment. There being none, the public hearing was closed and the matter brought before the Planning Commission for action.

Ms. Porterfield said she had some specific questions for Mr. Shimp due to her family medical background and as the Planning Commissioner for the Scottsville District. Some of what the applicant presented today came out of her meeting with them.

- Mr. Shimp showed another design which brought the parking forward. She thought for the use presented that is an important thing. Visitors who would park on the back side of the building during snow would have difficulty getting around the building. She thinks it was good they figured out a way to bring the parking forward. She hoped the Commission would be able to allow them to really work on that plan.
- She also mentioned to Mr. Shimp with the waiver being requested that he should mention that one of the abutting neighbors has the document and all it needs is a signature. That neighbor has agreed to it.
- Mr. Shimp also did present as far as the run off onto the elementary school was that construction could be accomplished without the easement. Their point that she understands is that if there was industrial zoning around this site, these waivers would not be required.
- Property around the site happens to be primarily residentially zoned. So these waivers are being required. The parking is their business model, and they feel that 98 spaces are required. Obviously where this is located, there is no street parking or other parking available. Certainly the Commission wants to make sure they have enough parking. If they can work it into the site, that is fine.
- Her biggest problem is that it is a little bit overdeveloped. She would prefer if it was 90 beds because they could make it fit on the site better. The 120-bed facility is pushing the envelope. That is causing things to spill over. That is the applicant's business model, but they are not going to build it all at the beginning. She agreed with staff that the site is overdeveloped and suggested that they pull it in a little bit. She also was concerned with the travel way accessibility instead of a real road. She suggested that it be built to a road standard because it would be better for everybody.

Mr. Smith agreed with most of what Ms. Porterfield said and that it is overbuilt. He asked Mr. Shimp about the access road and if the County is not requiring them to build that to a higher standard than just a driveway. He questioned if the county was going to let them get away with that.

Mr. Shimp replied that was for the Commission and the Board of Supervisors to consider. His discussion with the County has been that they need some access here to their property, but they don't know what or when anything will be done with it. They have very low traffic and can easily accommodate their folks on a 20' to 24' wide road with a shoulder. They will grade that in and pave their 20' to 24'. When the time comes that the County or the developer wants to build something else in that area, a discussion would come up again about the traffic impacts and whose fair share it is to pay for what. He pointed out that they would be cutting in the road per a state road grade. So they were doing the cutting to the rock behind the fire station. They are getting up to that spot at no expense to the county. If that became a school, the traffic in and out of that would be 10 to 20 times what they would have. That is certainly something for them to discuss and consider. Their perspective is they will go in and do their share. If someone comes in later, they will make it as easy as they can for them to continue.

Mr. Smith said the road coming in actually is an exit for the trucks going out. So they were going against the flow of traffic where they go around that curve. It is really one way for the fire trucks now. In other words, they enter the first road and loop around.

Mr. Shimp replied that was correct.

Mr. Smith said when that road was built they talked about if and when there was ever a road of if a school was built up there that they would widen that entrance road. Right now when they come out of there they would be going against fire trucks going only one way. That is just a question.

Mr. Shimp replied that having been out there that there is a lot of graded room off to the side. That is something he did not see.

Mr. Smith said it was graded for future road.

Mr. Shimp said that when they get to the final design details now that he said this, it would make perfect sense for them to shift over a little bit in there to give them some more room. That is something that could get worked out with the County engineer when the time came. He was sure that could be accommodated.

Mr. Smith questioned the parking. He liked it all the way around. He asked if they would be able to access the back of the building for the visitors.

Mr. Shimp replied that there are the two access points. He turned the question over to Mr. Hedrick.

Mr. Hedrick said the building was built as a single story. From a safety perspective, a single-story building is the best. In terms of safety and evacuation, they wanted a single-story building. The main entrance is at the front of the building. There are two rear entrances that are key-padded, which allow for limited access with a code. Family members would have the code or whatever type of card. Regarding the 90-bed versus the 120-bed facility concern, their intentions are to bring additional beds to Albemarle County as that is needed. He planned and ultimately will build 120 beds there. To limit it to 90 beds would make it difficult in the long term. The footprint is the way it is because they were going to be able to provide private rooms everyone.

