Albemarle County Planning Commission
August 6, 2013

The Albemarle County Planning Commission held a public hearing on Tuesday, August 6, 2013, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Richard Randolph, Thomas Loach, Don Franco, Calvin Morris, Chair; and Russell (Mac) Lafferty, Vice Chair. Absent were Bruce Dotson and Ed Smith. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Other officials present were Megan Yaniglos, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; Rebecca Ragsdale, Senior Planner; Amanda Burbage, Senior Planner; Sharon Taylor, Clerk to Planning Commission; David Benish, Chief of Planning; and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Morris, Chair, 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. Morris invited comment from the public on other matters not listed on the agenda.

Doug Arrington questioned why finishing the comp plan is more important than figuring out projects and costs on a doable basis since he felt that development and planning development should follow infrastructure. He asked what a floating district is.

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

Committee reports

Mr. Morris invited committee reports. There being none, the meeting moved to the next item.

Consent Agenda:

Approval of Minutes: April 16, 2013 and May 28, 2013

Mr. Morris asked if any Commissioner wanted to pull an item from the consent agenda.

Motion: Mr. Randolph moved and Mr. Franco seconded for acceptance of the consent agenda.

The motion carried by a vote of 5:0.

Mr. Morris noted the consent agenda items were approved.

Regular Item

SUB-2013-00081 Houndstooth – Preliminary
PROPOSED: Request for preliminary subdivision approval to create five single family lots on 13.76 acres in the Rural Areas.
ZONING CATEGORY/GENERAL USAGE: Rural Areas (RA)- agricultural, forestall, and fishery uses; residential density (0.5 unit/acre in development lots)
SECTION: Chapter 14 Section 206 of the Subdivision Ordinance
COMPREHENSIVE PLAN LAND USE/DENSITY: Rural Area in Rural Area 1
ENTRANCE CORRIDOR: No
LOCATION: 2865 Free Union Road (State Route 601)
TAX MAP/PARCEL: 04300-00-00-03800

MAGISTERIAL DISTRICT: Jack Jouett
(Megan Yaniglos)

Megan Yaniglos presented a PowerPoint presentation and summarized the proposal.

The request is for preliminary subdivision approval to create five single family lots and a public street on 13.76 acres in the Rural Areas.

This application has been called up for review by two adjacent owners. While the property owners do not specify concerns in their letters, many attended the site review committee meeting on July 3rd. Among the concerns expressed at that meeting were privacy, screening, storm water management, and ground water and well capacity.

The following is a summary of the concerns and Staff's position/how they have been addressed:

1. Privacy and screening- The subdivision ordinance does not require screening of any kind for like uses (i.e., residential to residential). However, the applicant indicated at the site review meeting a desire to work with those residents closest to the development and provide some landscape screening.
2. Storm water management- A biofilter is proposed in Lot 1 of the subdivision. The ordinance does not require detailed storm water information to be provided during the preliminary subdivision process. A Water Protection Ordinance (WPO) Plan will be required to be submitted and approved by engineering before the final plat is approved.
3. Groundwater and Well Capacity- Many of the adjacent owner's expressed concerns about their well water being depleted or reduced by this proposal. However, the County does not have any regulations that prohibit or limit the establishment of wells based on their potential impact on adjacent properties/wells. Wells and septic systems are under the authority of the Virginia Department of Health. The subdivision ordinance requires a soils report that includes drainfields, and well information to be submitted with the final plat. This will need to be reviewed and approved by the Health Department before the approval of the final plat.

Factors Favorable:

1. Meets the requirements of the subdivision ordinance for preliminary plat.
2. Members of the site review committee have given their approval for the preliminary subdivision plat.

Factors Unfavorable: None Identified

The Planning Commission will need to take actions on the following sections of the Zoning Ordinance:

1. Chapter 14 Section 220 Approval of the Preliminary Subdivision Plat

The preliminary subdivision plat was reviewed by all members of the Site Review Committee and found to meet the requirements for preliminary subdivision approval. Therefore, staff recommends approval of the preliminary subdivision plat with the following conditions:

RECOMMENDED CONDITIONS:

The final subdivision plat shall not be signed until the following conditions have been met:

Planning approval to include:

- ❑ The plat shall be subject to the requirements of Section 14-303 (Contents of final plat), as identified on the "Final Subdivision Checklist" which is available from the Community Development Department;
- ❑ Fire and Rescue approval of final plat

VDOT approval to include:

- ❑ Additional detail will be necessary on the road plans for this project. Information such as the road profile, sight lines, edge or pavement for Free Union Road, drainage calculations, etc. will need to be included with the road plans.
- ❑ Reference to sight distance being found adequate by VDOT staff needs to be removed from future plats and road plans. The surveyor/engineer of record is responsible for determining sight distance which will be verified during the review process by VDOT.

Engineering approval to include:

- ❑ 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.

Mr. Morris invited questions for staff.

Mr. Randolph asked if the groundwater and well capacity have been looked at by the engineer to determine if there was any basis for concern that these wells could jeopardize the adjacent wells of the adjacent homeowners.

Ms. Yaniglos replied that the engineer did not look at that. Therefore, staff did not have that information.

Mr. Benish replied that under the State Code they are not enabled to deny subdivisions based on water quantity. In fact, the State law does not identify that adjacent property owners with existing rights of water have any more right to that water than the adjacent lot where they are proposing to drill the well. The Health Department looks at the well capacity information based on State requirements and it is not a factor in the subdivision plat reviews.

Mr. Randolph asked if the Health Department would be looking at the capacity of the new homes, but won't necessarily be able to provide information of the impact of those new wells on the existing wells of adjacent and contiguous property owners.

Mr. Benish said he did not believe that was within the preview of their permitting process. However, it will be subject to the Health Department's review and approval of those wells.

Mr. Morris pointed out in reading through this it appeared this is really a ministerial question. He asked if the proposal meets the standards, then that is it.

Ms. Yaniglos replied was that correct

Mr. Kamptner agreed.

Mr. Benish asked the Commission to bear in mind this is a preliminary that does have conditions. Those conditions will call up the final for it to meet the storm water requirements of the ordinance. He pointed out staff looked at the proposal in the context of it being a by right development.

Mr. Loach asked if the proposal already meets the conditions as far as staff is concerned.

Mr. Benish pointed out staff cannot find any reason for the Planning Commission to deny the request.

Mr. Morris opened the public hearing for applicant and public comment. He invited the applicant to address the Commission.

Brian Ray, with Roger Ray & Associates, said staff did a good job of explaining the conditions of approval, the questions the adjoining property owners had, and how those affect the by right plan that is in front of the Commission. Again, it is a five lot by right plan that shows a new VDOT public street. Staff reviewed all the information and found that they meet all the conditions of the ordinances. During site

review there were quite a few neighbors there and they discussed the concerns in the report. The applicant was willing to discuss the screening with the adjacent property owners because it really benefits both properties to have screening between the homes. The applicant he has opened up and asked any of those property owners to discuss that with him.

Mr. Ray said regarding storm water, the biofilter will be designed by an engineer before the final plat is approved. It will meet all the County's regulations for storm water management. Again, the soils and everything that need to be placed there will be designed by that engineer such that it is adequate to meet the standards that the County required for the biofilter. Staff did a good job of describing that the Virginia Department of Health will be approving all the drainfields and well sites on each lot before the final plat is approved. Therefore, all of the conditions the Virginia Department of Health has will be met, which included the water quantity. The owner and his representative for True North Environmental, who prepared the groundwater assessment report that is required for the preliminary plat, are present to answer any questions.

Mr. Morris invited public comment.

