Albemarle County Planning Commission
November 8, 2011

The Albemarle County Planning Commission held a regular meeting on Tuesday, November 8, 2011, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Wayne Cilimberg, Director of Planning; Elaine Echols, Principal Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; 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.

Committee Reports

Mr. Zobrist asked for committee reports from the Commissioners.

- Mr. Franco reported the CIP Technical Committee met today. The CIP program should come to the Planning Commission in January for a work session.
- Mr. Lafferty reported the CHART committee met and he was elected chairman.

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

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 none, the meeting moved to the next item.

Review of Board of Supervisors Meeting – November 2, 2011.

Mr. Cilimberg summarized the actions taken by the Board of Supervisors on November 2, 2011.

Consent Agenda:

Approval of Minutes: June 7, 2011

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

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

The motion passed by a vote of 6:0.

Mr. Zobrist noted that the consent agenda was approved.

Public Hearing Items:

ZMA-2011-00001 Fontana Trail Proffer Amendment
PROJECT: ZMA 2011-00001 Fontana Trail Proffer
PROPOSAL: Amend proffer to remove obligation to build trail on 6.09 acres zoned R-4 Residential which allows 4 units per acre. Proffer was made in conjunction with the ZMA-2004-00018 which was a rezoning of 17.15 acres on TMP 078E00000000A0. No proposed change in density.
PROFFERS: Yes

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Neighborhood Density Residential which allows residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses in the Pantops Neighborhood
ENTRANCE CORRIDOR: No
LOCATION: In open space behind Olympia Drive and Appian Way and also at the rear of lots on the north side of Fontana Court in the Fontana Subdivision
TAX MAP/PARCEL[S]: 078000000000A0, 078E00000000E0, 078E000000000D, 078E0000012800, 078E0000012900, 078E0000012700, 078E00000012600, 078E0000012500, 078E0000012400, 078E0000012300, 078E0000012200, 078E0000012100, 078E0000012000
MAGISTERIAL DISTRICT: Rivanna
DUE TO AN ADVERTISING ERROR THIS APPLICATION IS BEING REHEARD BY THE PLANNING COMMISSION
(Elaine Echols)

Mr. Zobrist noted that ZMA-2011-00001 was before the Commission before and they made a decision. The request is back before them because it was improperly advertised.

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

This request was before the Planning Commission in April. When this came before the Commission there were three sections of trail that were requested to be removed. When the Commission heard it they were in agreement that the section as shown in purple should be removed. The trail shown in black was requested to be removed and the Commission came up with a compromise with the applicant that it should be marked as a grassed trail. The applicant has changed his proffer and proffered this plan. The Commission had asked for an updated plan. The plan shows where the existing trails are with the grassed trail marked and no trail where there formerly was one shown on a plan.

Outstanding Issue from PC Recommendation of April 19, 2011
- Commission asked for a proffer of completion of repairs to trails by May 1, 2012 for the trails.
- Applicant has declined to proffer the date
- County is holding a bond and can call it to repair the trails, if necessary

There was only one outstanding issue from the April 19, 2011 meeting. The Commission asked for a completion date of repairs to the trails by May 1, 2012. The applicant has declined to proffer the date. However, the County is holding a bond and can call it to repair the trails if necessary. Staff believes that is sufficient to be able to correct the outstanding issues. Staff is not concerned that there is not a date in here. The Commission may prefer a date, but staff is okay with it without that.

Factors Unfavorable
- Elimination of paths is contrary to Comprehensive Plan, Neighborhood Model, and Pantops Master Plan
- Paths throughout neighborhoods enable pedestrians to move safely and conveniently through a neighborhood without having to walk in the street

Factors Favorable
- Most residents desire elimination of the proposed paths and believe that this will have a positive impact on the neighborhood.
- To date, property owners on north side of Fontana Court have been unwilling to provide easements for path
- The unsurfaced paths will have signage that will indicate that neighborhood access is available through the open space
- The County holds a bond for completion of repairs to the paths that are in need of repair

Recommendation:
The favorable factors outweigh the factors unfavorable. Most of the residents in the neighborhood have asked that these paths be removed. The owners on the north have been unwilling to provide the

easements. The unsurfaced paths will have signage. A bond is being held for the repairs. Therefore, staff recommends approval of the rezoning with the proffers and revised plan.

Mr. Zobrist invited questions for staff. He asked if the bond would not be released until it was done.

Ms. Echols replied that was correct.