Mr. Franco asked if the road issue was only the width.

Ms. Monteith asked if the road has been designed to accommodate all type of vehicles including JAUNT vehicles with grades included.

Mr. Benish replied that the application plan has not addressed the JAUNT issue. There is a particular type of entrance they are interested in. It does accommodate JAUNT, but they have not addressed JAUNT's recommendations.

Mr. Zobrist supported giving as many rooms as possible for Medicaid facilities. He was not concerned about overbuilding of the space. He supported private rooms being available for all individuals. It was similar to affordable housing, and he felt they should approve it.

Mr. Morris agreed and thanked the applicant for bringing the proposal to Albemarle County.

Mr. Lafferty voiced concern about the document before them was not what they had been talking about. It almost seems premature. It is a great idea, but there are too many questions. He thought that was the response that the County had.

Ms. Porterfield asked if the applicant was willing to defer to close all the loopholes and then come back.

Mr. Zobrist questioned what they would get out of a deferral.

Ms. Porterfield said they would have a complete plan for consideration. The complete plan could be reviewed and then sent on for Board of Supervisor review.

Mr. Franco said he was on the fence or border-line about the deferral. He questioned if the 20' buffer was preserved. It appears that the 20' buffer is left undisturbed and that 50' yard is provided as well. He thinks it is okay in there. He would prefer seeing what the proffers would be as far as what is proffered in or out before moving forward. However, he did not feel real strongly about it. It is something the applicant can address before it goes to the Board.

Mr. Loach agreed with Mr. Franco if they could craft the language so it was acceptable enough that by the time it got to the Board those questions would be answered. The basic intent and plan is overbuilt, but he felt they could craft the language.

Mr. Franco suggested moving the request forward as long as there was a certainty that the Commission was in support of the plan basically as is with the refinements they are talking about. They need to delineate the deficiencies, but don't have to craft that this is what they have to do. What he did not know is if time is of the essence and things like that. It could possibly add two weeks to their schedule, but they are going to have to address these easements sooner or later.

Mr. Zobrist said it would take more time if the applicant had to come back to the Commission.

Mr. Benish noted that the schedule would depend on how much time it would take the applicant to make the changes to the application plan and bring it back. It would be two-to-four weeks to get it scheduled. He felt that they were looking for very basic proffers that have to be reviewed by the County attorney that could be finalized before the Board meeting. Those are straight forward. What their expectations are on the site, they are going to have to condition them as part of the special use permit and be very specific about what those expectations are and give the applicant general guidance such that they can adjust the application plan. Staff can then ensure that those issues are addressed.

Ms. Monteith said the other thing is the agreement from the neighbors. She did not understand it completely.

Mr. Benish replied that staff has not seen what the ultimate storm-water detention method is. All staff can advise the Commission on is the plan they had to review. They assume what the applicant is saying is true and there are other alternative for those locations. But that is something staff will have to follow up with the applicant and the adjacent property owners if no on-site improvements are still called for in that plan.

Mr. Franco noted that there are three actions to take that they need to craft an action on.

Ms. Porterfield suggested that it was the applicant's job and they should defer to take care of it.

Mr. Lafferty agreed with Ms. Porterfield.

Mr. Blaine agreed that it was the applicant's job and that they were prepared to address the things that they have heard tonight. They propose the Commission take action in recommending approval subject to the easements being in place, which they know they have to do. It is a legal matter. The urgency is that the applicant does not own the property and has it under contract. They cannot indefinitely postpone. They have been in the process for six months. The urgency of the delivery of the care is also a consideration. It is not like another residential

development where they are being told they have an oversupply of residential. This is an urgent need. They have a financial need for urgencies. These are all issues that can be received by the Board in their recommendations. He was prepared to help them with that because he felt it was their responsibility.

Ms. Porterfield noted that there was a lot of information needed and the application should be deferred.

Mr. Blaine questioned when the information was needed and what date it could come back.

Mr. Kamptner noted that the signed document was needed before it goes to the Board.