Melvin McCauley said he lives at 1172 Woodlands, which abuts the subject property on the south side, and his main concern is water table and water quality. When Jackson Woods was started, which is on the other side, he measured the height of the water in his well. After the ten lots for Jackson Woods were built and wells all drilled his water table dropped 12 feet. It concerns him greatly about the additional 5 lots with wells and septic systems to be located closer than Jackson Woods. The neighborhood is very quiet, peaceful and has wild life. If they put five additional lots there, it will not be that anymore. He would like an answer from the builder or whoever about if he is going to go in there and clear cut this land. He would like the trees preserved and did not want a subdivision. The proposed house on that lot will be right at his back door and he did not want that.

Tom Lisa, owner of the home at 2725 in the valley part, said his concern from the last meeting was the storm runoff water. This property is higher than his lot and he is concerned where that water will actually run off. During rainy seasons there is quite a bit of water that runs off his lot and down into the stream. There is a stream on his property, but a lot of the water tends to gravitate towards that stream. He was concerned about the land that is being proposed to be subdivided and where that water actually will go in the court area from his home.

John Swartzwelder said his wife and he reside on the property tangent to the proposed lot 1. He wanted to reiterate some of the concerns that were addressed by Mr. Randolph. He was concerned with the storm runoff and the effect that has on sediment. They have a little bridge that allows them to cross over the natural swale through which all the stream's water will pass. He was concerned with the worst case scenario of water damage to that bridge and the subsequent cost involved from repairing it. There is a significant slope on the proposed property behind his home that forms a swale. During normal seasonal conditions they get significant runoff. In the present situation with the high grass and the other existing plants and trees the damage is minimal. At the present time they mitigate it with some rocks and plantings. However, he is very concerned especially during the construction phase. He heard the gentleman representing the builder say the biofilter will be installed after construction, but the silt screen will be in place during construction. There will be clearing of those grasses and timber and the paving of roads that will contribute to the increased runoff. He was very concerned what effect that will have during the construction phase on the runoff and he hoped there was something that could be done to mitigate that by the engineers when they look at this. He suggested that perhaps the filter could be placed prior to the clearing and construction.

Mr. Morris invited other public comment. There being none, the public hearing was closed and the matter before the Planning Commission for discussion and action.

Mr. Randolph suggested asking the developer to come forward and address Mr. Swartzwelder's question.

Mr. Morris invited Mr. Ray to come forward to address the question.

Mr. Ray said Mr. Swartzwelder had a question about during construction. He pointed out that a silt trap will be installed there, which is basically the biofilter before final construction. The biofilter cannot be constructed until after construction is done. The silt trap is built, which is a hole for that water to come into. What happens is the sediment settles out in the silt trap as it holds the water there. The purpose of the silt trap is to keep that soil and any eroded dirt that flows into that area in the silt trap. What happens after a rain event if the silt builds up in there is the developer comes in and excavates that out so that it can catch more silt. Again, a biofilter cannot be installed until after construction because the silt trap is there to catch that water and filter the sediment out. The biofilter conversion that happens after construction is for the eventual water quality for nitrates and such that flow from yards that are fertilized and such and runoff from the paved road. That filters the water and also serves as a storm water buffer such that when a storm comes it does not increase the amount of flow that is above what is there now. He hopes that helps answer that question.

Mr. Randolph said it addresses the point of siltation, but not the property owner's concern about the volume of water that could be on this property prior to the actual construction of the biofilter.

Mr. Ray replied that some of that could be addressed during the design of the biofilter and sediment trap. He was sure the applicant would be willing to meet with the engineer and Mr. Swartzwelder to try to describe what will happen, why it is being designed, and how it functions so hopefully that can be alleviated. Again, he thinks staff did a good job of reviewing all of this and saying they do meet all the conditions of approval. They would really appreciate the Commission's positive vote.

Mr. Morris asked the Commissioners to remember this was ministerial.

Mr. Loach said he understands the concerns of the neighbors. He was not very happy about the lack of regulations on the water supply. However, they have to deal with it. Under the Comp Plan they are doing a water plan for the natural resource section and hopefully in the future that will help.

Motion: Mr. Loach moved and Mr. Lafferty seconded to approve SUB-2013-081 Houndstooth Preliminary Subdivision Plat with conditions as recommended by staff in the staff report.

- **Note**: Mr. Randolph noted the importance of the meeting between the applicant and neighbors to be held soon.

The motion passed by a vote of 5:0. (Smith and Dotson absent)

Mr. Morris said that SUB-2013-00081 Houndstooth – Preliminary was approved and does not require approval by the Board of Supervisors.

Deferred Item

ZTA-2011-00006 Phase I Noise Amendments
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.
DEFERRED FROM THE JULY 16, 2013 PLANNING COMMISSION MEETING
(Amelia McCulley)

Ms. McCulley presented a PowerPoint presentation and summarized the staff report. She asked Ms. Burbage to pass out a comparison chart of existing and proposed regulations, which she would go over in the presentation. (Attachment A – Comparison of Existing versus Proposed Noise Regulations – Available with written minutes in the office of the clerk)

This is the Phase I of the Noise regulations public hearing. There have been a couple of meetings that lead up to this. It began with the resolution of intent adopted by the Board on October 5, 2011. The same time they also directed staff to work on the kind of accompanying regulation in Chapter 7 of the County Code, Noise Regulation. The Planning Commission has discussed the noise ordinance amendment twice, most recently being on June 11 at a work session. Staff requested deferral until this date because they wanted to go back and tidy up some things that were not going to work out well as it was drafted at that point.

It is always important when they do an ordinance amendment to be able to identify why they are doing it and what they are trying to achieve. She would briefly state that here. Two of those items are housekeeping, numbers 2 and 3, to provide clarity and consistency between the two regulations. The focused issue for resolution with this phase 1 noise amendment relates to the first item. That is clarifying and better addressing amplified sound associated with agricultural activity.

These are the criteria that the Board has directed us to consider with every ordinance amendment. As they can see under those criteria there is really no identifiable detrimental impact from this amendment. So staff has focused on a couple of guiding principles. She would say a) not obstructing bona-fide agricultural operations. b) treating similar activities similarly, and c) establishing clear enforcement standards.

Because this was not really straight forward and it could have impact on the bona-fide agricultural activities, as the Commission knows, staff did some research with the Farm Bureau, with some local commercial barn owners, and others. In that research staff found that there is a very broad range of opinions on the use of amplified sound to condition horses for competition. While there was a broad range of opinions on that there was a common opinion that all of those who have these commercial barns don't want to be a nuisance to their neighbors and do support our draft ordinance and understand the need to not be a nuisance to their neighbors.

What they are recommending is that amplified sound that is associated with an agricultural activity no longer be just an open exemption. Instead, staff recommends that it be treated the same as noise from other types of amplified sound in terms of the audibility within the dwelling like playing a loud radio or something like that in somebody's home. One of the things they had to consider when staff was looking at the use of amplified sound associated with the bona-fide agricultural use is that under Chapter 7, which the Police enforce, the officer would have to make what could be a problematic judgment call as to whether the amplified sound is associated with agricultural activity. From the difference of opinions about the use of amplified sound that would be a tough call even amongst equestrians and commercial barn owners in this community.

Before the Commission is Chapter 18 Zoning Ordinance, which the chart outlines in green highlight. The current language is worded slightly different between the Zoning regulations and the Chapter 7 regulations. Under Zoning, sounds generated during agricultural activities would be exempt under the agricultural or silvicultural exemptions. Under Chapter 7, sound produced during these activities would be exempt as agriculture. Therefore, they are dividing them out and in the end will be treating them the same in terms of the list of exemptions. In terms of what is before the Commission the important thing is they are not proposing any new regulation under the Zoning Ordinance. Instead it would be addressed under Chapter 7, which the Police enforce, that will be before the Board of Supervisors. She wanted the Commission to see how it worked out.