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

Anthony Matthew Nichols, applicant, said that Fontana is a subdivision which he felt was very attractive. However, it has two pathways. One path would be very difficult to utilize because of the steep slopes. It would be mostly steps rather than a walking trail. In a picture of Fontana Court it shows lot 28 has two basements with a low and upper level because the topography is so steep. In fact, between lots 121 and 122 there is a ½ acre parcel which is too steep to build on. That pathway is totally out of question for somebody to utilize. The other path goes down between lot 12 towards Avemore, which is around 250' away. Basically, if a person is closer to Olympia Drive or Miranda Lane they would easily be able to go there rather than to use the one in the middle. Basically that is the whole issue. He was unsure if there was anyone present concerning the right-of-way that is in contention at this time.

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

Lynwood Bell, resident of Fontana for ten years, said he has walked these trails for the past ten years off and on. The trail behind Fontana Court is not usable. Regarding the trails on Avian Way, the people in that area can get on a trail either from their front or rear door or at a cul-de-sac that is very seldom used by anyone except the people in that cul-de-sac. So people can navigate the area and get to wherever they want to be including Giant or Darden Towe Park. He urged the Commission to support Mr. Nichols because as a community they certainly do.

Stan Rose, President of the Homeowners Association for Fontana, said the Fontana Homeowner's Association Board of Directors whole heartedly supports the proffer amendment before the Commission. Basically it is for the reasons given on Fontana Court, which is a moot subject because there is no easement to build on. Also, from the aesthetic point of view the piece on Avian Way is the only flat area in Fontana which is solid grass. They think a gravel trail will ruin the aesthetics of that. As a walking trail with grass it serves the purpose they are looking for. The Board still supports this request.

Michael Powers, resident of Fontana Court, asked to briefly refresh a point they made at the last hearing on this subject. In August, 2009 ten homeowners on Fontana Court wrote a letter to both the developer and the County Attorney advising that the proffer as designed included a section of trail that was within their private property and that there was no easement for that construction. The homeowners also advised that they intend not to grant any such easement in the future. They are concerned that if this amendment is not approved that there will be a limbo situation in which the developer will have an obligation to construct a trail and yet not any ability to obtain easements to construct that and the situation will languish for a long time because of that conflict. There also has been a little bit of talk as part of the staff notes that the county if they are concerned about the timing could eventually pull the bond and then proceed to construction themselves with those funds. If this waiver is not approved, then the county itself would be in this limbo situation of having an obligation to construct the path for which no easements were possible. He asked that the Commission consider that point in their deliberations.

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

Motion: Mr. Morris moved and Mr. Franco seconded to recommend approval of the proffer amendment request for ZMA-2011-00001 Fontana Trail Proffer Amendment and the accompanying plan.

The motion passed by a vote of 6:0.

Mr. Zobrist noted ZMA-2011-00001 Fontana Proffer Amendment to delete the path behind houses on Fontana Court and provide a marked grass pathway in the open space east and west of Appian Way was recommended for approval with the accompanying plan. ZMA-2011-00001 Fontana Trail Proffer Amendment would go to the Board of Supervisors on December 14, 2011 with a recommendation for approval.

ZTA-2011-00006 Noise (Chapter 18, Zoning)
Amend Secs. 4.18.01, Applicability, and Sec. 4.18.05, exempt sounds, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 4.18.01 to clarify that the noise regulations in Sec. 4.18 apply to those uses and activities authorized by the Zoning Ordinance and do not apply to exempt sounds under Sec. 4.18.05 and sounds expressly regulated under County Code § 7-100 *et seq*.; and amend Sec. 4.18.05 to state the exemptions in a manner consistent with the exemptions in County Code § 7-106. The full text of the ordinance is available for examination by the public in the offices of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Greg Kamptner)

Mr. Kamptner, Deputy County Attorney, said the purpose of this zoning text amendment is to attempt to create a brighter line between the zoning noise regulations and what staff refers to as the nuisance noise regulations in Chapter 7. Ms. McCulley is present to answer questions. He made the following comments.

- The Commission may recall this became a big issue during the farm winery outdoor amplified music discussion and eventual zoning text amendment. By the time the Board adopted the regulations making that amendment, staff's perception was they had displayed a clear intention that land uses that are permitted under the zoning ordinance should be regulated for noise purposes under the zoning noise standards. The nuisance noise regulations should be targeting the non-land use related uses. When he talks about land use related uses he was speaking about those that are permitted under our zoning ordinance where the county has either determined that those uses are permitted by right or by special use permit or in a code of development where the use has been identified as being permitted. The zoning text amendment before the Planning Commission today makes those changes. Also, as part of this zoning text amendment they are also proposing to have the exemptions that are listed in Section 4.18.0.5 match the language that is used in the exemptions in Chapter 7. That will allow for cleaner implementation of both regulations and start to develop a pattern of consistency in how those two exemption schedules fit together.
- The other ordinance that is in their materials tonight is the Chapter 7 text amendment. That is not before the Planning Commission for action or recommendation because that is not a zoning regulation and is just for the Commission's information. Ultimately, the Board will be acting upon both of these proposed text amendments.