Mr. Cilimberg noted there is a resubmittal schedule. He suggested the Commission defer to a date certain, but give enough time that the applicant can resubmit and then get the staff review necessary so the report can be done and come to the Commission. There are two December dates.

Mr. Benish noted the next submittal was November 7th with the Commission hearing date on January 10th. The December 13th deadline was yesterday.

Mr. Cilimberg pointed out that it was the applicant's choice whether to defer or not. He suggested not deferring any earlier than the December 13th hearing date.

Mr. Zobrist asked if the applicant was considering a deferral, and Mr. Blaine replied that they were considering one.

Mr. Zobrist pointed out the applicant needed to work out the proffers.

Mr. Kamptner said the understanding is that they do not have to have the owner's signature on those proffers by the time it comes back to the Planning Commission.

Mr. Zobrist noted that was number one, but it has to be done by the time it goes to the Board. Number two is that they need an engineering plan that meets what the applicant has represented to them tonight.

Mr. Blaine asked if there was consensus for the front-loading parking because he heard some differences.

Mr. Lafferty suggested that the applicant go with their best judgment there for up to 120 beds.

Mr. Zobrist asked what else they need. He noted they need the waivers.

Ms. Monteith said once they have the plan they are asking them to prepare that they would need to assess how it impacts adjacent neighbors. If anything is impacting them directly on their property, they need to have an understanding that they have accepted that.

Mr. Blaine noted it would require a signed easement.

Mr. Franco asked that they bring it back so there is no grading off site or bring the easements with them. On the site design side, the biggest question he would like to see worked out is the circulation past the fire station. He thought they said there was plenty room to potentially expand there. He suggested they have a definite proposal for that area on what is going to happen.

Mr. Blaine said that is only five things.

Mr. Franco said that with the modifications, they were comfortable with the parking, the yard, and the disturbance of the buffer and the lack of screening to the adjacent properties. He asked if there were no changes that they were requiring there.

Mr. Zobrist said not from his standpoint and Mr. Morris agreed.

Ms. Porterfield asked that they still think about how the people in the back are going to get into this building. There are very few medical buildings where people do not come in through the main entrance simply for the security and safety of the people in the building. That is something they need to think about. She supported the majority of the spaces up front. She questioned whether the entrance by the fire station would work with big service trucks coming in and out. The proposal needs to be put together completely.

Mr. Franco said as they went through it they only identified four comments that don't seem to be that complicated. He suggested that they craft a motion.

Mr. Zobrist polled the Commission and the majority of the Commission was okay with 120 beds. Ms. Porterfield disagreed.

Motion on ZMA-2011-0006:

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of ZMA-2011-00006, Albemarle Health and Rehab Center with the proffers being resolved before it goes to the Board to restrict the uses to the use they are proposing plus wireless facilities, public utilities and public facilities.

Mr. Kamptner noted that all of the waivers have to be approved by the Board. So if there is consensus for approving all four of the waivers, then the Commission can take care of them all together. If they think they need to break each one out, then they can do so. There are four findings the Commission has to make under Section 8 because this is a Planned Development. He pointed out the following:

- The Board will need to find that the modification or waiver is consistent with the intent and purposes of the planned development district under the particular circumstances and satisfies all other applicable requirements of Section 8.
- Number 2, that it is consistent with planned development design principles.
- Number 3, that the waiver or modification would not adversely affect the public health, safety or general welfare. Number 4, in the case of a requested modification that the public purposes of the original regulation would be satisfied to at least an equivalent degree by the modification in Section 8.2.b.
- For the parking waiver, the finding that is required under Section 4 actually duplicates one of the findings he just read. That is the Commission and ultimately the Board needs to find for the parking modification that the public health, safety or welfare would be equally or better served by the modification or waiver and that the modification or waiver would not otherwise be contrary to the purpose and intent of this chapter. That is section 14.12.2.c.
- The last one deals with one of the buffer waivers. Under section 21.7.c for the buffer zone adjacent to residential and rural area district the Commission may waive upon finding that: 1. Minimum screening requirements are met. 2. Existing landscaping in excess of minimum requirements is substantially restored.

Mr. Kamptner continued that he would leave it to staff to fill in some of the blanks as to the facts that would support each of those findings. A lot of this information is in the staff report.