What they would do in the beginning is define agricultural activity because right now there is no definition. The reference would be sound produced by an agricultural activity. So any agricultural activity involving a device that produces outdoor amplified music or serving as a public outdoor public address system cannot be audible from inside a dwelling unit basically on the surrounding property or nearby property that would be the complaining or receiving property. That is the current standard that police enforce under Chapter 7. In addition, they have a standard about a distance of 100 feet or more from the property line. Staff was concerned about using that second standard, which is listed as small Roman numeral i), because a lot of barns and rings are close to side and rear property lines. In talking to the police they can

be very literal and if they hear it, then it is a violation. They can often hear it crossing that property line. It would not be appropriate in terms of trying to protect everybody's rights on adjoining property that they would hear it inside a dwelling on that adjoining property. So that is what they are using as our standard. The experts that they consulted do agree with this, think it is reasonable, and they can work with it.

A couple of things they are proposing with the zoning text amendment before the Commission are:

- The definition of agricultural activity that would mirror the current one within the definition section in the zoning ordinance.
- A new listing for outdoor amplified music or outdoor public address system that clarifies which of the two noise regulations apply. It would be the Chapter 7 noise regulation.
- Having a consistent listing of exemptions between the two regulations, which they don't have now.
- Then clarifying which regulation applies where because that has been problematic and it should not be. It should be easier.

In conclusion, staff recommends that the Commission recommend approval and the Board of Supervisors adopt the draft ordinance that is found in Attachment D.

Mr. Morris invited questions for staff.

Mr. Randolph commended staff especially for Chapter 7 to move to a standard that parallels Potter Stuart's famous remark about pornography that "I know it when I see it". She is saying here that noise is you know it when you hear it. He thinks that is a very common sense approach. His only concern about the audibility enforcement standard is she says from inside a dwelling unit. The emphasis is that could be interpreted to mean the only concern about the application of the standard applies to human beings. There could very easily be a scenario from the case study that precipitated this if the neighbor had horses in a barn and there was loud audible noise it could actually interfere with the normal behavior of the horses. The only thing he would propose is saying from "inside a habitation unit" instead of calling it a dwelling and hopefully in most situations noise would not actually interfere with the behavior and the condition of animals. Animals are very noise sensitive. He would hate to have a new standard where in seeking to protect humans they somehow create inadvertently an opportunity where animals could be put at risk. That would be his only recommendation. Otherwise, he thinks the way staff just put together this topology is excellent and very well done.

Mr. Loach agreed with Mr. Randolph that it took the Wisdom of Solomon to put this together since he knows what they have been through. The only question he has along the same lines as Mr. Randolph is using the audibility standard of inside the dwelling. He asked if that means his patio, which is outside that realm, is open game for it.

Ms. McCulley replied yes it would. She thinks what works now in most of the loud music complaints is that it is an either/or. It is either inside the dwelling or within 100' of the property line.

Mr. Loach pointed out what he is saying is that not within 100' feet of the property line but either inside or in the proximity to the home so that essentially he could use his patio or deck and that would be along the same lines as the primary dwelling unit. That would be his only concern.

Ms. McCulley said she appreciates what he is saying and she does want the opportunity to consider that and discuss with Mr. Kamptner before they move forward to the Board. They were trying not to introduce a new and different standard for the police to enforce.

Mr. Loach said he understands. However, he thinks the concerns they have heard from the public is they cannot go out and enjoy their backyards in the evening because there is a wedding going on at the farm winery next door and the music is too loud. Essentially what they are doing is chasing them inside to get away from the music and then using it as a standard. He was not sure that excluding the deck and the patio area in these homes adjacent is worse. He understands the 100' from the property line because of the alignment of some of the areas where the noise occurs. But, that said is just one observation.

Ms. McCulley thanked him for his comment.

There being no further comments, Mr. Morris opened the public hearing and invited public comment.

Bonnie Podraza said first she wanted to thank Ms McCulley for all of the work she has done by coming out to her home, hearing the music, and all the foot work. They really appreciate it. While they are happy to not be able to hear the music in their home it would be awesome if they could be able to sit on their deck, also. As it stands now they don't open the windows because they cannot be in the house without hearing the music. They definitely cannot sit on the patio or in the sunroom and enjoy that because they can hear the music. Walking to her mother's house in the back, which is 200' and closer than their house at 250', they definitely can hear the music in her house. However, if they keep their windows closed it has gotten a little better. But, they cannot sit outside on the patio or enjoy the outdoors. But, they really appreciate everything that Ms. McCulley has done to help them. They appreciate any consideration that can be given in this case.

Mr. Loach asked what is the frequency or how often does this occur.

Ms. Podraza replied that today at quarter of 4 they were getting ready to come to the meeting and the music was playing loudly. It is very sporadic. It could be 9 p.m. at night or 8 a.m. in the morning. It is almost every day. She thanked the Commission for their consideration.

Mr. Felix Podraza thanked the Commission for listening to their concerns about the noise problem. It would be nice to have some kind of venue to come to and respond to the concerns they have about the music. The judgment kind of silenced everybody and took away all their ability to have anybody come help them. So whatever they can do would be fine. In the house not hearing the music is nice. However, it would be very nice to be able to sit on the patio and enjoy it. A home is a man's castle and they would like to be able to enjoy their castle in peace.

Mr. Randolph said he had a question for Mr. Podraza. He asked if the proposed amendment is passed what is his expectation as to what his neighbor will do with the amendment as written. If they do not include a section that involves the patio does he think the neighbor would adjust the volume or, would this effectively forestall them using music at random times as a way to harass them.

Mr. Podraza replied hopefully it will help accomplish something, but he did not know because he could not predict his neighbor. They pretty much play the music every day. There are signs that it is a hate crime in his opinion. He is optimistic and hopes for the best since any kind of help is better than none.

There being no further public comment, Mr. Morris closed the public hearing to bring it back to the Commission for discussion and action.

Mr. Lafferty said he would certainly like to incorporate what Mr. Loach was saying if they have a deck or patio they should be able to enjoy that. He assumed there was some way to work that out

Mr. Kamptner replied yes. That would be in the Chapter 7 regulations, which the Board of Supervisors would take final action on. They can certainly look at the 100' distance that they have used for the other nuisance noise provisions. They thought that was going to be problematic. However, if they tied it to a certain distance from the dwelling itself that would be easier for the officers in the field to be able to administer. That is one of the key things they are trying to do.

Mr. Franco asked in Chapter 7 the standards for inside the house can the windows be open or do the windows have to be closed.

Mr. Kamptner replied it needs to be audible 4' from the wall with the windows and doors closed.

Motion: Mr. Loach moved and Mr. Lafferty seconded to recommend approval of the draft ordinance in Attachment D for ZTA-2011-00006 Phase 1 Noise Amendments.

The motion passed by a vote of 5:0. (Smith and Dotson absent)

Mr. Morris noted that a recommendation for approval of ZTA-2011-00006 would be forwarded to the Board of Supervisors at a date to be determined.

Ms. McCulley noted it was tentatively scheduled for September 4. She asked Mr. Kamptner if they make it more restrictive if they need to readvertise and move the public hearing for the Board.

Mr. Kamptner replied that the zoning ordinance is not changing. It would just be the Chapter 7 regulations and it has not been advertised.

Ms. McCulley noted that ZTA-2011-00006 would be heard at a day meeting with the Board in September.