Mr. Zobrist said as he understands the health and the safety issues of the nuisance noise stays with the audible standard.

Mr. Kamptner replied yes, the Chapter 7 regulations will remain an audibility standard. That has not been changed. There are really no substantive changes to either of the regulations. They are trying to codify the definitions and the approach that was taken, which ultimately was endorsed by the Board when the latest round of farm winery noise regulations was adopted. He would be happy to answer any questions.

Mr. Zobrist invited questions for staff.

Mr. Morris noted that he had several questions on this. It seems that the time frames have been taken out, particularly in Section d, construction, demolition, and/or maintenance activity. The time between 7 and 10 has been eliminated from this. They need a timeframe for construction equipment and construction itself going on where it is going to be a nuisance to residential areas. What he was really thinking about is the situation Fontana faced with the trucks. The trucks may still be going through Fontana. The trucks were starting well before 6 a.m. at one particular point and just barreling on through.

Mr. Kamptner replied that he was glad he had identified construction since that is one they have discussed. The reason why the time frame was eliminated from the zoning noise regulations was because it is going to be fully enforced under the Chapter 7 noise regulations. Under the zoning standard there was no need to delineate the times in which different standards were going to apply. That would be enforced entirely under the nuisance noise regulations.

Mr. Zobrist said the times are still there. They have daylight and night time. It is all in the zoning ordinance regarding the hours and what the measurements are.

Mr. Kamptner replied that construction and demolition related noise is going to be regulated under Chapter 7 and not under the zoning ordinance. There are time standards in the Chapter 7 regulations. Actually it is the same time that is here.

Mr. Morris pointed out that the zoning ordinance regulations need to gel with Chapter 7. They need to provide clarification so the contractor who looks at the zoning regulation knows there may be another location, Chapter 7 where noise standards may apply.

Mr. Kamptner agreed. Staff is not asking for a recommendation tonight. They recognize that staff needs to do some further tweaks, and in this case let the contractor know that even though they may look at the zoning regulations and see this is an exempt activity that they need to refer to Chapter 7.

Mr. Morris said that he was not trying to make life harder for the contractor. He was just simply saying the way he reads this they are opening themselves up to what they want them to do is read every paragraph in the Code.

Mr. Kamptner replied no, that he had raised a good point. They need one more step of clarification so the contractor who looks at the zoning regulation knows that there may be another location, Chapter 7 where noise standards may apply.

Mr. Morris asked to bring up one more concern regarding a sound produced by a person's voice is exempt. He asked if that includes non-amplified or is it strictly amplified.

Mr. Kamptner replied that would be non-amplified. This is to address the first amendment issues and just simple people who are conversing. Particularly under the zoning regulation they don't want to be regulating people yelling or people talking as a zoning violation.

Mr. Morris questioned what happens if he had a blow horn and he was trying to referee a ball game.

Mr. Kamptner replied that he would fall under the Chapter 7 regulations.

Mr. Morris said there needs to be consistency throughout.

Mr. Zobrist said he thought that was what staff was striving for. Legislative drafting is not the simplest thing. Somebody has to draft the ordinance and they need the Commission to weigh in. Staff is not asking for a recommendation tonight.

Mr. Kamptner agreed that staff is not asking for a vote tonight. Staff wants to look at the construction issue and see if there are any additional changes that need to be made. They want to have these two sets of regulations as clear as possible.

Mr. Morris said since that is what staff wants that he would give Ms. McCulley his notes and comments.

Mr. Loach asked how they made out as far as the noise they had last year with the weddings. He asked if staff ran into many problems.

Ms. McCulley replied she attended a wedding and was one of many people involved in taking readings from a sound meter at one of the wineries. That is the only situation she was aware of that they have had any noise complaints. In that case the readings they took from several different parts, including on a concerned property owner's adjoining property, were well below the maximum limits. That said, if it got much louder it may be objectionable but it did meet the current sound regulations. It was only in that one case at that one winery. She thought that has been resolved because she did not hear again about it later in the summer.

Mr. Zobrist asked if that was the only complaint staff received, and Ms. McCulley replied yes.