Mr. Franco asked if he needed to do the waivers separately.

Mr. Kamptner said if there was consensus for approving all four waivers, then they can take care of them altogether. If they need to break each one out, then do so.

Mr. Cilimberg suggested the first action being considered is whether to recommend the rezoning. That would be the starting point for the action followed by the special use permit and then the waivers.

Motion: Mr. Franco moved to recommend approval of ZMA-2011-00006, Albemarle Health and Rehab Center with the provision that the proffers are amended and the applicant work with staff to remove the undesirable uses within the PD-MC.

Ms. Porterfield asked who is going to determine what is undesirable.

Mr. Franco said he was happy that right now the applicant has said that they will proffer down to one use. Staff has said that they prefer to see some of the other uses, especially public uses and utilities uses allowed in there. He was comfortable with those being allowed.

Ms. Porterfield suggested that he put in his motion that it is proffered down to the one use including the public uses and the utilities uses and that is it.

Mr. Franco accepted the amendment.

Mr. Kamptner noted one other particular use classification that comes to mind would be wireless facilities, which he thought they typically allow.

Mr. Franco said those three general uses would be allowed along with the requested use. It is a motion for recommendation of approval to the Board with the proffers being resolved before it goes to the Board to restrict the uses to the use they are proposing plus wireless facilities, public utilities and public facilities.

Mr. Loach asked what would happen to the proposal if staff found that all of these conditions have not been met by the time it goes to the Board.

Mr. Cilimberg replied that their procedure was based on expectations because they are not passing conditions since there are no conditions with a rezoning. They are making a motion with an expectation of certain things being satisfied. Staff evaluates the resubmittal based on whether or not it satisfies those things they identify and then they report to the Board based on that and then they take their action. That action could be to return it to the Planning Commission. However, it would be in their hands at that point.

Mr. Loach said he just wanted to know what the process was.

Mr. Morris seconded the motion on the floor.

Mr. Zobrist asked for a roll call vote.

The motion passed by a vote of 7:0.

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of SP-2011-00014, Albemarle Health and Rehab Center with the expectation that the access past the fire station will be resolved before it goes to the Board.

Mr. Cilimberg asked if there were any conditions.

Mr. Kamptner noted there were no conditions stated in the staff report. This special use permit approves just this particular use and there are not conditions.

Mr. Benish pointed out staff was relying on the rezoning, the proffer and the application plan to address those. If there are specific expectations to the site the Commission could articulate those.

Mr. Franco said the only other expectation is the adjacent easements, which they have talked about needing before it goes forward. His only expectation would be the grading easements.

Ms. Porterfield agreed with the need for the grading easements. However, it also should include the access road that the applicant needs to work out with the County. They need to know whether there is a reservation for future dedication, whether it is going to be built to state standards, if there is a private road maintenance agreement and how it is going to be maintained. Those type of things need to be worked out.

Mr. Benish said the five issues that he thought they addressed have not shown up yet in any action so they would want to do that with the special use permit.

Mr. Franco asked for help with those five conditions.

Ms. Porterfield said the parking conditions would be with the site plan.

Mr. Zobrist noted that was a waiver.

Ms. Porterfield asked if it needs to be shown.

Mr. Franco said the parking waiver is to allow extra parking. He was of the opinion that the design they were submitting addresses the access concerns that they have identified. He thought that they know their business and he was comfortable with them putting parking where they think it should be.

Ms. Porterfield asked if the parking waiver was for the 90 spaces.

Mr. Benish noted that they were not there yet.

Mr. Zobrist noted they were working on the special use permit.

Ms. Porterfield said it sounds like what they need is a site plan and they either have to have the agreements with the neighbors or they have to, as Ms. Monteith said earlier, show no off-site grading or anything like that on the site plan.

Mr. Benish noted it was to address the road by the fire station.

Mr. Franco agreed they need to address the road by the fire station. The rest of it he understood they have accommodated for in the future development or the widening of that road. Therefore, he was satisfied with the exception by the fire station. It is having the site plan amended to show grading kept on site or provided in an easement and address the access past the fire station.