Public Hearing Item

ZTA-2013-00004 Family Day Homes
Amend Secs. 3.1, Definitions, 5.1.06, Day care centers, family day homes, 10.2.1, By right (RA), 12.2.1 By right (VR), 13.2.1, By right (R-1), 14.2.1, By right (R-2), 15.2.1, By right (R-4), 16.2.1, By right (R-6), 17.2.1, By right (R-10), 18.2.1, By right (R-15), 19.3.1, By right (PRD), 20.3.1, By right (PUD), 20A.6, Permitted uses (NMD), and 20B.2, Permitted uses (DCD) of, and add Sec. 5.1.06A, Family day homes to, Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to revise the definition of "family day home," amend Sec. 5.1.06, to reorganize the section and revise it to apply only to day care centers but not family day homes, add Sec. 5.1.06A to establish regulations and performance standards for family day homes providing care for 6 to 12 children related to traffic generation, parking, entrance and access, State licensure, and fire official inspections, and establish procedures for the review and approval of family day homes, and amend the district regulations delineated above (10.2.1 through 20B.2) to allow family day homes as a by right use subject to the substantive and procedural requirements of Sec. 5.1.06A. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Rebecca Ragsdale)

Ms. Ragsdale presented a PowerPoint presentation to review the proposed zoning text draft ordinance amendment for family day homes regulations. First, she covered the background and the origins of the text amendment and then would go over the highlights of the draft ordinance. The Commission last heard this ZTA in June at a work session. She reviewed the following.

BACKGROUND

- July 2012 Department of Social Services initiated Zoning Administrator form in and providers/parents began contacting Zoning staff
- Community Development meetings held with Albemarle County Social Services & research
- April 2, 2013-Planning Commission Resolution of Intent
- June 11, 2013-Planning Commission Work Session
- August 6, 2013-Planning Commission Public Hearing
- To Be Determined -Board of Supervisors Hearing

Staff has heard from a number of existing providers. They worked with the local Albemarle County Social Services Offices. There is representation present tonight from them. They have looked at what some other localities have done. Some of them were ahead of the curve. Some of them already allow the family day homes by right. Staff has looked into all of that, which has led to the draft ordinance that they have this evening.

Staff reviewed data on some of the current family day home providers in Albemarle that are licensed for care of up to 6 to 12 children in a dwelling unit. It is distinct from a day care center. Family day care homes have been in residential areas in dwelling units. They have a variety of them in terms of what zoning districts they have seen them located in and also what dwelling unit types.

They are extensively and comprehensively regulated through the Department of Social Services licensing process, as follows.

DSS FAMILY DAY HOME STANDARDS

- Twice a year inspection minimum
- Caregiver qualifications and training
- Household members
- Physical Health of Caregivers and Household members
- Children's records, proof of age, immunizations, etc. and Caregiver records
- Physical environment and equipment, space, safety, hazards, home maintenance, poisonous materials, sharp objects, fire safety, machinery, garbage, rodents and insects, animals, heating and cooling, water supply, etc.
- Safety of indoor and outdoor play equipment
- Rest areas, Cribs, Linens
- Care of children, daily activities, behavioral guidance, parent notifications, swimming and wading activities
- Preventing spread of disease, Medication Administration, Emergencies, Nutrition, Nighttime Care Transportation

What they have now in the ordinance are family day homes sort of lumped in with daycare centers in terms of being required to get special use permits in residential and rural areas zoning districts. So they are creating a new tier similar with what they have done with the major home occupation regulation changes for family day homes, which care for between 6 and 12 children. Just a reminder that family day homes or what is commonly referred to as babysitting of 5 children or less is allowed and treated the same as a single-family use. They are not allowed to regulate that in any way in terms of the zoning ordinance and provide any restrictions for that use.

Staff provided a table of what is in the existing ordinance and what is changing. In terms of what they feel is major changes to the application process itself going from the special use permit process, which takes several months, to a zoning clearance process, possibly a special exception for certain applications that would take around 30 to 90 days with the change in fee being from $2,000 for a special use permit to $50 for the zoning clearance process.

Staff wanted to preserve some of the technical review that one would get with the special use permit process. So staff looked at some of the standard conditions and review that was happening with special use permits over the years and created supplemental regulations to address traffic, parking and entrance/access requirements. Because of the State Code provisions they are required to provide abutting owner notice. So that will be preserved as part of this process.

Draft Ordinance Provisions

- Add Family Day Home as a by-right
- Added Section 5.1.56 to provide for Family Day Home (FDH) regulations and update language of 5.1.06
- Traffic limits- 24 vehicle round trips a day limit and provides for a modification to this requirement through the special exception process
- Parking requirements- One additional parking space for a family day home use + One additional parking space per employee is also required
- Adequate entrance and access
- State licensure and compliance with other laws

Staff noted they are amending the family day home definition and adding it as a by-right use in the zoning ordinance in the list of permitted uses in the zoning districts in the residential and rural area zoning districts. There is the traffic limitation, which they talked about last time of 24 round trips a day with the provision for a modification to that requirement, which would go through the special exception process. That is similar to some of the home occupation traffic modifications that they have seen before. There are parking requirements with 1 parking space for a family day home and then provisions for additional parking if there are employees. Those parking spaces would be on the lot or in a lawful on-street parking space. There was a question from one of the Commissioners about that. It is not saying that someone can have on-street parking where it would not otherwise be permitted on the road. Then provisions are in

the ordinance to confirm that there is an adequate entrance and access requirement. Then all family day homes or daycare centers in the ordinance are required to be licensed by Social Services and comply with Fire Marshall, The Building Code, and the Health Department requirements if applicable.

Staff reviewed the approval process, which is something they did not have as much detail for the Commission at the work session. Staff took the Commission's comments and looked at what the State Code says we must do and suggested the special exception process for those zoning clearance applications where there is objectionable neighbor feedback. The State Code does not allow an administrative process if there is neighbor objections. The process would be that staff would have a pre-application meeting with the family day home providers. This would apply to the existing family day home providers that need to come into compliance and any new family day home providers.

This zoning text amendment will set up the process by which they would then have to follow with the individual zoning clearance application, as follows.

Draft Ordinance Provisions for Approval Process

- Zoning Clearance required- $50 fee is proposed for family day homes. Staff does not recommend additional fees to cover required notice or for waivers/special exceptions. The current ordinance fee for relief from conditions of approval or a modification/waiver is $425.
- Abutting Owner Notification- 30 days to contact staff with any questions, concerns, or to submit any written objection to a family day home application.
- Special exception-If a written objection is received from an abutting property owner, then a zoning clearance can only be approved following the special exception process in the ordinance Section 33. Board of Supervisors to consider whether a proposed family day home use will be a substantial detriment to abutting lots.
- Public notice sign recommended only for modifications or Special Exception hearing only. What would trigger that process is if they were requesting a traffic modification or there is the written objection from the neighbors.

That covers the highlights of it. Staff is recommending the Planning Commission to recommend approval of the zoning text amendment to the Board of Supervisors, which may be able to be heard in September.

There being no questions for staff, Mr. Morris opened the public hearing and invited public comment.

The following individuals spoke:

Ryan Davidson spoke in favor of the proposed zoning amendment that would allow home day care providers by right to care for up to 12 children. He thanked the Planning Commission, staff, and everyone involved with all the time, hard work, and consideration that they have put into this effort and for finding a solution that he feels will best benefit the community as a whole. As a County resident and a City of Charlottesville employee he has seen how important quality child care is for the families in our area and particularly those facilities that offer part-time care. Gentle Care, which is where they sent their 2 ½ year old son and 4 month old daughter, is one such facility that provides the flexibility that many of the larger day care facilities cannot accommodate. Larger facilities have these rigid 8 a.m. to 5 p.m. timeframes whereas the smaller care facilities will allow for half days and part time during the week and any kind of flexibility that working families will need in our community. Due to this flexibility of the part time he did not see where in this particular case, the Gentle Care example, where as a neighborhood with the drop off and pick up times being so staggered he did not see where traffic would be a large issue. Given the amount of on-street parking in front of the house he thinks that is again not an issue he can see for Gentle Care. For this neighborhood in particular he sees the cut through traffic avoiding the lights and the traffic on 29 as being a larger problem than the actual at home facility. He feels that 12 children is an appropriate size. It allows for a lot more of one on one interaction given the number of staff per children. Being the children are grouped into several smaller groups this allows them to interact both with different age groups and within age groups within themselves.