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

Judith Sommer, resident of Keswick, said she was very surprised when she saw this draft which puts outdoor amplified music at a farm winery under agricultural activities.

- She asked how outdoor amplified music becomes an agricultural activity. She asked was it just because it takes place at a farm winery. She was not sure if she had the most recent regulation related to Chapter 18. Section 5.1.25 farm winery says sound from outdoor amplified music shall not be deemed to be an exempt sound under Section 4.18.05.j. Section 4.18.05.j used to be silvicultural and agricultural activities. Now agricultural has been separated out. All of a sudden outdoor amplified music is under agricultural activity. She asked how farm wineries got into that.
- Farm wineries in Section 5.1.25 of Chapter 18 of the Zoning Ordinance says agric-tourism uses or wine sales and related uses the following uses are permitted. Among that #10 is weddings and wedding receptions. Section b. is agric-tourism. Section e. is the sound of outdoor amplified music shall not be deemed to be an exempt sound. Yet here it is supposed to clarify it and all of a sudden it has moved from non-exempt to exempt sound. Something is wrong here.
- Agricultural activity – agriculture in its simplest form is the production of crops and livestock. Agricultural activities are activities that contribute to the production of crops and livestock. Bona-fide agricultural activity implies that there is a bogus agricultural activity and maybe outdoor amplified music is the bogus. Lawfully permitted? Yes with the farm winery legislation. But bona-fide there is no way. Are violins playing when the bride walks down the aisle at a wedding at a farm winery? Is that agricultural activity? No. Is the minister helping them through their vows? Is he conducting an agricultural activity? No. Is music after the party an agricultural activity? No, it is a part of agric-tourism. It is lawfully permitted, but it is not an agricultural activity. Outdoor amplified music is not an agricultural activity and it is not exempt.
- Is everybody going to go along with this idea that outdoor amplified music is agricultural activity and that music contributes to the production of crops and livestock? No, it contributes to the bottom line of farm wineries, but that is it. It is agric-tourism related and not agricultural related.

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

Mr. Zobrist noted staff was recommending deferral of any action on it.

Mr. Cilimberg questioned if they would need to readvertise when it comes back to the Commission or could they defer to a date specific.

Mr. Kamptner noted staff's preference was the Commission asks that the request come back for a work session. There may be a second public hearing if they decide there are any substantive changes that staff thinks need to be made further. The action to defer does not need to be to a specific date tonight.

Motion: Mr. Morris moved and Mr. Smith seconded for deferral of ZTA-2011-00006 Noise (Chapter 18, Zoning) to a date to be set at the convenience of staff.

The motion was passed by a vote of 6:0.

Mr. Zobrist noted ZTA-2011-00006 Noise (Chapter 18, Zoning) was deferred to a date to be determined by staff for a work session.

In summary, the Commission provided comments for staff to take into consideration, as follows.

- It seems that the time frames have been taken out, particularly in Section d, construction, demolition, and/or maintenance activity. The time between 7 and 10 has been eliminated from this. They need a timeframe for construction equipment and construction itself going on where it is going to be a nuisance to residential areas.
- Provide clarification so that the contractor who looks at the zoning regulation knows that there may be another location, Chapter 7 where noise standards may apply.
- A sound produced by a person's voice is exempt. The question was raised if that includes non-amplified or is it strictly amplified.
- Consistency needs to be provided throughout. (Mr. Morris provided his notes and comments to staff.)

Staff will work on draft language and reschedule ZTA-2011-00006 for a work session or a second public hearing if substantial changes are made.

Mr. Zobrist asked Mr. Kamptner to speak with Ms. Somers to clarify and address her concerns.

New Business:

Mr. Zobrist asked if there was any new business.

- Mr. Zobrist to be absent on November 29th.
- Economic Development Roundtable to be held on November 28th at 10 a.m. in room 241. Next week's meeting will be adjourned to that date as more than two Commissioners indicated they will be attending.

- Next Planning Commission Meeting will be on Tuesday, November 15, 2011.

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

Old Business:

Mr. Zobrist asked if there was any old business.

- Mr. Kamptner noted the Sinclair case had been heard by the Virginia State Supreme Court who would render their decision in January or March.

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

Adjournment:

Mr. Franco moved and Mr. Lafferty seconded for adjournment to the November 15, 2011 meeting.

The motion passed by a vote of 7:0.

With no further items, the meeting adjourned at 6:36 p.m. to the Tuesday, November 15, 2011 meeting at 6:00 p.m. at the County Office Building, Second Floor, Room #241, 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)