Mr. Kamptner said when he said site plan he was referring to the application plan.

Mr. Franco agreed it should refer to the application plan.

Mr. Kamptner suggested they go back to the rezoning part and clarify that to make that a recommendation as part of the rezoning the application plan attaches to the rezoning.

Mr. Franco asked if the special use permit needed an application plan.

Mr. Cilimberg replied that there would not be a need for a plan with the special use permit if they had an application plan with the rezoning.

Amended Motion: Mr. Franco said the Commission agreed with the two conditions: keep grading on site or get the access easements and fix the road around the fire station. He asked to amend the motion for the ZMA-2011-00006 to say that the application plan needs to address those two aspects as well. He asked for reconsideration of ZMA-2011-0006.

Mr. Morris seconded the motion.

Mr. Cilimberg asked what the Commission was acting on.

Amended Motion to Reconsider: Mr. Kamptner said they were going back and correcting by reconsidering ZMA-2011-00006. He would take Mr. Franco's motion in effect as a motion to reconsider. So they needed a voice vote on that to reopen the ZMA.

Mr. Cilimberg asked for a voice vote first on the reconsideration of the ZMA.

The motion to reconsider ZMA-2011-00006 passed by a vote of 7:0.

Mr. Kamptner noted the ZMA was back on the table. In addition to everything that was approved with the original ZMA motion there is the additional matter that the application plan be amended.

Motion on ZMA-2011-0006:

Mr. Franco agreed with Mr. Kamptner to reconsider ZMA-2011-00006 and added to keep all of the grading on site or provide the off-site easements and to address the circulation past the fire station.

Mr. Morris seconded the motion.

Ms. Monteith noted that it was all grading and storm-water mitigation.

Mr. Franco clarified that it was for any off-site improvements and Mr. Morris agreed.

Amended Motion for ZMA:

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of ZMA-2011-00006, Albemarle Health and Rehab Center with the proffers being resolved before it goes to the Board of Supervisors, as follows:

- to restrict the uses to the use they are proposing plus wireless facilities, public utilities and public facilities;
- the application plan to be amended for any off-site improvements;
- to keep all of the grading on site or provide off-site easements; and
- To address the circulation past the fire station.

The motion passed by a vote of 7:0.

Motion for Special Use Permit:

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of SP-2011-00014 Albemarle Health and Rehab Center with no conditions.

The motion was passed by a vote of 7:0.

Motion on the Waivers:

Mr. Franco noted that he would make a motion to include all the waivers at one time.

Motion: Mr. Franco moved and Mr. Morris seconded to recommend approval of the four requested waivers of maximum parking allowance, minimum yard requirements, maintenance of undisturbed buffer, and screening requirements based on affirmative findings regarding Sections 4.12.2(C), 21.7(B), 21.7(C) and 8.2(B) of the Zoning Ordinance. The Commission requested staff to include the appropriate findings.

The motion was passed by a vote of 7:0.

Mr. Zobrist noted that the four waivers for ZMA-2011-00006 had been recommended for approved. ZMA-2011-00006, SP-2010-00034 and the four waivers will go to the Board of Supervisors on a date to be determined with a recommendation for approval.

Old Business

Mr. Zobrist invited old business.

Mr. Loach asked staff to clarify several questions on affordable housing.

Staff will schedule Ron White to attend a Planning Commission meeting to address affordable housing questions when housing is discussed with the Commission as part of the Comprehensive Plan review.

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

New Business:

Mr. Zobrist invited any new business.

- There will be no Planning Commission meeting on Tuesday, October 25, 2011 and November 1, 2011.
- The Commission scheduled its next meeting on November 8 to hear Fontana and amendments to noise ordinance provisions.
- Concern was expressed about the Commission receiving lengthy emails on the same day as the matters to be addressed by the e-mails are being considered by the Commission. Acknowledging that such e-mails cannot be prevented, Commissioners agreed that consideration of the information contained in the e-mails was at the discretion of each Commissioner.

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

Adjournment:

With no further items, the meeting adjourned at 8:51 p.m. to the November 8, 2011 meeting at 6:00 p.m. at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

_____

V. Wayne Cilimberg, Secretary

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