Mr. Davidson said he also wanted to point out that even though this new zoning will allow for 12 children the facilities still have to go through the rigorous DSS and the State licensing approval that they would

need to. So they will not have the case where someone is keeping 5 children right now says they can add 7 children and make a lot more money because they still have to have the State sign off on it and make sure that the increase is appropriate and in the best interest of the children and for those providing the care. He feels that the considerations and the conditions in place for the public for the neighbor response period are appropriate and necessary. He feels the smaller day cares really do help drive our local economy as well through the buying of art supplies, food, etc. locally and not going out to these larger chains or having them ordered and brought in. This is also a good economic driver. Lastly, he feels that Gentle Care is a part of his extended family and it would be a huge impact on his family if this was not approved and they were forced to find somewhere else.

Ms. Anne Linden, resident of Albemarle County, said as a single mom she split her net paycheck with the home childcare provider who cared for her one-year old twins. Financially that left her with no choice. She had to leave her 3 ½ year old to get himself off to school in the morning because she left for work an hour before he left for school. She supports the proposed changes in the family day home zoning regulations. They need more affordable licensed childcare facilities in the area not fewer. Forcing the current zoning application fee of $2,000 for family day homes would not be in the best interest of our community.

Anne Linden said she was also here to represent the League of Women Voters of the Charlottesville area. The League supports community-based efforts to improve the quality and affordability of and accessibility of child care in the Thomas Jefferson Planning District. Home child care providers offer the least expensive form of licensed child care available in this area and we need to help them remain licensed and in business.

Shannon Hoofer recommended that the Commission vote in favor of this amendment. Like our prior speakers he would agree with everything that they said. He had a couple additions to that. Mr. Davidson mentioned about the economic impact. It would really snowball if this amendment was not passed. His daughter goes to Gentle Care as well and if the amendment is not passed she would have to cut down to 5 children. He was sure other daycares would be affected as well. It would hurt the parents in having their ability to work and provide for their family. It also helps with the economy of the area. He thinks that is one thing to consider as well. His wife suggested a couple other items such as just finding quality daycare in Charlottesville is hard and specifically the part time area is difficult to find. His wife put their baby on the waiting list before she notified him that she was pregnant. The reason he tells that story is that it is so hard because there is such a long waiting list for quality daycare. Where they go is top notch. Therefore, one reason to accept the amendment is to decrease that. Secondly, his wife brought up the idea if this amendment is not passed that they grandfather in current daycares and then apply this to the new ones coming in.

Angela Ciolfi spoke in support of staff's recommendation. She felt a picture is worth a thousand words. It is a testament to how special and irreplaceable that places like Gentle Care Daycare are in that all of these people are here to support it and it is pushing on bed times. She also wants to second the economic impacts. She thinks the ancillary benefits of having Gentle Care Daycare cannot be overstated. She used to do all her business in the City since she is a City resident. However, now she travels to and from Gentle Care Daycare on a frequent basis and she stops at many of the County businesses to spend money. She asked the Commission to approve the recommendation.

Brox Roosevelt agreed basically with everything that our fellow parents have said. When she was pregnant she went to 15 different facilities. The one thing she loved about Gentle Care is that it felt residential. They wanted their children to feel like they are at home, especially when they are infants. She is very pleased to see that she feels like it is going to be easy and affordable for ours and other family day homes to stay in business. One other point is if they have to reduce the number of children it makes it very economically difficult for them to stay in business. So making it easy and affordable is important because the DSS already regulates so much. She cannot believe the amount of paperwork that they have to do.

Tara Koenig spoke for her husband Billy Koenig. She introduced her daughter BB who at this point is one of Gentle Care's longest running attendees. She has been there since she was 12 weeks old and she is

3 ½ years old now. She agreed with everything that was said before. She spoke on behalf of all the parents who have older toddlers. Most of them live in the City of Charlottesville. At this age they would normally be considering transferring your child to preschool. They considered a lot of City preschools, but because the curriculum at Gentle Care is so strong and our children are being offered as much if not more than they would be receiving in an older school setting, they have decided to leave our child there as have a lot of other parents. She echoed the point that Angela made earlier. Rather than move her into a City school where they would be paying a different fee there, they opt to keep her at the preschool. She added that Angela lives on the same street. They both drive about 20 minutes each way to get their child to daycare. It is just a testament to how wonderful the care is and they would be really disappointed if that was not standing there for us.

Mike Cruise said his son, Evan, was at Gentle Care Daycare for 2 ½ years. His son is now 4 years old and in preschool. His son Sebastian who is 5 months old has just started. It is hard to convey how valuable Gentle Care Daycare is to us and the 12 families that go there. He wanted to repeat that it is hard to get into a daycare where the services provided are of such high quality. It would be a real disservice to the town. They all like the way the recommendations are going. They hope the amendment gets through. He would hope that one grumpy neighbor could not veto all this.

Adrena Anderson, resident of the County, said she works in the County as well. She has two kids in Gentle Care. It is an amazing place. She reiterated what everyone else said. She was at the point right now where she has one child who is about to leave and she would absolutely like to have her second child continue going there. It is really important and she would ask to allow them to continue to have 12 children.

Kay Heinz agreed with all the speakers who are in favor of the proposed amendment. She noted the children might be displaced if the proposal was not passed and would not have a place in these larger daycare centers. The space just does not exist. She moved to Charlottesville last year when she was pregnant and found that the wait lists for appropriate daycare are long. Basically she did not think the care in other facilities is on par with the care that her daughter is getting at Gentle Care. She was in favor of the proposal.

Delores Grady said she has been doing childcare for 33 years. She has worked from Louisa, Fluvanna all the way to Greene County. She wanted to speak on behalf of all the child care providers. They are not getting rich doing this. They are providing a service that most people can't provide. The centers cannot give up their hours and they also can't afford to do it at the price that her daycare does it at. She appreciates a lot of the things that the people at Gentle Care was saying that a lot of parents don't want to take their kids out of these daycare homes and put them into another setting. She just had her eighth graduation on Friday. When the kids turn four the parents refuse to take them out of her daycare. So she keeps most of her kids. When the kids leave there they are ready for kindergarten, the first grade and the world. She wanted to speak on behalf of Social Service. She keeps her prices affordable because they are not trying to make a lot of money here. They are trying to take care of ourselves and have some money.

Glenda Best, the Senior Childcare Worker with Albemarle County Social Services, said it was so wonderful that most of the parents came out and supported her. She must say that all of our licensed providers are good providers. It is just that a lot of her clients will not come out because they are scared to verbalize themselves. They are just afraid. But, all of our providers for license are good quality providers. That is why she really hopes that this amendment passes. She and another child care worker do site visits. She wished they could go out with us. If they really compare the State licensed providers compared to the unlicensed it is a big different. The State licensed and home providers' kids are school ready. A lot of the unlicensed providers are not school ready. Some of the providers are unlicensed because they cannot pass all of the different requirements that the State licensed providers have to do. State licensed providers also allow service providers that do speech therapy and things like that into the home because they do want the kids to be school ready. State licensed providers a lot of times tell the parents they think their child has an IAP, speech problems, and hearing problems. A lot of the parents are not in tune to what is going on because they are just trying to survive day to day. She has parents who ask her to come out to watch a particular child. Then when she sits there and watches she can see

that there are issues.

Ms. Best noted these providers are very important. Like Ms. Grady said, they are not getting rich at this. The average in home provider only makes $1,700 to $2,500 a month. The ones who make over $2,000 usually have helpers. The in home unlicensed provider only has that one person. As far as parking, she was sure a lot of Commissioners have come up and down Ridge Street during the day time. There is Very Early Learning Center. They have an average of 42 to 60 kids and they only have four really good parking spots in front of the Center. There are some spaces across the street. Some people park by the cemetery. She has gone up and down Ridge Street and she has not seen any problems with the parents being able to drop kids off and pick them up. She asked the Commission to recommend approval of the amendment.

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

Motion: Mr. Loach moved and Mr. Lafferty seconded to recommend approval of the draft ordinance in Attachment III for ZTA-2013-00004 Family Day Homes.

The motion passed by a vote of 5:0. (Smith and Dotson absent)

The Planning Commission took a break at 7:23 p.m. The meeting reconvened at 7:30 p.m.

Public Hearing Item:

ZTA-2013-00005 Inoperative Vehicle Ordinance
Amend Secs. 3.1, Definitions, 4.12.3, Prohibited activities in parking, stacking and loading areas, 4.15.7, Prohibited signs and sign characteristics, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 3.1 to add definitions related to the regulation of inoperable vehicles; amend Sec. 4.12.3 regarding parking or storing inoperable vehicles, reducing the number of inoperable vehicles from 2 to 1 that may be stored outside of a fully enclosed building on lots less than 5 acres having a Rural Areas or a residential zoning designation (with a limited exception for active vehicle restoration or repair), and requiring that businesses authorized to keep inoperable vehicles outside of a fully enclosed building do so only in the location designated for that use on an approved site plan; and amend Sec. 4.15.7 to clarify the reference to inoperable vehicles. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia.
(Mandy Burbage)

Mandy Burbage presented a PowerPoint presentation to summarize the executive summary.

Staff clarified the type of vehicles that are being addressed by this zoning text amendment, which is taken from the State Code definition of inoperable vehicles. Basically, they are talking about any vehicle, trailer, or semi-trailer that is not in operating condition or that lacks solid license plates or an inspection decal, or has an inspection that has been expired for over 60 days. What it excludes are vehicles that are not required by the State to have a license. Therefore, recreational kinds of vehicles and farm use vehicles would be excluded from these kinds of regulations.

The regulation of inoperable vehicles in Albemarle County is addressed in two sections of the County Code: Chapter 9 Motor Vehicles and Traffic and Chapter 18, the Zoning Ordinance. Currently the County allows properties to have up to two inoperable vehicles outside of an enclosed building or structure provided that they are shielded or screened from view. However, they do not currently have specifications as to what type of screening is appropriate. The amendment is intended to bring these two chapters into alignment. There are currently a few wording inconsistencies between the two chapters that the amendment will correct.

The State Code addresses the enabling authority of localities to regulate inoperable vehicles in two sections. Section 904 applies broadly to all localities and it allows them to limit the number of vehicles

outside of an enclosed vehicle that are shielded or screened. Exceptions are made for licensed businesses engaged in auto sales, repair and salvage. It is also for individuals who are engaged in active restoration or repair of vehicles. Albemarle County sought the enabling authority to further regulate the keeping of inoperable vehicles under Virginia Code § 15.2-905. This enabling authority became effective on July 1, 2013. That is part of the reason staff is bringing the amendments before the Commission.

In response to resident concerns about inoperable vehicles and the impact of inoperable vehicles on smaller residential lots the Board adopted a resolution of intent on May 8, 2013 to address and further restrict inoperable vehicles particularly in those areas. In June, staff came to the Planning Commission in work session to recommend further restricting the number of inoperable vehicles that could be kept on residential lots and on lots smaller than five acres and to introduce specific screening standards to avoid the kind of blue tarp syndrome that they talked about in the last work session. At that work session the question came up as to whether or not our ability to limit also allowed us to prohibit the keeping of inoperable vehicles. The County Attorney's Office agreed to further research that question and essentially came to the conclusion that limit unfortunately does not need to be limited to zero because there is a particular wording in Section 905 that excludes vehicles that are shielded or screened from being prohibited. She asked Mr. Kamptner to add to that.

Mr. Kamptner pointed out staff did a lot of research. He thinks it comes down to the fact that the General Assembly in one part of the statute said that they can prohibit certain things and in another part of the statute it says localities can limit. If the General Assembly had intended that the localities could completely prohibit the outdoor storage of vehicles, even if they were shielded or screened from view, it would not have used the two terms that it did. So applying the rule of instruction that the General Assembly uses different terms means that those words should have different meanings. It was a close call. When they talked to the five localities that do go all the way down to zero they could not articulate on what basis they concluded they were able to go down to zero. He spoke with one locality. Ms. Burbage spoke with four localities. The answer he had from an Assistant City Attorney said, ". . . it has always been that way." The other thing they said was that the vehicles, even in those localities that prohibit any outdoor storage of vehicle such as Newport News, was even if there was a vehicle that was stored outside, if it was shielded or screened from view, then they would not enforce the ordinance against that particular landowner. He thinks Ms. Burbage found the same answer from the localities that she spoke to. He thinks what they came up with is not only the practical solution but it is also one that is true to the language of the statute.

Mr. Morris thanked them both for the extra effort.

Ms. Burbage pointed out one of the other requests that the Commission made to staff at the last work session was for some of the data on the complaints they have had. She provided graphics on that going back to 2007 looking at what districts these complaints about inoperable vehicles are coming from. The majority of the complaints are coming from the rural area and the residential districts. Fifty-two percent of the inoperative vehicle complaints come from the rural area and forty-one percent come from residential districts, which are the areas that are being addressed by this amendment. Looking specifically at the rural area by parcel size, since they had discussed the five-acre cut off, they can see that the large majority of complaints do come from the smaller parcels. In terms of the percentage of all complaints, about one-fifth is about inoperable vehicles. Going back to 2007, they have averaged about forty-nine inoperable vehicle complaints per year, which averages to about four per month. In discussing the length of time it takes to address one of these complaints before civil penalties are enacted the Code Enforcement staff has estimated about 8 to 10 hours of enforcement per complaint. The CEO's have said they believe these amendments will increase the number of complaints they have just by becoming more restrictive in those areas.

In anticipation of the volume of complaints increasing staff is recommending a phased approach to the amendment. For Phase 1 staff is recommending introducing the screening standards and that would be across all areas. Those screening standards they discussed at the work session: evergreen vegetation, an opaque masonry wall or wood fence, or a form fitted default free cover. The covers were given extra attention. But, staff feels that if they are going to require screening that having sort of a cost affordable option is important. Also, on smaller lots the other two screening standards may be more difficult to

achieve. Part of Phase 1 would be dealing with residential districts and limiting to the extent that they are enabled to the keeping of one inoperable vehicle per property. There would be an exception for those individuals engaged in auto repair/restoration to keep up to two provided they are covered or screened and they could keep those vehicles for up to 180 days. One concern staff had in changing the regulations to become more restrictive was to give property owners kind of a chance to adapt to the new regulations. That is why they are proposing a delayed effective date of January 1, 2014 to give the Code Enforcement Officers a chance to educate the owners of properties that they are currently working with. In addition, it is for zoning staff to do some broader public outreach about the change in regulations to give people a chance to change.

As a part of Phase 2 that would be introducing the rural area regulations with a five acre cut off for one (1) inoperable vehicle on lots fewer than five (5) acres, which is essentially the same as what can be done now in keeping two (2) on lots five (5) acres or larger. Licensed businesses would continue to be exempt from those regulations. Individuals engaged in repair would be able to keep up to two (2) inoperable vehicles on the lots smaller than five (5) acres.

Staff recommends the Planning Commission to make a motion to modify the draft ordinance to implement Phase 1 effective January 1, 2014. Staff would be happy to answer any questions.

Mr. Morris invited questions for staff.

Mr. Lafferty said in the screening he assumed staff means out of sight. He noted that staff just says evergreens. So could a little bush be put in front of the inoperable car?

Ms. Burbage replied yes, the State Code has a definition for adequate screening. That specifies that it cannot be visible from someone standing at ground level from outside of the property that the vehicle is located on. She has a couple of visuals just to give an example of an acceptable versus not acceptable look at the different screening standards. So form fitted covers would have to be specifically manufactured to cover a car and completely conceal it. It can't just be a tarp tucked close to the car. The vehicle could not be seen through the fence. The wood fence would have to be completely concealing the inoperable vehicle and not have an open gate showing what is behind it. To the point about the vegetation, it would need to be of sufficient density that they can't see what is going on behind the bushes.

Mr. Randolph asked what happens if he does not put in screening or a car cover after being cited by staff.

Ms. Burbage pointed out a complaint would come in from your neighbor. The Code Enforcement Officer would come out to the property and talk to him about what the standards for screening are. A discussion would be held about the time it would take him to realistically come into compliance with those standards. Then the CEO would come back at that agreed upon time. If he had not taken any action, then they would move into a notice of violation. Should these amendments be passed staff is exploring ticketing and towing as another possible remedy.

Mr. Randolph asked if it would be a financial penalty or fine if he was cited and failed to have put up the screening or the fencing.

Ms. Burbage invited Lisa Green, Code Enforcement Officer, to answer the question.

Lisa Green, Code Enforcement Officer, said the process is they would go out talk to the individual and let them know what the violation is and what the remedy would be. They would give them some time since the procedure is to work with people and not go straight into civil action. At that point if they did not comply after the specified time they would go back and a notice of violation would be sent. The process after that is a 30 day appeal period of time in which they would have the other 30 days to come into compliance. Soon after that would be a civil fine. It takes 6 to 8 hours to get to the first initial packet to go to civil court. As Ms. Burbage said they are looking at the ticket option, which staff feels would cut the time frame down tremendously.

Mr. Loach asked if most of the vehicles they go to at least have a title. The reason he asked was one of the effects he would worry about is that these cars end up in a dump someplace.

Ms. Green noted that was an entirely different conversation. In the residential areas mostly they don't check title, but look for registration and inspection. They do have a number of vehicles out in the rural area that are untitled. They are considered not road worthy so would not fall under this ordinance. Those are modified vehicles that go to race tracks, are not driven on the road and taken to the activity on a trailer. She noted that the enforcement was complaint driven.

Mr. Kamptner asked to clarify one thing about these vehicles that don't have to be licensed or have inspection decals. If the vehicles are not in operating condition they will fall within the definition of an inoperative vehicle. If they meet the state definition of a vehicle, trailer or a semi-trailer they certainly will not be looking for a missing decal or a plate if they don't have to have it under State law.

Mr. Loach noted he only asked because his concern was that they would end up dumped somewhere versus if there is a title that they should follow the vehicle. That was the reason.

Mr. Kamptner said if they are dumped the County just proceeds against the owner and/or the occupant regardless of who actually owns the vehicle.

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

Robert Hogue said his concern is under five (5) acres the farm use tag some people have no connection to agriculture. It appears from the way this is worded that someone can put a farm use tag on a couple vehicles and then could leave them there. He thinks they need to look at the farm use tag again. Some of these farm vehicles have been sitting for a year and never been moved. The other concern is that the neighbor has to call the complaint in. He thinks if there is a law enforcement officer, animal control officer or social service worker on the property they should not turn a blind eye and should report it also.

Jeff Monroe, resident of Inglewood Drive, said he represents the Hessian Hills Neighborhood Association which is a voluntary group of about 120 homeowners in the area between Barracks, Hydraulic and Georgetown in the City limits. They are just north of the Canterbury Hills Association, which is the home of Bob Garland who has been talking to them. They work very closely with Bob Garland about the inoperable vehicles. Their property is zoned R-4 to R-12 residential. He reviewed several color photos of several houses in our neighborhood and how it affects the residents. The first is on Solomon that has a couple of cars covered with a tarp. Apparently under what is proposed one of those would be gone. The second photo is on Bennington, which he thinks fits under the system being proposed here. In other words, it has a form fitting cover; and it is a single car. However, it is right up against the street. They can see what it has forced the trailer onto the street. It used to be in the driveway there earlier. His concern is that this is really good for what they are doing, but it is not going to deal with everything that needs to be done. He hoped they will give further consideration to the fact that they have to do something about these things. He thinks when they look at these houses if it was just the car that was the issue there would not be a problem. If these people had landscapers coming to deal with their house and all they had was that one car sitting in the driveway covered up, then he would not be standing here talking to the Commission. It is the trash, the cars in the street and all the other stuff. However, at the same time they have to deal with what they can deal with here. He hoped that they will come down strong on this.

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

Mr. Loach agreed with him about the form fitting tarp. He asked if it was putting lipstick on a pig. As he pointed out in this picture the position of the inoperable is still problematic.

Mr. Franco said he was probably going against everybody here especially when they are talking about how to phase this in. If screening is the first goal, he was still back to if he can't see it because it is behind a fence or landscaping, then what does he care if there was two or one inoperable vehicle. He did

not see that as a big deal in his world. If he cannot see it, then it does not bother him to have those vehicles on the other side of a fence out of sight. What he understands they are doing is going from two down to one especially on the small rural lots. That is probably the thing that bothers him the most. He still thinks it is good to get rid of them if it is not working. However, he knows lots of rural people with lots of cars in the driveway or behind the house. However, they are on 70 acres and it cannot be seen. So there may be better solutions for them. He did not think they should be hanging on to the inoperable vehicles. However, he did not know that was something they need to be regulating.

Mr. Loach said that was the reason he asked about enforcement. It was fortunate in the case just described that it would not be a problem because it would not be enforceable because they could not see them and no one is going to complain. The way he sees it the county is going to the lowest common denominator that they can use if there is a complaint. They are dealing with the problems as presented here.

Mr. Franco said he would be more agreeable to saying let's get rid of the form fitting covers and just shielding and hiding it from the use. He thinks it is coming down to an aesthetic issue.

Mr. Loach said Mr. Franco's point is as long as it meets the shielding criteria the number is really not an issue. In other words, he was suggesting doing away with form fitting cover as form of shielding.

Mr. Franco agreed with the caveat that everybody should not be able to have a junk yard or a car yard just because it is behind a fence. There has to be a reasonable limit. Right now the limit is two. He suggested leaving it at two if they think it is going to be more problematic going to one, which is going to require a lot more effort and education. Again, form fitting becomes part of that problem. If it were behind a solid fence or landscaping he did not see the difference between two or one and would not pick the fight.

Mr. Kamptner pointed out part of the impetus for the text amendment was concerns of the Canterbury Hills neighborhood because they had inoperable vehicles. What happens now is the regular vehicles that are used end up being parked on the street. In Canterbury Hills the cars are not supposed to be parked on the street. The street is narrow and it creates a cluttered neighborhood. That was what they were trying to address in this regulation by reducing the number and focusing on the residential parcels.

Mr. Franco asked if the cars are not allowed to be parked on the street.

Ms. Burbage replied that it depends on the neighborhood.

Mr. Kamptner agreed that it depends on the neighborhood, but in that particular circumstance it was. He asked Ms. McCulley if vehicles are allowed to be parked on the street in Canterbury Hills.

Ms. McCulley replied that the one case she recalled the streets were wide enough that they could. However, there are plenty of streets where the streets are not designed to be wide enough to accommodate on street parking. In fact, they have a lot of cases that fire apparatus can't get down the streets because people are parking where they should not be.

Mr. Franco questions if the streets should be marked for no parking. This seems to address a different issue of fire or emergency vehicle access, but not in a direct manner. He would rather see us go back to getting the signs up there and keep the people from parking in the street. That is no different from putting the car on the street because there is no room for it in the driveway. It is no different from having parties or anything else that would have a lot of cars parked in the street blocking traffic. That does not provide enough justification to go from necessarily two to one and pick problems.

Mr. Loach said Mr. Franco's solution is more rigid because it leaves out the form fitting cover and makes visibility the issue versus the number. He thought that is almost stricter than saying one but you can put a cover on it.

Mr. Franco said being an aesthetic issue in the examples he sees from what they have been handed it is

going to be hard to put a fence or landscaping in the front yard. They are not going to see them parked in the front of the driveway, but will need to have some kind of screening associated with it. He asked if there were setbacks for privacy fences in front yards.

Ms. McCulley replied that there are no setbacks for fences currently in the regulations. Some localities go as far as to have setbacks even for the location of the inoperable vehicles. That starts to get really complicated to administer. The three reasons why they are doing this are: aesthetics, the spill over onto on-street parking that may not be authorized, which can impact public safety vehicles; and having vehicles that are sometimes in the state of disrepair, which can have leaking fluids, etc.

Mr. Randolph said form fitting cover could present a whole new set of problems in trying to enforce this. He said Mr. Franco's point was well taken in the rural area on five acres that the limit not be one if inoperative vehicles are not visible. However, in denser zoning they need the flexibility of the car cover or some kind of fencing or shrubbery. An acreage separation between the two would be more supportable. Look at some way of differentiating the zoning.

Mr. Franco disagreed that it was an acreage problem. He felt it is a visibility issue. He thinks there are one acre parcels where if the parking goes beside the house and then to the back they would not be able to see that from the street. A fencing element could take care of that. It is the layout. He has a hang up on the property rights side of aesthetics. There are neighborhoods and communities that have adopted homeowner associations that have standards and regulations that prohibit that. A lot of the old by right zoning does not. However, if they are going to argue aesthetics and making it visible or not visible, then it is probably separate from the acreage issue. It is just get them out of there and don't make it visible. He suggested putting them in the backyard.

Mr. Loach asked for reaction from the public to what the Commission has said.

Mr. Morris invited Mr. Monroe to come forward.

Mr. Monroe said Bob Garland, who was absent tonight, sent in an email today. He thought they were on the right track. His concern when he sees the first photo in the presentation is that they are sort of trading one thing for another here if all they were doing was forcing this guy to put a form fitting cover over that. He is going to go out and do that and it is still going to be almost as ugly as it is now. He liked the discussion about the fact that maybe the form fitting cover is not enough and they need to do something to screen these things.

Mr. Franco said he would not want to see fences in the front yard just to hide it. It is creating a whole new aesthetic issue, which is the same as tarps or form fitting covers. He has a concern about that at the same time.

Mr. Loach asked if there is a time factor.

Mr. Morris said it is up to 190 days.

Ms. Burbage noted that applies if they are actively restoring or repairing. However, there is no absolute limit on a properly screened inoperative vehicle.

Mr. Morris thanked staff for all the work. He hoped the request goes forward with a recommendation for approval simply because it is needed. What they have had up to this point has not been working very well.

Ms. Burbage clarified with the phasing that staff is recommending they start just with the residential districts since the rural areas are different. This would give them an opportunity to see how it goes because considering the rural areas.

Mr. Loach asked if they go to the one inoperative vehicle with the form fitting cover can they add a setback so it won't end up right on the road. He asked if staff could craft language to do that. He agreed

with one being the lowest common denominator. If they were going to allow the form fitting covers it should be setback as far off the road as possible.

Mr. Franco asked if they have the ability to create a setback for that.

Mr. Kamptner replied yes, under the zoning regulation in front of the Commission they could create a requirement.

Ms. McCulley pointed out that they had considered that. However, they were also concerned about the view from the side and rear properties. The more they push it away from the road the more they are potentially going to impact those other properties, too.

Mr. Kamptner noted that staff had pointed out in the discussions that with the side yard setbacks being less for structures it may be that if they are forced to have the vehicle in the side yard it actually might be closer to the abutting owner's house.

Mr. Franco suggested that they keep it simple. If he were to look at the setbacks he would probably lean towards using the front face of the building so that they are starting to use the structure to shield it. If the form fitting had to be behind the front face of the building, then that would push it away from the road and get it closer to the house without taking up the parking spaces for the unit.

Mr. Loach suggested that staff regroup and reword the draft language and bring it back.

Ms. McCulley said she was not sure she had heard consensus about the setback situation. She was not sure if there was a consensus that they need to look at impacts on neighbors.

Mr. Randolph said they need a distance in there away from adjoining properties for this really to work to be effective.

Mr. Franco asked if they have parking setbacks in residential areas as well.

Ms. McCulley replied no, that it could be right on that property line. There could even be a shared driveway for attached units.

Mr. Franco noted it could go to the shared property line or shared driveway scenario and be behind the front face, but still have to shield it.

Lisa Green suggested that they think about the reduced size of the rear and side setback in the residential area. They would also need to consider the visibility from the side and rear properties.

Ms. McCulley suggested looking at the survey from other localities. What the survey shows is that more localities prohibit the use of covers and only one locality institutes setbacks. That may be a way to get there also to achieve what Mr. Franco is talking about.

Mr. Morris asked staff if they would like a deferral.

Mr. Franco asked where are they are a group.

Mr. Loach agreed with Mr. Franco with the shielding.

Mr. Morris agreed with the proposal as is.

Mr. Randolph said he likes the idea of getting the inoperable vehicles into the back and not in the front. However, he thought to do that they are going to need a setback. He suggested that they ensure there are setbacks; the inoperable vehicles would be behind the house (relegated parking to the side or rear) so that the house shields the vehicle, with screening or car covers. He thought that screening should be the preference. Then they should come back in a year to see how this has worked, reassess it and then

determine how they need to tweak it to move it into the rural areas.

Mr. Franco said he was more concerned with the view from the road than the side and rear as long as it is screened. He could probably be convinced to go with potentially the tarp, but he was more on board with saying screening with fencing, get it away from the road and relegate it relative to the street or travel way.

Mr. Morris asked to keep in the form fitting tarp and not the blue tarp.

Mr. Loach said he could live with the tarp on the side because the setback is enough.

Mr. Franco said they would find that it will vary from situation to situation. But, in the newer communities being built they are talking about very small setbacks. He did not think they would see cars parked in the 3' setbacks because most of it is house. He thought they were going to eliminate the ability to do inoperable vehicles on a lot of these lots except in backyards that won't be accessible.

Ms. McCulley requested a deferral to a date specific so they don't have to readvertise. They would like some time to study some different scenarios.

Mr. Kamptner pointed out what they come back might be so different that they need to readvertise it anyway. He suggested not specifying a date, but bringing it back when they can.

Mr. Franco said he had one last clarification question on trailers that stay on the property. When they talk about trailers in the rural area he did not have to have a license on it or have something that says farm use only if it is a trailer that only stays on his property. Where does that fit into this?

Ms. Burbage pointed out that DMV has specific rules about the use of a farm use tag. It is restrictive and cannot be slapped on any old vehicle. There is a vehicle weight requirement and some other specifications.

Mr. Franco asked staff for clarification on how they deal with the trailer on property that does not need a license and never leaves.

Motion: Mr. Franco moved and Mr. Randolph seconded to indefinitely defer ZTA-2013-00005 Inoperable Vehicles.

The motion passed by a vote of 5:0.

Mr. Morris noted that ZTA-2013-00005, Inoperable Vehicles was indefinitely deferred to a time to be determined.

Old Business

Mr. Morris asked if there was any old business. There being none, the meeting proceeded.

New Business

Mr. Morris asked if there was any new business.

- Open House on Critical Slopes to be held on August 13th. The Commission requested the time of the open house to be emailed.

There being no further old business, the meeting proceeded.

Adjournment

With no further items, the meeting adjourned at 8:39 p.m. to the Tuesday, August 13, 2013 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

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